

# MNsure Grant Services Contract Navigator/In-Person Assister Attachment A State of Minnesota



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## 1. MNsure Duties

1.1 Develop and administer a certification and recertification training program and maintain documentation of certification and recertification completion;

1.2 Provide technical assistance to the Contractor;

1.3 Provide MNsure's policies and procedures to the Contractor as new or updated policies and procedures are released;

1.4 Provide the current versions of marketing and communications materials;

1.5 Produce a quarterly report on the number of applicants enrolled by the Contractor for evaluation and payment pursuant to clause 4.2, Payment, no later than 60 days following the end of each quarter;

1.6 Monitor the Consumer Assistance Partner ("CAP") utilizing qualitative and quantitative evaluation tools;

1.7 Provide notification within ten (10) business days of any proposed and final changes to Minnesota Rules Chapter 7700.

## 2. Contractor Duties. The Contractor, who is not a State employee, shall:

2.1 Facilitate enrollment in health plans offered in MNsure by providing the following services:

(a) Inform consumers of health insurance options and the value of coverage, in addition to reviewing insurance options available through MNsure;

(b) Inform individuals of application processes, required documentation, mandated requirements, and any exemption criteria;

(c) Provide information and referrals to small employers on enrollment in the Small Business Health Options Program (SHOP) and any tax provisions, including credits and penalties, potentially affecting small employers;

(d) Gauge eligibility through METS and provide referrals to appropriate support services or programs for further assistance, such as free health clinics;

- (e) Provide nonmedical referrals, to the extent possible, according to MNsure referral guidance;
- (f) Explain program eligibility rules and provide application assistance for Medicaid/Childrens' Health Insurance Plan (CHIP), MinnesotaCare, premium tax credits, cost-sharing reductions, and qualified health plans;
- (g) Assist with the entry of information into enrollment tools and resources, including final submission of information;
- (h) Advise American Indians and Alaskan Natives on benefits specified by the Affordable Care Act, such as cost-sharing reductions, income exclusions, special open enrollment periods, and exemption from minimum health care coverage mandate;
- (i) Answer questions regarding the submission of eligibility and enrollment verification documentation;
- (j) Facilitate referrals to insurance producers for individuals and families enrolling in qualified health plans through MNsure and requesting plan enrollment assistance beyond the scope of CAPs;
- (k) Facilitate referrals to community organizations, counties, or other appropriate nonprofit or public entities when individuals and families require technical expertise and assistance beyond the scope of the CAP;
- (l) Explain, discuss, and interpret coverage and policies with consumers to facilitate plan selection;
- (m) Assist with plan comparisons based upon individual priorities, including but not limited to metal tier levels, quality ranges, providers including, but not limited to, specialty care, pharmaceutical, dental and eye care, and total cost estimation including utilization and health status; and,
- (n) Maintain a physical presence in the MNsure service area so that face-to-face assistance can be provided to applicants and enrollees in accordance with 45 C.F.R. § 155.210(e)(7) 2016.

**2.2** Provide oversight of all of the Contractor's employees, agents and volunteers engaged in this process, ensuring that they:

- (a) Successfully complete the certification program prior to providing CAP services under this Contract, including training and background check completion;
- (b) Successfully complete the annual recertification process required for continuing to provide CAP services under this Contract;
- (c) Are informed of and comply with all procedures as outlined in MNsure's policy and procedures; and
- (d) Are informed of and comply with the information privacy and security in Clause 6 of this contract.

**2.3** Provide to MNsure a roster of all employees, agents and volunteers who require certification to perform the services outlined in this Contract and provide immediate notification to MNsure when each certified individual is terminated, separates, or otherwise ceases to perform services under this Contract.

**2.4** Disclose to MNsure all affiliations that may present a direct, indirect, or perceived conflict of interest which includes submission of a written attestation that the CAP is not a health insurance issuer or issuer of stop loss insurance, a subsidiary of a health insurance issuer or issuer of stop loss insurance, or an association that includes members of, or lobbies on behalf of, the insurance industry. The Contractor remains under a continuing obligation to notify and disclose a potential conflict of interest at any time it may arise but in no case later than five (5) business days of discovery of the conflict.

**2.5** If none exists, create and enforce a policy that no compensation, benefit or gift is received directly or indirectly by the Contractor, its employees, subcontractors, agents and volunteers from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a qualified health plan or a nonqualified health plan as specified in the 45 C.F.R. § 155.210(d)(4).

**2.6** Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities based on materials provided by MNsure.

**2.7** Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service Act, or any other appropriate state agency or agencies for any enrollee with a grievance, complaint, or question regarding an enrollee's health plan, coverage, or a determination under such plan or coverage;

**2.8** Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by MNsure including individuals with limited English proficiency; and ensure accessibility and usability of tools and functions for individuals with limited English proficiency or disabilities according to the Americans with Disabilities Act and section 504 of the Rehabilitation Act and as outlined in MNsure policies and procedures.

**2.9** Provide targeted assistance to serve underserved or vulnerable populations, as identified by MNsure, within the MNsure service area.

**2.10** Provide information and services in a fair, accurate, and impartial manner.

**2.11** Comply with Title VI of the Civil Rights Act of 1964, section 1557 of the Americans with Disabilities Act, and other applicable federal laws and regulations.

**2.12** Report any actual or suspected instances or evidence of fraud, waste, or abuse discovered in the course of conducting business with MNsure to the MNsure fraud and ethics anonymous hotline 1-844-466-7873 or email address ([mnsurecompliancehotline@mnsure.org](mailto:mnsurecompliancehotline@mnsure.org)) immediately and in no case later than seven (7) business days from discovery.

**2.13** Use the current versions of State-provided applications, forms and outreach materials, and adhere to the publicity guidelines in Clause 12 for distribution of any outreach or other materials not provided by MNsure.

**2.14** Ensure that consumers are informed, prior to receiving assistance, of the functions and responsibilities of CAPs, including that CAPs are not acting as tax advisors or attorneys when providing assistance as a CAP and cannot provide tax or legal advice within their capacity as CAPs in accordance with 45 C.F.R. § 155.210(e)(6)(i).

**2.15** Provide authorization in a form and manner as determined by MNsure prior to obtaining access to an applicant's personally identifiable information, and maintain a record of the authorization provided in a form and manner as determined by MNsure in accordance with 45 C.F.R. § 155.210(e)(6)(ii).

**2.16** Certified CAPs must be listed on the MNSure Assister Directory, except in situations as defined in MNSure's policies and procedures. Failure to maintain at least one certified navigator listed on the directory at all times may lead to immediate termination of this Contract consistent with section 15.2.

**2.17** CAPs must attempt to provide assistance to all those who contact them or refer them to other assistance. Failure to attempt to provide assistance or connect a consumer to other assistance may lead to immediate termination of this Contract consistent with section 15.2.

**2.18** The Contractor is prohibited from performing the following activities:

- (a) Performance of services which require licensure under Minnesota Statutes, chapter 60K;
- (b) Charging of any applicant or enrollee, or requesting or receiving any form of remuneration from or on behalf of an individual application or enrollee, for application or other assistance related to duties as a CAP in accordance with 45 C.F.R. § 155.210(d)(5);
- (c) Providing gifts of any value as an inducement for enrollment to an applicant or potential enrollee in accordance with 45 C.F.R. § 155.210(d)(6);
- (d) Using MNSure funds to purchase gifts or gift cards, or promotional items that market or promote the products or services of a third party, that would be provided to any applicant or enrollee in accordance with 45 C.F.R. § 155.210(d)(7); and,
- (e) Soliciting any consumer for application or enrollment assistance by going door-to-door, using an automatic dialing system, or through other unsolicited means of direct contract, unless the individual has a pre-existing relationship with the individual CAP or CAP entity in accordance with 45 C.F.R. §§ 155.210(d)(8), 155.210(d)(9).

### **3. Consideration and Payment**

**3.1 Consideration.** The State will pay the Contractor for each successful enrollment in an Insurance Affordability Program or Qualified Health Plan resulting from the submission of an application through MNSure.

- (a) Compensation. The Contractor will be paid in accordance with the initial payment rate and any subsequent changes to the payment rate as published in the State Register. Effective October 1, 2013, the payment shall be:
  - Seventy and 00/100 dollars (\$70.00) per successful enrollment in a Qualified Health Plan (QHP).
  - Twenty Five and 00/100 dollars (\$25.00) per successful enrollment in Medical Assistance (MA).
  - Seventy and 00/100 dollars (\$70.00) per successful enrollment in MinnesotaCare.

### **3.2 Payment**

- (a) Reports. The State will pay the Contractor quarterly based on a State-run Quarterly Report identifying the number of successful enrollments during the period of time from the date of the previous Quarterly Report or the effective date of the Contract if there is no previous report. The State will pay the Contractor per successful enrollment within 60 days following the end of the quarter. Pursuant to MNSure policy and procedures, Contractor may request an Enrollment Report listing the individual enrollments based on MNSure's accounting of successful enrollments.
- (b) Payments are to be made from federal funds obtained by the State according to the following:
  1. Payment for QHP enrollments completed before January 1, 2017 will be made from funds obtained by the State through Section 1311 of the Affordable Care Act of 2010 (Public law 111-148 and amendments thereto), Catalog of Federal Domestic Assistance (CFDA) No. 93.525, Cooperative Agreement to Support Establishment of the Affordable Care Act's Health Insurance Exchange Award number(s) HBEIE130163 and HBEIE140181; and,
  2. Payment for Medical Assistance and Minnesota Care enrollments will be made from funds obtained by the State through Title XIX of the Social Security Act

(Public law 113-76 and amendments thereto) Catalog of Federal Domestic Assistance (CFDA) No. 93.778, Medical Assistance Program Award number: 1605MN5ADM for payments through September 30, 2016; 1705MN5ADM for payments October 1, 2016 through September 30, 2017; 1805MN5ADM for payments October 1, 2017 through September 30, 2018; 1905MN5ADM for payments October 1, 2018 through June 30, 2019.

If at any time such funds become unavailable, this grant shall be terminated immediately upon written notice of such fact by the State to the Contractor. In the event of such termination, Contractor shall be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

**3.3 Conditions of Payment.** All services provided by the Contractor under this Contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

#### **4. Third Party Beneficiary**

Both parties agree that the Minnesota Department of Human Services ("DHS") shall be, and is hereby, named as an express third-party beneficiary of this contract, with full rights as such. The Parties specifically acknowledge and agree that DHS has standing to and may take any appropriate action for any appropriate relief in law or equity, including, but not limited to, rescission, damages, or specific performance, of all or any part of this Contract. DHS is entitled to and may recover reasonable attorney's fees and costs and disbursements associated with any action taken under this Section that is successfully maintained.

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

**5.1 Assignment.** The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of all parties and a fully executed assignment agreement, executed and approved by the same parties or their successors in office.

**5.2 Amendments.** Except where otherwise addressed in section 6.8 of Attachment A and within this section 5.2, 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. The State reserves the right to modify Attachment A without amendment as necessary to comply with federal or state law or regulation not addressed within section 6.8. The State must provide the Contractor notice of the need to update Attachment A within a reasonable time prior to the update being completed. All necessary updates will be posted on the MNsure.org website.

**5.3 Waiver.** If the State fails to enforce any provision of this Contract, that failure does not waive the provision or the State's right to enforce it.

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

#### **6. Information Privacy and Security.**

**6.1 Information Covered by this Provision.** In carrying out its duties, the Contractor will be handling one or more types of private information, collectively referred to as "protected information,"

concerning individuals. "Protected information," for purposes of this Contract, may include any or all of the following:

- (a) 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;
- (b) Protected health information ("PHI") (as defined in and governed by the Health Insurance Portability Accountability Act ("HIPAA"), 45 C.F.R. § 160.103);
- (c) Federal Tax Information ("FTI") (as defined by IRC. § 6103);
- (d) Records (as defined by the Privacy Act of 1974, 5 U.S.C. § 552a;
- (e) Other data subject to applicable state and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

**6.2 MNSure Duties Relating to Protection of Information.** 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 the 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.

**6.3 Contractor Duties Relating to Protection of Information.** 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 applying appropriate screening measures and monitoring to protect information privacy, ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in paragraph 6.1, and having implemented administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic protected health information at rest and in transit that it creates, receives, maintains, or transmits on behalf of MNSure.
- (b) Comply with the "minimum necessary" access and disclosure rule set forth in the MGDPA. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government. Minn. Stat. § 13.05 subd. 3.
- (c) Report to MNSure any privacy or security incident regarding the information of which it becomes aware. For purposes of this Contract, "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 Contract, if the Community Assistance Partner receives a request to release the information referred to in this Clause, the Community Assistance Partners must immediately notify MNSure. MNSure will give the Community Assistance Partners 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 Contract other than as permitted or required by this Contract or as required by law, either during the period of this Contract or hereafter.
- (f) In accordance with Minn. Stat. § 62V.06, subd. 9, the Community Assistance Partner may not sell any data collected, created, or maintained by the MNSure, regardless of its classification, for commercial or any other purposes.
- (g) Consistent with this Contract, 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 the State.
  - 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, subd. 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 the State in order for the State to satisfy its obligations under Minn. Stat. § 13.04, subd. 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 the State, the information required to provide an accounting of disclosures to the State as necessary to satisfy the State's obligations under 45 C.F.R. §164.528, or upon request from State 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 the State's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the State in the performance of such obligation(s); and
8. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.
9. The Community Assistance Partner 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 State.
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 Contract.
  - (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.

**6.4 Disposition of Data upon Completion, Expiration, or Contract Termination.** Upon completion, expiration, or termination of this Contract, Contractor will return to MNsure or destroy all protected information received or created on behalf of MNsure for purposes associated with this Contract. A written certification of destruction or return to the States' Authorized Representatives listed in Clause 6 is required. Contractor will retain no copies of such protected information, provided that 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 Contract, Contractor will extend the protections of this Contract to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as Contractor maintains the information.

- 6.5 Sanctions.** In addition to acknowledging and accepting the terms set forth in Clause 9, "Indemnification" relating to liability, 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.

The State may inspect, assess, and audit a CAP's data security and privacy practices at any time. Minn. R. 7700.0080. If there is a finding of any willful violation of the MGDPA (Minnesota Statutes, Chapter 13), the State must immediately and permanently revoke authorization of Certified CAPs pursuant to Minnesota Statutes, section 62V.06.

- 6.6 Interpretation.** Any ambiguity in this Contract 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.

- 6.7 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>.

- 6.8 Effect of statutory amendments or rule changes.** The Parties agree to take such action as is necessary to amend this Contract and Attachment A 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 Contract 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 Contract has been amended to reflect the amendment(s).

## 7. Indemnification

The Contractor agrees to indemnify, save and hold MNSure and the State, its representatives and employees harmless from any and all claims or causes of action, including all attorneys' fees incurred by MNSure and the State arising from the performance of this Contract by Contractor or Contractor's agents or employees. This clause will not be construed to bar any legal remedies that Contractor may have for MNSure's or the State's failure to fulfill its obligations pursuant to this contract.

## 8. State Audits

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

Upon request, Contractor must provide the State with any documentation necessary to facilitate payment for services and to maintain certification requirements.

Contractor will make its staff available to State during audits and allow state observation of Contractor's MNSure-related activities and training.

## 9. Intellectual Property

**9.1 Intellectual property rights.** The State owns all rights, title, and interest in all of the intellectual

property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the works and documents created and paid for under this Contract. 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 in the performance of 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, in the performance of this Contract. The documents will be the exclusive property of the State and all such documents must be immediately returned to the State by the Contractor upon completion or cancellation of this Contract. To the extent possible, those works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the works and the documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the works and documents.

## **9.2 Obligations.**

(a) Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.

(b) Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the works and documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Contractor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 9, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the works or documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

## **10. Workers Compensation**

Contractor certifies that it is in compliance with Minn. Stat. §176.181, Subd. 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 and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

## **11. Debarment by State, Departments, Commissions, Agencies, or Political Subdivisions**

Contractor certifies that neither it nor its principals is presently debarred or suspended by the State, 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 the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549.

## **12. Publicity and Endorsement**

**12.1 Publicity.** The Contractor may use MNsure and State-created materials. MNsure provides its express approval for Contractor to use the MNsure Partner Badge in relation to activities arising out of the Contract and in accordance with MNsure's policies and procedures. The MNsure Partner Badge is provided to the Contractor by MNsure upon request.

**12.2 Endorsement.** The State will publicly identify the Contractor as a MNsure Community Assistance Partner, but does not endorse Contractor's products or services. Contractor must not claim any endorsement by the State.

## **13. 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.

## **14. Data Disclosure**

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number. Identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

## **15. Termination**

**15.1 Termination by either Party.** Either party may terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to the other party. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

**15.2 Termination for Cause.** The State may immediately terminate this Contract if the State finds that there has been a failure to comply with the provisions of this Contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

**15.3 Termination for Insufficient Funding.** The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Pursuant to clause 4.1(a), the Qualified Health Plan, Medical Assistance program, and MinnesotaCare program are individually and independently funded from different sources. Insufficient funding for a specific compensation program as identified in clause 4.1(a) and this clause will be sufficient to terminate compensation for that specific program. Termination must be by written, fax, or e-mail notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State receiving that notice.

**16. Non-discrimination (In accordance with Minn. Stat. § 181.59)**

The Contractor agrees with the provisions of Minn. Stat. § 181.59, which require:

- “(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.”*

**17. Affirmative action requirements for contracts in excess of \$100,000 and if the Contractor has more than 40 full-time employees in Minnesota or its principal place of business**

The State intends to carry out its responsibility for requiring affirmative action by its contractors. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

**18. 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.