



# MNsire Joint Powers Agreement 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 report on the number of applicants enrolled by the Contractor for evaluation and payment pursuant to Clause 3.2 of this Attachment, no later than 60 days following the end of the reporting period;
- 1.6 Monitor the Contractor 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 the determination of eligibility for health insurance programs offered through MNsure by providing the following services:
  - (a) Inform consumers of health insurance programs and the value of coverage, in addition to reviewing insurance options available through MNsure;
  - (b) Inform individuals of application and renewal processes, required documentation, mandated requirements, and any exemption criteria;
  - (c) Gauge eligibility through the Minnesota Eligibility Technology System (METS) by assisting applicants with the entry of information and provide referrals to such applicants to appropriate support services or programs for further assistance, such as free health clinics;
  - (d) Explain to applicants program eligibility rules and provide them application assistance for Medicaid/Childrens' Health Insurance Plan (CHIP), MinnesotaCare, premium tax credits, cost-sharing reductions, and qualified health plans;
  - (e) Assist consumers in complying with their responsibility to report changes that could impact program eligibility, including assisting with the renewal process;
  - (f) Provide nonmedical referrals, to the extent possible, according to MNsure referral guidance;
  - (g) Facilitate referrals to community organizations or other appropriate nonprofit or public entities when individuals and families require technical expertise and assistance beyond the scope of this Agreement;
  - (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 verification documentation; and,

- (j) Maintain a physical presence in the MNsure service area so that face-to-face assistance can be provided to applicants and enrollees.

**2.2** Facilitate the enrollment in qualified health plans offered through MNsure for individuals eligible to purchase a qualified health plan by providing the following services:

- (a) Explain, discuss, and interpret coverage and policies with consumers to facilitate plan selection;
- (b) 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;
- (c) Assist with the entry of information into enrollment tools and resources, including final submission of information;
- (d) Facilitate referrals to brokers for individuals and families enrolling in qualified health plans through MNsure and requesting plan enrollment assistance beyond the scope of this Agreement; and,
- (e) If available, 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.

**2.3** Maintain a roster of all employees, agents and volunteers who require certification to perform the services outlined in this Agreement in a form and manner as determined by MNsure. Provide notification to MNsure without delay and no later than (5) business days when an individual on the Contractor's roster is terminated, separates, or otherwise ceases to perform services under this Agreement.

**2.4** 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 services under this Agreement, including training and background check completion;
- (b) Complete any background check or background study process in the time frame and manner prescribed by MNsure or the Department of Human Services (this may include an additional background study for currently certified navigators, in-person assisters, and certified application counselors upon State's determination that an additional background study using the online NETStudy 2.0 system operated by the Department of Human Services is required);
- (c) Successfully complete the annual recertification process required for continuing to provide services under this Agreement;
- (d) Are informed of and comply with all procedures as outlined in MNsure's policy and procedures; and
- (e) Are informed of and comply with the information privacy and security requirements in Attachment B.

**2.4.1** If additional costs are incurred due to a background check or background study process that is not timely completed by the Contractor's employees, agents or volunteers after such background check or background study process has been initiated, Contractor will be responsible for paying the costs of any subsequent or additional background study process (i.e., if a first background study is not timely completed and another background study is required). State will not pay for additional background studies if a first background study is not timely completed. The State will not pay any additional fees for fingerprinting and photographing that is not completed at an approved Minnesota fingerprint and photo service location.

**2.5** Disclose to MNsure all affiliations that may present an actual conflict of interest or a potential conflict of interest (including any individual conflict of interest or organizational conflict of interest),

and as part of this disclosure, must include submission of a written attestation that the Contractor 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 MNSure's Authorized Representative identified in Clause 4.1 of the Agreement 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.

**2.5.1** Contractor certifies that it does not have any conflicts of interest related to this Agreement as defined by State of Minnesota OGM policy [08-01](#).

**2.6** 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).

**2.7** Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities.

**2.8** 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;

**2.9** 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.

**2.10** Provide targeted assistance to serve underserved or vulnerable populations, as identified by MNSure, within the state of Minnesota.

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

**2.12** 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.

**2.13** 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.

**2.14** Use the current versions of State-provided applications, forms and outreach materials, and adhere to the publicity guidelines in Clause 11 of this Attachment for distribution of any outreach or other materials not provided by MNSure.

**2.15** Ensure that consumers are informed, prior to receiving assistance, of the functions and responsibilities of a navigator/in-person assister, including that individuals certified by MNSure are not acting as tax advisors or attorneys when providing assistance under this Agreement and cannot provide tax or legal advice within their capacity as a certified navigator/in-person assister in accordance with 45 C.F.R. § 155.210(e)(6)(i).

**2.16** 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).

**2.17** Attempt to provide assistance to all consumers who contact the Contractor or refer them to assistance. Failure to attempt to provide assistance may lead to immediate termination of this Agreement consistent with Clause 14.2 of this Attachment.

**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 under this Agreement 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);
- (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 contact, unless the individual has a pre-existing relationship with the individual navigator/in-person assister or Contractor entity in accordance with 45 C.F.R. §§ 155.210(d)(8), 155.210(d)(9); and,
- (f) Providing choice counseling or enrollment services as defined in 42 C.F.R. § 438.810 to individuals who have been determined eligible for Medical Assistance or MinnesotaCare unless otherwise authorized to do so.

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

**3.1 Consideration.** The State will pay the Contractor for each successful determination of eligibility for a qualified health plan from the submission of an application through METS or a qualified health plan enrollment completed 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 applicant for a successful determination of eligibility or enrollment in a qualified health plan.

### **3.2 Payment**

- (a) Reports. The State will pay the Contractor based on a State-run report run at least quarterly identifying the number of successful eligibility determinations and enrollments performed by a certified navigator or in-person assister on their roster during the period of time from the date of the previous report or the effective date of the Agreement if there is no previous report. The State will pay the Contractor within sixty days of the close of the reporting period.
- (b) If at any time 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, the 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 Agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative, who is identified in Clause 4.1 of the Agreement, 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 Agreement, 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 Agreement. 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 Agreement Complete**

**5.1 Assignment.** The Contractor may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of the State 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 Clause 2.1(b) of Attachment B and within this Clause 5.2, 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. The State reserves the right to modify Attachment A and/or Attachment B without amendment as necessary to comply with federal or state law or regulation not addressed within Clause 2.1(b) of Attachment B. The State must provide the Contractor notice of the need to update Attachment A and/or Attachment B 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 Agreement, that failure does not waive the provision or the State's right to enforce it.

**5.4 Agreement Complete.** The Agreement, this Attachment A and Attachment B contain all negotiations and agreements between the State and the Contractor. No other understanding regarding the Agreement and this Attachment A and Attachment B, whether written or oral, may be used to bind either party or the Third Party Beneficiary.

## **6. Indemnification**

The Contractor agrees to indemnify, save and hold MNSure, DHS and the State, its representatives and employees harmless from any and all claims or causes of action, including all attorneys' fees incurred by MNSure, or DHS, and/or the State arising from the performance of this Agreement by the Contractor or the Contractor's agents or employees. This clause will not be construed to bar any legal remedies that the Contractor may have for MNSure's or the State's failure to fulfill its obligations pursuant to this Agreement. MNSure's and DHS' liability, if any, are governed by Minn. Stat. § 3.736.

## **7. State Audits**

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

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

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

## **8. Intellectual Property**

**8.1 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 Agreement. 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 Agreement. "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 Agreement. 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 Agreement. 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.

## **8.2 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 Agreement, 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 of this Attachment, 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.
- (c) **License Reserved for U.S. Department of Health and Human Services.** Because federal funds are used in funding this Agreement, in accord with 45 C.F.R., sec. 92.34, for Works and Documents created and paid for under this Agreement, the U.S. Department of Health and Human Services will have a royalty free, non-exclusive, perpetual and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the Works or Documents created and paid for under this Agreement for federal government purposes.

## **9. 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.

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

**10.1** 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 Agreement 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.

## **11. Publicity and Endorsement**

**11.1 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 Agreement and in accordance with MNSure's policies and procedures. The MNSure Partner Badge is provided to the Contractor by MNSure upon request.

**11.2 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.

## **12. Governing Law, Jurisdiction, and Venue**

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

## **13. Data Disclosure**

Under Minn. Stat. §§ 270B.09, 270C.65, subd. 3, 270C.66 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.

## **14. Termination**

**14.1 Termination by either Party.** Either party may terminate this Agreement 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.

**14.2 Termination for Cause.** The State may immediately terminate this Agreement if the State finds that there has been a failure to comply with the provisions of this Agreement, 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.

**14.3 Termination for Insufficient Funding.** The State may immediately terminate this Agreement 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 3.2(b) of this Attachment 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 3.2(b) of this Attachment 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 Agreement 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.

## **15. 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."*

**16. 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 Agreement exceeds \$100,000 and the Contractor employed more than forty (40) full-time employees on a single working day during the previous twelve (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.

**17. Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)**

The Contractor agrees with the provisions of Minn. Stat. § 16C.053, which applies to any contract for which the value, including all extensions, is \$50,000 or more: Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

**18. Counterparts**

This Agreement 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.