

# 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 PricewaterhouseCoopers LLP with a designated business address at 225 South Sixth Street, Suite 1400, 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 to assist in the development and implementation of a Compliance Plan for a sustainable Compliance Program for the organization.
3. The Contractor represents it is duly qualified and agrees to perform all services described in this Contract in accordance with the Contract terms.

## 1. Term of Contract

**1.1 Effective Date.** August 18, 2014, or the date State obtains all required signatures (including Contractor's), whichever is later. Contractor must not begin work under this Contract until this Contract is fully executed.

**1.2 Expiration Date.** December 31, 2014, or until all obligations have been fulfilled in accordance with this Contract, whichever occurs first.

**1.3 Survival of Terms.** All clauses which by their nature are intended to survive termination/expiration shall continue in full force and effect after termination or expiration, including but not limited to the following: 8. Indemnification; 9. State Audits; 10. Government Data Practices and Intellectual Property; 14. Publicity and Endorsement; 15. Governing Law, Jurisdiction, and Venue; 16. Data Disclosure, 20. Limitation of Liability, and Contract Attachment 1- Data Sharing Agreement.

## 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) Current-state Assessment of Compliance-related Activities at State, Including Prioritized Gap Observations.

1. Review selected relevant compliance-related documentation, as determined by Contractor, to help gain an understanding of the current state compliance program.

2. Compile an inventory of applicable compliance program regulatory requirements for State, including, as appropriate, applicable statutes, regulations, rules, policies, and guidance, from the following regulatory bodies: DOL, HHS/CMS, Treasury/IRS and relevant MN statutes.
3. Deliverable: As identified in Section 4.1, Deliverable #1
4. Conduct up to a maximum of twenty interviews, each not to exceed one hour, with State Board members, management and staff, and other key stakeholders, including agency partners (which may consist of the DHS Commissioner, DHS CCO, and possibly MNIT services) to inform the assessment of current status of the compliance program.
5. Develop a draft current-state compliance program assessment against Contractor's compliance program framework, including prioritized gap observations
6. Conduct a facilitated session with key State stakeholders (including State Board members, management, staff and agency partners, as appropriate) to discuss the draft assessment and prioritization of gap observations.
7. Deliverable: As identified in Section 4.1, Deliverable # 2.
8. Finalize a current-state compliance program assessment, including prioritized gap observations.
9. Deliverable: As identified in Section 4.1, Deliverable # 3.

(b) Future-state Compliance Plan for Implementation of a Compliance Program tailored to State's Circumstances.

1. Develop prioritized recommendations, outlining the activities needed to enhance and/or build State's Compliance Program based on observations and gaps identified in section (a) above as well as industry practices, (i.e., a compliance plan). Create and present summaries of the draft future-state compliance plan including a 30-90-180-360-day implementation plan.
2. Facilitate a session with key State stakeholders to discuss recommendations and help to establish future-state compliance plan that is in alignment with State's circumstances.
3. Deliverable: As identified in Section 4.1, Deliverable #4.
4. Incorporate feedback collected from State stakeholders during facilitated session (#b3) into the draft future-state compliance plan.
5. Present the amended future-state compliance plan for approval by State stakeholders.
6. Deliverable: As identified in Section 4.1, Deliverable # 5.

(c) Project Management.

1. Proactively manage contract and make State aware of risks related to timely and successful completion of deliverables.
2. Participate in a regularly scheduled weekly call, provide bi-weekly status reports, and respond to inquiries and calls from State promptly.
3. Provide a Project Work Plan updated monthly for the duration of the engagement
4. Provide timekeeping records and invoices for Contractor engagement for review, upon request by the State, and make the State aware on a timely basis of any risks related to achieving project budget.

(d) Contractor Resources

1. Provide appropriate resources to carry out Contractor's duties, including providing key personnel with experience relevant to carry out Contractor duties.

2. The following named key personnel will perform the Services:

Name	Role
Gerald Stone	Engagement Partner
Mark Fleming	Director
Michael Fierro	Director-Subject Matter Specialist

3. In addition to the other resources that Contractor may choose to use on this engagement, the following contractor resources will also be available to contribute to the project in various capacities, as needed by Contractor:

Terry Puchley	Partner
Steve Zawoyski	Partner
Christopher O'Brien	Partner
John Dalton	Manager
James Taylor	Senior Associate
Amy Bergner	Managing Director – Subject Matter Specialist
Mitchell Harris	Director – Subject Matter Specialist
Susan Maerki	Director – Subject Matter Specialist

4. 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 Contractor's control, including but not limited to employee departures, retirements, and leaves, Contractor will provide State with reasonable notice. Unless otherwise mutually agreed to in writing, (via email), this clause shall only apply through December 31, 2014 or when the individual completes his/her task on the engagement.

(e) Other Contractor Duties

1. Contractor duties listed in Section 2.1 are in addition to other duties identified elsewhere in the contract.
2. Contractor will perform the Services in accordance with the Standards for Consulting Services established by the American Institute of Certified Public Accountants. Accordingly, Contractor will not provide an audit or attest opinion or other form of assurance, and Contractor will not verify or audit any information provided to Contractor. Contractor's role is advisory only.

2.2 The State shall:

- (a) State is responsible for all management functions and decisions relating to this engagement, including evaluating and accepting the adequacy of the scope of the Services in addressing State's needs.
- (b) State is also responsible for the results achieved from using the Services or deliverables, and it is State's responsibility to establish and maintain its internal controls.
- (c) State will designate a competent member of its management to oversee the Services.

- (d) Contractor expects that State will provide timely, accurate and complete information and reasonable assistance, and Contractor will perform the engagement on that basis.
- (e) State duties listed in Section 2.2 are in addition to other duties identified elsewhere in the contract.

**2.3** Contractor shall not perform any legal services or advocacy under this Contract. The State should seek the advice of its own attorneys.

**2.4** Contractor will not review, provide advice on, or otherwise include in the Deliverable(s) any aspect of the State's systems, processes or compliance activities which are related to work previously performed by Contractor for the State (including other State agencies).

**3. Time**

The Performance Dates set forth in section 4.1 are estimates only. The parties will mutually agree on an updated schedule if necessary during the course of the engagement. The parties will use commercially reasonable efforts to comply with the time estimates set forth herein, or as mutually agreed on.

**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 schedule below. These payment schedules include Deliverables and payment amounts.
- (b) Payment for Deliverables listed in the Deliverables Schedule below shall be based upon approval of Deliverables as identified in Section 21 below.

# 1	Deliverable	Estimated Performance Date	Payment Amount
1	An inventory of applicable compliance program standards for State, including, as appropriate, applicable statutes, regulations, rules, policies, and guidance from the following regulatory bodies: DOL, HHS/CMS, Treasury/IRS, and relevant MN statutes.	9/19/2014	\$30,000
2	Draft current-state compliance program assessment, against Contractor's compliance program effectiveness framework, including prioritized gap observations.  Facilitated session with key State stakeholders (including State Board members, management, staff and agency partners, as appropriate) to discuss the draft assessment and prioritized gap observations.	9/29/2014	\$30,000

3	Final current-state compliance program assessment, including prioritized gap observations.	10/13/2014	\$40,000
4	Draft future-state compliance plan as defined in Section 2, including a 30-90-180-360-day implementation plan.  Facilitated session with key stakeholders to discuss draft recommendations and obtain State's feedback thereon.	10/20/2014	\$50,000
5	Final future-state compliance plan incorporating key State stakeholder feedback, and including a 30-90-180-360-day implementation plan.	10/31/2014	\$50,000

(c) Total Obligation. The total obligation of State for all compensation and travel expenses to Contractor under this Contract will not exceed Two Hundred Thousand Dollars (\$200,000.00).

#### 4.2 Payment

(a) Invoices. In accordance with Minn. Stat. § 16A. 124, Subd. 3, State will promptly pay Contractor within 30 days after Contractor presents an itemized invoice for the Services actually performed and State's Authorized Representative accepts the invoice. In the event that an invoice is not accepted by State's Authorized Representative due to improper invoice itemization by Contractor, State shall provide Contractor with a detailed written notice, within five (5) business days from receipt of invoice, of the deficiency in Contractor's invoice itemization and grant Contractor thirty (30) calendar days to provide additional documentation. The final invoice must be submitted within thirty (30) calendar days of the expiration date.

(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, identified in Section 6.1 below. The balance due will be paid when State's Authorized Representative 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 will provide its Services hereunder as a vendor and not as a subrecipient of any grant that State has received. Accordingly, the Contractor will be exempt from any terms and conditions that are required to be accepted by State as a grant recipient or subrecipient. Pursuant to Section 952 of the Omnibus Reconciliation Act of 1980, enacted December 5, 1980, amended §1861(v)(1)(I) of the Social Security Act, to the extent applicable to the Services provided under this contract, Contractor agrees to permit the Department of Health and Human Services' (HHS) Secretary and the U.S. Comptroller General (or their representatives) to have access to Contractor's books, documents, and records that are necessary to verify the nature and extent of costs of Services furnished under the contract. Contractor

agrees to include this requirement in any subcontract agreements covering subcontractors services to which this requirement applies.

#### **4.3 Key planning assumptions:**

In addition to the State's duties listed in Section 2.2, the estimated timing, billing/payment schedule and cost of this project is based on the following key assumptions which are agreed-to by State and Contractor:

1. State will ensure that appropriate staff allocates sufficient time to achieve the project. State will provide timely access to the appropriate leadership and staff, data, written materials, third-party vendors or any other relevant resource or guidance required to complete the Services and deliverables outlined for this project.
2. State will provide Contractor with appropriate working space and access to facilities as well as required systems.
3. State will provide Contractor with timely access to and support of State leadership, business and IT teams.
4. State will provide administrative support to assist with the scheduling and coordination of meetings.
5. State will provide Contractor with State business and IT resources and administrative support, as necessary, to assist with Program Management, project documentation and information gathering activities.
6. State personnel, board members, and other stakeholders will be available on a timely basis for interviews, and other individual and group discussions. The duration, scope of the project may vary based upon State's ability to schedule discussions and other related meetings in a timely manner.
7. Information discovered or provided by State will be considered accurate. Contractor is not responsible for the validity of any information provided by State.
8. In performing the Services, Contractor's personnel will work for four (4) weeks at State's offices with the remainder of the work being performed remotely. The scheduling of onsite interviews, group meetings, etc. will be planned within the Contractor's scheduled onsite time. It is expressly understood that the remote component of the work is planned primarily in order to limit Contractor's travel costs and thus if a higher amount of onsite time is desired by State, then the total billable fees of the engagement would increase accordingly.

#### **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 including business registration requirements of the Office of the Secretary of State. Contractor will not receive payment for work not materially in compliance with this Contract or performed in violation of federal, state, or local law.

#### **6. Authorized Representative**

##### **6.1 State's Authorized Representative is:**

Name: Michael A. Turpin

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

Telephone: 651-539-1335

E-Mail Address: Michael.a.turpin@state.mn.us

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

6.2 The Contractor's Authorized Representative is:

Name: Gerald E. Stone, Risk Assurance Partner & U.S. Compliance Services Leader

Address: 100 E. Pratt Street, Suite 1900, Baltimore, MD 21202

Telephone: 410-659-3630

E-Mail Address: [jerry.stone@us.pwc.com](mailto:jerry.stone@us.pwc.com)

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

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

**7.1 Assignment.** Neither party may assign or transfer any rights or obligations under this Contract without the prior consent of the other party 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 this limitation, State may assign or otherwise transfer the Contract to another governmental entity, a quasi-governmental entity, or a private entity to the extent that entity has been delegated responsibility to carry out the governmental functions for which State has entered this Contract at no additional cost.

**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**

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, against any and all amounts payable under any judgment, verdict, court order or settlement for 1) death or bodily injury or the damage to or loss or destruction of any real or tangible personal property or 2) Contractor's breach of the Data Sharing Agreement attached hereto, to the extent caused by Contractor's intentional, willful, or negligent acts or omissions in the performance of this Contract, provided, however, that in no event shall Contractor's liability associated with breach of the Data Sharing Agreement exceed two (2) times the total Contract amount set forth in Section 4.1(c).

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of State's sole negligence. This clause will not be construed to bar any legal remedies Contractor may have for State's failure to fulfill its obligation under this Contract.

The indemnities in this section are contingent upon: (1) State promptly notifying Contractor in writing of any claim which may give rise to a claim for indemnification hereunder; (2) to the extent allowed by the Minnesota Attorney General consistent with Minnesota Statutes § 8.06, Contractor being allowed to control the defense and settlement of such claim, such agreement not to be unreasonably withheld; and (3) to the extent allowed by the Minnesota Attorney General consistent with Minnesota Statutes § 8.06, State cooperating with all reasonable requests of Contractor (at the indemnifying party's expense) in defending or settling a claim, such agreement not to be unreasonably withheld. State shall have the right, at its option and expense, to participate in the defense of any suit or proceeding through a counsel of its own choosing, consistent with Minnesota Statutes § 8.06.

## **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**

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**10.1 Government Data Practices.** Contractor and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Contractor under this Contract, provided, however, that Contractor agrees to comply only to the extent applicable to Contractor's Services hereunder. 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 Contractor or State.

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

If State receives a request to release data referred to in this clause and if such data either submitted within the RFP proposal or provided pursuant to this Contract was identified by Contractor to be trade secret materials and State does not believe the materials identified meet the data classification of Trade Secret as defined in Minnesota Statute, State will notify Contractor of the request within two days of receipt and prior to releasing the data. Contractor will have a reasonable amount of time to justify the claim of trade secret, or to seek injunctive relief prior to State disclosing the requested data. Trade Secret materials are defined in the Minnesota Government Data Practices Act, Minnesota Statute § 13.37. Contractor shall clearly mark all trade secret materials to include a statement justifying the trade secret designation for each item and Contractor reserves the right to take any action permitted by law

to withhold disclosure of its trade secret information, including without limitation, defending any action seeking release of the materials it believes to be trade secret.

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. State owns all written material that are prepared for and delivered to it under this Contract ("Deliverables"), except as follows: Contractor will own its working papers, preexisting materials and software, as well as any general skills, know-how, processes, methodologies, tools, techniques or other intellectual property (including a non-client specific version of any Deliverables) which Contractor may have discovered or created as a result of the Services ("Contractor Materials"). Upon payment, State has a nonexclusive, non-transferable license to use any Contractor Materials included in the Deliverables for State's own internal use as part of those Deliverables.

(b) Obligations. Contractor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities. The remedies for breach of such warranty are solely as set forth in this paragraph. Notwithstanding Clause 8, Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless State, at the Contractor's expense, from any action or claim brought against State to the extent that it is based on a claim that all or part of the Deliverables infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in Contractor's or State's opinion is likely to arise, Contractor must, at Contractor's discretion, either procure for 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. If neither of the above options are or would be available on a basis that Contractor finds commercially reasonable, then Contractor may terminate the Contract, State shall return such Deliverables provided to Contractor and Contractor will refund to State the fees paid for the Deliverables provided, less a reasonable allowance for use. This infringement indemnity does not cover claims arising from: (1) the combination of Deliverables with products or services not provided by Contractor; the modification of Deliverables by any person other than Contractor; (2) Deliverables complying with or based upon information, specifications or designs provided by or at State's direction; or (3) use of Services and/or Deliverables in a manner not permitted or contemplated under the Contract.

### (c) Use of Deliverables

State and Contractor agree that State shall not use Deliverables for commercial purposes. State and Contractor agree that State shall accept non-branded Deliverables from Contractor (i.e., materials that do not contain Contractor's name or other information that could identify Contractor as the source, either because the Contractor provided a Deliverable without identifying information or because State subsequently removed it).

State and Contractor agree that Deliverables are meant solely for the internal use and benefit of State and are not intended to be, and may not be used or relied upon by any third party. State agrees that Deliverables may include statements or legends to this effect which shall not be removed by the State. Contractor disclaims any contractual or other responsibility or duty of care to third parties based upon the Services or Deliverables.

The Deliverables will be prepared in conjunction with the State and will be intended to be treated solely as owned by the State. The State will review such Deliverables, revise them as the State deems appropriate, approve them prior to use and take full responsibility for their content.

## **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 the following insurance policies.

**11.2.1 Workers Compensation Insurance.** Except as provided below, Contractor must provide Workers Compensation insurance for all its employees 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 anyone directly 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

Contractual Liability

Products and Completed Operations Liability

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

**11.2.3 Business Automobile Liability Insurance.** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for third party property damage resulting from the use of all hired, and non-owned autos which may arise from operations under this contract. Insurance minimum limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Third Party Property Damage

The following coverage shall be included:

Hired, and Non-owned Automobile

**11.2.4 Professional Indemnity/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance.** This policy will provide coverage for all claims Contractor is 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 and in the 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 two(2) years, following completion of the work.

### **11.3 Additional Insurance Conditions**

**11.3.1** Contractor's Commercial General Liability and Business Automobile Liability 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) business days with a copy of the cancellation notice;

**11.3.3** Contractor is responsible for payment of Contract related insurance premiums and deductibles;

**11.3.4** 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

**11.3.5** 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 has not in the last three (3) years been suspended or debarred by the Federal Government. To the best of Contractor's knowledge, Contractor is not currently under suspension or debarment by the any state, or the federal government. Contractor certifies that to the knowledge of the Contractor engagement partner, Contractor's partners and principals are not 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**

Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document which implements 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 the foregoing, Contractor may use the State's name in experience citations and recruiting materials.

**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, only to the extent required by applicable law to be disclosed. 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**

To the extent 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 Parties.** State or Contractor may terminate this Contract at any time, without cause, upon thirty (30) calendar days written notice to the other party. Upon termination, Contractor will be entitled to payment, determined on a pro rata basis, for Services performed in accordance with this Contract.

**18.2 Termination for Insufficient Funding.** State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding sources, or if funding is not received or made available at a level sufficient to allow for the payment of the Services covered here. Termination must be by written, 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 performed in accordance with this Contract 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, and Contractor is permitted to cease performance of Services for which funding is not available.

**18.3 Termination by Contractor.** In the event Contractor concludes the existence of this Contract constitutes actual, or the appearance of, impairment of independence with respect to any Contractor audits client, this Contract shall be subject to termination by Contractor.

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

Contractor will comply with the provisions of Minnesota Statutes § 181.59, to the extent required and applicable to Contractor and this Contract, 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. Limitation of Liability.**

Except as provided in Section 8, and except to the extent finally determined to have resulted from Contractor's gross negligence or intentional or wilful misconduct, Contractor's aggregate liability to pay damages for any losses incurred by State as a result of breach of contract, negligence or other tort committed by Contractor, regardless of the theory of liability asserted, is limited in the aggregate to no more than the total Contract amount set forth in Section 4.1(c).

Contractor will not be liable in any event for lost profits, consequential, indirect, punitive, exemplary or special damages. Also, Contractor shall have no liability to State arising from or relating to third-party hardware, software, information or materials selected or supplied by State.

Contractor is the U.S. firm of the global network of separate and independent PricewaterhouseCoopers firms (exclusive of Contractor, the "Other PwC Firms"). During its performance of the Services, Contractor may, in its discretion, draw on the resources of and subcontract to its subsidiaries, the Other PwC Firms and/or third party subcontractors (each a "PwC Subcontractor"), in each case within or outside of the United States. State agrees that Contractor may provide information Contractor receives in connection with this Contract to each PwC Subcontractor to perform the Services and/or for internal administrative and regulatory compliance purposes. Contractor will be solely responsible for the provision of the Services (including those performed by the PwC Subcontractors) and the PwC Subcontractors, their and Contractor's respective partners, principals or employees (collectively the "Beneficiaries") shall have no liability or obligations arising out of this Contract. State agrees to bring any claim or other legal proceeding of any nature arising from the Services against Contractor and not against the Beneficiaries. Contractor disclaims any contractual or other responsibility or duty of care to any third party. While Contractor is entering into this Contract on its own behalf, this section also is intended for the benefit of each PwC Subcontractors.

## **21. Approval of Deliverables**

21.1 State shall complete its review of each Deliverable identified in Section 4.1 within five (5) business days and at such time shall provide Contractor with (a) approval of the Deliverable or (b) a written statement, as provided below, of the deficiencies preventing approval. Each Deliverable shall be accepted by State if it finds that such Deliverable complies, in all material respects, with the requirements as set forth in Section 4.1.

21.2 In the event of State's rejection of a Deliverable, State shall provide one consolidated written statement (the "Deliverable Cure Notice") that identifies in reasonable detail all material deficiencies with respect to the Deliverable. Contractor shall then have five (5) business days to complete all such corrective actions or changes in order for such Deliverable to conform in all material respects with the requirements therefor set forth in Section 4.1 and shall then resubmit the Deliverable to State for approval.

21.3 State shall have three (3) business days to complete a review of the corrective changes made to the resubmitted Deliverable in response to the Deliverable Cure Notice and, within such period, notify Contractor in writing of acceptance or rejection. State's review and approval of such corrected Deliverable shall be solely for the purpose of determining that the required corrections have been made to bring the identified deficiencies into compliance in all material respects with the items set out in the Deliverable Cure Notice.

21.4 If State fails to approve or reject a Deliverable within the period set forth in Section 21.1 or 21.3, the Deliverable will be deemed approved by State.

21.5 If any Deliverables have been approved by State pursuant to the terms of this Contract, Contractor shall be entitled to rely on such approval.

21.6 Wherever approval is required by a party herein, such approval shall not be unreasonably withheld.

## 22 Other Terms and Conditions

22.1 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any of the Services or obligations in this Contract due to causes beyond its reasonable control.

22.2 THE WARRANTIES SET FORTH IN THIS CONTRACT ARE THE SOLE WARRANTIES PROVIDED HEREUNDER. CONTRACTOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER, INCLUDING THE MERCHANTABILITY, SUITABILITY, ORIGINALITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR THAT THE OPERATION OF SUCH SERVICE OR ANY DELIVERABLE WILL BE UNINTERRUPTED OR ERROR-FREE.

## 23. Counterparts

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

**ACKNOWLEDGED AND AGREED:** By signing below, the parties agree to the terms of this Contract.

**1 STATE ENCUMBRANCE VERIFICATION**

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

Signed: *David A. Simon-Mark*

Date: *Aug. 23, 2014*

SWIFT Contract No. *82817 / PD 646*

**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.

PricewaterhouseCoopers LLP

By: *Gerald E. Stone*

Gerald E. Stone

Title: Partner -

Date: August 19, 2014

**3 MINNESOTA INSURANCE MARKETPLACE [MNsure]**

By: *Martin L. Cannon*

(with delegated authority)

Title: Acting CFO

Date: 8-20-2014

## 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 PricewaterhouseCoopers (“Contractor”).

WHEREAS, the parties have executed a Contract for the development of a Compliance Plan and sustainable supporting Compliance Program for MNsure;

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:** August 18, 2014, or the date the State obtains all required signatures, whichever is later.
- 1.2 **Expiration date:** December 31, 2014, or until all obligations under the Contract have been satisfactorily fulfilled, or until any applicable statutory authority expires, whichever comes first.

#### 2. Information Covered by this Agreement.

- 2.1 Under the Contract, 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, means, to the extent applicable to this Agreement:
  - 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.

However, “protected information” does not mean information that: (a) is or becomes publicly available other than by a breach of this Agreement by Contractor; (b) is acquired by Contractor from a third party that is not, to Contractor’s knowledge, under any confidentiality obligation to the Client regarding such information; or (c) is known to Contractor prior to the date of this

Agreement, or that Contractor develops independently without use of the 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 in advance 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 properly 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. requiring 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 MNSure information of which it becomes aware. For purposes of this Agreement, "Security incident" means the successful unauthorized access, use, disclosure, modification, or destruction of MNSure information or interference with system operations in an information system in which Contractor or its employees, subcontractors, or authorized agents maintain MNSure information. 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 promptly.
- (d) Unless provided for otherwise in this Agreement, if Contractor receives a request to release the information referred to in this Clause, Contractor must promptly 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 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, require 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 confirmed 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 promptly after learning of such non-permitted use or disclosure. Such a report will at least, to the extent known to Contractor at the time of the report:
    - (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, as MNSure may reasonably request which does not violate Contractor's internal confidentiality policies.
    - (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, require 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. 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, only use this data 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 its performance under this Contract, 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;

**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 an applicable regulation, rule, statutory retention schedule, or by professional standards to which it adheres, 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 protected 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/lfservlet/Public/DHS-4683-ENG>.

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

In the event the laws listed in paragraph 1 of this Agreement are amended, the Parties agree to negotiate this Agreement in good faith from time to time to revise this Agreement to be consistent with the amended laws.

**10. Survival.**

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

**1. CONTRACTOR** PricewaterhouseCoopers LLP

By:   
(With delegated authority)

Title: Partner

Date: August 19, 2014

**2. MNSure**

By:   
(With delegated authority)

Title: Acting CFO

Date: 8-20-2014