



MNsure Request for Proposals for MNsure Marketing Campaign

Date Posted: January 11, 2021

- Responses must be received not later than 3 p.m. Central Time, February 16, 2021.
- Late responses will not be considered.

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 the [Office of Equity in Procurement home page](#), at www.mn.gov/admin/oep.

SPECIAL NOTICE: This is a request for proposal. It does not obligate the State of Minnesota to award a contract or complete the proposed program, and the State reserves the right to cancel this solicitation if it is considered in its best interest.

Responses to this RFP will be public information under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.

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Section 1 – Instructions to Responders

Steps for Completing Your Response	Follow the steps below to complete your response to this Solicitation: Step 1: Read the solicitation documents and ask questions, if any Step 2: Write your response Step 3: Submit your response
Incomplete Submittals	A response must be submitted along with any required additional documents. Incomplete responses that materially deviate from the required format and content may be rejected.

Step 1 – Read the Solicitation Document & Ask Questions, if Any

How to Ask Questions	The contact person for questions is: Katie DeGrio Channing, Legal Director MNsure Legal, Purchasing & Contracts katie.degriochanning@state.mn.us Questions should be emailed to the contact by January 28, 2021 . Other personnel are not authorized to answer questions regarding this Solicitation.
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Step 2 – Write Your Response

The Proposal Content section is in Section 4. Prepare a written response and supply all requested content. Responses should address the requested information and documents detailed in Section 4. **DO NOT INCLUDE** Non-Public/Trade Secret data (as defined by Minn. Stat. § 13.37).

Review, sign and include the Responder Declarations with your response.

Step 3 – Submit Your Response

Where to Send Your Response	Responses and the required attachments must be emailed to: MNsure Katie DeGrio Channing, Legal Director katie.degriochanning@state.mn.us Proposals must be received not later than 3 p.m., Central Time, February 16, 2021 . Late responses 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 <ul style="list-style-type: none"> • Organization Name – MNsure Marketing Campaign RFP App #1 of 2 • Organization Name – MNsure Marketing Campaign RFP App #2 of 2 Submit a separate attachment of the technical proposal and one set of work samples.
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Technical 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.

Price will be a significant factor in the evaluation of proposals.

By submitting a response, responder is making a binding legal offer for the period of time set forth below in Section 6, Conditions of Offer.

Section 2 – Summary of Scope

2.1 Procurement Overview and Goals

Project Overview:

MNsure requests proposals to implement its statewide marketing campaign aimed at reaching all individuals and populations who need affordable, comprehensive health care coverage. The contract will encompass the national open enrollment period in fall 2021, marketing efforts outside of open enrollment in 2021 and 2022, and potentially be extended to cover open enrollment and special enrollment periods in 2022, 2023, 2024, and 2025, and into the special enrollment period in 2026. MNsure has the option to extend the contract at MNsure's sole discretion in increments to be determined by MNsure, not to exceed a total contract term of five years.

Background:

MNsure is an online health-insurance marketplace that facilitates the comparison, choice and purchase of health care coverage for individuals. Through MNsure, individuals have access to comparable information on costs, benefits, health care providers, quality and customer satisfaction for an array of coverage options. With this information, these individuals can choose and enroll in the health benefit plan that best fits their personal and family needs. MNsure is the only place eligible individuals can receive an advanced premium tax credit and cost-sharing reductions. By engaging consumers in a one-stop shopping experience with transparent information, MNsure helps make purchasing health insurance easier and more understandable, puts more control and choice in the hands of individuals, and ideally will create greater market competition.

MNsure's executive leadership team prioritizes ingenuity, innovation, creative thinking, a commitment to equity and inclusion and a get-it-done attitude. As an organization, MNsure will be open, honest and inclusive as it looks to increase enrollment through its website.

Responder Eligibility:

Pursuant to section 1311¹ of the ACA, a health carrier or an entity that is treated under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health carrier is not eligible to carry out responsibilities or perform functions required of an exchange. Responders must describe how they are an eligible Responder to this RFP (as detailed in "Attachment F" below).

Desired Outcomes, Including RFP Goal, Project Goal and Time Frame:

The successful responder (vendor) will provide professional technical and media purchasing services in accordance with applicable budget and workplan documents, which will be included in and incorporated into a contract. Vendor will develop collateral materials as needed; complete all media buying, negotiations and placement activities; develop a public relations strategy; manage and oversee MNsure media and productions for a customized mix of advertising services for MNsure selected lead agency brokers; and ensure all documents, videos, and other work products delivered to MNsure are accessible in order to conform to the State of Minnesota accessibility standard and state video captioning requirements. Information about the standards can be found at <https://mn.gov/mnit/government/policies/accessibility/> and <https://www.revisor.mn.gov/statutes/cite/3251.05>.

As necessary and as directed by MNsure, vendor will also complete all media buying, negotiations and placement activities and manage and oversee MNsure media and productions for a customized mix of advertising services for MNsure Qualifying Life Event ("QLE") and Special Enrollment Period ("SEP") campaigns.

¹ See: 42 U.S.C. § 18031.

RFP 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 marketing and public relations campaign that will drive all audiences to purchase health insurance through MNsure. This RFP is seeking innovative and flexible solutions for marketing and promoting MNsure. Vendor must show ability to adapt to changing market realities throughout the course of the campaign. At MNsure's direction, the incumbent may work with MNsure's outreach team to help facilitate marketing and awareness of enrollment events, as well as select broker and/or navigator partners.

Project Goal:

This RFP is seeking development of a statewide marketing campaign that will leverage existing marketing and public relations efforts and initiatives and enhance them in order to raise awareness of MNsure's programs and services and that will run from approximately September 2021 through January 2022 (including the national and state open enrollment periods within this time). Additional marketing efforts outside of open enrollment to promote special enrollment periods, progress MNsure has made in technology and customer service, as well as general audience awareness, may also be considered and may run from December 2021 through June 2022 or during any other period outside the national and state open enrollment periods. As noted below, MNsure has the option to extend the project up to an additional four years in increments determined by the State.

Time Frame:

The State anticipates a contract will be executed during June 2021 with work commencing thereafter in July 2021, with an anticipated end date of June 30, 2022. MNsure reserves the right to extend the contract, in increments determined by MNsure, not to exceed a total contract term of five years.

Components of Requested Services:

This RFP seeks innovative and flexible proposals from firms or contractors capable of leveraging existing efforts and initiatives and enhancing them with production, media buying and marketing analysis services to produce a marketing campaign, all with the effect of increasing enrollment through the exchange and raising awareness of MNsure.

The campaign will 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: launch of open enrollment, 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
7. Updating and creating individualized marketing campaigns for approximately 20 lead broker agencies across the state

Approaches may include strategic planning, research in service of creating a strategic plan, including but not limited to market research, 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 marketing campaign includes: 1) Those who currently purchase health insurance coverage on their own, including individuals that qualify for Medical Assistance, MinnesotaCare or a qualified health plan with or without tax credits; 2) uninsured individuals; 3) individuals who previously obtained coverage through MNsure and need to reenroll; and 4) external stakeholders such as navigators, brokers, grantees and other partners.

The State recognizes that some firms may have a higher level of expertise on a specific section of the Sample Tasks and Deliverables. Given that the Sample Tasks and Deliverables 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.

While MNsure is not setting a maximum cost limit on proposal submissions, 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 table below lists the approximate spending on the MNsure statewide marketing campaign for the 2021 and 2022 open enrollment periods.

Open Enrollment Year	Approximate Marketing Campaign Services Amount	Approximate Media Purchases Amount
2021	\$571,500	\$1,078,500
2022	\$571,500	\$1,078,500

Key Components of Requested Services:

- Design and manage an innovative, flexible and multifaceted advertising campaign that drives enrollment in health insurance plans through MNsure.
- Effectively reach **diverse audiences** in all geographic areas of Minnesota, including those who are traditionally more uninsured, underinsured and/or experiencing health disparities, as well as more affluent audiences who currently purchase health insurance on their own but would benefit from the services available only through MNsure.
- Maintain strong endorsement and support from key stakeholders and all Minnesotans.

2.2 Sample Tasks and Deliverables

This RFP is seeking individuals or companies that will design, develop and produce a comprehensive statewide marketing and public relations campaign for MNsure.

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 may also 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) MNsure outreach staff, 3) MNsure communications and marketing staff and 4) other MNsure staff and leadership.

The sample tasks (Tasks 1-5 below) should be individually addressed in the detailed cost proposal, in the work plan and in the implementation timeline estimates. A Responder’s work plan should include a detailed implementation timeline along with proposed solution and approach, and estimated deliverable due dates.

Task 1: Design a Multi-faceted Statewide Marketing and Public Relations Campaign for MNsure

Building upon market research, previous marketing campaign assets and outreach and communications planning work already completed, the selected vendor will develop and manage a results-oriented marketing and public relations campaign. In addition to describing your proposed solution and approach for MNsure’s project, please provide a sample media plan that demonstrates an approach to reach targeted diverse, multicultural and “hard to reach” populations.

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

1. A focus on increasing enrollment that targets:
 - a. Individuals who currently purchase health insurance on their own / have no access to employer sponsored coverage
 - b. Diverse communities that are typically uninsured or underinsured
 - c. Demographics that are typically uninsured or underinsured
 - d. 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: <https://www.health.state.mn.us/data/economics/hasurvey/index.html>
2. Re-enrolling individuals who have previously enrolled in MNsure, including:
 - a. Qualified health plan enrollees
 - b. MinnesotaCare enrollees
 - c. Medical Assistance enrollees
3. Increasing enrollment by working with partner organizations including grantees, navigators, brokers and agents to increase enrollment through MNsure

The campaign will 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: launch of open enrollment, 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
7. Updating and creating individualized marketing campaigns for approximately 20 lead broker agencies across the state

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, co-branded signage, brochures, fact sheets, images and other population-specific collaterals.

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 vendor 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 Responder 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 mediums, and align with the media usage of MNsure's audiences:

1. Television (e.g., 30-second TV ads)
2. Online (e.g., paid search, banner ads, streaming videos)
3. Radio (over air and internet, i.e., Pandora, iHeartRadio) (e.g., 15- and 30-second ads)
4. Additional mediums suggested by the proposer. Proposed recommendations should also include:

- a. Identification of specific media to be used
- b. Identification through which the Responder will reach Minnesota's minority populations
- c. Timing, frequency, penetration and length of placement
- d. Allocation of placement within selected media
- e. Justification of media allocation and integration in campaign, cost effectiveness and return on investment
- f. Itemization of media cost

Task 4: Development of Public Relations Strategies

Either as a stand-alone element or in-concert with partnership plans with other vendors, the selected vendor shall assess and recommend different types of public relation strategies and activities for all appropriate target audiences. The vendor will seek to conceive and create unique opportunities or events to increase enrollment as a component of the marketing campaign.

Responder should incorporate structure and strengths of existing MNsure partners, including navigator grantees, broker enrollment centers and other enrollment assistance and external partners in proposing strategic and sustainable promotional strategies.

Responder should consider direct-to-consumer tactics, consumer-facing technologies, external and community partnerships, and other innovative, results-oriented strategies.

Task 5: Accessibility

All documents, videos and other work products delivered by the vendor 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/government/policies/accessibility/> and <https://www.revisor.mn.gov/statutes/cite/3251.05>. For example, this requirement includes closed-captioned products for the deaf and hard of hearing.

Section 3 – Proposal Instructions and Additional Information

1. Anticipated Contract Term

The term of this contract is anticipated to be from July 2021 to June 2022, with the option to extend up to an additional four years in increments determined by the State.

2. Question and Answer Instructions

All questions should be submitted no later than the date and time listed in Section 1, Instructions to Responders. The State is not obligated to answer questions submitted after the question due date and time.

Only personnel listed above are authorized to discuss this solicitation with responders. Contact regarding this solicitation with any personnel not listed above could result in disqualification. This provision is not intended to prevent responders from seeking guidance from state procurement assistance programs regarding general procurement questions.

If a Responder discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the solicitation, please immediately notify the contact person detailed above in writing of such error and request modification or clarification of the document.

3. Additional Tasks or Activities

Responders are encouraged to propose additional tasks, activities, or goods above and beyond the scope of what is requested in this solicitation if they will substantially improve the results of this procurement. Any costs associated with these additional tasks, activities, or goods should be clearly marked and separated from costs associated with the tasks, activities, or goods specifically requested under this solicitation. Because cost is a factor in the evaluation of responses to this solicitation, failure to separate costs for additional tasks, activities, or goods may result in those costs being included in a responder's cost proposal and result in a lower cost score for that proposal.

Section 4 – Proposal Content

Please submit the following information:

1. Work Plan. Responder should provide a description of the deliverables to be provided by the Responder along with a detailed work plan that identifies the major tasks to be accomplished and be used as a scheduling and managing tool, as well as the basis for invoicing. This document should NOT list cost detail. If cost detail is included in this document, the State may disqualify the proposal as non-responsive. Responder should provide a statement of the objectives, goals, and tasks to show or demonstrate the Responder's view and understanding of the nature of the contract.
 - Include a detailed implementation timeline with the work plan (for the period of July 1, 2021 through June 30, 2022, including possible market research and marketing work to be performed outside of MNsure annual open enrollment).
 - Describe proposed project management and interaction/communication with MNsure staff and/or stakeholders for the project.
 - Explain how the work plan will meet the project goal (the goal is identified on page 6 of this RFP document).
 - Address all of the Sample Tasks (Tasks 1-5), which are listed on pages 7-9 of this RFP document.
 - Identify and separate proposed optional tasks or activities from the required items on the work plan.
 - Include a sample media plan that demonstrates an approach to reach targeted diverse, multicultural and “hard to reach” populations.
2. Qualifications and Experience. Responder should provide an outline of background and experience with examples of similar work done by the Responder and a list of personnel who will conduct the project, detailing their training, and work experience. **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 response that personal contact information is being provided.**
 - Include a 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.
 - Describe your background and experience with similar projects.
 - 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, provide a list of subcontractors whose services will be used and the specific role(s) each subcontractor will have.
 - Provide a description of your previous project management approach.
 - Include responses to Attachment F.
3. References. Responder must complete and submit “Attachment E: Reference Form” with their response. Responder **must** submit **three completed reference forms** with each reference's company name and contact information with their response. Once Responder's response is received, the Solicitation Administrator will send the same form to Responder's reference(s) for each reference to fill out and return to the Solicitation Administrator.

PASS/FAIL Requirement. Responder must complete and submit “Attachment E: Reference Form” with their response. Responder should answer every question and provide all information requested on the reference form. Failure to meet this requirement may result in the rejection of the entire solicitation response as non-responsive.

The State reserves the right to verify the information submitted on Attachment E before an award is made. The State reserves the right to contact the references listed in Attachment E. The solicitation response will be rejected if the State, in its sole discretion, receives information that indicates the responder is non-responsible or non-responsive.

4. Cost Detail. Complete and submit Attachment C, “Cost Detail,” attached to this solicitation.
5. Sample Transaction Documents. Prior to award, a potential successful Responder must submit samples of any transaction documents proposed for use under the resulting contract. The State will review the transaction documents to ensure they contain sufficient detail and to review additional terms and conditions contained therein, if any. The State reserves the right to request additional detail in the transaction documents or to reject additional terms and conditions within transaction documents. Once approved by the State, Contractor may not materially change transaction documents unless a change has been approved in writing by the Commissioner of Administration, as delegated to the Office of State Procurement. Any terms and conditions included in transaction documents but not approved by the State are voidable by the State. Any terms and conditions that are in conflict with Minnesota law or in conflict with the terms of the State Contract are void. Failure to void a non-approved term or condition included in a transaction document does not waive the State’s right to void any non-approved term or condition.

Submit all requested documentation, including, but not limited to, the following documents:

1. Attachment A: Responder Declarations
2. Attachment B: Exceptions to State's Standard Terms and Conditions
3. Attachment C: Cost Proposal
4. Attachment D: Responder Forms
 - a. Veterans Preference Form
 - b. Workforce Certification
 - c. Equal Pay Certificate Form
5. Attachment E: Reference Form
6. Attachment F: Responder Overview and Responder Questions

DO NOT INCLUDE Non-Public/Trade Secret data (as defined by Minn. Stat. § 13.37).

Section 5 – Evaluation Procedure and Criteria

The State will conduct an evaluation of responses to this Solicitation. The evaluations will be conducted in three phases:

Phase 1 - Review responses for responsiveness and pass/fail requirements

Phase 2 - Evaluate responses

Phase 3 - Select finalist(s)

Phase 1 – Responsiveness and Pass/Fail Requirements

The purpose of this phase is to determine if each response complies with mandatory requirements. The State will first review each proposal for responsiveness to determine if the Responder satisfies all mandatory requirements. The State will evaluate these requirements on a pass/fail basis.

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

- Responses must be received by the due date and time specified in this RFP.
- Responder must complete and submit three completed “Attachment E: Reference Form” with their response.
- Responder must complete and submit “Attachment F: Responder Overview and Responder Questions.”
- Responder must be an eligible Responder under section 1311 of the Affordable Care Act. When responding to Attachment F, Responder must attest that Responder is not a health carrier or an entity that is treated under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health carrier.

Phase 2 - Evaluate Responses

Only those responses found to have met Phase 1 criteria will be considered in Phase 2.

The factors and weighting on which responses will be evaluated are:

1. Work Plan for Deliverables	450 points
2. Qualifications and Experience of Personnel	100 points
3. References	150 points
4. Cost Detail	<u>300 points</u> 1,000 points
5. Preference Points (if applicable)	60 points (in addition to 1,000 available)

Preference points are described under Solicitation Terms and will be applied to the total score after points have been awarded.

Phase 3 - Select Finalist(s)

Only those responses that have been evaluated under Phase 2 shall be eligible for Phase 3.

The State will make its selection based on best value, as determined by this evaluation process. The State reserves the right to pursue negotiations on any exception taken to the State’s standard terms and conditions. In the event that negotiated terms cannot be reached, the State reserves the right to terminate negotiations and begin negotiating with the next highest scoring responder or take other actions as the State deems appropriate. If the State anticipates multiple awards, the State reserves the right to negotiate with more than one Responder.

It is anticipated that the evaluation and selection will be completed **by June 30, 2021**.

Section 6 – Solicitation Terms

1. Competition in Responding

The State desires open and fair competition. Questions from responders regarding any of the requirements of the Solicitation must be submitted in writing to the Solicitation Administrator listed in the Solicitation before the due date and time. If changes are made the State will issue an addendum.

Any evidence of collusion among responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action.

2. Addenda to the Solicitation

Changes to the Solicitation will be made by addendum with notification and posted in the same manner as the original Solicitation. Any addenda issued will become part of the Solicitation.

3. Data Security - Foreign Outsourcing of Work is Prohibited

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 levels.

4. Joint Ventures

The State allows joint ventures among groups of responders when responding to the solicitation. However, one responder must submit a response on behalf of all the others in the group. The responder that submits the response will be considered legally responsible for the response (and the contract, if awarded).

5. Withdrawing Response

A responder may withdraw its response prior to the due date and time of the Solicitation. For solicitations in the SWIFT Supplier Portal, a responder may withdraw its response from the SWIFT Supplier Portal. For solicitations done any other way, a responder may withdraw its response by notifying the Solicitation Administrator in writing of the desire to withdraw.

After the due date and time of this Solicitation, a responder may withdraw a response only upon showing that an obvious error exists in the response. The showing and request for withdrawal must be made in writing to Solicitation Administrator within a reasonable time and prior to the State's detrimental reliance on the response.

6. Rights Reserved

The State reserves the right to:

- Reject any and all responses received;
- Waive or modify any informalities, irregularities, or inconsistencies in the responses received;
- Negotiate with the highest scoring Responder[s];
- Terminate negotiations and select the next response providing the best value for the State;
- Consider documented past performance resulting from a State contract may be considered in the evaluation process;
- Short list the highest scoring Responders;
- Require Responders to conduct presentations, demonstrations, or submit samples;
- Interview key personnel or references;
- Request a best and final offer from one or more Responders;
- The State reserves the right to request additional information; and

- The State reserves the right to use estimated usage or scenarios for the purpose of conducting pricing evaluations. The State reserves the right to modify scenarios, and to request or add additional scenarios for the evaluation.

7. Samples and Demonstrations

Upon request, Responders are to provide samples to the State at no charge. Except for those destroyed or mutilated in testing, the State will return samples if requested and at the Responder's expense. All costs to conduct and associated with a demonstration will be the sole responsibility of the Responder.

8. Responses are Nonpublic During Evaluation Process

All materials submitted in response to this Solicitation will become property of the State. During the evaluation process, all information concerning the responses submitted will remain private or nonpublic and will not be disclosed to anyone whose official duties do not require such knowledge. Responses are private or nonpublic data until the completion of the evaluation process as defined by Minn. Stat. § 13.591. The completion of the evaluation process is defined as the State having completed negotiating a contract with the selected responder. The State will notify all responders in writing of the evaluation results.

9. Trade Secret Information

9.1 Responders must not submit as part of their response trade secret material, as defined by Minn. Stat. § 13.37.

9.2 In the event trade secret data are submitted, Responder must defend any action seeking release of data it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments awarded against the State in favor of the party requesting the data, and any and all costs connected with that defense.

9.3 The State does not consider cost or prices to be trade secret material, as defined by Minn. Stat. § 13.37.

9.4 A responder may present and discuss trade secret information during an interview or demonstration with the State, if applicable.

10. Conditions of Offer

Unless otherwise approved in writing by the State, Responder's cost proposal and all terms offered in its response that pertain to the completion of professional and technical services and general services will remain firm for 180 days, until they are accepted or rejected by the State, or they are changed by further negotiations with the State prior to contract execution.

11. Award

Any award that may result from this solicitation will be based upon the total accumulated points as established in the solicitation. The State reserves the right to award this solicitation to a single Responder, or to multiple Responders, whichever is in the best interest of the State, providing each Responder is in compliance with all terms and conditions of the solicitation. The State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the State.

12. Requirements Prior to Contract Execution

Prior to contract execution, a responder receiving a contract award must comply with any submittal requests. A submittal request may include, but is not limited to, a Certificate of Insurance.

13. Targeted Group, Economically Disadvantaged Business, Veteran-Owned and Individual Preference

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. § 16C.16, businesses that are eligible and certified by the State as targeted group (TG) businesses, economically disadvantaged (ED) businesses, and veteran-owned businesses will receive points equal to 6% percent of the total points available as preference.

For TG/ED/VO certification and eligibility information visit [the Office of Equity in Procurement website](https://mn.gov/admin/business/vendor-info/oep/) at <https://mn.gov/admin/business/vendor-info/oep/> or call the Division's Helpline at 651-296-2600.

14. Reciprocity

State shall comply with Minn. Stat. § 16C.06, subd. 7, as that applies to a non-resident vendor. This paragraph does not apply for any project in which federal funds are expended.

Attachment A: Responder Declarations

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

- A. **Response Contents.** 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
- B. **Authorized Signature.** This Declaration is signed by the appropriate person(s), with the authority to contractually bind the Responder, as required by applicable articles, bylaws, resolutions, minutes, and ordinances.
- C. **Non-Collusion Certification.**
 - 1. The Proposal has been arrived at by the Responder independently and has been submitted without collusion and without any agreement, understanding or planned common course of action with any other vendor designed to limit fair or open competition; and
 - 2. The contents of the Response 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 other individual prior to the due date and time of this Solicitation. Any evidence of collusion among Responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action.
- D. **Organizational Conflicts of Interest.** To the best of Responder's knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons,
 - 1. a vendor is unable or potentially unable to render impartial assistance or advice to the State;
 - 2. the vendor's objectivity in performing the contract work is or might be otherwise impaired; or
 - 3. the vendor has an unfair competitive advantage.

If after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the State's Chief Procurement Officer which must include a description of the action which 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 Contractor 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. Organizational conflicts of interest terms apply to any subcontractors for this work.

- E. **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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients 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 and 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.

- F. **Copyrighted Material Waiver.** By signing its Response, the Responder certifies that it has obtained all necessary approvals for the reproduction and distribution of the contents of its response.
- G. **Diverse Spend Reporting.** The Sample Contract contains a clause for Diverse Spend Reporting. When this clause applies, Contractor will be required to register in a free portal to report diverse spend.

Please see [Diverse Spend Reporting Frequently Asked Questions](https://mn.gov/admin/assets/Diverse_Spend_Reporting_FAQ_tcm36-394274.pdf) (https://mn.gov/admin/assets/Diverse Spend Reporting FAQ_tcm36-394274.pdf) for additional information.

By signing this form, Responder acknowledges and certifies compliance with all applicable requirements indicated above.

Company Name: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone Number: _____

Email Address: _____

Attachment B: Exceptions to State's Terms and Conditions

The State presumes a responder agrees to the terms and conditions of this solicitation unless a responder takes specific exception to one or more of the conditions on this form.

The State reserves the right to reject, negotiate, or accept any exception listed to the State's terms and conditions (including those found in the attached Sample Contract).

INSTRUCTIONS: A responder must explicitly list all exceptions to State's terms and conditions, if any (including those found in the attached Sample Contract). Reference the clause number and page number of the State's term and condition for each of a responder's exceptions. If no exceptions exist, state "NONE" specifically on the form below. Whether or not exceptions are taken, the Responder must sign and date this form and submit it as part of their response. (Add additional pages if necessary.)

Clause and Page Number	Suggested Change to Clause	Explanation or Justification

By signing this form, I acknowledge that the above-named responder accepts, without qualification, all terms and conditions stated in this solicitation (including the sample contract) except those clearly outlined as exceptions above.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attachment C: Cost Detail

Responders must submit Attachment C “Cost Detail” form to submit their Cost Proposal. The rate(s) identified in the Cost Proposal must include all costs, including but not limited to: travel expenses, mass mailings, fees, commissions, compensation, equipment and other charges.

Identify the level of the State’s participation in the contract and details of cost allowances for this participation. The State does not make regular payments based solely upon the passage of time; it only pays for services performed or work delivered after it is accomplished.

Submit the Attachment C: Cost Proposal as a separate document(s) from your technical response for all copies of the Proposal. Do not include any cost information in the Technical Proposal part of the response. The Proposal must be open for acceptance until a contract is executed, the Solicitation is cancelled, or 180 days after the due date and time of the Solicitation, whichever comes first.

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.

Attachment D: Responder Forms

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 – 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: _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services

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

TC Metro: 651-539-1095

Toll Free: 800-657-3704

TTY: 651-296-1283

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	

Attachment E: Reference Form

Responder/Company Name:

Contact Name:

Address:

Email:

Phone Number:

1. Description of project(s):
2. Dates of Engagement:
3. Were the project(s) completed on budget? If not, please explain.
4. Were the project(s) complete on time? If not, please explain.
5. What went well with the project(s)?
6. What could have gone better with the project(s)?

Attachment F: Responder Overview and Responder Questions

State of Minnesota MNSure Public Awareness Marketing/Outreach 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 MNSure's marketing and advertising 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 utilized 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 the approach to project management and organization that you would use for the project.
8. Describe how you would design a campaign that would reach underserved communities in Minnesota.
9. Describe how you are an eligible Responder to this RFP, in accordance with Section 1311 of the ACA. At minimum, provide a written statement that attests that your company is **not** a health carrier or an entity that is treated under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health carrier. **This is a pass/fail requirement, as stated above on page 13 of this RFP solicitation document.** MNSure reserves the right to verify this attestation and request additional information on your company's ownership and corporate or business entity formation documents, or any other necessary documents to verify eligibility under section 1311.

Instructions: If you take exception to any of the terms, conditions or language in the contract or contract exhibits, 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.



State of Minnesota Contract

SWIFT Contract No.:

This Contract is between the State of Minnesota, acting through its _____ (“State”) and [Contractor] whose designated business address is [Contractor’s business address] (“Contractor”). State and Contractor may be referred to jointly as “Parties.”

Recitals

1. State issued a solicitation identified as MNSure Request for Proposals for MNSure Marketing Campaign on January 11, 2021 for advertising and marketing services to advance its mission to ensure all Minnesotans have access to comprehensive, affordable health coverage (“Solicitation”);
2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and
3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

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. The contract may be extended for up to an additional 4 years, in increments as determined by the State, through a duly executed amendment.

2. Contractor’s Duties.

The Contractor shall perform all duties described in this Contract to the satisfaction of the State. The Contractor, who is not a State employee, shall:

3. Representations and Warranties.

- 3.1. Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law, including Minn. Stat. § 62V.05, subdivision 1(b) (4) , the State is empowered to engage such assistance as deemed necessary.
- 3.2. Contractor warrants that it is duly qualified and shall perform its obligations under this Contract in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor's industry, trade, or profession, and in accordance with the specifications set forth in this Contract, to the satisfaction of the State.
- 3.3. Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms.

4. 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.

5. Consideration and Payment.

5.1. Consideration. The State will pay for performance by the Contractor under this Contract as follows:

- 5.1.1. Compensation. The Contractor will be paid in accordance with Attachment 2 and the project approval process described in section 2, following the acceptance of the deliverables described in this Contract.
- 5.1.2. Travel expenses. If applicable, reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Contract will not exceed \$0.00; 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.
- 5.1.3. Media Services Purchasing Authority.
- 5.1.4. Total obligation. The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed \$_____.

5.2. Payment.

5.2.1. Invoices. The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the goods received or services actually performed, and the State's Authorized Representative accepts the invoiced goods or services. Invoices must be submitted timely and according to the following schedule:

The State does not pay merely for the passage of time; all payments must be tied to the completion of work.

- 5.2.2. 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. The balance due will be paid when the State determines that the Contractor has satisfactorily fulfilled all the terms of this Contract.
- 5.2.3. Conditions of payment. All services delivered by the Contractor under this Contract must be performed to the State's satisfaction 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.

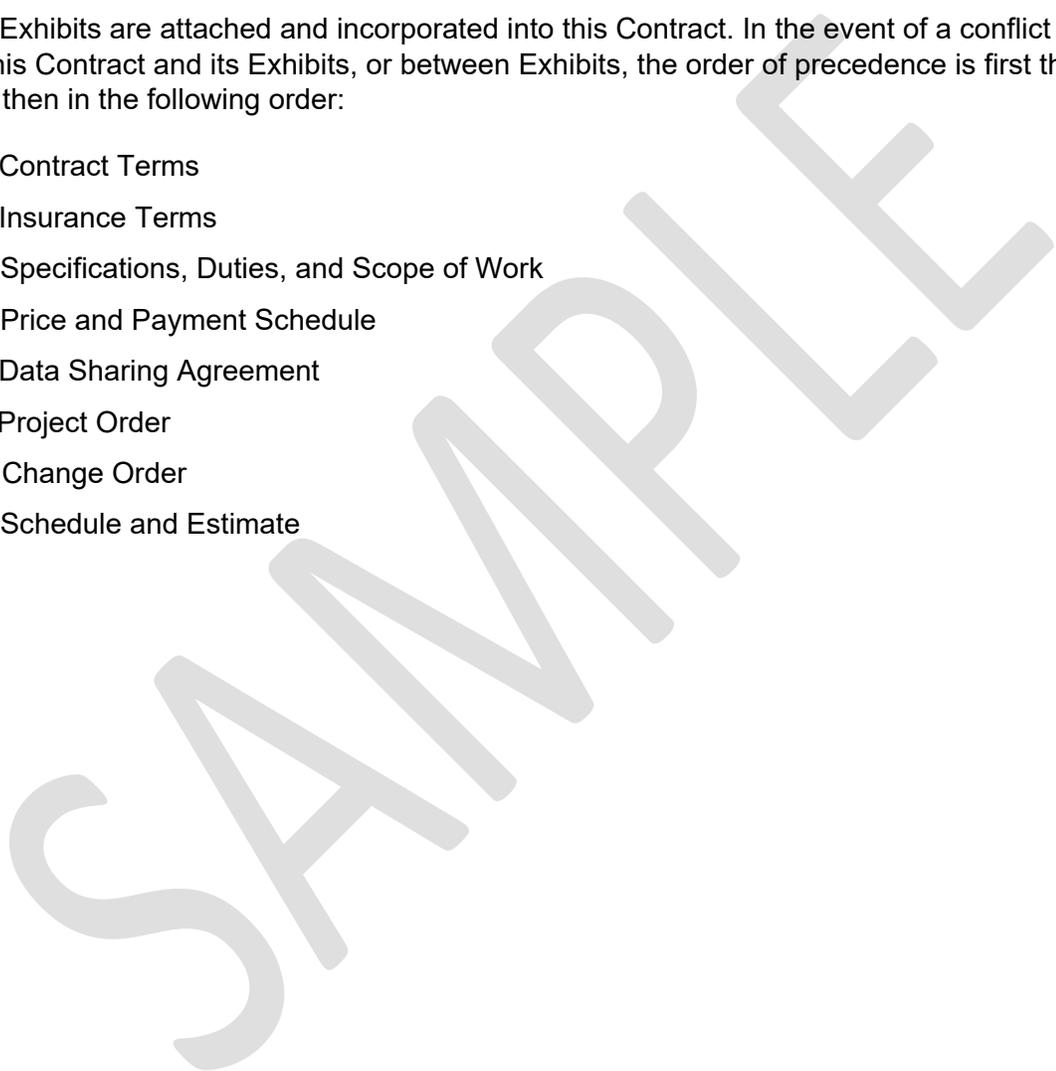
The State's Authorized Representative is _____, or his/her successor or delegate, and has the responsibility to monitor the Contractor's performance.

Contractor's Authorized Representative. The Contractor's Authorized Representative is _____ at the following business address and telephone number: _____ 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. Exhibits.

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits, or between Exhibits, the order of precedence is first the Contract, and then in the following order:

- Exhibit A: Contract Terms
- Exhibit B: Insurance Terms
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Price and Payment Schedule
- Exhibit E: Data Sharing Agreement
- Exhibit F: Project Order
- Exhibit G: Change Order
- Exhibit H: Schedule and Estimate



1. State Encumbrance Verification
Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05

Print name: _____
Signature: _____
Title: _____ Date: _____
SWIFT
Contract No.: _____

3. State Agency
With delegated authority

Print name: _____
Signature: _____
Title: _____ Date: _____

2. Contractor
The Contractor certifies that the appropriate person(s) have executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Print name: _____
Signature: _____
Title: _____ Date: _____

4. Commissioner of Administration
As delegated to The Office of State Procurement

Print name: _____
Signature: _____
Title: _____ Date: _____

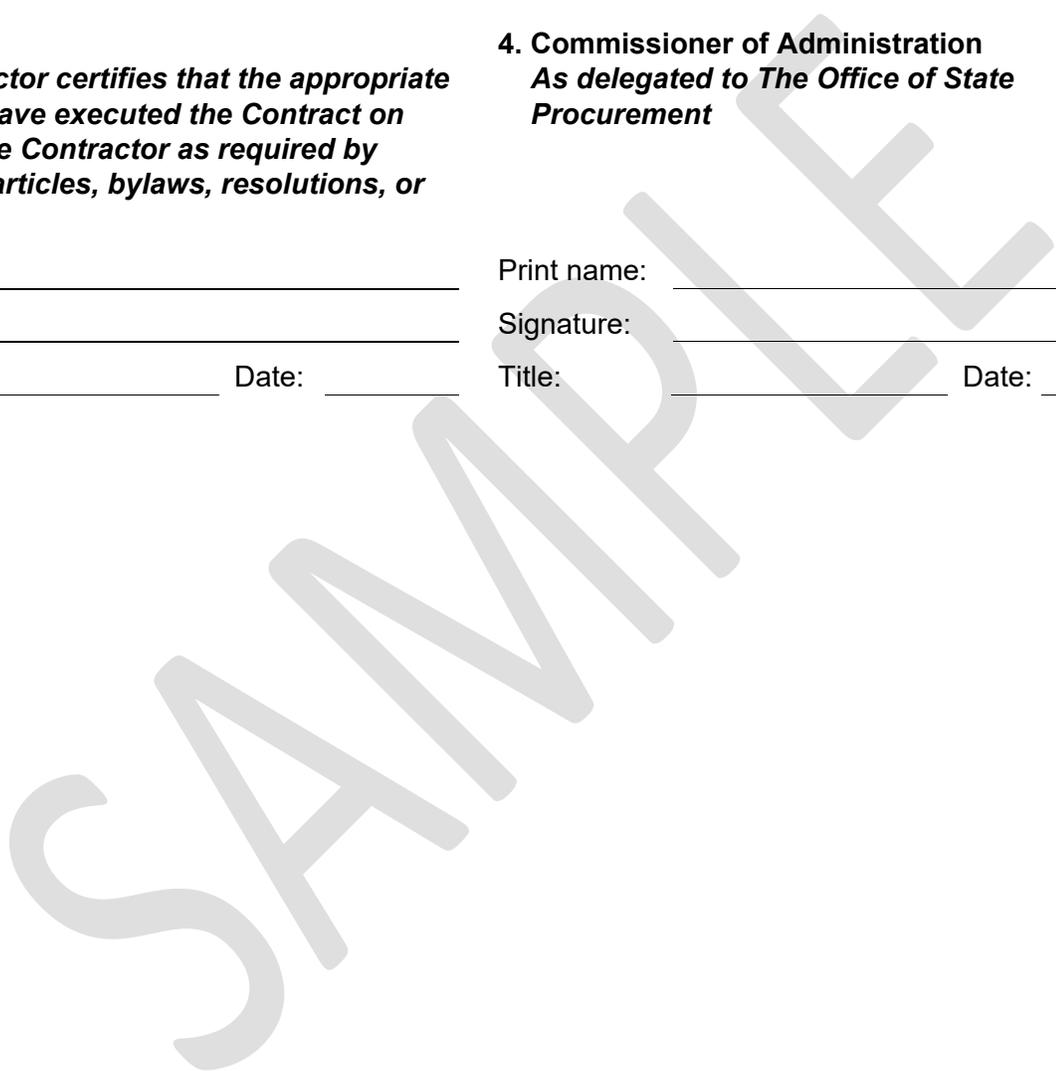


Exhibit A: Contract Terms

1. Prompt Payment and Invoicing.

1.1. Prompt Payment. The State will pay the Contractor pursuant to Minn. Stat. § 16A.124, which requires payment within 30 days following receipt of an undisputed invoice, or merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read “Net 30 days.” Notwithstanding the foregoing, the State may pay the Contractor in advance for purchases as allowed pursuant to Minn. Stat. §16A.065.

The payment for each order will only be made for goods received or services actually performed that have been accepted by the ordering entity, and meet all terms, conditions, and specifications of the Contract and the ordering document.

1.2. Invoicing. The invoice must be in the same format as the sample invoice form approved as Exhibit D, Supplement 1 with the Contract, unless an alternative format is approved in writing by the State Authorized Representative, or delegate. See Exhibit D, Supplement 1 for a list of minimum invoice requirements.

2. Assignment, Amendments, Waiver, and Contract Complete.

2.1. 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 authorized parties or their successors.

2.2. Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.

2.3. 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.

2.4. 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.

3. Termination.

3.1. Termination for Convenience. 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 for convenience, the Contractor will be entitled to payment, determined on a pro rata basis, for services or goods satisfactorily performed or delivered.

3.2. Termination for Breach. The State may terminate this Contract, with cause, upon 30 days' written notice to Contractor of the alleged breach and opportunity to cure. If after 30 days, the alleged breach has not been remedied, the State may immediately terminate the Contract.

3.3. 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 addressed within this Contract. Termination must be by written 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 dedicated 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. This notice will be provided within a reasonable time of the State's receiving notice.

4. Force Majeure.

Neither party shall be responsible to the other or considered in default of its obligations within this Contract to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot,

disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

5. Indemnification.

5.1. In the performance of this Contract, the Indemnifying Party 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 Indemnifying Party's:

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

The Indemnifying Party is defined to include the Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, or 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 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.

5.2. 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.

6. 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.

7. 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 all subcontractors.

8. Subcontracting and Subcontract Payment.

8.1. Subcontracting Allowed. A subcontractor is a person or company that has been awarded a portion of the Contract by Contractor. Only subcontractors that have been approved by the Contract Administrator can be used for this Contract.

After the effective date of the Contract, the Contractor shall not, without prior written approval of the Contract Administrator, subcontract for the performance of any of the Contractor's obligations that were not already approved for subcontracting when the Contract was awarded. During this Contract, if an approved subcontractor is determined to be performing unsatisfactorily by the Contract Administrator, the Contractor will receive written notification that the subcontractor can no longer be used for this Contract.

The provisions of the Contract shall apply with equal force and effect to all approved subcontractors engaged by the Contractor. Notwithstanding approval by the State, no subcontract shall serve to terminate or in any way affect the primary legal responsibility of the Contractor for timely and satisfactory performances of the obligations contemplated by the Contract.

8.2. Subcontractor Payment. Contractor must pay any subcontractor in accordance with Minn. Stat. § 16A.1245.

9. 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 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.

10. Government Data Practices.

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

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

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

11. Intellectual Property Rights.

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

11.1.1. "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.

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

11.1.3. "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.

11.2. 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.

11.3. 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.

11.4. Obligations.

- 11.4.1. 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.
- 11.4.2. 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.
- 11.4.3. 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.

12. Copyright.

The Contractor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted compositions, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

13. Contractor's Documents.

Any licensing and maintenance agreement, or any order-specific agreement or document, including any pre-installation, linked or "click through" agreement that is allowed by, referenced within or incorporated within the Contract whenever the Contract is used for a State procurement, whether directly by the Contractor or through a Contractor's agent, subcontractor or reseller, is agreed to only to the extent the terms within any such agreement or document do not conflict with the Contract or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Contract or create an additional financial obligation to the State. Any such agreement or document must not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applicable to this Contract or afforded to the State by Minnesota law. A State employee's decision to choose "accept" or an equivalent option associated with a "click-through" agreement does not constitute the State's concurrence or acceptance of terms, if such terms are in conflict with this section.

14. 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, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Contract.

15. Diverse Spend Reporting.

If the total value of the Contract may exceed \$500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount paid to diverse businesses both: 1) directly to subcontractors performing under the Contract, and 2) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Contract compared to Contractor's overall revenue). When this applies, Contractor will register in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Contract is in effect.

16. Publicity and Endorsement.

16.1. 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, information posted on corporate or other websites, 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.

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

17. 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 Federal government, 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.

18. Federal Funds.

18.1. Compliance with Federal Requirements. Federal money will be used or may potentially be used to pay for all or part of the goods, construction or services under the Contract. The Contractor is responsible for compliance with all federal requirements imposed on the funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

18.2. 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.

19. Contingency Fees Prohibited.

Pursuant to Minn. Stat. § 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.

20. 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.

21. Non-discrimination (in accordance with Minn. Stat. § 181.59).

The Contractor will comply with the provisions of Minn. Stat. § 181.59.

22. E-Verify Certification (in accordance with Minn. Stat. § 16C.075).

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

23. Affirmative Action Requirements.

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

- 23.1. 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.
- 23.2. 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.
- 23.3. Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

Affirmative Action for Disabled Workers

 - 23.3.1. 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.
 - 23.3.2. 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.
 - 23.3.3. 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.
 - 23.3.4. 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.

23.3.5. 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.

23.4. 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.

23.5. 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.

24. Equal Pay Certification.

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the State may require Contractor to verify its exempt status.

25. IT Accessibility Standard.

Contractor acknowledges and is fully aware that the State of Minnesota (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) and Section 508 which can be viewed at: <https://mn.gov/mnit/government/policies/accessibility/>.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. As upgrades are made to the software, products, or subscriptions available through this Contract, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above-mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.

When updates or upgrades are made to the products or services available through this Contract, the Contractor agrees to document how the changes will impact or improve the product's or service's accessibility and usability. This documentation, upon request, must be provided to the State in advance of the change, occurring within an agreed upon timeframe sufficient for the state to review the changes and either approve them or request a remediation plan from the Contractor. Contractor warrants that its Products comply with the above-mentioned accessibility Standards and agrees to indemnify, defend, and hold harmless the State against any claims related to non-compliance of Contractor's Product with the above-mentioned accessibility Standards. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for the State to consider the Contractor in default.

26. Nonvisual Access Standards.

Pursuant to Minn. Stat. § 16C.145, the Contractor must comply with the following nonvisual technology access standards to the extent required by law:

- That 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;

- 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;
- That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- 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; and
- Executive branch state agencies subject to Section 16E.03, subdivision 9, are not required to include nonvisual technology access standards developed under this Section in contracts for the procurement of information technology.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

27. Survival of Terms.

The following clauses survive the expiration or cancellation of this Contract: Indemnification; State Audits; Government Data Practices; Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Contract term that expressly states or by its nature shall survive, shall survive.

Exhibit B: Insurance Requirements

1. Notice to Contractor.

- 1.1. The Contractor is required to submit Certificates of Insurance acceptable to the State as evidence of insurance coverage requirements prior to commencing work under this Contract.
- 1.2. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of this Contract, unless otherwise specified in this Contract
- 1.3. The failure of the Contractor to provide a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the State to the Contractor to provide such insurance.
- 1.4. The State reserves the right to immediately terminate this 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.

2. Notice to Insurer.

- 2.1. The Contractor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
- 2.2. Insurance certificate holder should be addressed as follows: [Add agency contract holder's address below.]
[Insert Agency Mailing Address]

3. Additional Insurance Conditions. The following apply to the Contractor, or the Contractor's subcontractor:

- 3.1. 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.
- 3.2. 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;
- 3.3. Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- 3.4. If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- 3.5. Contractor's policy(ies) shall include legal defense fees in addition to its policy limits with the exception of professional liability.
- 3.6. Contractor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best.
- 3.7. 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.

4. Coverages. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

- 4.1. **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 – applying to 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.

4.2. **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:

\$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.

Evidence of Subcontractor insurance shall be filed with the Contractor.

4.3. **Workers' Compensation Insurance. Statutory Compensation Coverage.** 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, 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 Minn. Stat. § 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State, 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 with a certificate of insurance.

4.4. **Professional Liability, Errors, and Omissions.** 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. Insurance minimum limits are as follows:

\$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.

- 4.5. **Network Security and Privacy Liability Insurance (or equivalent).** The coverage may be endorsed on another form of liability coverage or written on a standalone policy. Contractor shall maintain insurance to cover claims which may arise from failure of Contractor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

The following coverage shall be included: State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.

- 4.6. **Privacy Liability Insurance (or equivalent).** The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The Contractor shall maintain insurance to cover claims which may arise from failure of the Contractor to ensure the security of not public data stored on the State's documents, including but not limited to paper, microfilms, microfiche, magnetic computer tapes, cassette tapes, photographic negatives, photos, hard disks, floppy disks, and carbon sheets, while in the Contractor's care, custody, and control. Insurance minimum limits are as follows:

\$2,000,000 - Per Occurrence

\$2,000,000 - Annual Aggregate

The following coverage shall be included: State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.

- 4.7. **Property of Others Insurance (or equivalent).** The Contractor shall maintain a Property insurance policy covering "All Risk" of direct physical loss or damage, or equivalent, including the perils of theft, flood, transit, earthquake, and pollution clean-up expense for property owned by the state that is in the Contractor's care, custody, and control. Any deductible shall be the sole responsibility of the Contractor. Insurance minimum limits are as follows: The Contractor is solely responsible for the coverage equal to that of the actual cash value of state-owned property in the Contractor's care, custody, and control at any given point in time.

Exhibit C: Specifications, Duties, and Scope of Work

Workplan will be here, along with descriptions of tasks, deliverables, and approximate timing or firm due dates of deliverables

SAMPLE

Exhibit D: Pricing

[If payment is fully described in Contract Section 5, this page will state “Intentionally Left Blank.”] Otherwise, a Budget will be here, including deliverables and tasks specifically tied to budgeted amounts and this section may include due dates.

SAMPLE

Exhibit D, Supplement 1

Sample Invoice and Project Order/Quote

Attached is a sample invoice (see page 45) and project order/quote.

Contractor is required to use the sample quote/project order and sample invoice for all transactions under this Contract. A project order form is also attached. Contractor may not materially change either document unless the change has been approved in writing by the State's Authorized Representative. Contractor may not modify the sample quote or sample invoice to provide less detail regarding purchases under this Contract. Contractor hereby waives the right to enforce any term in either sample which contradicts or modifies any term of the solicitation or any Contract that may result, including subsequent amendments to the Contract, or would result in an unencumbered expense if enforced against the state or its CPV members. The State anticipates the sample quote and sample invoice will contain, at a minimum:

- Customer name
- Vendor name
- Vendor address
- Project order number
- Job number
- Date
- Invoice Total
- Deliverables delivered
- Itemized costs of deliverables
- Name of vendor personnel completing form
- Telephone # and e-mail of vendor personnel completing form
- State Contract number field
- Service description
- Explanation of work performed per charge indicated on the invoice, including description of deliverables completed

Exhibit D, Supplement 1 (continued) Sample Project Order

MNsure Media Plan Development

Vendor name and job #

Date

Pursuant to the agreement between the State of Minnesota and the Vendor ("Agency"), SWIFT Contract No. ___ dated _____ (date of agreement) (the Agreement), the following services are hereby authorized by the State and agreed to be performed by the Agency, in accordance with the Agreement.

1. Work Description/Work Product/Deliverables and due date
2. Fees/Expenses/Invoices
3. Total
4. Invoices will be sent to the following email address, or physical address upon State request
5. Billing/payment terms
6. Schedule/Duration/Due Date
7. Changes/Deviations

Project Order Approval

Signatures

Project order completion (signed by State upon completion of deliverables and all work under the Project Order completed as agreed):

Signature of State Authorized Representative and Date of Acceptance – if Accepted

Exhibit D, Supplement 1 (continued)

Sample Invoice

MNsure

Attn: Authorized Rep

Address

INVOICE NUMBER: #

Date: _____

Page: #

Service Name	Estimate	Prior	Current	Total to Date
	XYZ,000	QRS,000	ABC	DEFG

Job: # - name [e.g. only, Strategic Counsel & Planning & Implementation Meetings]

Agency Fee PO# _____

Total: \$ _____

Total for job:	\$15,000.00
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Net Due 30 days

Less Payment received _____, **Reference #** _____

Invoice #

Balance remaining \$ _____

Contractor Name

Contractor Address

Name of personnel responsible for preparing invoice for Contractor

Exhibit E: 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 and 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);
- (e) Health records, identifying information or individually identifiable form [as defined by Minnesota Health Records Act (Minn. Stat. § 144.291–144.34)]; and
- (f) 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 which 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, including but not limited to State of Minnesota “Enterprise Information Security Policies and Standards.”²

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.

² See <https://mn.gov/mnit/government/policies/security/>

- (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 5 of Exhibit A, section 4.8 of Exhibit E, Minn. Stat., section 13.08, or under any other section of this Agreement or under any other applicable law, statute, regulation, and rule, 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 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, as in effect and as amended or revised, 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 Attachment 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 statutory amendments(s) or rule or regulation change(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: _____

Exhibit F

Project Order form (to be completed during negotiation):

SAMPLE

Exhibit G

Change Order form (to be completed during negotiation):

SAMPLE

Exhibit H

Schedule and Estimate form (to be completed during negotiation):

SAMPLE