

Professional and Technical Services Contract

State of Minnesota



This Contract is between the State of Minnesota, acting through its Chief Executive Officer of Minnesota Insurance Marketplace [MNSure] ("State") and Deloitte Consulting LLP whose designated business address is 50 South Sixth Street, Minneapolis, MN, 55402, an independent contractor, not an employee of the State of Minnesota ("Contractor").

Recitals

1. Under Minnesota Statutes §§ 15.061 and 62V.05, subdivision 1(b)(4), the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of consulting services related to the MNSure project, including carrying out various project management functions, performing functional and technical assessments, and assisting with executing certain testing processes.
3. The Contractor represents it is duly qualified and agrees to perform all services described in this Contract as set forth herein.

Contract

1. Term of Contract

- 1.1 **Effective Date.** April 28, 2014 or the date State obtains all required signatures, whichever is later. Contractor must not begin work under this Contract until this Contract is fully executed and Contractor has been notified by State's Authorized Representative to begin work.
- 1.2 **Expiration Date.** December 31, 2014, or until all obligations have been fulfilled and approved in accordance with the terms of the Contract, whichever occurs first, unless this Contract is terminated sooner in accordance with Section 18.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this Contract: 8. Indemnification and Limitation of Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 14. Publicity and Endorsement; 15. Governing Law, Jurisdiction, and Venue; 16. Data Disclosure; 18. Termination; and 24. Force Majeure.

2. Duties

2.1 The Contractor, who is not an employee of the State of Minnesota, shall perform the duties and services specified in this Section 2.1 (the "services"):

(a) Program and Project Management Assessment and Recommendations

- (1) Assess the existing overall program governance and organizational structure and project management approach.
- (2) Recommend to the State critical changes needed to improve overall management of the Program in the immediate term and longer term. For the purposes of this Contract, "Program" is defined as the MNSure Phase II Project.
- (3) Deliverable: As identified in Section 4.1, Deliverable #2

(b) Implementation of Program and Project Management Recommendations

- (1) Coordinate with the State to implement agreed upon recommendations from the Program and project management Deliverable.
 - i. Implementation should occur in a two-phased approach.
 - a) Phase one should focus on implementing changes identified for the immediate term to enable the State to carry out program requirements through the end of CY 2014.
 - b) Phase two should focus on implementation of changes identified for over a longer term to assist in positioning the State for an effective and sustainable approach to program governance and ongoing project management.
 - c) Implementation of a MNsure Program Management Office (PMO), that operates with other appropriate State PMOs, and is led by a State program director with support from the Contracted lead project manager.
 - d) Program and project dashboards, documentation and identified tools to enable required metrics reporting reflective of overall program status.
 - e) Implementation of a sustainable project management lifecycle process, including incorporation of applicable CMS Enterprise Life Cycle processes, that incorporates the following:
 1. Stage or phase gates with entrance and exit criteria for testing phases
 2. A change control process by which Contractor, State and vendors identify potential changes that may impact cost, schedule, system and/or contracts and expedite the impact assessment to a change control board for review and decision.
 3. A risk and issues management process by which Contractor, State, and vendors identify, validate, and report potential risks and issues.

(c) Project Planning, Oversight and Resource Management

- (1) Review the current status of deliverables under vendor agreements, including updating or developing a vendor deliverable traceability matrix
- (2) Assist State in identifying additional work necessary to support the objectives of the project and assist in negotiating modifications to existing contracts with vendors.
- (3) Assist with scheduling and approval of projects moving through phase/stage gates.
- (4) Oversee development and timely completion of status reports for the MNsure Phase II project, including accomplishments, planned activities, identification of risks and issues.
- (5) Develop a project work plan to support the MNsure Phase II project.
- (6) Develop and deliver to the PMO and other key leadership teams an overall program dashboard that incorporates the status of the MNsure Phase II project, and identifies key risks and issues of the program as well as milestones and other critical achievements.
- (7) Deliverable: As identified in Section 4.1, Deliverable #1 and #4

(d) Functional and Technical System Assessment

- (1) Review Key Function Matrix (KFM) with State to identify the areas of focus for a two-phased functional and technical system assessment. The KFM will use the following functions supporting: Anonymous browse, Eligibility, Plan Management, Consumer Shopping Experience, Plan Selection and Enrollment, Application Intake, Account Creation, Log-in, Worker Portal, Document Management, Notices, Reports, Broker, Navigator, SHOP, and Premium Payment and Invoicing.
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- (2) Phase one assessment is a limited scope assessment of the functional and technical system capabilities identified through the Key Function Matrix review in (1) requiring an immediate focus and may be completed in 4 weeks. The phase one assessment should include:
 - a) A description of the likely impact of identified system gaps on the technology application supporting ongoing operations of applicable programs through the end of CY 2014
 - b) The State's strategy for converting public program cases from legacy systems to the new eligibility system beginning no later than August 2014;
 - c) Identification of the critical technology functions to support open enrollment for benefit year 2015;
 - d) Identification of the critical technology functions to support ongoing MAGI Medical Assistance and MinnesotaCare programs for benefit year 2015.
- (3) Phase two assessment (based on KFM) is a functional assessment of the current suite of the MNsure COTS products and a review of:
 - a) Interfaces, database structure and application architecture for scalability and maintainability
 - b) The usability of the citizen and caseworker portals against the Exchange, Medical Assistance, and MinnesotaCare standards
 - c) Documentation review of gaps in security and privacy requirements against state and federal standards
 - d) Commercial off-the-shelf (COTS) vendor identified upgrade path and potential impediments caused by customizations
 - e) The viability of the current suite of COTS products in the near, mid and longer term.
- (4) Deliverables: As identified in Section 4.1, Deliverable #3 and #5,

(e) Release Management

- (1) Review existing release management plans and establish release management processes, leveraging existing release management plans. Results of the assessment form part of Deliverable #2 in Section 4.1 below.
- (2) Establish guidelines for major, minor, and emergency releases and logical grouping of releases.
- (3) Review tools/support for branching and merging of software (code) artifacts, remediation recommendations.
- (4) Integrate the release management process in the overall governance structure for prioritization and decision making and applicable stage/phase gate entrance and exit criteria.
- (5) Work collaboratively with vendors and State to develop level of effort estimations.
- (6) Review and assess business requirement mapping and alignment to contracts.
- (7) Review change requests for completeness to allow for appropriate decision-making by the State.
- (8) Oversee the release management process in the development and test environments in coordination with vendor staff.
- (9) Coordinate with the State technical team for releases to quality and production environments.
- (10) Review, evaluate, and produce release management plan
- (11) Assess documentation against applicable state, federal and other contract requirements.

(f) Defect Tracking

- (1) Perform a functional review of current defects to support a re-prioritization alignment to State objectives. Results of the assessment form part of Deliverable #2 in Section 4.1 below.
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- (2) Collaborate with the State to develop and implement a defect management process that includes:
 - i. Defect tracking
 - ii. Summary impact analysis of defects
 - iii. Defect resolution tracking
- (3) Develop and deliver to the State a report that identifies known defects, summary of impacts for defects, resolution status and corresponding timelines as identified by other vendors.

(g) Testing

- (1) Conduct assessment of current testing process and tools. Results of the assessment form part of Deliverable #2 in Section 4.1 below.
- (2) Develop and implement applicable testing processes based on identified gaps in current testing process. This should include reports required for prioritization and decision making.
- (3) Establish criteria to move into the next phase of testing; unit test to system test to user acceptance test.
- (4) Collaborate with State testing lead to oversee the UAT process, including UAT triage calls with responsible parties through management and oversight of the UAT process.
- (5) Work collaboratively with vendors and State to validate application performance management criteria.
- (6) Work collaboratively with the State to coordinate application performance testing with both internal and external partners.
- (7) Review, evaluate, and produce UAT reporting and dashboards

(h) Vendor Management

- (1) Review any existing vendor management processes, as it pertains to the Program, and either modify or replace such processes (as it specifically relates to the respective project management processes of issue and risk management, change control, release management, status reporting and dashboards, UAT, PMO, governance, and communications), in an effort to assist the State in its oversight of the day-to-day work of all vendors involved in the Program.
- (2) Serve as the State's lead primary point of contact with all vendors including the day-to-day management of the vendors under the State's guidance (as it specifically pertains to the Program and relates to the respective project management processes of issue and risk management, change control, release management, status reporting and dashboards, UAT, PMO, governance, and communications), in an effort to assist the State so that the State's decisions and directions are communicated to the appropriate vendors.
- (3) Review the current status of deliverables under vendor agreements and develop and maintain a traceability matrix as it specifically relates to the Program. The matrix maintained will be the matrix developed as part of Deliverable #1.
- (4) Assist the State in identifying any additional work necessary to support the objectives of the Program for the State's negotiations and modifications to existing/future contracts with vendors.

(i) Contractor Resources

- (1) Provide appropriate resources to carry out Contractor duties, including providing key personnel with experience relevant to carry out Contractor duties with regard to interactions with the COTS software involved in the project.
- (2) Provide the services of the following named key personnel:

TEAM	NAME	ROLE
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TEAM	NAME	ROLE
Leadership	Sally Fingar	Project Manager
	Kevin Kelly	Project Partner (Part Time)
	Brian Keane	Project Partner (Part Time)
	Patrick Howard	QA/Advisory Partner (Part Time)
PMO	Andrew Harris	Team Lead
Technical/Application	Brian Rabe	Team Lead (Phase 1)
Technical/Application	David Pollock	Sr. Technical Architect (Phase 1, Part Time)
Technical/Application	Kunal Shah	Application Advisor (Phase 1, Part Time)
Change Leadership	Jeyson Florez	Team Lead
Testing	Deepa Venkateswaran	Team Lead

- (3) To the extent it is within Contractor's control, Contractor shall not remove key personnel without State approval, such approval not to be unreasonably withheld. For those reasons not within the Contractor's control, including but not limited to employee departures, retirements, and leaves, Contractor shall provide State with reasonable notice. Unless otherwise mutually agreed to in writing, this clause shall only apply through December 31, 2014 or when the individual completes his/her task in the project plan.

(j) Knowledge Transfer

- (1) Perform knowledge transfer to State staff throughout the project on processes and tools.

2.2 In addition to or further clarifying the State's duties under Section 20 below, the State has the following duties and responsibilities:

- (a) The State's Authorized Representative will have overall day-to-day responsibility for assuring the State's compliance with any duties or obligations outlined in this Section or in Section 20 below, including assuring timely decision-making, assuring completion of identified State activities, and being the primary point of contact for the Contractor team. While the Contractor will be providing assistance to the State in assessing, developing and implementing appropriate vendor management processes as identified in section 2.1 above, the State remains responsible for holding its vendors accountable to their contractual commitments overall and specifically when issues are identified and escalated in project status reports and issue and risk logs.
- (b) The State shall provide access to certain documents, systems, knowledgeable individuals, and other resources necessary for the Contractor to accomplish its duties and obligations under this Contract as further clarified in the below table titled "Responsibility Description."

Responsibility Description

- Provide access to subject matter experts (SMEs) – State and vendor – for interview or answer questions as agreed upon in the project schedule
- Provide access to SMEs – State and vendor – who can provide overview of system and provide background on functionality and design decisions as agreed upon in the project schedule
- Review and approve submitted Deliverables as agreed upon in the project schedule
- Provide access to project leads and appropriate leadership staff as agreed upon in the project schedule and assist with scheduling interviews as needed
- Provide access to Test environment(s) with user ID
- Participate in the established project oversight and management processes
 - Participate in facilitated project discussions and communication among the project participants
 - Participate in weekly project meetings
 - Establish Steering Committee (or utilize existing Steering Committee) and decision making process for program/policy decisions
 - Attend risk and issue meetings and provide timely feedback, review, and resolution of issues or risks that are escalated by the project team
 - Provide access to the outstanding change orders and the process of identification, review, prioritization, estimation, approval, and scheduling
 - Attend change control board meetings and make timely decisions on change controls
 - Approve defect management process based on recommendations
 - Make approval/sign-off decisions in a timely manner in accordance the project work plan
- Approve and publish communications as agreed upon in the project schedule
- Provide the required project facilities for conducting interviews with State and vendor personnel
- Provide sufficient work space, system and network access, and phone access
- Provide documents, system access and material at the start of the project including, but not limited to any of the following as they may currently exist:
 - Baseline and current project plan with detailed WBS breakdown
 - Design documents and approved Deliverables
 - Test scripts and results, reports and coverage matrix including Functional, Stress and regression testing
 - Go-live readiness checklist
 - Requirement traceability matrix
 - Technical architecture document including security assessment reports
 - System configuration documents to review base application
 - Access to State SME who has access to production system as broker, navigator and account worker to analyze and evaluate system behavior
 - Configuration management plan and release schedule
 - Outstanding defect report and access to the defect repository
 - Project status reports, QA vendor reports, IV&V reports, vendor reports submitted to State and board
 - Batch execution report, log errors
 - Interface reports, exception reports
 - CMS gate review artifacts
 - CMS security and privacy compliance artifacts
 - Operations reports: applications started, applications finished, payments made, 820 enrollments sent, 834 enrollments sent and effectuations received
 - Legacy Medicaid conversion strategy
- Write UAT test scenarios as agreed upon in the project schedule
- Execute UAT test cases as agreed upon in the project schedule
- Execute software releases, fixing and testing software defects and executing

- performance and load testing
- Responsible for system and data security controls
- Provide access to or assure the participation of State and vendor project personnel for project activities as agreed upon in the project schedule, including:
 - Vendor personnel (including those involved in COTS product support)
 - State Project Manager(s)
 - Functional SME (SHOP, Admin, Eligibility, Enrollment, Financial Management, EDI)
 - Technical SME (Architecture, Infrastructure, Interfaces, Batch)
 - Test and Quality Assurance Lead and SMEs
 - HIX Policy SME
 - Technical Interface SME

2.3 As further clarification of the duties listed in Sections 2.1 and 2.2 above, the State and Contractor Roles and Responsibilities document is incorporated by reference into this Contract as Attachment 2. The parties agree that the incorporation of Attachment 2 shall not be construed as additional Contractor obligations, and, in the event of conflict, Sections 2.1 and 2.2 above shall take precedence over Attachment 2.

3. Time

Contractor must comply with all the time requirements described in this Contract. Notwithstanding any other provision of this Contract or any of its exhibits or attachments, all performance dates contained herein or therein, except for dates specifically identified as "Firm Performance Dates" in Section 4.1, shall be regarded only as estimates. Nonetheless, Contractor shall use diligent efforts to meet such dates and shall notify the State promptly if Contractor encounters significant delays in completing the services under this Contract. In the event that any Firm Performance Dates are not met, then, except as otherwise excused hereunder, the amount owed to Contractor for the specific corresponding Deliverable per Section 4.1 below (the "Deliverable Payment Amount") shall be reduced as follows:

# Days following the Firm Performance Date	Reduction of Deliverable Payment Amount
0-9 business days	No reduction
10-19 business days	5% of the Deliverable Payment Amount
20 or more business days	10% of the Deliverable Payment Amount

For Firm Performance Dates, notwithstanding any other provision of this Contract, Contractor shall not be considered to have defaulted in its obligations hereunder if its failure to meet any Firm Performance Date is caused by (a) a delay or failure by the State to meet its obligations under this Agreement, (b) the failure of an assumption listed in this Contract, or (c) delays caused by other contractors engaged by the State in connection with the project, and the Contractor uses commercially reasonable efforts to perform notwithstanding any such delay or failure. Any such events shall result in a Change Order to address the adverse impact of such failure on Contractor.

4. Consideration and Payment

4.1 Consideration. State will pay for all services performed by Contractor under this Contract as follows:

- (a) Compensation. Contractor will be paid in accordance with the payment schedules below. These payment schedules include Deliverables, milestones, Firm Performance Dates, invoicing dates, and payment amounts.
 - i. Payment for Deliverables listed in the Deliverables Schedule below shall be based upon approval of the Deliverables as identified in Section 21 below.

#	Deliverable	Firm Performance Date	Payment Amount
1	Report and reconciliation matrix of current status of	5/17/2014	\$400,000

	Deliverables across existing vendor agreements		
2	<p>Report on analysis and recommendations for:</p> <p>Project governance structure (including vendor management structure) identifying coordination and integration across State and vendor teams</p> <p>Recommended accountability and decision-making structures and processes</p> <p>Recommended project status reports/dashboards</p> <p>Recommended tools and processes (risk and issue management, change control, defect management, release management, and testing) used to support overall project tracking and reporting</p> <p>Recommended communication and information flow between State agency staff and external stakeholders and administrative partners including counties, navigators, brokers and health plans</p>	5/27/2014	\$400,000
3	Phase one functional and technical assessment report with a categorization of key functional and system gaps and recommendations for a near-term system roadmap (to support open enrollment for benefit year 2015)	5/27/2014	\$540,000
4	Project plan – Application project work plan	6/13/2014	\$500,000
5	Phase two functional and technical assessment report with a categorization of key functional and system gaps and recommendations for a mid-term and long term system roadmap	6/24/2014	\$400,000

- ii. Payment for Milestone Periods listed in the Milestone Schedule below shall be based upon Contractor's completion of the corresponding services provided at the time of the applicable Milestone Period. Contractor's completion shall be evidenced by submission of Contractor's monthly status report, thereby allowing the State to review and provide approval for completion of the services during the applicable Milestone Period under the procedures identified in Section 21.

#	Milestone Period	Invoicing Date (estimate)	Payment Amount
1	April 29-May15, 2014	5/16/2014	\$300,000
2	May 16-31, 2014	6/1/2014	\$300,000
3	June 1-30, 2014	7/1/2014	\$300,000
4	July 1-31, 2014	8/1/2014	\$300,000
5	August 1-31, 2014	9/1/2014	\$300,000
6	September 1-30, 2014	10/1/2014	\$300,000
7	October 1-31, 2014	11/1/2014	\$300,000
8	November 1-30, 2014	12/1/2014	\$300,000
9	December 1-31, 2014	12/31/2014	\$314,277

- iii. The State shall have the option of extending the Contract to continue to receive the Contractor's services after December 31, 2014 (the State will provide the Contractor with thirty (30) days advanced written notice of its intent to exercise this option). In the event that the State exercises this option, the parties agree to work together in good faith to mutually agree upon the newly applicable payment amounts and defined scope and deliverables for any related services requested and provided by Contractor after December 31, 2014; for which the applicable future milestone payment amounts for said services will not exceed \$310,000 within a defined milestone period.

- (b) Travel Expenses. Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Contract will not exceed Zero Dollars (\$0.00).
- (c) Total Obligation. The total obligation of State for all compensation and travel expenses to Contractor for services performed through December 31, 2014, under this Contract, will not exceed Four Million Nine Hundred Fifty-Four Thousand Two Hundred Seventy Seven Dollars (\$4,954,277.00).

4.2 Payment

- (a) Invoices. In accordance with Minn. Stat. §16A. 124, Subd. 3, the State will promptly pay Contractor within 30 calendar days after Contractor presents an itemized invoice for the services performed and State's Authorized Representative accepts the invoice. In the event that an invoice is not accepted by the State's Authorized Representative due to improper invoice itemization by the Contractor, the State shall provide Contractor with a detailed written notice, within five (5) days from receipt of invoice, of the deficiency in Contractor's invoice itemization and grant the Contractor 30 (thirty) days to provide additional documentation to cure the improper invoice itemization. Upon any failure by the State to make payment as set forth above, Contractor may provide notice of breach to the State and terminate the contract in accordance with the termination and cure rights set forth in Section

18.2 of this contract.

- (b) **Retainage.** Under Minnesota Statutes § 16C.08, subdivision 5(b), no more than ninety percent (90%) of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by State's Authorized Representative. The balance due will be paid when State's Authorized Representative reasonably determines that Contractor has satisfactorily fulfilled all the terms of this Contract.
- (c) **Federal Funds.** Payments under this Contract will be made from federal funds obtained by State through HHS section 1311 CFDA Number 93.525 of the Patient Protection and Affordable Care Act of 2010. Contractor is responsible for compliance with all federal laws applicable to the Contractor in its performance under this contract.

5. **Conditions of Payment**

All services provided by Contractor under this Contract must be performed in accordance with the terms of this Contract and all applicable federal, state, and local laws, ordinances, rules, and regulations applicable to Contractor's performance of such services, which may include business registration requirements of the Office of the Secretary of State. Contractor will not receive payment for work that was not performed in accordance with the terms of this Contract or was performed in violation of applicable federal, state, or local law.

6. **Authorized Representative**

6.1 The State's Authorized Representative is:

Name: Scott Leitz
Address: 81 7th St. E. Suite 300
St. Paul, MN 55101
Telephone: 651-539-1339
E-Mail Address: scott.leitz@state.mn.us

The State's Authorized Representative, or his/her successor, has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this Contract. If the services are performed in accordance with the terms hereof, State's Authorized Representative will certify acceptance on each invoice submitted for payment.

6.2 The Contractor's Authorized Representative is:

Name: Steve Dahl
Address: 50 South Sixth Street, Minneapolis, MN, 55402
Telephone: 612.397.4267
E-Mail Address: stdahl@deloitte.com

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

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

- 7.1 Assignment.** Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of State and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office. Notwithstanding the foregoing, Contractor may assign this Contract without obtaining the State's consent, provided such assignment is to any Affiliate of the Contractor. "Affiliates" mean entities that control, are controlled by, or are under common control with, another entity.
- 7.2 Amendments.** Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.
- 7.3 Waiver.** If either party fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

7.4 Contract Complete. This Contract contains all negotiations and agreements between State and Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

8. Indemnification and Limitation on Liability

8.1 In the performance of this Contract by Contractor, or Contractor's agents or employees, Contractor will indemnify, defend, to the extent permitted by the Minnesota Attorney General, such agreement not to be unreasonably withheld consistent with Minnesota Statutes, section 8.06, and hold harmless State, its agents, and employees, from any third party claims or causes of action, including reasonable attorney's fees incurred by State, for bodily injury, death or damage to real or tangible personal property to the extent directly and proximately caused by Contractor's intentional, willful, or negligent acts or omissions while engaged in the performance of the services under the Contract.

The indemnification obligations of this section do not apply to, and will be on a comparative fault basis, to the extent the claim or cause of action is the result of State's intentional, willful or negligent acts or omissions. This clause will not be construed to bar any legal remedies Contractor may have for State's failure to fulfill its obligation under this Contract.

8.2 In no event (A) shall the Contractor's liability relating to this Contract exceed the amount of fees paid and incurred but not yet paid by the State to the Contractor under this Contract; and (B) shall the Contractor be liable for consequential, special, indirect, incidental, punitive, or exemplary damages, costs, expenses, or losses relating to this contract. The foregoing limitations do not apply to (i) the Contractor's obligations to indemnify the State under Sections 8.1 or 10.2(b)(2), (ii) a breach by the Contractor of Attachment 1, or (iii) bad faith or intentional misconduct of Contractor, its subcontractors or their respective personnel. The provisions of this Section shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence) or otherwise, notwithstanding the failure of the essential purpose of any remedy.

9. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Contract.

10. Government Data Practices and Intellectual Property

10.1 Government Data Practices. The Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (the "MGDPA") shall apply to all data provided by the State under this Contract, and to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. Contractor shall comply with those provisions of the MGDPA that are applicable to Contractor as a contractor for the State performing the services under this Agreement. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes Chapter 13.

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

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

10.2 Intellectual Property Rights

(a) Intellectual Property Rights. The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Contract (except with respect to any Contractor Pre-Existing Intellectual Property contained therein). The "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs,

drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others for delivery to the State as a result of Contractor's performance of the services under this Contract. "Works" includes Documents. The "Documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, for delivery to the State as a result of Contractor's performance of the services under this Contract. The Documents will be the exclusive property of the State and all such Documents must be promptly 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." Except with respect to any Contractor Pre-Existing Intellectual Property contained therein, upon full payment by State to Contractor under for the applicable Work as set forth in this Contract, 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. Nothing in this contract shall be construed to grant the State ownership rights to the works of authorship, materials, or other intellectual property created by the Contractor or its subcontractors prior to or independently of the performance of the services hereunder, or created by the Contractor or its subcontractors as a tool for their use in performing the services, plus any modifications or enhancements to any of the foregoing and derivative works based on any of the foregoing (collectively "Contractor Pre-Existing Intellectual Property"). The Contractor grants the State an irrevocable, non-exclusive, non-transferable royalty-free license to use any Contractor's Pre-Existing Intellectual Property incorporated into the Works. Such license granted is for the State's governmental use, or as assigned pursuant to Section 7.1, and not any other use. To the extent any Contractor Pre-Existing Intellectual Property provided to the State under this contract is a product (to the extent it constitutes merchandise within the meaning of section 471 of the Internal Revenue Code), the Contractor Pre-Existing Intellectual Property is licensed to the State by the Contractor as agent for Deloitte Consulting Product Services LLC.

The rights granted in this Section 10.2(a) do not apply to any third-party intellectual property, including without limitation, any third-party software (and any modifications or enhancements thereto or derivative works based thereon) that is subject to a separate license agreement between the State and any third party (which may include subcontractors).

(b) Obligations

- (1) *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 the Contractor, its employees, agents, or subcontractors shall not retain any interest in and to the works and documents (except with respect to any Contractor Pre-Existing Intellectual Property contained therein). The Contractor represents and warrants that the works and documents do not and will not knowingly infringe upon any intellectual property rights of other persons or entities.
- (2) *Indemnity.* Notwithstanding Clause 8, the Contractor will indemnify; defend, to the extent permitted by the Attorney General, such agreement not to be unreasonably withheld consistent with Minnesota Statutes, section 8.06; and hold harmless the State, at the Contractor's expense, from any third party action or claim brought against the State that all or part of the Works or Documents infringe upon the U.S. patent, or the copyright or other intellectual property rights of such third party; except to the extent that such infringement or unauthorized use arises from, or could have been avoided except for (i) the State's modification of the Works or Document or use thereof in a manner not contemplated by this contract, (ii) the failure of the State to use any corrections or modifications made available by Contractor, (iii) information, materials, instructions or

specifications provided by or on behalf of the State or by a third-party that are themselves infringing, or (iv) the use of the Works or Documents in combination with any product or data not provided by Contractor or recommended by Contractor under the terms of this Contract. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, reasonable attorney fees.

- (3) If such a claim or action arises, or in the Contractor's is likely to arise, the Contractor must, at the Contractor'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 with a non-infringing work product that is capable of performing substantially the same function. If neither of the foregoing alternatives is commercially reasonably available with respect to Works or Documents provided by subcontractors of the Contractor, then the Contractor may accept return of such Works or Documents and refund to the State the fees paid by State under this contract for such Works or Documents. The provisions of this paragraph constitute the sole and exclusive remedy of the State, and the sole and exclusive obligation of the Contractor, relating to a claim that any Works or Documents infringe any patent, copyright or other intellectual property rights of a third party.

11. Workers Compensation and Other Insurance

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

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

11.2.1 Workers Compensation Insurance. Except as provided below, Contractor must provide Workers Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers Compensation insurance in accordance with the statutory requirements of State, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:

\$100,000 – Bodily Injury by Disease per employee

\$500,000 – Bodily Injury by Disease aggregate

\$100,000 – Bodily Injury by Accident

If Minnesota Statutes § 176.041 exempts Contractor from Workers Compensation insurance or if Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers Compensation requirements.

If during the course of the contract Contractor becomes eligible for Workers Compensation, Contractor must comply with the Workers Compensation Insurance requirements herein and provide State with a certificate of insurance.

Further, Contractor certifies that it is in compliance with Minnesota Statutes § 176.181, subdivision 2, pertaining to workers compensation insurance coverage. Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way State's obligation or responsibility.

11.2.2 Commercial General Liability Insurance. Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including death, as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the Contract. Insurance minimum limits are as follows:

\$2,000,000 – per occurrence
\$2,000,000 – annual aggregate
\$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Bodily Injury and Property Damage
Personal and Advertising Injury
Contractual Liability
Products and Completed Operations Liability

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

- 11.2.3 Commercial Automobile Liability Insurance.** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, 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

The following coverage shall be included:

Owned, Hired, and Non-owned Automobile

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

\$2,000,000 – per claim or event
\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of Contractor.

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 one (1) year, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement if available at a commercially reasonable cost.

11.3 Additional Insurance Conditions

- 11.3.1** Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to State with respect to any claim arising out of Contractor's performance under this contract;
- 11.3.2** If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify State within thirty (30) days, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to State;
- 11.3.3** Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- 11.3.4** Contractor's policy(ies) shall include defense costs in addition to its liability policy limits, with the exception of 11.2.4 above;
- 11.3.5** Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- 11.3.6** An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

12. Debarment by State, its Departments, Commissions, Agencies, or Political Subdivisions

Contractor certifies that as of the Effective Date and to its knowledge neither it nor its principals is presently debarred or suspended by the State of Minnesota, or any of its departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide prompt written notice to State's Authorized

Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

13. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

Federal money will be used to pay for all or part of the work under the Contract; therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

- 13.1 By signing and submitting this Contract, Contractor is providing the certification set out below.
- 13.2 The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, State may pursue available remedies, including suspension and/or debarment.
- 13.3 Contractor shall provide immediate written notice to State's Authorized Representative if at any time Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- 13.4 The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549.
- 13.5 Contractor agrees that upon execution of this this Contract, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- 13.6 Contractor further agrees that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 13.7 A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
- 13.8 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 13.9 Except for transactions authorized under paragraph 13.5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, State may pursue available remedies, including suspension and/or debarment.
- 13.10 **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**
 - 13.10.1 Contractor certifies, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - 13.10.2 Where Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

14. Publicity and Endorsement

14.1 Publicity. Any publicity regarding the subject matter of this Contract must identify State as the sponsoring agency and must not be released without prior written approval from State's Authorized Representative. For purposes of this provision, publicity includes any and all communications with the media or press with respect to the program, publications, or services provided resulting from this Contract, and any notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract. This provision does not preclude the Contractor from referencing this contract, or the services, in any future work reference or qualification submission.

14.2 Endorsement. Contractor must not claim that State endorses its products or services.

15. Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

16. Data Disclosure

Under Minnesota Statutes § 270C.65, subdivision 3 and other applicable law, Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

17. Payment to Subcontractors

As required by Minnesota Statutes § 16A.1245, the prime Contractor must pay all subcontractors, less any retainage, within ten (10) calendar days of the prime Contractor's receipt of payment from State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

18. Termination

18.1 Termination by the State. State may cancel this Contract at any time, without cause, upon thirty (30) calendar days written notice to Contractor. Upon termination, Contractor will be entitled to, and the State will make, (i) payment, determined on a pro rata basis, for services performed in accordance with the terms of this contract through the effective date of termination, and (ii) payment of any retainage amounts withheld by State pursuant to Section 4.2(B) of this Contract.

18.2 Termination for Breach. Either party may terminate this contract with 30 days' written notice to the other party in the event of material breach of this Contract by the other party, provided that the breach is not cured within the 30-day notice period. In addition, without limiting its rights or remedies, the Contractor shall have the right to terminate this contract if payment of correct invoices for approved Deliverables is not paid within 30 days of the receipt of invoice, provided that State has not paid such invoice within 30 days of its receipt of written notice from the Contractor. Upon termination of this Contract by the Contractor as set forth in this Section, the Contractor will be entitled to, and State will make, (i) payment, determined on a pro rata basis, for services performed in accordance with the terms of this contract through the effective date of termination, and (ii) payment of any retainage amounts withheld by State pursuant to Section 4.2(B) of this Contract.

18.3 Termination for Insufficient Funding. State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding sources, or if funding is not received or made available at a level sufficient to allow for the payment of the services covered here. Termination must be by written, e-mail or fax notice to Contractor. State is not obligated to pay for any services that are provided after notice and effective date of termination. However, Contractor will be entitled to, and the State will make, (i) payment, determined on a pro rata basis, for services performed in accordance with the terms of this contract through the effective date of termination, and (ii) payment of any retainage amounts withheld by State pursuant to Section

4.2(B) of this Contract. State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding sources, not to appropriate funds or to otherwise prohibit such use of or deny access to funds. State must provide Contractor notice of the lack of funding within a reasonable time of State receiving that notice.

18.4 Termination for Independence Reasons. The Contractor may terminate this Contract upon written notice to the State if, as a result of the State's assignment of this contract, the Contractor determines that the performance of any part of the services would be in conflict with law, or independence or professional rules.

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

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

"Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
- (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
- (3) that a violation of this section is a misdemeanor; and
- (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment upon written notice to the Contractor, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract."

20. Cooperation

The State will cooperate with the Contractor in the performance by the Contractor of its services under this Contract. The State acknowledges and agrees that the Contractor's performance is dependent on (i) the State's timely and effective satisfaction of the States' responsibilities under this contract, including its responsibility to provide accurate and complete data or information to the Contractor, and (ii) timely decisions and approvals of the State in connection with the services under this contract. The services provided under this contract may include advice and recommendations, but Contractor will not make any decisions on behalf of State in connection with the implementation of such advice and recommendations.

21. Approval of Deliverables

The State shall approve each Deliverable that conforms in all material respects to the requirements therefor set forth in this Contract. If the State fails to approve or reject a Deliverable within five (5) business days, then Contractor shall promptly issue a written reminder to the State's Authorized Representative or his or her designee, notifying the State in writing that no such notice was received with respect to such Deliverable. If, within two (2) business days of the date of Contractor's written reminder, Contractor does not receive a written approval or rejection of such Deliverable, the Deliverable will be deemed approved by the State.

"Deliverable(s)" means the specific items of Contractor's Works that are identified as Deliverables in this Contract.

22. Change Control Process.

Either party may request changes to the services, Deliverables, and/or any other aspect of the scope of work through a written change request ("Change Request"). Promptly thereafter the parties shall discuss what impact the Change Request will have on the services and Deliverables and on pricing, timing, and other terms of this Contract. Any changes to this Contract agreed upon by the parties as a result of the foregoing process shall be set forth in a change order signed by the parties ("Change Order"). Once a Change Order is signed it shall amend, and become part of, this Contract. Neither party is obligated to change the services,

Deliverables, or any other aspect of the scope of work unless a Change Order for such change has been signed by the parties.

23. Performance of Services; Limitation on Warranties.

The Contractor represents and warrants that the services performed under this contract shall be performed in good faith and in a professional manner consistent with generally accepted industry standards for the performance of such services. THIS IS A SERVICES AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THIS PARAGRAPH, THE CONTRACTOR DISCLAIMS ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

24. Force Majeure

The Contractor shall not be liable for any delays or nonperformance resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty; act of God; strike or labor dispute; war or other violence; or any law, order, or requirement of any governmental agency or authority.

25. Counterparts

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

1 STATE ENCUMBRANCE VERIFICATION

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

Signed: ~~Scott Hutch~~ *Wendy S. Loman-Moore*

Date: ~~4-29-2014~~ *April 29, 2014*

SWIFT Contract No. *77568 / PS 521*

2 CONTRACTOR

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

By: *Steve Dahl*

Name: Steve Dahl Title: Director

Date: *4/29/14*

3 MINNESOTA INSURANCE MARKETPLACE [MNsure]

By: *Scott Hutch*
(with delegated authority)

Title: *CEO*

Date: *4-29-14*

CONTRACT ATTACHMENT 1 – DATA SHARING AGREEMENT

This Data Sharing Agreement (“Agreement”) is by and between the Minnesota Insurance Marketplace a/k/a MNsure (“MNsure”) and Deloitte Consulting LLP (“Contractor”) and hereby amends and is made part of the Contract (defined below).

WHEREAS, the parties have executed a Contract for certain consulting services, to which this Agreement is attached (“Contract”);

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

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

Agreement

1. Term of Agreement

- 1.1 **Effective date:** April 28, 2014, or the date the MNsure obtains all required signatures, whichever is later.
- 1.2 **Expiration date:** December 31, 2014, or until all obligations have been satisfactorily fulfilled, or until any applicable statutory authority expires, whichever comes first.

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”. “Protected information,” for purposes of this Agreement, means any or all of the following that is shared with Contractor pursuant to Contractor’s performance of services under the Contract (“Services”):
 - 2.1.1 Private data (as defined in Minnesota Statutes § 13.02, subd. 12), confidential data (as defined in Minn. Stat. § 13.02, subd. 3), welfare data (as governed by Minn. Stat. § 13.46), medical data (as governed by Minn. Stat. § 13.384), and other not public data governed by other sections in the Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
 - 2.1.2 Protected health information (“PHI”) (as defined in and governed by the Health Insurance Portability Accountability Act (“HIPAA”), 45 C.F.R. § 160.103);
 - 2.1.3 Federal Tax Information (“FTI”) (as defined by IRC § 6103);
 - 2.1.4 Records (as defined by the Privacy Act of 1974, 5 U.S.C. § 552a); and
 - 2.1.5 Other personally identifiable data subject to applicable State and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

Unless otherwise specified in this Agreement, all capitalized terms used in this Agreement shall have the meanings established for purposes of HIPAA or the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as applicable. Specific statutory or regulatory citations used in this Agreement shall mean such citations as amended and in effect from time to time.

3. Duties.

3.1 MNsure Duties. MNsure shall:

- (a) Only release information which it is authorized by law or regulation to share with Contractor.
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- (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, regulation or rule if done by MNSure.
- (e) Limit any disclosure of PHI to Contractor, to the extent practicable, to the Limited Data Set of such PHI, or, if the disclosure of PHI that is not in a Limited Data Set is necessary for Contractor's performance of the Services, to limit the disclosure of such PHI to the minimum necessary to accomplish the intended purpose of such disclosure, provided, however, that the requirements set forth above in this subpart (e) shall be superseded and replaced by the requirements of the "minimum necessary" regulations or guidance to be issued by the Secretary (pursuant to 42 U.S.C. § 17935(b)(1)(B)) on and after its compliance date.

3.2 Contractor Duties. Contractor shall:

- (a) Be responsible for 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 providing the Services to protect information privacy in accordance with Contractor's policies and procedures;
 - 2. requiring that employees and agents providing the Services comply with and are properly trained regarding, as applicable, the laws listed above in clause 2; and
 - 3. implementing administrative, physical, and technical safeguards (i) that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected information in its possession at rest and when transmitted by Contractor, while in transit, that it creates, receives, maintains, or transmits on behalf of MNSure; and (ii) to prevent use or disclosure of Protected information other than as permitted or required by this Agreement.
 - (b) Comply with the "minimum necessary" access and disclosure rule set forth in the MGDPA to the extent applicable. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government. Minnesota Statutes § 13.05 subdivision 3.
 - (c) Report to MNSure any privacy or security incident regarding the protected information of which it becomes aware. For purposes of this Agreement, "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system affecting Electronic protected information of which it becomes aware. Security incident shall not include pings and other broadcast attacks on Contractor's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above when using Contractor equipment and infrastructure; so long as such incidents do not result in unauthorized access, use or disclosure of MNSure's protected information. "Privacy incident" means improper and/or unauthorized use or disclosure of protected information, including any Breach of unsecured protected information, in breach of this Agreement by Contractor. This report must be made in writing and submitted to MNSure promptly and in no case more than 10 days after learning of such incident.
 - (d) Unless provided for otherwise in this Agreement, if Contractor receives a request to release protected information referred to in this Clause, Contractor must promptly notify MNSure unless prohibited by applicable law or regulation. MNSure will give Contractor instructions concerning the release of the data to the requesting party before the data is released; provided that, Contractor may release information to the extent Required by Law.
 - (e) Contractor may use or disclose protected information as reasonably necessary in connection with its performance of the Services. Contractor shall not use or further disclose protected information created, collected, received, stored, used, maintained, or disseminated in the course or performance of this
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Agreement or the Contract other than as permitted or required by this Agreement, the Contract or as required by law, either during the period of this Agreement or hereafter.

- (f) In accordance with Minnesota Statutes § 62V.06, subdivision 9, Contractor may not sell any data collected, created, or maintained by MNsure, regardless of its classification, for commercial or any other purposes.
- (g) Consistent with this Agreement, ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.
- (h) To the extent that any protected information is PHI:
 - 1. Comply with the minimum necessary rule with respect to the use and disclosure of PHI in accordance with 45 C.F.R. §§ 164.502(b) and 164.514(d).
 - 2. Report any Breach of Unsecured PHI or security incident pursuant to the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E). This report must be in writing and sent to MNsure not more than 10 days after learning of such non-permitted use or disclosure. To the extent known, such a report will at least:
 - (A) Identify the nature of the non-permitted use or disclosure;
 - (B) Identify the types of PHI used or disclosed;
 - (C) Identify the role of 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, intended 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, as MNsure may reasonably request.
 - (G) Provide the information required to be in the 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 to MNsure.
 - 3. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree in writing to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information.
 - 4. Within ten (10) business days of a request from an individual or their designee, make available PHI maintained by Contractor in a designated record set, consistent with Minn. Stat. § 13.04, subdivision 3, if applicable, and 45 C.F.R. § 164.524.
 - 5. Within ten (10) business days, forward any request to make any amendment(s) to PHI maintained by Contractor in a designated record set to MNsure in order to assist MNsure in satisfying its obligations under Minnesota Statutes § 13.04, subdivision 3 and 45 C.F.R. § 164.526.
 - 6. Document such disclosures of PHI and information related to such disclosures as would be required for MNsure to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Maintain and make available no later than fifteen (15) days after receipt of request from MNsure, the information required to provide an accounting of disclosures to MNsure as necessary to assist in satisfying MNsure's obligations under 45 C.F.R. § 164.528.
 - 7. To the extent the business associate is to carry out one or more of MNsure's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to MNsure in the performance of such obligation(s).
 - 8. Make its internal practices, books, and records available to the Secretary of the United States Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.
 - 9. Contractor may use and disclose PHI as reasonably required in connection with the performance of the Services; provided that, Contractor may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by MNsure. Notwithstanding the foregoing, Contractor may use and disclose PHI for the proper management and administration of Contractor as provided in 45 C.F.R. § 164.504(e)(4).

10. Comply with any and all other provisions of the HIPAA Privacy Rule, Administrative, and Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A, C, and E, including future amendments thereto, to the extent applicable to Contractor in its performance of the Services. Develop written policies and procedures for safeguarding and securing PHI in its possession or under its control and complying with HIPAA and the HITECH Act, and other privacy laws applicable to it.

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.

- (i) To the extent that any protected information is FTI, require that this data only be used as authorized under the Patient Protection and Affordable Care Act and the Internal Revenue Code, 26 U.S.C. § 6103(C), and IRS Publication 1075, to the extent applicable to Contractor in the performance of its Services, and restrict from use for any other purpose.
- (j) Mitigate, to the extent practicable and technically feasible, any harmful effects known to it of a use, disclosure, or Security incident with respect to protected information by it in violation of this Agreement.
- (k) Upon MNSure's request, report to MNSure its mitigation efforts, if any, performed pursuant to section 3(j) above.
- (l) Comply with any and all other applicable provisions of the Final Exchange Privacy Rule at 45 C.F.R. § 155.260, including future amendments thereto, to the extent applicable to Contractor in the performance of the Services.

4. Disposition of Data upon Completion, Expiration, or Agreement Termination. Upon completion, expiration, or termination of this Agreement, Contractor will return to MNSure or destroy all protected information received or created on behalf of MNSure for purposes associated with this Agreement. If requested by the MNSure in writing, a written confirmation of destruction or return to the MNSure Authorized Representative is required. Contractor will retain no copies of such protected information. Notwithstanding the foregoing, if both parties agree that such return or destruction is not feasible (such as in the event that retention of protected information is required for archival purposes to evidence the Services), or if Contractor is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this Agreement, Contractor will extend the protections of this Agreement to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as Contractor maintains the information.

5. Amendments

Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office or their authorized representatives.

6. Sanctions.

The parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties.

7. Interpretation.

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

8. Intentionally Omitted.

9. Effect of statutory amendments or rule changes.

The parties agree to reasonably cooperate 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 Agreement or in any other applicable law. However, any requirement in this Agreement that is based upon HIPAA Rules or upon other applicable federal or state information privacy or security laws means the requirement as it is currently in effect, including

any applicable amendment(s), regardless of whether the Agreement has been amended to reflect the amendments(s).

10. Survival.

The obligations of the parties that by their nature should survive the termination of this Agreement shall survive the termination of this Agreement.

12. No Third Party Beneficiaries.

Nothing contained in this Agreement is intended to confer upon any person (other than the parties hereto) any rights, benefits, or remedies of any kind or character whatsoever, whether in contract, statute, tort (such as negligence), or otherwise, and no person shall be deemed a third-party beneficiary under or by reason of this Agreement.

1. CONTRACTOR

By: Steve Dahl
(With delegated authority)

Name: Steve Dahl

Title: Director

Date: 4/29/14

2. MNSure

By: Scott Leitz
(With delegated authority)

Name: Scott Leitz

Title: CEO

State and Contractor Roles and Responsibilities

The following RACI chart (Responsible, Accountable, Consulted and Informed) further clarifies the State and Contractor's respective duties for the Project.

Area	Activity	State Leadership	Contractor	Other Vendors
Project Management	Implement MNSure PMO	A/C	R	C/I
	Project plan – Application project work plan	A/C	R	C/I
	Project status Reporting and Dashboards	A/I	R	C/I
	Reconcile deliverables with current vendor contracts	A/C/I	R	C/I
	Maintain deliverable matrix	A/C	R	C/I
	Vendor Management	C/I/A	R	n/a
Governance	Develop Project Governance Structure (including vendor management structure)	C/I/A	R	C/I
	Develop accountability and decision making structures and process	C/I/A	R	C/I
Change Control	Develop Change Control Management Plan	A/I	R	C/I
	Attend change control board meetings and make decisions	R/A	C	C/I
Issue Management	Develop Issue Management plan	A/I	R	C/I
	Approve Issue Management Plan	R/A	I	C
	Manage Issue Management process	A/I	R	C/I
	Attend issue management meetings and make decisions	R/A	C/I	C/I
Risk Management	Develop Risk Management Plan	A/I	R	C/I
	Manage risk management process	I	R	C
	Attend risk management meetings and make decisions	R/A	C	I
Communications	Assess communication and information flow for stakeholders: State agency staff and external stakeholders and administrative partners including counties, navigators, brokers and health plans	A/C	R	C/I
Functional and Technical System Assessment	Develop Key Function Matrix (KFM)	C/I/A	R	I
	Identify prioritized areas based on KFM	R/A	C/I	I
	Perform Phase 1 Functional and Technical Assessment and recommendations	C/I/A	R	I
	Perform Phase 2 Functional and Technical Assessment and recommendations	C/I/A	R	I
	Answer questions about current software	C/R	I	R

Area	Activity	State Leadership	Contractor	Other Vendors
	functionality, technology, architecture and infrastructure			
	Database Design Review (as part of Phase 2 Assessment)	C//A	R	C
	Technical Design Review (as part of Phase 2 Assessment)	C//A	R	C
	Overall Application Architecture Review (as part of Phase 2 Assessment)	C//A	R	C
	Develop mid-range and long range Roadmap	C//A	R	C
	Make decisions on recommendations from assessments	R/A	C//	C//
	Review existing release management plans	A/C	R	C
Release Management	Establish release management processes	A//	R	C
	Identify which functionality is included in each release	A	R	C//
	Oversee release management process	A/C	R	C//
	Execute releases	A/C	I	R
	Assess current defects to support re-prioritization	A/C	R	C
	Implement Defect Management process (includes tracking, summary impact analysis of defects, resolution tracking)	A//	R	C
	Approve Defect Management process	R/A	I	C
	Identify defects	A/C	I	R
	Identify defects (UAT environment)	R/A	I	C
	Fix defects	A/C	I	R
	Reporting on known defects	A/C	R	C//
Defect Tracking	Assess testing process and tools and make recommendations	A/C//	R	C//
	Make decisions on recommendations	R/A	C	C//
	Implement decisions	R/A	R/C	R/C//
	Write and Execute UAT Scenarios	R/A//	I	R//
	Oversee UAT process	A//	R	I
	Testing reports for prioritization and decision making	A//	R	C//
	Vendor coordination for validation of application performance management criteria	C//A	R	C//
	Perform load and performance testing	C/A	I	R
	Produce UAT reporting and dashboards	C/A	R	I
Testing				

Area	Activity	State Leadership	Contractor	Other Vendors
Knowledge Transfer	Perform knowledge transfer	A/C	R	I

Legend	
R - Who is Responsible	The person or entity assigned to do the work
A - who is Accountable	The person or entity that makes the final decision
C - who is Consulted	The person or entity that must be consulted before a decision or action is taken
I - Who is Informed	The person or entity that must be informed that a decision or action has been taken

Definition of RACI Terms:

Implement MNSure PMO: Implementation of a MNSure Program Management Office (PMO) that operates in alignment with MN.IT PMO, and is led by a state program director with support from the contracted lead project manager.

Project Plan: Application project work plan with work breakdown structure of vendors that supports the MNSure Phase II project.

Issue Management: An issue management process by which Contractor, State, and vendors identify, validate, and report potential issues.

Project Reporting and Dashboards: Program and project dashboards, documentation and tools (issue, risk) to enable metrics reporting of MNSure Phase II project

Change Control Management: A change control process by which Contractor, State and vendors identify potential changes that may impact cost, schedule, system and expedite the impact assessment to a change control board for review and decision.

Deliverables Matrix: Review the current status of deliverables under vendor agreements, reconcile and develop a vendor deliverable traceability matrix.

Key Function Matrix: Functional matrix to inform the prioritization of application assessments.

Knowledge Transfer Management: Knowledge transfer through the project on processes and tools.

Vendor Management: Managing the vendors under the State's guidance as it specifically pertains to the Program and relates to the respective project management processes of issue and risk management, change control, release management, status reporting and dashboards, UAT, PMO, governance and communications, in an effort to assist the State so that the State's decisions and directions are communicated to the appropriate vendors.

Develop Accountability and Decision Making Structures and Processes: Development of RACI matrix to define accountability and decision making structures within the project.

Develop Project Governance Structure (including vendor governance): Development of a governance structure to manage the work and activities being performed by the vendors. Governance structure will address communication and information flow to executive team, steering team, between state agency staff and external stakeholders and administrative partners including, counties, navigators, brokers and health plans.

Risk Management Plan: Development of a process by which Contractor, State, and vendors identify, validate, and report potential risks.

Develop Acceptance Criteria: Develop and assure adherence to both regulations and standards that are the business basis for decisions on acceptable risk.

Oversee UAT: The oversight of UAT process including tools, criteria for phases exit and entry criteria, UAT triage process and production of reports and dashboards.

Report on Testing: Active reports that effectively gauge the quality activities that enable the enhancement of the overall process.

Database Structure Review/Technical Design Review/ Overall Application Architecture Review: As part of the two phase assessment outlined in the contract, review database structure and application architecture for scalability and maintainability. Identify recommendations in the two phase assessment.

Release Management Plan: Development of a process to manage the vendor software releases from development to production.