



# Professional and Technical Services Contract

State of Minnesota

This Contract is between the State of Minnesota, acting through its Chief Executive Officer of MNsure (“State”) and \_\_\_\_\_, whose designated business address is \_\_\_\_\_, an independent contractor, not an employee of the State of Minnesota (“Broker Enrollment Center” or “Contractor”).

## Recitals

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1. Under Minnesota Statutes §§ 15.061 and 62V.05, subdivision 1(b)(4), the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of consulting services to assist: consumers during the enrollment process.
3. The Contractor represents it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of the State.

## Contract

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### 1. Term of Contract

- 1.1 Effective Date. July 1, 2017, or the date State obtains all required signatures, whichever is later. Contractor must not begin work under this Contract until this Contract is fully executed and Contractor has been notified by State’s Authorized Representative to begin work.
- 1.2 Expiration Date. June 30, 2018, 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. Duties

- 2.1 A Broker Enrollment Center, who is not an employee of the State of Minnesota, shall:
  - 2.1.1. Develop and operate a walk-in site for education and enrollment for residents of surrounding communities.
    - 2.1.1.1. Offer face-to-face assistance.
    - 2.1.1.2. Ensure walk-in site will be open throughout the open enrollment period.
    - 2.1.1.3. Make space available for use by in-person brokers, agents and other assisters to help clients renew or obtain coverage.
  - 2.1.2. Participate in media planning and purchasing with MNsure and MNsure’s identified advertising contractor. Broker Enrollment Center shall pay media outlets directly for its portion of the marketing budget. Broker Enrollment Center will provide sufficient detail to

MNsure within its interim and final financial reporting to confirm the match requirement described in section 4.1.1 has been fully satisfied.

- 2.1.3. Be appointed by each insurer participating in MNsure for any geographical area represented by Broker Enrollment Center.
- 2.1.4. Broker Enrollment Center agrees to provide: MNsure certified agency person(s), high speed internet access, phone lines, copier during predetermined Broker Enrollment Center hours of service.
- 2.1.5. Maintain MNsure Broker Certification requirements and state of Minnesota license.
- 2.1.6. Comply with MNsure Privacy and Security guidelines by taking and passing MNsure Data Privacy and Security training as part of Certification requirements.
- 2.1.7. Comply with all industry-accepted norms, ethics and conduct standards applicable to licensed brokers. Comport oneself at all times with the highest professional ethics and conduct standards. An egregious violation of an ethics and conduct standard may have consequences up to and including de-certification and the violation will be reported to the Minnesota Department of Commerce and all other appropriate authorities.
- 2.1.8. Participate in any required training sessions or meetings as scheduled by MNsure.
- 2.1.9. Submit financial and program reports in the manner and timeframe prescribed by MNsure.
  - 2.1.9.1. Interim progress reports will be due monthly.
  - 2.1.9.2. Final reports will be due 30 calendar days following the expiration date.
- 2.1.10. Comply with all applicable federal, state and local laws, as well as all established policies, rules and procedures of MNsure.

2.2 The State shall:

- 2.2.1. Provide planning and financial support for outreach and educational campaigns directed at new consumers, re-enrollees and the uninsured. MNsure will support development of creative materials and media planning and buying for the following:
  - 2.2.1.1. MNsure signage – High-impact signage designed to direct customers to Broker Enrollment Centers for help with MNsure enrollment.
  - 2.2.1.2. Google paid search – Broker Enrollment Center will appear among the top search results when consumers in the area search for certain key words (i.e. MNsure, health insurance etc.).
  - 2.2.1.3. Local radio OR local print advertising – Broker Enrollment Center name and contact information will be included in a MNsure radio or print advertisement; radio may include local stations and/or Pandora while print will include local or community newspapers.
- 2.2.2. Broker Enrollment Center will be identified on the MNsure website. A Broker Enrollment Center listing will be viewable to consumers prior to an Assister directory search.

**3. Time**

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. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the parties hereby agree that the following will occur:
  - 4.1.1. Contractor will provide \$\_\_\_\_\_ towards the purchase of marketing materials as described within section 2.1 above.
  - 4.1.2. State will match Contractor’s advertising budget total and expend no more than \$\_\_\_\_\_ towards the purchasing of marketing materials as described in section 2.2.

## 5. Conditions of Payment

All services provided by Contractor under this Contract must be performed to State's satisfaction, as determined at the sole discretion of 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. Contractor will not receive payment for work found by State to be unsatisfactory or performed in violation of federal, state, or local law.

## 6. Authorized Representative

6.1 The State's Authorized Representative is:

Name: Bob Davy

Address: 81 Seventh Street East, Suite 300, St. Paul, MN 55101

Telephone: 651.539.1382

Email address: [bob.davy@state.mn.us](mailto:bob.davy@state.mn.us)

The State's Authorized Representative, or his/her successor, 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, State's Authorized Representative will certify acceptance on each invoice submitted for payment.

6.2 The Contractor's Authorized Representative is:

Name:

Address:

Email address:

The Contractor must immediately notify the State if the Contractor's Authorized Representative, changes at any time during this Contract.

## 7. Assignment, Amendments, Waiver, and Contract Complete

7.1 Assignment. Contractor may neither assign or transfer any rights or obligations under this Contract without the prior consent of 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 State and 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, Contractor must indemnify, save, and hold harmless State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by State, to the extent caused by Contractor's:

- Intentional, willful, or negligent acts or omissions; or
- Actions that give rise to strict liability; or
- 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 State's sole negligence. This clause will not be construed to bar any legal remedies Contractor may have for State's failure to fulfill its obligation under this Contract.

**9. State Audits.** Under Minnesota Statutes § 16C.05, subdivision 5, Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) 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, Minnesota Statutes Chapter 13, 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 Minnesota Statutes § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes Chapter 13, by either the Contractor or the State. If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

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

10.2 Intellectual Property Rights

10.2.1. 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.

10.2.2. Obligations

10.2.2.1. 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.

10.2.2.2. 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

11.1 Contractor shall not commence work under the Contract until Contractor has obtained all the insurance described below. Contractor shall maintain such insurance in force and effect throughout the term of the Contract.

11.2 Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies.

11.2.1. 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 State, 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 Accident

If Minnesota Statutes § 176.041 exempts Contractor from Workers Compensation insurance or if 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 Contractor becomes eligible for Workers Compensation, Contractor must comply with the Workers Compensation Insurance requirements herein and provide State with a certificate of insurance.

Further, Contractor certifies that it is in compliance with Minnesota Statutes § 176.181, subdivision 2, pertaining to workers compensation insurance coverage. 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 State's obligation or responsibility.

11.2.2. 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 Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the Contract. Insurance minimum limits are as follows:

\$1,000,000 – per occurrence

\$1,000,000 – annual aggregate

\$1,000,000 – 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

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

11.2.3. 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 which 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:

\$1,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

The following coverage shall be included: Owned, Hired, and Non-owned Automobile

11.2.4. Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance. This policy will provide coverage for all claims Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract. Contractor is required to carry the following minimum limits:

\$1,000,000 – per claim or event

\$1,000,000 – annual aggregate

Any deductible will be the sole responsibility of Contractor and may not exceed \$50,000 without the written approval of State. If Contractor desires authority from State to have a deductible in a higher amount, 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 State can ascertain the ability of 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.

### 11.3 Additional Insurance Conditions

11.3.1. Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to State with respect to any claim arising out of Contractor's performance under this contract;

- 11.3.2. If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify 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 State;
- 11.3.3. Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- 11.3.4. Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of 11.2.4 above;
- 11.3.5. 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
- 11.3.6. 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.

**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 of Minnesota, 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 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 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.

- 13.1 By signing and submitting this Contract, Contractor is providing the certification set out below.
- 13.2 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 Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, State may pursue available remedies, including suspension and/or debarment.
- 13.3 Contractor shall provide immediate written notice to State's Authorized Representative if at any time Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- 13.4 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.
- 13.5 Contractor agrees that upon execution of this this Contract, 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.
- 13.6 Contractor further agrees 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.

- 13.7 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.
- 13.8 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.
- 13.9 Except for transactions authorized under paragraph 13.5 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, State may pursue available remedies, including suspension and/or debarment.
- 13.10 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions
- 13.10.1. Contractor certifies, 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.
- 13.10.2. Where Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### **14. Publicity and Endorsement**

- 14.1 Any publicity regarding the subject matter of this Contract must identify State as the sponsoring agency and must not be released without prior written approval from State's Authorized Representative. For purposes of this provision, publicity includes any and all communications with the media or press with respect to the program, publications, or services provided resulting from this Contract, and any notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for 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. Contractor must not claim that 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 Minnesota Statutes § 270C.65, subdivision 3 and other applicable law, Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to 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 Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

#### **17. Payment to Subcontractors**

As required by Minnesota Statutes § 16A.1245, the prime Contractor must pay all subcontractors, less any retainage, within ten (10) calendar days of the prime Contractor's receipt of payment from 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. State may cancel this Contract at any time, with or without cause, upon thirty (30) calendar days written notice to Contractor. Upon termination, Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- 18.2 Termination for Insufficient Funding. State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding sources, or if funding is not received or made available at a level sufficient to allow for the payment of the services covered here. Termination must be by written, email or fax notice to Contractor. State is not obligated to pay for any services that are provided after notice and effective date of termination. However, Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding sources, not to appropriate funds or to otherwise prohibit such use of or deny access to funds. State must provide Contractor notice of the lack of funding within a reasonable time of State receiving that notice.

## 19. Non-discrimination (In accordance with Minnesota Statutes § 181.59)

Contractor will comply with the provisions of Minnesota Statutes § 181.59 which requires:

“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.”

## 20. 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.

## 21. Accessibility for Individuals with Disabilities (as applicable)

Materials created under this Contract must include usability features or functions that accommodate the needs of persons with disabilities and/or limited English language proficiency, according to state and federal law as applied to the State. All materials created under this Contract must comply with the Minnesota IT Accessibility Standards effective September 1, 2010, which entails, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 Subparts A,D, which can be viewed at: [http://www.mmd.admin.state.mn.us/pdf/accessibility\\_standard.pdf](http://www.mmd.admin.state.mn.us/pdf/accessibility_standard.pdf).

### Nonvisual Access Standards (as applicable)

Materials created under this Contract must comply with nonvisual access standards, which require the following:

- 22.1 The effective interactive control and use of the technology, including the operating system, applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- 22.2 That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- 22.3 That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- 22.4 That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

**1. STATE ENCUMBRANCE VERIFICATION**

Individual certifies that funds have been encumbered as required by Minnesota Statutes § 16A.15.

Signed: \_\_\_\_\_

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

SWIFT Contract No. \_\_\_\_\_

**2. CONTRACTOR**

The Contractor certifies that the appropriate person has executed the contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions or ordinances.

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

**3. MNsure**

By: \_\_\_\_\_

(with delegated authority)

Title: \_\_\_\_\_

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

## CONTRACT ATTACHMENT 1 – DATA SHARING AGREEMENT

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This Data Sharing Agreement (“Agreement”) is by and between MNSure (“MNSure” or “State”) and Broker Enrollment Center (“Contractor”).

WHEREAS, the parties have executed a Contract for see contract;

WHEREAS, MNSure is subject to the Minnesota Government Data Practices Act by Minnesota Statutes, section 62V.06, subd. 1, and is authorized to enter into the below agreement by Minnesota Statutes, section 62V.05, subdivision 1(b)(5); and

WHEREAS, MNSure is authorized to share protected information pursuant to Minnesota Statutes, section 62V.06, subdivisions 5(b)(5) and 5(d).

### 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:
  - 2.1.1. Private data (as defined in Minnesota Statutes § 13.02, subd. 12), confidential data (as defined in Minn. Stat. § 13.02, subd. 3), welfare data (as governed by Minn. Stat. § 13.46), medical data (as governed by Minn. Stat. § 13.384), and other not public data governed by other sections in the Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
  - 2.1.2. Protected health information (“PHI”) (as defined in and governed by the Health Insurance Portability Accountability Act (“HIPAA”), 45 C.F.R. § 160.103);
  - 2.1.3. Federal Tax Information (“FTI”) (as defined by IRC § 6103);
  - 2.1.4. Records (as defined by the Privacy Act of 1974, 5 U.S.C. § 552a; and
  - 2.1.5. 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:
  - 3.1.1. Only release information which it is authorized by law or regulation to share with Contractor.
  - 3.1.2. Obtain any required consents, authorizations, or other permissions that may be necessary for it to share information with Contractor.
  - 3.1.3. 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.
  - 3.1.4. 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:

- 3.2.1. 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:
  - 3.2.1.1. conducting appropriate screening and monitoring of its employees and agents to protect information privacy;
  - 3.2.1.2. ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in clause 1; and
  - 3.2.1.3. 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.
- 3.2.2. Comply with the “minimum necessary” access and disclosure rule set forth in the MGDPA. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government. Minnesota Statutes § 13.05 subdivision 3.
- 3.2.3. Report to MNSure any privacy or security incident regarding the information of which it becomes aware. For purposes of this Agreement, “Security incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. Security incident shall not include pings and other broadcast attacks on Contractor’s firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above when using Contractor equipment and infrastructure; so long as such incidents do not result in unauthorized access, use or disclosure of MNSure’s information. “Privacy incident” means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be made in writing and submitted to MNSure immediately and in no case more than two (2) days after learning of such incident.
- 3.2.4. Unless provided for otherwise in this Agreement, if Contractor receives a request to release the information referred to in this Clause, Contractor must immediately notify MNSure. MNSure will give Contractor instructions concerning the release of the data to the requesting party before the data is released.
- 3.2.5. 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.
- 3.2.6. In accordance with Minnesota Statutes § 62V.06, subdivision 9, Contractor may not sell any data collected, created, or maintained by MNSure, regardless of its classification, for commercial or any other purposes.
- 3.2.7. Consistent with this Agreement, ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.
- 3.2.8. To the extent that any protected information is PHI:

- 3.2.8.1. 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).
- 3.2.8.2. Report any breach or security incident pursuant to the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E). This report must be in writing and sent to MNSure not more than two (2) days after learning of such non-permitted use or disclosure. Such a report will at least:
  - 3.2.8.2.1. Identify the nature of the non-permitted use or disclosure;
  - 3.2.8.2.2. Identify the PHI used or disclosed;
  - 3.2.8.2.3. Identify who made the non-permitted use or disclosure and who received the nonpermitted or violating disclosure;
  - 3.2.8.2.4. Identify what corrective action was taken or will be taken to prevent further nonpermitted uses or disclosures;
  - 3.2.8.2.5. Identify what was done or will be done to mitigate any deleterious effect of the nonpermitted use or disclosure; and
  - 3.2.8.2.6. Provide such other information, including any written documentation, as MNSure may reasonably request.
  - 3.2.8.2.7. Provide notice required by 45 C.F.R. §§ 164.404 through 164.408 to affected individuals, news media, and/or the Office of Civil Rights, Department of Health and Human Services, only upon direction from and in coordination with MNSure.
- 3.2.8.3. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree in writing to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- 3.2.8.4. Within ten (10) business days of a request from an individual or their designee, make available protected health information in a designated record set, consistent with Minn. Stat. § 13.04, subdivision 3, and 45 C.F.R. § 164.524.
- 3.2.8.5. Within ten (10) business days, forward any request to make any amendment(s) to protected health information in a designated record set to MNSure in order for MNSure to satisfy its obligations under Minnesota Statutes § 13.04, subdivision 3 and 45 C.F.R. §164.526.
- 3.2.8.6. Document such disclosures of PHI and information related to such disclosures as would be required for MNSure to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Maintain and make available no later than fifteen (15) days after receipt of request from MNSure, the information required to provide an accounting of disclosures to MNSure as necessary to satisfy MNSure’s obligations under 45 C.F.R. §164.528, or upon request from MNSure respond directly to individual’s request for an accounting of disclosures.
- 3.2.8.7. To the extent the business associate is to carry out one or more of MNSure’s obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to MNSure in the performance of such obligation(s).
- 3.2.8.8. Make its internal practices, books and records available for purposes of determining compliance with the HIPAA Rules.
- 3.2.8.9. 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.

3.2.8.10. Comply with any and all other applicable provisions of the HIPAA Privacy Rule, Administrative, and Security Standards, including future amendments thereto. Develop written policies and procedures for safeguarding and securing PHI and complying with HIPAA and the HITECH Act, and other privacy laws.

3.2.8.11. 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.

3.3. To the extent that any protected information is FTI, ensure that this data only be used as authorized under the Patient Protection and Affordable Care Act and the Internal Revenue Code, 26 U.S.C. § 6103(C), and IRS Publication 1075, and restrict from use for any other purpose.

3.4. Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure or breach of security with respect to protected information by it in violation of this Agreement.

3.5. Report and mitigate any fraudulent activities;

3.6. Comply with any and all other applicable provisions of the Final Exchange Privacy Rule at 45 C.F.R. § 155.260, including future amendments thereto.

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

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

#### **5. 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.

#### **6. 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.

#### **7. Interpretation.**

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

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

#### **9. Effect of statutory amendments or rule changes.**

The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the laws listed in paragraph 1 of this section or in any other applicable law. However, any requirement in this Agreement or in the DHS Information Security Policy that is based upon HIPAA Rules or upon other federal or state information privacy or security laws

means the requirement as it is currently in effect, including any applicable amendment(s), regardless of whether the Agreement has been amended to reflect the amendments(s).

**10. 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: \_\_\_\_\_

