

**Software License ("License") and Software Maintenance Agreement**

This Software License Agreement ("Agreement") between Connecture, Inc. ("Connecture" or "Licensor"), a Delaware corporation, having offices at One Riverwood Place, N17W24222 Riverwood Drive, Suite 330, Waukesha, WI 53188 and the State of Minnesota, acting through its Commissioner of Commerce ("State" or "Licensee") is made as of the 30th day of June, 2012, or the date the State obtains all required signatures under Minnesota Statutes section 16C.05, subdivision 2, whichever is later (the "Effective Date"). Unless otherwise defined herein, capitalized terms shall have the respective meanings assigned to such terms as set forth in Section 1. This License governs the use by State of the State Software.

**DEFINITIONS.**

**"Acceptance Criteria"** shall be as described in each Statement of Work.

**"Affiliate"** means an entity that, directly or indirectly, currently controls or is currently controlled by, or is under common control with, the entity specified. For the purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any entity, whether through the ownership of voting securities, by contract, or otherwise.

**"Agreement"** means collectively, this Agreement and any and all addenda, schedules, and exhibits.

**"Confidential Information"** means any information that is protected from disclosure under the Minnesota Data Practices Act requested and/or received by either party (the "receiving party") from the other party ("disclosing party") and any other information that the disclosing party, its affiliated entities or their agents or representatives, and with respect to State, the Participating Affiliates, furnish to the receiving party in connection with this Agreement, and may include without limitation, software, algorithms or information contained therein, any Trade Secrets of a party, User Data, State Data, a party's product plans, designs, costs, prices, non-published financial information, and all notes, analyses, compilations, studies and other documents, whether prepared by the disclosing party or others, which incorporate, summarize, contain or otherwise reflect or refer to such information. "Confidential Information" does not include information which (i) becomes generally available to the public other than as a result of a disclosure by the receiving party or its affiliates or representatives; (ii) was rightfully available to the receiving party on a non-confidential basis prior to its disclosure to the receiving party by the disclosing party; (iii) becomes rightfully available to the receiving party on a non-confidential basis from a source other than the disclosing party, provided that such source is, to the knowledge of the receiving party, not bound by a confidentiality agreement with any of said parties or otherwise prohibited from transmitting the information to the receiving party by a contractual, legal or fiduciary obligation; or (iv) is independently developed by an employee, agent or contractor of the receiving party without use of the Confidential Information, which independent development can be established by appropriate written records.

**"Connecture Intellectual Property" or "Connecture IP"** means the Connecture Software and State Software (including but not limited to the Source Code for the

Software), Connecture Trade Secrets, Connecture proprietary information, and all Documentation; any modifications, copies, enhancements, adaptations, and derivative works thereof; and the techniques and ideas embodied and expressed in the foregoing, including but not limited to the structure, sequence, and organization of the foregoing.

**"Connecture Software"** means Connecture's core software product and modules that it offers commercially to its customers.

**"Data Center"** means, when/if Connecture is providing hosting services, the co-location facility that contains the hardware provided by Connecture that runs the State Software.

**"Documentation"** means all written (including electronic) documents and procedures relating to the Software, or any derivative works thereto, including technical and operating manuals.

**"Fees"** means the compensation, payment or other amounts due for Software License, Software Maintenance, or other obligations as set forth in this Agreement, all applicable exhibits and all other documents deemed incorporated by reference into this Agreement.

**"Intellectual Property Rights"** means all intangible proprietary rights and interests, however denominated, throughout the world, including, without limitation, rights of the following types to the full extent such rights are recognized by law: copyrights (whether or not registered); patent rights; rights in industrial designs and registered designs; rights in Trade Secrets; rights pertaining to trademarks, service marks, trade names, trade dress and other distinctive brand identifiers (whether or not registered); database rights; rights of privacy and publicity; and moral rights.

**"Marks"** means trade names, trademarks, and service name, service marks, logos and trade dress.

**"Nonconformity"** means the failure of the Connecture Software to operate in material conformance with the respective Documentation and specifications.

**"Participating Affiliates"** means any Affiliate that the parties have mutually agreed to receive the Services. As of the Effective Date the Participating Affiliates are those Affiliates of State within the Region(s) listed in this Agreement.

**"Production Acceptance"** means the acceptance and approval of the State Software for the deployment into production, occurring at the completion of the user acceptance testing phase of the project, subject to the "sign off" process set forth in the applicable SOW.

**"Region"** means the State of Minnesota Health Insurance Exchange (the Exchange), with which Connecture, through a prime contractor has contracted to provide technology to enable said Exchange to operate a health insurance exchange.

**"Server(s)"** means computers or other data processing devices that host, store or deliver content over the Internet or such other communications network or networks as are capable of interactive communications with the State Web Site or State web site, utilizing such communications protocols and technology as exist now or may in the future become available.

**"Services"** means Software Maintenance and any other services provided by Connecture to State under this Agreement.

**"Software"** means collectively the Connecture Software and the State Software.

**"Software License"** means that certain license to use the State Software described in this Agreement.

**"Software Maintenance"** has the meaning set forth in Section 3 of this Agreement.

**"Source Code"** means the human readable embodiment of the software code, in or on any electronic media, and all related documentation for such software.

**"State"** means the State of Minnesota, acting through its Commissioner of Commerce.

**"State Data"** means that certain content including product descriptions, collateral, rate tables, benefits descriptions, broker information, and authorized website links that State provides Connecture.

**"State Software"** means the Connecture Software listed in Section 2(B) of this Agreement, licensed to the State pursuant to Section 2(A) of this Agreement that has been configured or modified to meet State's requirements.

**"State Web Site"** means the Web sites or collection of Internet pages residing on Servers owned, controlled or operated by State and currently accessible by the public via the Internet at the URL <http://www.mn.gov> and its successor Web site(s).

**"Trade Secrets"** means know-how, technology (including source code, object code, development documentation, programming tools, specifications and data), methodologies, processes, information, in each case, reduced to writing or other tangible form or, if in oral form, able to be reduced to writing or other tangible form that is maintained in confidence by the owners, that is the subject of reasonable efforts to maintain its confidential status, and that is or will be used in or useful to the business of the owner.

**"Users"** means any individual(s) or organizations that are authorized to access or utilize the State Software.

**"User Data"** means all data and information gathered, generated or collected from or about Users while navigating on, using and interacting with the State Web Site.

## 1. SOFTWARE LICENSE, LICENSE GRANT.

A. During the Term of this Agreement, provided that Connecture receives the applicable Software License Fees as described in Exhibit A, Connecture hereby grants to State and its Participating Affiliates a worldwide, nontransferable, nonassignable (except as may otherwise be provided herein), nonexclusive (except as may otherwise be provided herein), license to use the State Software, in object code form only, and Documentation for State's business purposes only in the Region.

**B. Modules:** The StateAdvantage® modules licensed to State and made a part of the State Software are summarized below and shall be configured to operate as further defined in each applicable Statement of Work.

- Individual/AHBE: Shopping
- Individual/AHBE: Initial Enrollment
- Individual/AHBE: Renewals/Re-enrollment
- SHOP: Shopping (Employer and Employee)
- SHOP: Enrollment (Employer and Employee)
- SHOP: Employer Maintenance
- SHOP: Employee Maintenance
- SHOP: Employer Renewal
- Health Plan Management (Plan and Rate Maintenance)
- Provider Facilities/Directory and Search

**C. Cessation of Use.** Upon termination of this License Agreement, State shall cease using the Software and shall return to Connecture all copies of the Software that may be in its possession.

**D. Reserved Rights.** All rights not specifically granted to State hereunder are reserved by Connecture.

**E. Limitations.** Except as expressly set forth in this Agreement, no express or implied license, moral rights, or other right of any kind is granted to State regarding the Software. Without limiting the foregoing and except as expressly set forth in this Agreement, State agrees not to, and shall not allow others to, market, sell, distribute, transfer, translate, disassemble, decompile or reverse engineer the Software or create derivative works from the Software. State further agrees not to utilize the Software to operate a service bureau, to provide services to other health plans that are not Participating Affiliates or allow third-parties to directly interface to or integrate with the Software or system. Notwithstanding the foregoing limitations and subject to Licensor approval which will not be unreasonably withheld, Licensee may transfer the license to a quasi-governmental or private entity to the extent that entity has been delegated responsibility to carry out the governmental functions for which the Licensee has obtained this license.

**G. Documentation.** Connecture shall document the State Software and shall provide State with one electronic copy of the Documentation. Connecture grants State permission to duplicate, for its internal use, all Documentation, subject to

the terms and conditions of this License. State shall use the Documentation solely in connection with the rights granted to State under this License.

- H. **Passwords.** State shall be fully responsible for all passwords issued to access the application. State accepts full responsibility for, and is liable for, all access, authorized or unauthorized, to the system in connection with the password(s) issued to by or on behalf of State. State agrees to be solely responsible for the confidentiality of all password(s) issued by or on behalf of State, and State agrees to immediately notify Connecture of any unauthorized use of the passwords or any other breach of security. State will have sole responsibility for authenticating, approving and issuing passwords to Users.
  
- I. **Audit.** Connecture may conduct an audit to ensure State's compliance with Section 2 of this Agreement. Any such audit shall be conducted upon reasonable notice to State, during regular business hours, and not more frequently than once a year, and shall use commercially reasonable efforts not to interfere with State's business activities. Connecture shall abide by State's reasonable security regulations while on State's premises. If Connecture finds that State is using the Software beyond the scope of the Software License, State will (a) be invoiced for the additional use in accordance with Connecture's then current rates for such use, (b) pay for reasonable expenses associated with such audit if so ordered by court, and pay any invoice associated with additional use and audit within thirty (30) days of invoice date.
  
- J. **Ownership.** Connecture is and shall at all times be the sole and exclusive owner of all rights, title and interests in the Connecture Intellectual Property.
  
- K. **Confidential Information.** Each party agrees to hold the Confidential Information of the other Party in strictest confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Confidential Information to any third party, or utilize the Confidential Information for any purpose whatsoever other than as expressly contemplated by this Agreement or as required by law. State acknowledges and agrees that the Connecture IP is the proprietary information of Connecture, and State agrees to treat such information as Confidential Information in accordance with the terms of this Agreement to the extent Connecture IP meets the definition of Trade Secret as defined by Minn. Stat. § 13.37, subd. 1(b).
  
- L. **Representation and Warranties.** Connecture represents, warrants and agrees that:
  - a) Connecture has all rights, including all Intellectual Property rights, necessary to enter into this Agreement and perform its obligations.
  - b) Connecture represents that the Connecture Software and the State Software are not subject to any Liens.

- c) Connecture represents and warrants that to the best of its knowledge, the State Software does not contain and will not receive from any Connecture data transmission via modem or other Connecture medium any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design that would erase data or programming or otherwise cause the Software to become inoperable or incapable of being used in accordance with its Documentation.
- d) Connecture warrants that the Software and all of the related Software products and services will perform in accordance with the Documentation, with Connecture's specifications, and any specifications mutually agreed to by both parties in writing in a separately executed Statement of Work. Connecture further warrants that the Software and user documentation furnished by Connecture are compatible; and that the Software shall be free of defects in design, workmanship, and materials which prevent them from being used for their intended purpose.
- e) For a period of ninety (90) days after Production Acceptance of the Software and after any installation of a patch or upgrade ("Warranty Period"), Connecture shall, at no additional cost to State, correct any material errors or defects in the Software not caused by State, regardless of whether any such error or defect is brought to the attention of Connecture by State, another user of comparable software, Connecture, or any other person. Connecture shall notify State of the existence of any such error or defect within the first business day for both Connecture and State that occurs after Connecture becomes aware of such error or defect. If State requires additional technical support in the use of the correct Software and documentation beyond what is included in Software Maintenance, Connecture shall furnish such support at State's expense on a time and material basis and at the hourly rates mutually agreed upon.
- h) Disclaimer of Warranties: Connecture's and State's express warranties contained in this agreement are in lieu of all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose, title, non-infringement, quiet enjoyment, and error-free and uninterrupted use. The provisions of this section shall survive expiration and termination of this agreement. All other warranties, including warranties made by the State with regard to State modifications (but not including warranties by State), are specifically disclaimed.

### 3. SOFTWARE MAINTENANCE.

- A. In consideration of the payment of Software License Fees identified in Exhibit A (Connecture Fees) and commencing with the termination of the Warranty Period, Connecture will provide State with such assistance and support as necessary to cause the Connecture Software to perform materially in accordance with the applicable specifications set forth in any applicable Statement of Work and the Documentation, and shall maintain the Connecture Software in operable condition, providing bug fixes, corrections and/or revising the Connecture Software for Nonconformities ("Software Maintenance")

## Software License and Software Maintenance Agreement

- B. Connecture will provide toll-free telephone support from 9:00 a.m. to 5:00 p.m. Eastern Standard Time, Monday through Friday, with the holidays of New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, Day after Thanksgiving, Christmas Eve and Christmas excepted ("Daily Support Hours"). State's Project Manager and its designee will be State's primary representatives for contact with Connecture regarding Software Maintenance. A backup contact will be identified to provide notification to Connecture in the absence of the primary representatives. Upon notification of a Nonconformity from State, or is otherwise known by Connecture, Connecture will take prompt action to correct the Nonconformity.
- C. Except for Urgent Issues or High Priority Issues set out in Section 3.H (a) and (b) below, if State requires support (e.g., after-hours staffing to remedy a non-critical issue), outside of Connecture's standard hours, set out above in Section 3.B, State agrees to pay Connecture for all such non-standard support services that will be billed to State at the hourly rates identified in Exhibit A (Connecture Fees).
- D. All defects mutually identified prior to production launch, that the parties agree will be fixed after the State Software is in production, will be resolved according to a mutually agreed upon timeframe, and will not be governed by this Agreement.
- E. Software Maintenance supports the current generally available major point software release and any major point release immediately prior to the current release of the Connecture Software. Software Maintenance includes new releases and updates that are made commercially available to the Connecture Software, as well as bug fixes and correction of errors to the Connecture Software. All costs associated with migrating State from one major or minor point release to another will be on a time and materials basis, at the hourly rate identified in the SOW. As used herein a major point means a number to the left of the decimal, i.e., 1.0, 1.5, 2.0. and the numbers to the right of the decimal shall designate a minor point release.
- F. Should State or any other party without the prior written authorization and approval of Connecture perform any modification, alteration, change or removal to the State Software, Connecture shall not be required to perform Software Maintenance.
- G. Connecture does not warrant that modifications to any State systems that materially impacts the functionality of the State Software and are identified as interfacing or linking to the State Software as identified in any SOWs are compatible with the State Software unless such modifications were performed with assistance by Connecture.
- H. Connecture shall provide response and support services to State for the categories of issues identified in the following table for the Connecture Software. If acknowledgement or resolution is not provided within the timeframe identified, State shall receive a credit toward the monthly attributable Software Maintenance Fees based on whether the severity of the delay is i) minor or ii) major. Resolution shall be defined as the migration of the fix to the State's user acceptance testing environment for review and sign-off.

- a) **Urgent Issues:** Immediate service required; the software is inoperable (i.e., system down, system inoperable). Applies to the total unavailability of the core system functions and impacts all system users. Partial functional outages will be classified as High Priority or Medium Priority as appropriate. Engineer(s) will be deployed pursuant to the following table to remedy the error and as appropriate determine the root cause per the agreed-upon response times set out in the table below and will apply resources as appropriate to resolve the issue until it is successfully resolved.
- b) **High Priority Issues:** Errors that make continued use of the system seriously inconvenient or inaccurate for all users within a category (e.g., internal users, brokers, consumers), or materially inhibit online sales processing. Specifically includes specific pages and functions required to access new sales, proposals or renewals that are not available or do not function specifically to allow completion by a User. Engineer(s) will be deployed pursuant to the following table and as appropriate determine the root cause per the agreed-upon response times set out in the table below and will apply resources as appropriate to resolve the issue until it is successfully resolved.
- c) **Medium Priority Issues:** Errors that materially impact the application flow or User's experience. Specifically includes site navigation and page alignment.
- d) **Low Priority Issues:** Generally related to inaccurate content that already exists on the site.

Service Issues	Target	Minor Severity Delay	Major Severity Delay
<b>Urgent—During Daily Support Hours (Sec. 3.B)</b>			
--Acknowledgement	60 Minutes	Greater than 90 Minutes	Greater than 2 Hours
-- Resolution	8 Hours	Between 8-12 Hours	Greater than 12 Hours
<b>Urgent—During Non-Daily Support Hours</b>			
--Acknowledgement	By 9:00 am ET, following business day	Greater than 2 Hours beyond Target	Greater than 4 Hours beyond Target
-- Resolution	8 Hours	Between 8-16 Hours	Greater than 16 Hours
<b>High Priority—During Daily Support Hours</b>			
--Acknowledgement	60 minutes	Greater than 2 Hours	Greater than 4 Hours
--Resolution	8 Hours	Between 8-24 Hours	Greater than 24 Hours
<b>High Priority—During Non-Daily Support Hours</b>			
--Acknowledgement	By 10:00 am ET, following business day	Between 3-8 Hours beyond Target	Greater than 8 Hours beyond Target
-- Resolution	24 Hours	Between 24-36 Hours	Greater than 36 Hours
<b>Medium Priority</b>			
--Acknowledgement	1 Business Day	Between 2-3 Business Days	Greater than 3 Business Days
-- Resolution	3 Business Days	Between 6-9 Business Days	Greater than 10 Business Days
<b>Low Priority</b>			
--Acknowledgement	1 Business Day	Between 2-3 Business Days	Greater than 3 Business Days
-- Resolution	7 Business Days	Between 7-14 Business Days	Greater than 15 Business Days

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- i. State shall log all defects and service issues into the website provided by Connecture for such logging and tracking purposes. Prior to logging such issues or defects, and/or contacting Connecture, State shall replicate and verify that the issue or defect is within the Connecture Software. If Connecture is performing hosting services, Connecture shall promptly notify State of all known service issues so that State may promptly notify its customer service group of any Urgent or High Priority issues so as to provide good customer service to its Users.
- ii. In all cases the State Project Manager or designee(s) reporting the error will be notified as appropriate of the progress made toward the solution along with an estimated time of completion.
- iii. Upon receipt of an issue or event, an engineer will be deployed within the timeframes listed above based on the severity of the issue. Root causes will be communicated to the State Project Manager or designee(s) as soon as they are available and will include expected steps and timeframes required to resolve the issues. In the event the issue is not resolved within the timeframes listed above, the State Project Manager will be notified with the expected completion time, the reasons why the issues cannot be resolved within the allotted time frame.
- iv. The determination of the severity-level for each specific reported service issue shall be upon mutual agreement of the parties, and if such agreement does not occur, than the following escalation path shall occur:
  - Connecture path of escalation will be as follows: Customer Support Consultant > Customer Support Team Lead > Project Director > Client Account Manager > VP, Client Services > SVP, Operations >CEO.
  - The State path of escalation will be as follows: Project Manager > Project Sponsor > Project Executive Sponsor
- v. Monthly Fee Credits.
  - a. Connecture shall provide State with credits toward the attributable portion of the Software Maintenance Fees prorated for the month in which the delay occurred.
  - b. Minor Severity Delay: One percent (1%) credit of the attributable portion of the Software Maintenance Fees prorated for the month in which the delay occurred.
  - c. Major Severity Delay: Three percent (3%) credit of the attributable portion of the Software Maintenance Fees prorated for the month in which the delay occurred.
- vi. The individual or cumulative maximum amount of credits generated on a monthly basis cannot exceed 50% of the attributable portion of the respective Software License Fees prorated on a monthly basis due to the severity delay(s) occurred.

- vii. Service credits shall not be accrued or earned until thirty (30) days following the production launch of the State Software to ensure adequate time to identify and resolve any open items remaining after Acceptance.
- viii. Service credits shall not apply to defects mutually identified prior to production launch, provided the parties agree that such defects will be fixed after the State Software is in production.
- ix. No credits shall be generated for those service issues that are caused by the failure of any State system, interface or link with the State Software, or any inaccurate data provided by State to Connecture.
- x. Connecture and State agree that the damage resulting from Connecture's failure to meet the service levels set forth may be difficult to calculate. If Connecture fails to meet such service levels, Connecture and State agree that, as liquidated damages for such failure, and not as a penalty, State shall be entitled to receive, with respect to each such failure, a credit for such service as set forth in this Exhibit. The credits shall be State's sole and exclusive remedy for such failure.
- xi. The service levels for Software Maintenance described in this Section 3 shall only apply to the extent Connecture is providing Software Maintenance. Connecture makes no representations with respect to the performance of the Software if Connecture is not providing Software Maintenance.

#### **4. INDEMNIFICATION.**

Connecture agrees to indemnify, defend with the approval of the Minnesota Attorney General's Office (at State's request) and hold harmless State from and against any claim asserted or suit or proceeding brought against State alleging that any Software infringes a U.S. patent, U.S. trademark, U.S. copyright or U.S. trade secret of a third party, provided Connecture is given prompt written notice of, and full and complete authority, information, and assistance in the defense of such claim, suit or proceeding. Connecture shall not be responsible for the cost of any settlement of any such claim, suit or proceeding made without the written consent of Connecture. In addition, and at the option and expense of Connecture, Connecture may, at any time after any such claim has been asserted, and shall, in the event any Software is held to constitute an infringement, either procure for State the right to continue using that Software, or replace or modify that Software so that it becomes non-infringing, provided that such replacement or modified Software has substantially the same functional characteristics as the infringing Software. State may engage its own counsel, at its own expense, to advise State in connection with any such claim, suit or proceeding. Connecture shall not be liable to State under the terms of this Paragraph or otherwise if any infringement or claim is based upon the use of any Software in violation of the Software License, or in combination with any software or hardware not approved by Connecture.

#### **5. LIMITATION OF LIABILITY.**

In no event shall Connecture or State be liable for indirect, incidental, special, exemplary, consequential damages, loss of profits, loss of goodwill, loss of use of data or interruption of business suffered or incurred, whether such damages are labeled in tort, contract or indemnity, even if such party has been advised, knew, or should have known of the possibility thereof.

The cumulative liability to either party for any and all claims shall not exceed an amount equal to the total fees State in the twelve months prior to when the damages first arose. Prior to the completion of twelve months of services under this Agreement, each Party's liability to the other party will not exceed an amount equal to the actual twelve month fees during such period. This shall be the maximum remedy and maximum liability under this Agreement. Under no circumstances (except for fraud or criminal activities) will either party's officers, directors, employees, agents or representatives have any personal liability for any breach of this Agreement.

## 6. NOTICES.

Any notice required or permitted to be given under the terms of this Agreement shall be in writing and shall either be delivered, or sent by U.S. mail, postage prepaid and return-receipt requested (receipt shall be deemed to be five days after postmark by the U.S. Postal Service), or overnight courier addressed as follows:

If to Connecture:

Connecture, Inc.  
One Riverwood Place  
N17 W24222 Riverwood Drive, Suite 330  
Waukesha, WI 53188  
Attention: Chief Executive Officer  
Telephone: (262) 408-3800  
Facsimile: (262) 408-3840

If to State:

Minnesota Department of Commerce  
Health Insurance Exchange  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, MN 55101-2198

Attention: Peter Frank  
Telephone:  
Email: peter.frank@state.mn.us

**7. EQUITABLE REMEDIES.** Each party acknowledges that each provision of this Agreement providing for the protection of the Marks, Intellectual Property and Confidential Information and is material to this Agreement, and that any threatened or actual breach of any such provision will cause immediate irreparable harm and the total amount of monetary damages for any injury resulting from any such violation would be impossible to calculate and would therefore be an inadequate remedy. Accordingly, each party shall be entitled to seek immediate and permanent equitable relief in the event of such actual or threatened breach. Therefore, and notwithstanding any other

term of this agreement, either party may apply to any court of competent jurisdiction in the event of any such breach or threatened breach for any appropriate equitable relief, including, without limitation, preliminary and permanent injunctions and temporary restraining orders, and shall be entitled to such other rights and remedies which they may be entitled to at law, in equity and under this Agreement for any such violations. The parties agree and stipulate that either party shall be entitled to such injunctive relief without posting a bond or other security; provided however that if the posting of a bond is a prerequisite to obtaining injunctive relief, then a bond in the amount of \$1000 shall be sufficient.

**8. CHOICE OF LAW.** This Agreement will be governed by and interpreted under the laws of the State of Minnesota and Venue will be Minnesota without giving effect to applicable conflicts of law principles. UCITA and the United Nations Convention on the International Sale of Goods shall not apply.

**9. U.S. GOVERNMENT RESTRICTED RIGHTS.** The following applies to all acquisitions of the Software by or for the U.S. government or by any prime contractor or subcontractor under any contract, grant, or other activity with the U.S. government. The Software provided to State hereunder are "commercial items" as that term is defined at 48 CFR 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212 and other applicable acquisition regulations and are provided only as a commercial item. Consistent with 48 CFR 12.212, 48 CFR 227.7102, and 48 CFR 227.7202, all U.S. Government users, if any, acquire the Software and its associated documentation with only those rights and subject to the restrictions set forth in this Agreement. Notwithstanding the foregoing, the Software may not be acquired by the U.S. Government pursuant to a contract incorporating clauses prescribed by 48 CFR 27.4, 48 CFR 227.71 or CFR 227.72.

**10. NONWAIVER.** The failure of either party to enforce any provision of this Agreement will not constitute a waiver of the party's rights to subsequently enforce the provision. Any and all waivers must be in writing and signed by the party charged therewith. Except where stated otherwise, the remedies specified in this Agreement are in addition to any other remedies that may be available at law or in equity.

**11. SEVERABILITY.** If any provision of this Agreement or any of the exhibits is held to be invalid, such invalidity will not affect the remaining provisions.

**12. COUNTERPARTS.** This Agreement may be executed in multiple counterparts, transmitted via facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**13. RELATIONSHIP OF THE PARTIES.** The relationship of State and Connecture established by this Agreement is of licensee and licensor, each to constitute an independent contractor. Nothing in this Agreement shall be construed to give either party the power to direct or control the daily activities of the other party, or to constitute the parties as principal and agent, employer and employee, franchiser and franchisee, partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking. State and Connecture understand and agree that, except as specifically provided in this Agreement, Connecture does not grant State the power or authority to make or give any agreement, statement, representation, warranty, or other commitment on behalf of Connecture, or to enter into any contract or otherwise incur any liability or obligation,

express or implied, on behalf of Connecture, or to transfer, release, or waive any right, title, or interest of Connecture.

**14. NO THIRD PARTY BENEFICIARY.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns.

**15. ENTIRE AGREEMENT.** This Agreement, the Exhibits and each applicable SOW constitute the entire Agreement of the parties with respect to the subject matter hereof. No promises, terms, conditions, or obligations other than those contained herein shall be valid or binding. Any prior agreements, statements, promises, either oral or written, made by any party or agent of any party that are not contained in this Agreement are of no force or effect.

**16. TERM AND TERMINATION.**

**Term.** The Term of the of the Software License granted under Section 2 of this Agreement shall commence on the Effective Date and shall continue until June 30, 2017 (the "Initial Term"). The State agrees to purchase Software License Usage according to the schedule outlined in Exhibit A for a minimum period of five (5) years beginning on the Effective Date and for as long as the State Software is used. State shall notify Connecture in writing sixty (60) days prior to the end of the initial five (5) year term of its intention to renew the Agreement.

**17. State Audit.** The books, records, documents and accounting practices and procedures of Connecture relevant to this Agreement shall be subject to examination by the State, and either the Minnesota Legislative Auditor or State Auditor as appropriate for a minimum of six years.

**18. Taxpayer Identification.** Connecture is required by Minn. Stat. § 270C.65 to provide its Minnesota Tax Identification Number or Federal Employer I.D. No. if Connecture does business with the State of Minnesota. This information may be used in the enforcement of federal and State tax laws. Supplying these numbers could result in action to require Connecture to file state tax returns and pay delinquent state tax liabilities. This Agreement will not be approved unless these numbers are provided. These numbers will be available to federal and state tax authorities and state personnel involved in the payment of state obligations.

Minnesota Tax I.D. No. \_\_\_\_\_  
Federal Employer I.D. No. 58-2488736

EXECUTED as of the day and date shown below to be effective as of the date first above written.

Software License and Software Maintenance Agreement

Accepted on Behalf of State

Accepted On Behalf of Connecticut

Signature: [Handwritten Signature]  
Name: Steven E. Carlson  
Title: Deputy Commissioner  
Date: July 13, 2012

Signature: [Handwritten Signature]  
Name: JAMES PURKO  
Title: CFO  
Date: 7/13/2012

Administration  
(Pursuant to Minn. Stat. § 19C.05, subd. 2)

By: [Handwritten Signature]  
Date: 7/14/12

**EXHIBIT A: Connecture Fees**

**1) Annual Software License Usage Fees**

The annual Software License Usage Fees for the modules licensed to the State in Section 2 of the Agreement shall be \$983,225.00. The Software License Usage Fees include Software and Software Maintenance Services as identified in the Agreement.

The Software License Usage Fees shall be invoiced as follows:

October 31, 2012: \$1,121,225.00  
October 31, 2013: \$983,225.00  
October 31, 2014: \$983,225.00  
October 31, 2015: \$983,225.00  
October 31, 2016: \$983,225.00

In consideration of the License granted under Section 2 of the Agreement, the State may designate MAXIMUS, Inc, as the fiscal intermediary to make payments to Connecture under this Agreement. If MAXIMUS is so designated, Connecture will submit invoices for the above Software License Usage Fees to MAXIMUS and such invoices will be paid within thirty (30) days of receipt. Furthermore, for the avoidance of doubt, such payment by MAXIMUS shall not give rise to any rights to or of MAXIMUS arising in connection with or under this Agreement, except as may be expressly set out in the Agreement. To the extent such payment is not received from MAXIMUS upon issuance of a valid invoice from Connecture, Connecture may submit the invoice directly to the State or terminate the License granted under Section 2 of the Agreement.

**2) Professional Services Fees**

Fees for additional projects agreed to by State and Connecture shall be billed at the hourly rate of \$150.

**3) Annual Increases.**

Fee increases for the fees identified in Exhibit A, Sections 1 and 2 above will increase on an annual basis by the greater of either the Consumer Price Index (CPI) for Urban Workers or five percent (5%), commencing on the anniversary of the Effective Date of this Agreement.