

Professional and Technical Services Contract

State of Minnesota



This Contract (this "Contract") is between the State of Minnesota, acting through its Chief Executive Officer of Minnesota Insurance Marketplace [MNsure] ("State") and EngagePoint, Inc. whose designated business address is 3901 Calverton Boulevard, Suite 110, Calverton, MD 20705, 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 professional and technical services to assist in the ongoing development and implementation of the MNsure system (the "Project").
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.** August 1, 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 satisfactorily fulfilled, whichever occurs first.
- 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; and 16. Data Disclosure.

2. Duties

- 2.1 The Contractor, who is not an employee of the State of Minnesota, shall:
 - 2.1.1 Provide certain technical services at the request and authorization of the State's Authorized Representative ("Services"). Such Services shall consist of technical design, development, maintenance and support services related to the MNsure system. Contractor shall provide up to 20,000 hours of Services prior to the Expiration Date at a rate of \$175 per hour.

A. Resources. The resource types ("Resource Types") made available by the Contractor to carry out the Services identified in this section 2.1.1 shall consist of the following skillsets, as applicable to the specific Services provided. Individuals complying with the below descriptions are hereinafter referred to as "Resources".

- Data Architect
- Data Analyst
- Developer
- Deployment Engineer
- Project Manager
- Senior Developer
- SOA Integration Architect
- Solution Architect
- Systems Analyst
- Technical Writer
- Test Analyst

B. Allocation of Resources. Contractor shall identify and make available Resource Types as requested and authorized by the State to meet its obligations under this Contract. Except for "Key Resources," as described below, individual Resources assigned to the Project will be approved by the state and shall be assigned, utilized, and billed on a full-time basis. The State understands and acknowledges that Resources shall be assigned on a full-time basis (40 hours minimum per week), and that Resources shall not be assigned on a part-time basis. Subject to the foregoing, Contractor reserves the right to deploy or re-deploy individual Resources as reasonable and necessary in the normal and customary management of Contractor's business, except as described below for Key Resources. In the event the State desires to remove a Resource, the State's Authorized Representative shall provide four (4) weeks' notice.

C. Key Resources. In addition to the Resources identified above, to carry out the Services identified in Section 2.1.1 above, Contractor shall provide the State with at least twenty-five (25) hours per week of Services from each of the following Resources with specifically needed experience ("Key Resources"):

1. Data Architect with at least 18 months experience on the Project;
2. SOA Integration Architect with at least 18 months experience on the Project;
and
3. Solution Architect with at least 18 months experience on the Project.

In addition to the above Contractor shall on a good faith basis, endeavor to maintain the same level of support and access to the abovementioned Key Resources as Contractor has provided in the past to the State with regard to the MNSure Project.

To the extent any Key Resources are unavailable to Contractor for greater than two weeks due to an end in employment with Contractor, or an extended leave ("extended leave" meaning a medical, FMLA, or other similar leave of absence) from Contractor, Contractor shall provide prompt written notice to State. Upon such notice and unless Contractor and State can mutually agree, within 10 business days following the date of such notice, on an acceptable substitute Key Resource, Contractor shall be relieved from the requirement to provide such Key Resource and State shall be relieved from any obligation to use services provided by such Key Resource. The criteria for establishing the acceptability of a substitute Key Resource shall be that the substitute shall possess a reasonably comparable skillset and experience that is sufficient, in the reasonable judgment of the State, to replace the original Key Resource, but such substitute Key Resources shall not be required to possess the same number of months of experience as above set forth, so long as Contractor and the State mutually agree upon the adequacy of such proposed substitute. For avoidance of doubt, the use of Services provided by Key Resources shall apply toward the State's Service use obligations identified in Section 2.2(b).

- D. **Request for Temporary Resources.** In addition to the Resources and Key Resources identified above, to carry out the Services in Section 2.1.1, State may request Contractor to add a temporary resource ("Temporary Resource") on a short-term, and possibly part-time basis. Contractor shall not be obligated to provide such Temporary Resource unless the parties mutually agree to the need for such services and the feasibility of providing such temporary services within the normal and customary management of Contractor's business, such agreement not to be unreasonably withheld. Upon such agreement, Contractor shall provide Services by a Temporary Resource at a rate of \$175 per hour and use of such Services by shall apply toward the State's Service use obligations identified in Section 2.2(b).
- E. With regard to the Services provided under section 2.1.1, all such direction to initiate work provided to the Contractor by the State shall be in writing and signed by the State's Authorized Representative.
- F. Any requests for labor estimates required by State shall be provided in writing promptly following the State's request for work to be performed. The Contractor shall not commence any work subject to a request for labor estimate prior to receiving written approval of the labor estimate from the State. The Contractor will provide all requested labor estimates as promptly as possible based on facts known to it at the time such request is made. Contractor shall notify the State promptly in writing (e.g., email) of any changes to a labor estimate that will result in an increased expenditure of the hours purchased under this Contract. All hours expended shall be billed at the rate herein set forth.

2.2 State Responsibilities. 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

Contract, including assuring timely decision-making, assuring completion of identified State activities, and being the primary point of contact for the Contractor team.

- (b) The State agrees and covenants that it shall use at least 10,040 hours of Services over the course of this Contract, including a commitment by the State to use not less than 2,000 hours per month. The State covenants and agrees that the aforementioned agreement to use minimum hours constitutes a contractual obligation and that Contractor may immediately seek enforcement of this Agreement by means of specific performance. In the event Contractor has provided and State has made payment for any person hours in excess of the 2,057 person hours identified in Addendum A, Paragraph 2 to the certain June 2014 Settlement Agreement and Mutual Release of Claims as provided for in that provision, Contractor and the State agree and acknowledge that such hours shall be credited toward any of the minimum use requirements contained in this section.
- (c) 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

Description of State's Responsibilities

- Provide access to subject matter experts (SMEs) for interview or answer questions as agreed upon in the Project schedule
- Provide access to SMEs who can provide overview of system and provide background on functionality and design decisions as agreed upon in the Project schedule
- Provide access to Project leads and appropriate leadership staff as needed to facilitate Contractor's performance of the Services
- Provide access to test environment(s) with user ID
- Participate in the established Project oversight and management processes
 - Make approval/sign-off decisions in a timely manner in accordance with the Project work plan
- Provide sufficient work space, office supplies, system and network access, and phone access for Contractor personnel
- Write and execute UAT test cases as agreed upon in the Project schedule
- Responsible for management and deployment of all software, systems and data security controls
- Provide access to or assure the participation of State and vendor Project personnel as necessary to enable Contractor to perform its obligations

3. Time

Contractor and State shall comply with all the time requirements applicable to each of them as described in this Contract. In the performance of this Contract by both parties, time is of the essence.

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 \$175 per hour for Services actually performed under this Contract. Contractor may invoice State monthly for Services actually performed and State shall pay such invoices consistent with section 4.2 of this

Contract.

- (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 under this Contract will not exceed Three Million Five Hundred Thousand Dollars (\$3,500,000.00).

4.2 Payment

- (a) Invoices. State will promptly pay Contractor after Contractor presents an itemized invoice for the Services actually performed and State's Authorized Representative accepts the invoiced Services. The final invoice must be submitted within thirty (30) calendar days of the expiration date.
- (b) 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 requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by Contractor's failure to comply with federal requirements.

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 federal, state, or local law.

6. Authorized Representative

6.1 The State's Authorized Representative is:

Name: Scott Leitz
Address: 81 Seventh Street East, Suite 300
St. Paul, MN 55101
Telephone: (651) 539-1320
E-Mail Address: scott.leitz@state.mn.us

The State's Authorized Representative, or his/her delegate or successor, has the responsibility to monitor the Contractor's performance and the authority to accept the Services provided under this Contract. If the Services are satisfactory, State's Authorized Representative will certify acceptance on each invoice submitted for payment.

6.2 The Contractor's Authorized Representative is:

Name: Thomas Swider
Address: 3901 Calverton Boulevard, Suite 110
Calverton, MD 20705
Telephone: cell (609) 792-6355
E-Mail Address: Thomas.swider@engagepoint.com

Either party must promptly notify the other in writing if that party'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 (which shall not be unreasonably withheld) and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.
- 7.2 Amendments.** Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.
- 7.3 Waiver.** If 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

- 8.1** In the performance of this Contract by Contractor, or Contractor's agents or employees, Contractor must indemnify, save, and hold harmless State, its agents, and employees, from any third party claims or causes of action, including reasonable attorney's fees incurred by State, to the extent caused by Contractor's
- a) Intentional, willful, or negligent acts or omissions; or
 - b) Actions that give rise to strict liability; or
 - c) Breach while engaged in the performance of the Services hereunder.

The indemnification obligations of this section 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 obligations under this Contract.

8.2 Limit of Liability. 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, 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 Contract, consistent with Minnesota Statutes § 13.05, subdivision 11. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes Chapter 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must 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) 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, if any, created and paid for under this Contract (except with respect to any Contractor Pre-Existing Intellectual Property contained therein, as hereinafter defined). 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, and consistent with the payment terms 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 (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, 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.

The State hereby grants Contractor a non-exclusive, royalty free, irrevocable, fully paid-up, and sub-licensable license to use, execute, reproduce, display, perform, sublicense, distribute and prepare derivative works of Work (the "License Back"). This License Back is granted without warranties of any kind.

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

(b) Obligations

- (1) Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will promptly give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.
- (2) Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the works and documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the works and documents (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. Notwithstanding Clause 8, the Contractor will indemnify; defend, to the extent permitted by the Attorney General, consistent with Minnesota Statutes, section 8.06; and hold harmless the State, at the Contractor's expense, from any action or claim brought by a third party against the State to the extent that it is based on a claim that all or part of the works or documents infringe upon the intellectual property rights of others.; 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 or the applicable software license, (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. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim.

11. Workers Compensation and Other Insurance

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

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

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

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

\$500,000 – Bodily Injury by Disease aggregate

\$100,000 – Bodily Injury by Accident

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

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

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

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

\$2,000,000 – per occurrence

\$2,000,000 – annual aggregate

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

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

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

11.2.3 **Commercial Automobile Liability Insurance.** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from

claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance minimum limits are as follows:

\$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 all claims Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional Services required under the contract.

Contractor is required to carry the following minimum limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of Contractor and may not exceed \$50,000 without the written approval of State. If Contractor desires authority from State to have a deductible in a higher amount, Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that State can ascertain the ability of Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

11.3 Additional Insurance Conditions

- 11.3.1** Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to State with respect to any claim arising out of Contractor's performance under this contract;
- 11.3.2** If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify State within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to State;
- 11.3.3** Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- 11.3.4** Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of 11.2.4 above;
- 11.3.5** Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- 11.3.6** An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

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

Contractor certifies that neither it nor its principals is presently debarred or suspended by the State of Minnesota, or any of its departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

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

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

13.1 By signing and submitting this Contract, Contractor is providing the certification set out below.

13.2 The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, State may pursue available remedies, including suspension and/or debarment.

13.3 Contractor shall provide immediate written notice to State's Authorized Representative if at any time Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

13.4 The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549.

13.5 Contractor agrees that upon execution of this this Contract, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

13.6 Contractor further agrees that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

13.7 A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

13.8 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

13.9 Except for transactions authorized under paragraph 13.5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in

addition to other remedies available to the Federal government, State may pursue available remedies, including suspension and/or debarment.

13.10 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

13.10.1 Contractor certifies, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

13.10.2 Where Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

14. Publicity and Endorsement

14.1 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. Notwithstanding any provision of this Contract or any other agreement to the contrary, Contractor is not precluded from referencing this contract, or the Services, in any future work reference or qualification submission. The State agrees that, although prior written approval of the Contractor is not required prior to the release of information by the State to the media, the State covenants and agrees that no intentionally disparaging or false statements will be made by the State to the media regarding this Contract or Contractor's performance of its obligations hereunder, however, this provision shall not be construed to limit the ability of employees or officials of the State to fulfill any obligations they may have as public officials.

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

18. Termination

18.1 Termination by the State. State may cancel this Contract at any time, with or without cause, upon thirty (30) calendar days' written notice to Contractor. Upon termination, Contractor will be entitled to payment, determined on a pro rata basis, for services performed in accordance with the terms of this Contract through the effective date of termination. In addition, in the event the State cancels this Contract pursuant to this Section 18.1, the State shall pay Contractor within thirty (30) days following such termination the difference between all amounts paid to Contractor prior to such termination and \$1,750,000.

18.2 Termination for Breach. Either party may terminate this contract with fifteen (15) 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 15-day notice period. Upon termination of this Contract by the Contractor as set forth in this Section, the Contractor will be entitled to, and State will make payment, determined on a pro rata basis, for services performed in accordance with the terms of this contract through the effective date of termination.

18.3 Termination for Insufficient Funding. State may immediately terminate this Contract upon written notice to Contractor 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 payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding sources, not to appropriate funds or to otherwise prohibit such use of or deny access to funds. State must provide Contractor notice of the lack of funding within a reasonable time of State receiving that notice.

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

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

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

(1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

(2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

(3) that a violation of this section is a misdemeanor; and

(4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment,

and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.”

20. 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, (ii) its responsibility for holding other vendors accountable to their contractual commitments overall, and (iii) 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. Contractor will not be penalized or held accountable in the event the failure of other vendors to meet contractual deadlines or otherwise perform their contractual obligations result in Contractor's tasks being delayed or otherwise affected.

21. 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.

22. Warranty

Contractor represents and warrants that all Services provided 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 following acceptance of such Services by the State and during the Warranty Period. Contractor shall promptly and correctly re-perform Services which are not in compliance with Contractor's representations and warranties during the Warranty Period at no cost to State. The Warranty Period shall be for a term of ninety (90) days and shall commence on the day after completion, expiration, or termination of the Contract. During the Warranty Period, Contractor shall correct any deficiencies identified at Acceptance of Deliverables and those that are found during the ninety-day Warranty Period at no additional cost

23. Force Majeure. Neither party shall 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 (except that the foregoing reference to "law, order, or requirement of any governmental agency or authority" shall not apply to actions of MNSure or instrumentalities of the State that are parties to or recipients of the Services pursuant to this Contract).

1 STATE ENCUMBRANCE VERIFICATION

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

Signed: *Kevin A. Lomas-Mark*

Date: *Aug. 29, 2014*

SWIFT Contract No. *83207 / PO 662*

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: *Hadley Coak*

Title: *CEO*

Date: *08/28/14*

3 MINNESOTA INSURANCE MARKETPLACE [MNsure]

By: *Scott Lutz*

Title: Chief Executive Officer

Date: August 29, 2014

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 _____ (“Contractor”).

WHEREAS, the parties have executed a Contract for _____;

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:** _____, 2014, or the date the State obtains all required signatures, whichever is later.

1.2 **Expiration date:** _____, 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," concerning individuals, employers, and/or employees participating in MNsure. "Protected information," for purposes of this Agreement, may include any or all of the following:
- 2.1.1 Private data (as defined in Minnesota Statutes § 13.02, subd. 12), confidential data (as defined in Minn. Stat. § 13.02, subd. 3), welfare data (as governed by Minn. Stat. § 13.46), medical data (as governed by Minn. Stat. § 13.384), and other not public data governed by other sections in the Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
 - 2.1.2 Protected health information ("PHI") (as defined in and governed by the Health Insurance Portability Accountability Act ("HIPAA"), 45 C.F.R. § 160.103);
 - 2.1.3 Federal Tax Information ("FTI") (as defined by IRC § 6103);
 - 2.1.4 Records (as defined by the Privacy Act of 1974, 5 U.S.C. § 552a; and
 - 2.1.5 Other data subject to applicable State and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

3. Duties

3.1 MNsure Duties. MNsure shall:

- (a) Only release information which it is authorized by law or regulation to share with Contractor.
- (b) Obtain any required consents, authorizations, or other permissions that may be necessary for it to share information with Contractor.
- (c) Notify Contractor of limitations, restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitations, restrictions, changes or revocation may affect Contractor's use or disclosure of protected information.
- (d) Not request Contractor to use or disclose protected information in any manner that would not be permitted under law if done by MNsure.

3.2 Contractor Duties. Contractor shall:

- (a) Be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of MNsure. This responsibility includes:
 - 1. conducting appropriate screening and monitoring of its employees and agents to protect information privacy;
 - 2. ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in clause 1; and
 - 3. implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any protected information at rest and in transit that it creates, receives, maintains, or transmits on behalf of MNsure.
- (b) Comply with the "minimum necessary" access and disclosure rule set forth in the MGDPA. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government. Minnesota Statutes § 13.05 subdivision 3.

- (c) Report to MNSure any privacy or security incident regarding the information of which it becomes aware. For purposes of this Agreement, "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. Security incident shall not include pings and other broadcast attacks on Contractor's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above when using Contractor equipment and infrastructure; so long as such incidents do not result in unauthorized access, use or disclosure of MNSure's information. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be made in writing and submitted to MNSure immediately and in no case more than 2 days after learning of such incident.
- (d) Unless provided for otherwise in this Agreement, if Contractor receives a request to release the information referred to in this Clause, Contractor must immediately notify MNSure. MNSure will give Contractor instructions concerning the release of the data to the requesting party before the data is released.
- (e) Not use or further disclose protected information created, collected, received, stored, used, maintained, or disseminated in the course or performance of this Agreement other than as permitted or required by this Agreement or as required by law, either during the period of this Agreement or hereafter.
- (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 and limit the collection, creation, use, maintenance, and disclosure of PHI to "that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government." See 45 C.F.R. §§ 164.502(b) and 164.514(d).
 2. Report any breach or security incident pursuant to the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E). This report must be in writing and sent to MNSure not more than 2 days after learning of such non-permitted use or disclosure. Such a report will at least:
 - (A) Identify the nature of the non-permitted use or disclosure;
 - (B) Identify the PHI used or disclosed;
 - (C) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure;
 - (D) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures;
 - (E) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and
 - (F) Provide such other information, including any written documentation, as MNSure may reasonably request.
 - (G) Provide notice required by 45 C.F.R. §§ 164.404 through 164.408 to affected individuals, news media, and/or the Office of Civil Rights, Department of Health and Human Services, only upon direction from and in coordination with MNSure.
 3. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree in writing to the same

restrictions, conditions, and requirements that apply to the business associate with respect to such information.

4. Within ten (10) business days of a request from an individual or their designee, make available protected health information in a designated record set, consistent with Minn. Stat. § 13.04, subdivision 3, and 45 C.F.R. § 164.524.
5. Within ten (10) business days, forward any request to make any amendment(s) to protected health information in a designated record set to MNSure in order for MNSure to satisfy its obligations under Minnesota Statutes § 13.04, subdivision 3 and 45 C.F.R. § 164.526.
6. Document such disclosures of PHI and information related to such disclosures as would be required for MNSure to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Maintain and make available no later than fifteen (15) days after receipt of request from MNSure, the information required to provide an accounting of disclosures to MNSure as necessary to satisfy MNSure's obligations under 45 C.F.R. § 164.528, or upon request from MNSure respond directly to individual's request for an accounting of disclosures.
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 for purposes of determining compliance with the HIPAA Rules.
9. Contractor may not use or disclose protected health information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by MNSure.
10. Comply with any and all other applicable provisions of the HIPAA Privacy Rule, Administrative, and Security Standards, including future amendments thereto. Develop written policies and procedures for safeguarding and securing PHI and complying with HIPAA and the HITECH Act, and other privacy laws.
11. Designate a privacy official to be responsible for the development and implementation of its policies and procedures as required by 45 C.F.R. Part 164, Subpart E.
 - (i) To the extent that any protected information is FTI, ensure that this data only be used as authorized under the Patient Protection and Affordable Care Act and the Internal Revenue Code, 26 U.S.C. § 6103(C), and IRS Publication 1075, and restrict from use for any other purpose.
 - (j) Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure, or breach of security with respect to protected information by it in violation of this Agreement.
 - (k) Report and mitigate any fraudulent activities;
 - (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.

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

5. Amendments

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

6. Sanctions.

In addition to any liability under section 6 of Agreement, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties.

7. Interpretation.

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

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

9. Effect of statutory amendments or rule changes.

The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the laws listed in paragraph 1 of this section or in any other applicable law. However, any requirement in this Agreement or in the DHS Information Security Policy that is based upon HIPAA Rules or upon other federal or state information privacy or security laws means the requirement as it is currently in effect, including any applicable amendment(s), regardless of whether the Agreement has been amended to reflect the amendments(s).

10. Survival.

The obligations of Contractor under this Attachment shall survive the termination of this Agreement

1. CONTRACTOR

By: 
(With delegated authority)

Title: CEO

Date: 08/28/14

2. MNsure

By: 
(With delegated authority)

Title: Chief Executive Officer

Date: August 29, 2014