



Department of Buildings and General Services
Office of Purchasing & Contracting
133 State Street, 5th Floor | Montpelier VT 05633-8000
802-828-2211 phone | 802-828-2222 fax
<http://bgs.vermont.gov/purchasing>

Agency of Administration

SEALED BID

REQUEST FOR PROPOSAL

DATA ANALYTICS – HEALTH CARE REPRICING, EXPENDITURE, QUALITY MEASURE AND AD HOC ANALYSES

ISSUE DATE	February 29, 2024
QUESTIONS DUE	March 13, 2024 – 4:30 PM (EST)
WRITTEN RESPONSES TO QUESTIONS POSTED	March 20, 2024 – 4:30 PM (EST)
RFP RESPONSES DUE BY	April 04, 2024 – 4:30 PM (EST)

PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND ADDENDUMS ASSOCIATED WITH THIS RFP WILL BE POSTED AT:

<http://www.bgs.state.vt.us/pca/bids/bids.php>

THE STATE WILL MAKE NO ATTEMPT TO CONTACT INTERESTED PARTIES WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH BIDDER TO PERIODICALLY CHECK THE ABOVE WEBPAGE FOR ANY AND ALL NOTIFICATIONS, RELEASES AND ADDENDUMS ASSOCIATED WITH THIS RFP.

STATE CONTACT: Kyle Emerson
E-MAIL: kyle.emerson@vermont.gov
USE SUBJECT: GMCB DATA ANALYTICS

1) OVERVIEW:

- **SCOPE AND BACKGROUND:** Through this Request for Proposal (RFP) the Green Mountain Care Board (hereinafter the “State”) is seeking to establish contracts with one or more companies that can provide Data Analytics – Health Care, Expenditure and Ad Hoc Analyses.
- **CONTRACT PERIOD:** Any Contract(s) arising from this RFP will be for a period of three (3) years with an option to renew for up to two additional twelve-month periods. The State anticipates the start date for such contract(s) will be July 1, 2024.
- **SINGLE POINT OF CONTACT:** All communications concerning this RFP are to be addressed in writing to the State Contact listed on the front page of this RFP. Actual or attempted contact with any other individual from the State concerning this RFP is strictly prohibited and may result in disqualification.
- **QUESTION AND ANSWER PERIOD:** Any bidder requiring clarification of any section of this RFP or wishing to comment on any requirement of the RFP must submit specific questions in writing no later than the deadline for question indicated on the first page of this RFP. Questions may be e-mailed to the point of contact on the front page of this RFP. Questions or comments not raised in writing on or before the last day of the question period are thereafter waived. At the close of the question period a copy of all questions or comments and the State's responses will be posted on the State's web site <http://www.bgs.state.vt.us/pca/bids/bids.php>. Every effort will be made to post this information as soon as possible after the question period ends, contingent on the number and complexity of the questions.
- **CHANGES TO THIS RFP:** Any modifications to this RFP will be made in writing by the State through the issuance of an Addendum to this RFP and posted online at <http://www.bgs.state.vt.us/pca/bids/bids.php>. Modifications from any other source are not to be considered.

2) DETAILED REQUIREMENTS/DESIRED OUTCOMES:

BACKGROUND: Through this Request for Proposal (RFP) the Green Mountain Care Board (hereinafter the “State”) is seeking to establish contracts with one or more companies that can provide transparent and reusable analyses of complex health care data.

DETAILED REQUIREMENTS/DESIRED OUTCOMES: The State of Vermont is interested in obtaining bids to meet the following business need(s): Health Care Data Analysis, utilizing, but not limited to, the State's All-Claims Payer Database (VHCURES) and the Vermont Uniform Hospital Discharge Data Set (VUHDDS). Deliverables will be project based and may include the work outlined below. Topics may include health care coverage, utilization, expenditures, and program performance.

Discrete requests will be established through data analysis plans to determine agreed upon scope and timeline for each request. No work shall begin until a dedicated analysis plan has been reviewed and approved by the State.

Bidders should submit detailed processes for achieving deliverables and, to the extent Bidders have completed similar work in past projects, submit examples as part of the proposal.

Requested work may include but is not limited to the following:

- **Data Analysis:** Perform research and statistical analysis to support the GMCB's regulatory duties related to hospital budgets, health insurance premium rates, certificate of need, and Accountable Care Organizations (ACOs). Analysis may include cost assessments, case-mix adjustments, insurance reimbursements, and analysis of general market trends. Updates to the following analyses may be requested:
 - i) Professional Services Repricing Analysis: Using Medicare's Resource Based Relative Value Scale pricing system, reprice federal fiscal year 2023 professional services.
 - ii) Payment and Cost Coverage:
 - (1) [Examination of Payment and Cost Coverage Variation Across Payers for Hospital Services \(Fiscal Years 2020 and 2021\)](#)
 - (2) [Supplementary Exhibits](#)
- **Quality Measures:** Develop methodology and calculate a specified set of quality measures using GMCB's data assets and other available data resources to support the hospital budget review process, and the Boards effort to monitor health care quality and access. Examples of possible measures follow. Each may not be requested and others may be added.

- i) Patient and Adverse Events Composite (CBE 0531, PSI 90) <https://p4qm.org/measures/0531>
- ii) Hospital-Wide All-Risk Standardized Mortality Measure (CBE 3504) <https://p4qm.org/measures/3504>
- iii) 30-Day Follow Up After ED Visit for Mental Illness (CBE 0576) <https://p4qm.org/measures/0576>
- iv) 30-Day Follow Up after ED Visit for AOD (CBE 3488) <https://p4qm.org/measures/3488>
- v) Initiation and Engagement in of AOD Treatment (CBE 0004) <https://p4qm.org/measures/0004>
- **State Health Care Expenditure Analysis Data Model Recommendations:** The Vermont Health Care Expenditure Analysis (VHCEA) has been required under 18 V.S.A. §9383 (formerly §9375a) since 1991. Per the statute the Board, "...shall develop annually an expenditure analysis and an estimate of future health care spending covering a period of at least two years." See GMCB website for more information: <https://gmcboard.vermont.gov/publications/expenditure>.
 - i) Alignment to National Health Expenditure and Payment Reform Categories: Map CPT/HCPCS codes to NHE categories and alignment of sub-categories to more closely align with payment reform initiative.
 - ii) Provide additional recommendations to revise current data model to better incorporate alternate payment models, especially those associated with the State's Accountable Care Organization (ACO).
 - iii) Provide recommendations on potential methods to extend the analysis in response to stakeholder interviews and health care policy priorities. Example of some possible priorities include reconciling the provider and resident sides of the analysis and including proportional assessments of spending for types of services, such as primary care or mental health.
 - iv) Provide recommendations for methodology to estimate claims for populations missing from VHCURES.
- **Data Fees** To the extent acquisition of other data sources is necessary to complete analytic work, please indicate data source and potential cost.
- **Project-Based Deliverables:**
 - i) Raw data files;
 - ii) Any software code used to derive the data files;
 - iii) Mock tables with recommended output;
 - iv) Recommended methods for analyzing data at a more granular level (applicable only to certain projects).
 - v) As requested by the Board, for all project-based deliverables, provision of training or technical assistance for GMCB staff analysts.

3) GENERAL REQUIREMENTS:

- **PRICING:** Bidders must price the terms of this solicitation at their best pricing. Any and all costs that Bidder wishes the State to consider must be submitted for consideration. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored. All equipment shall be delivered assembled, serviced, and ready for immediate use, unless otherwise requested by the State.
 - i) Prices and/or rates shall remain firm for the initial term of the contract. The pricing policy submitted by Bidder must (i) be clearly structured, accountable, and auditable and (ii) cover the full spectrum of materials and/or services required.
 - ii) Cooperative Agreements. Bidders that have been awarded similar contracts through a competitive bidding process with another state and/or cooperative are welcome to submit the pricing in response to this solicitation.
- **STATEMENT OF RIGHTS:** The State shall have the authority to evaluate Responses and select the Bidder(s) as may be determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP. The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Failure of bidder to respond to a request for additional information or clarification could result in rejection of that bidder's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in

part, with or without cause, and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.

- i) **Best and Final Offer (BAFO).** At any time after submission of Responses and prior to the final selection of Bidder(s) for Contract negotiation or execution, the State may invite Bidder(s) to provide a BAFO. The state reserves the right to request BAFOs from only those Bidders that meet the minimum qualification requirements and/or have not been eliminated from consideration during the evaluation process.
- ii) **Presentation.** A webinar presentation by the Bidder may be required by the State if it will help the State's evaluation process. The State will factor information presented during presentations into the evaluation. Bidders will be responsible for all costs associated with providing the presentation.
- **WORKER CLASSIFICATION COMPLIANCE REQUIREMENTS:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements.
 - i) **Self Reporting:** For bid amounts exceeding \$250,000.00, Bidder shall complete the appropriate section in the attached Certificate of Compliance for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.
 - ii) **Subcontractor Reporting:** For bid amounts exceeding \$250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the State shall be provided with a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54). This requirement does not apply to subcontractors providing supplies only and no labor to the overall contract or project. This list **MUST** be updated and provided to the State as additional subcontractors are hired. A sample form is available online at <http://bgs.vermont.gov/purchasing-contracting/forms>. **The subcontractor reporting form is not required to be submitted with the bid response.**
- **EXECUTIVE ORDER 05-16: CLIMATE CHANGE CONSIDERATIONS IN STATE PROCUREMENTS:**
 - (1) For bid amounts exceeding \$25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP.
 - (2) After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or manufactured in the State, as explained in the Method of Award section. But, such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.
- **METHOD OF AWARD:** Awards will be made in the best interest of the State. The State may award one or more contracts and reserves the right to make additional awards to other compliant bidders at any time if such award is deemed to be in the best interest of the State. All other considerations being equal, preference will be given first to resident bidders of the state and/or to products raised or manufactured in the state, and then to bidders who have practices that promote clean energy and address climate change, as identified in the applicable Certificate of Compliance.
 - i) **Evaluation Criteria:** Proposals will be evaluated using the following criteria:

Criteria	Weight
Experience and Qualifications	40%
Understanding of Work	30%
Accessibility and Responsiveness	10%
Price	20%

- **CONTRACT NEGOTIATION:** Upon completion of the evaluation process, the State may select one or more bidders with which to negotiate a contract, based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is in the best interest of the State. In the event State is not successful in negotiating a contract with a selected bidder, the State reserves the option of negotiating with another bidder, or to end the proposal process entirely.
- **COST OF PREPARATION:** Bidder shall be solely responsible for all expenses incurred in the preparation of a response to this RFP and shall be responsible for all expenses associated with any presentations or demonstrations associated with this request and/or any proposals made.
- **CONTRACT TERMS:** The selected bidder(s) will be expected to sign a contract with the State, including the Standard Contract Form and Attachment C as attached to this RFP for reference. If IT Attachment D is included in this RFP, terms may be modified based upon the solution proposed by the Bidder, subject to approval by the Agency of Digital Services.
 - i) **Business Registration.** To be awarded a contract by the State of Vermont a bidder (except an individual doing business in his/her own name) must be registered with the Vermont Secretary of State's office <https://sos.vermont.gov/corporations/registration/> and must obtain a Contractor's Business Account Number issued by the Vermont Department of Taxes <http://tax.vermont.gov/>.
 - ii) The contract will obligate the bidder to provide the services and/or products identified in its bid, at the prices listed.
 - iii) **Payment Terms.** Percentage discounts may be offered for prompt payments of invoices; however, such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.
 - iv) **Quality.** If applicable, all products provided under a contract with the State will be new and unused, unless otherwise stated. Factory seconds or remanufactured products will not be accepted unless specifically requested by the purchasing agency. All products provided by the contractor must meet all federal, state, and local standards for quality and safety requirements. Products not meeting these standards will be deemed unacceptable and returned to the contractor for credit at no charge to the State.
- **DEMONSTRATION:** A webinar demonstration by the Bidder may be required by the State if it will help the State's evaluation process. The State will factor information presented during demonstrations into the evaluation. Bidder will be responsible for all costs associated with the providing the demonstration.
- **INDEPENDENT REVIEW:** Certain State information technology projects require independent expert review as described under 3 V.S.A. § 3303(d). Such review, if applicable, will inform the State's decision to award any contract(s) resulting from this RFP

4) **CONTENT AND FORMAT OF RESPONSES:** The content and format requirements listed below are the minimum requirements for State evaluation. These requirements are not intended to limit the content of a Bidder's proposal. Bidders may include additional information or offer alternative solutions for the State's consideration. However, the State discourages overly lengthy and costly proposals, and Bidders are advised to include only such information in their response as may be relevant to the requirements of this RFP.

- The bid should include a Cover Letter and Technical Response and Price Schedule.
- **COVER LETTER:**
 - i) Confidentiality. To the extent your bid contains information you consider to be proprietary and confidential, you must comply with the following requirements concerning the contents of your cover letter and the submission of a redacted copy of your bid (or affected portions thereof).
 - ii) All responses to this RFP will become part of the contract file and will become a matter of public record under the State's Public Records Act, 1 V.S.A. § 315 et seq. (the "Public Records Act"). If your response must include material that you consider to be proprietary and confidential under the Public Records Act, your cover letter must clearly identify each page or section of your response that you consider proprietary and confidential. Your cover letter must also include a written explanation **for each marked section** explaining why such material should be considered exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c), including the prospective harm to the competitive position of the bidder if the identified material were to be released. Additionally, you must include a redacted copy of your response for portions that are considered proprietary and confidential. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures. Under no circumstances may your entire response be marked confidential, and the State reserves the right to disqualify responses so marked.

iii) Exceptions to Contract Terms and Conditions. If a Bidder wishes to propose an exception to any terms and conditions set forth in the Standard Contract Form and its attachments, such exceptions must be included in the cover letter to the RFP response. Failure to note exceptions when responding to the RFP will be deemed to be acceptance of the State contract terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State. Note that exceptions to contract terms may cause rejection of the proposal.

• **TECHNICAL RESPONSE.** In response to this RFP, a Bidder shall:

i) Provide details concerning your form of business organization, company size and resources.

ii) Describe your capabilities and particular experience relevant to the RFP requirements.

(1) Identify all current or past State projects.

iii) Identify the names of all subcontractors you intend to use, the portions of the work the subcontractors will perform, and address the background and experience of the subcontractor(s), as per RFP section 4.3.2 above.

• **REFERENCES.** Provide the names, addresses, and phone numbers of at least three companies with whom you have transacted similar business in the last 48 months. You must include contact names who can talk knowledgeably about performance.

• **REPORTING REQUIREMENTS:** Provide a sample of any reporting documentation that may be applicable to the Detailed Requirements of this RFP.

• **PRICE SCHEDULE:** Bidders shall submit their pricing information in the Price Schedule attached to the RFP.

• **CERTIFICATE OF COMPLIANCE:** This form must be completed and submitted as part of the response for the proposal to be considered valid.

5) **SUBMISSION INSTRUCTIONS:**

• **CLOSING DATE:** Bids must be received by the State by the due date specified on the front page of this RFP. Late bids will not be considered.

i) The State may, for cause, issue an addendum to change the date and/or time when bids are due. If a change is made, the State will inform all bidders by posting at the webpage indicated on the front page of this RFP.

ii) There will not be a public bid opening. However, the State will record the name, city and state for any and all bids received by the due date. This information will be posted as promptly as possible following the due date online at: <https://bgs.vermont.gov/content/opc-bid-tabulation-sheets-0>. Bidders are hereby notified to review the information posted after the bid opening deadline to confirm receipt of bid by the State. Any bidder that submitted a bid, and is not listed on the bid tabulation sheet, shall promptly notify the State Contact listed on the front page of this RFP. Should a bidder fail to notify the State Contact listed on the front page of this RFP within two weeks of posting the bid tabulation sheet, the State shall not be required to consider the bid.

• **BID DELIVERY INSTRUCTIONS:**

i) **ELECTRONIC:** Electronic bids will be accepted.

E-MAIL BIDS. Emailed bids will be accepted. Bids will be accepted via email submission to SOV.ThePathForward@vermont.gov. Bids must consist of a single email with a single, digitally searchable PDF attachment containing all components of the bid. Multiple emails and/or multiple attachments will not be accepted. There is an attachment size limit of 40 MB. It is the Bidder's responsibility to compress the PDF file containing its bid if necessary in order to meet this size limitation.
USE SUBJECT: GMCB DATA ANALYTICS

(1) **FAX BIDS:** Faxed bids will not be accepted.

• **U.S. MAIL OR EXPRESS DELIVERY OR HAND DELIVERY:**

i) Paper format bids will not be accepted.

6) **BID SUBMISSION CHECKLIST:**

- Required Number of Copies
- Cover Letter
- Technical Response
- Redacted Technical Response, if applicable
- References
- Price Schedule
- Signed Certificate of Compliance

7) **ATTACHMENTS:**

- Certificate of Compliance
- Worker Classification Compliance Requirement; Subcontractor Reporting Form
- Standard State Contract with its associated attachments, including but not limited to, Attachment C: Standard State Provisions for Contracts and Grants (December 7, 2023)
- Attachment E - Green Mountain Care Board Data Use Agreement – VHCURES & Green Mountain Care Board Data Use Agreement – VUHDDS
- Attachment F - Attachment F: Delivery Expectation & Delivery Acceptance Documents Deliverable Expectation Document (DED) Template

CERTIFICATE OF COMPLIANCE

For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.

- A. **NON COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.
- B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Contract Provisions, and any other contract attachments included with this RFP.
- C. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds \$250,000.00.

Self-Reporting. Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

Subcontractor Reporting. Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

D. Executive Order 05 – 16: Climate Change Considerations in State Procurements Certification

Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):

1. Bidder owns, leases or utilizes, for business purposes, space that has received:

- ☐ Energy Star® Certification
- ☐ LEED®, Green Globes®, or Living Buildings ChallengeSM Certification
- ☐ Other internationally recognized building certification:

2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder's place of business. Please explain:

3. Please Check all that apply:

- ☐ Bidder can claim on-site renewable power or anaerobic-digester power ("cow-power"). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.
- ☐ Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.
- ☐ Bidder's heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.
- ☐ Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this? _____
- ☐ Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc..
- ☐ Bidder offers employees an option for a fossil fuel divestment retirement account.
- ☐ Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:

4. Please list any additional practices that promote clean energy and take action to address climate change:

E. Executive Order 02 – 22: Solidarity with the Ukrainian People

- ☐ By checking this box, Bidder certifies that none of the goods, products, or materials offered in response to this solicitation are Russian-sourced goods or produced by Russian entities. If Bidder is unable to check the box, it shall indicate in the table below which of the applicable offerings are Russian-sourced goods and/or which are produced by Russian entities. An additional column is provided for any note or comment that you may have.

Provided Equipment or Product	Note or Comment

Bidder Name: _____ Contact Name: _____

Address: _____ Fax Number: _____

Telephone: _____

E-Mail: _____

By: _____ Name: _____
Signature of Bidder (or Representative) (Type or Print)

END OF CERTIFICATE OF COMPLIANCE

PRICE SCHEDULE

A. Hourly Labor Rates:

Service Category/Title of Positions	Hourly Rate
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$

B. This contract can be extended up to two (2) additional 12-month periods with mutual agreement between both parties:

Optional Year 2 Increase: Not to Exceed _____%

Optional Year 3 Increase: Not to Exceed _____%

Name of Bidder: _____

Signature of Bidder: _____

Date: _____

SUBCONTRACTOR REPORTING FORM

This form must be completed in its entirety and submitted prior to contract execution and updated as necessary and provided to the State as additional subcontractors are hired.

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding \$250,000.00 requires bidders to comply with the following provisions and requirements.

Contractor is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. Include additional pages if necessary. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

Subcontractor	Insured By		Subcontractor's Sub	Insured By

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Worker Classification Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

Send Completed Form to: Office of Purchasing & Contracting
133 State Street, 5th Floor
Montpelier, VT 05633-8000

State of Vermont
STANDARD CONTRACT FOR TECHNOLOGY SERVICES

[USE OF THIS TEMPLATE: ALL HIGHLIGHTED LANGUAGE MAY BE DELETED OR MODIFIED, AS APPLICABLE]

1. **Parties.** This is a contract for services between the State of Vermont, [REDACTED] (hereinafter called “State”), and [REDACTED], with a principal place of business in [REDACTED], (hereinafter called “Contractor”). Contractor’s form of business organization is [REDACTED]. It is Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of [REDACTED]. Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$ [REDACTED].00.

4. **Contract Term.** The period of Contractor’s performance shall begin on [REDACTED], 20 [REDACTED] and end on [REDACTED], 20 [REDACTED]. This contract may be amended to add two (2) years if both parties agree.

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Attachments.** This contract consists of [REDACTED] pages including the following attachments which are incorporated herein:

Attachment A – Statement of Work

- Exhibit 1 – State Technical and Functional Requirements
- Exhibit 2 – Preliminary Implementation Master Schedule
- Exhibit 3 – State Third Party Software
- Exhibit 4 – Contractor Software

Attachment B – Payment Provisions

Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date 12/7/2023)

Attachment D – Other Terms and Conditions for Information Technology Contracts

Attachment [REDACTED] – [OTHER DEPARTMENT ATTACHMENTS, AS APPLICABLE]

9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- 1) Standard Contract
- 2) Attachment D Other Terms and Conditions for Information Technology Contracts
- 3) Attachment C (Standard State Provisions for Contracts and Grants)
- 4) Attachment A with Exhibits
- 5) Attachment B
- 6) List other attachments as applicable

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

Date: _____

Signature: _____

Name: _____

Title: _____

By the Contractor:

Date: _____

Signature: _____

Name: _____

Title: _____

ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

1. **BACKGROUND:**

The Green Mountain Care Board (hereinafter the “State”) seeks to establish contracts with one or more companies that can provide transparent and reusable analyses of complex health care data.

2) **DETAILED REQUIREMENTS/DESIRED OUTCOMES:**

BACKGROUND: Through this Request for Proposal (RFP) the Green Mountain Care Board (hereinafter the “State”) is seeking to establish contracts with one or more companies that can provide transparent and reusable analyses of complex health care data.

SCOPE OF WORK: Requested work may include but is not limited to the following:

- a) **Data Analysis:** Perform research and statistical analysis to support the GMCB’s regulatory duties related to hospital budgets, health insurance premium rates, certificate of need, and Accountable Care Organizations (ACOs). Analysis may include cost assessments, case-mix adjustments, insurance reimbursements, and analysis of general market trends. Updates to the following analyses may be requested:
 - i) Professional Services Repricing Analysis: Using Medicare’s Resource Based Relative Value Scale pricing system, reprice federal fiscal year 2023 professional services.
 - ii) Payment and Cost Coverage:
 - (1) [Examination of Payment and Cost Coverage Variation Across Payers for Hospital Services \(Fiscal Years 2020 and 2021\)](#)
 - (2) [Supplementary Exhibits](#)
- b) **Quality Measures:** Develop methodology and calculate a specified set of quality measures using GMCB's data assets and other available data resources to support the hospital budget review process, and the Boards effort to monitor health care quality and access. Examples of possible measures follow. Each may not be requested and others may be added.
 - i) Patient and Adverse Events Composite (CBE 0531, PSI 90) <https://p4qm.org/measures/0531>
 - ii) Hospital-Wide All-Risk Standardized Mortality Measure (CBE 3504) <https://p4qm.org/measures/3504>
 - iii) 30-Day Follow Up After ED Visit for Mental Illness (CBE 0576) <https://p4qm.org/measures/0576>
 - iv) 30-Day Follow Up after ED Visit for AOD (CBE 3488) <https://p4qm.org/measures/3488>
 - v) Initiation and Engagement in of AOD Treatment (CBE 0004) <https://p4qm.org/measures/0004>
- c) **State Health Care Expenditure Analysis Data Model Recommendations:** The Vermont Health Care Expenditure Analysis (VHCEA) has been required under 18 V.S.A. §9383 (formerly §9375a) since 1991. Per the statute the Board, “...shall develop annually an expenditure analysis and an estimate of future health care spending covering a period of at least two years.” See GMCB website for more information: <https://gmcboard.vermont.gov/publications/expenditure>.

- i) Alignment to National Health Expenditure and Payment Reform Categories: Map CPT/HCPCS codes to NHE categories and alignment of sub-categories to more closely align with payment reform initiative.
 - ii) Provide additional recommendations to revise current data model to better incorporate alternate payment models, especially those associated with the State's Accountable Care Organization (ACO).
 - iii) Provide recommendations on potential methods to extend the analysis in response to stakeholder interviews and health care policy priorities. Example of some possible priorities include reconciling the provider and resident sides of the analysis and including proportional assessments of spending for types of services, such as primary care or mental health.
 - iv) Provide recommendations for methodology to estimate claims for populations missing from VHCURES.
- d) **Data Fees** To the extent acquisition of other data sources is necessary to complete analytic work, please indicate data source and potential cost.
- e) **Project-Based Deliverables:**
- i) Raw data files;
 - ii) Any software code used to derive the data files;
 - iii) Mock tables with recommended output;
 - iv) Recommended methods for analyzing data at a more granular level (applicable only to certain projects).
 - v) As requested by the Board, for all project-based deliverables, provision of training or technical assistance for GMCB staff analysts.

3. PROJECT MANAGEMENT

The scope of work as detailed below describes the services, deliverables and key assumptions. Contractor will develop an overall project schedule that details the tasks, timelines, and deliverables for the fully integrated solution.

6.1.3 KEY PROJECT STAFF

Contractor will perform and support the Services consistent with this Contract and the Solution Requirements. Contractor Personnel will be properly educated, trained and qualified for the Services they are to perform and Contractor will put appropriate training in place to meet initial and ongoing training requirements of Contractor Personnel assigned to perform Services.

- (a) Contractor shall be responsible, at its own cost and expense, for any and all recruitment, hiring, Contractor-specific training, education and orientation for all Contractor Personnel assigned or to be assigned to perform Services or support the Requirements.
- (b) All Contractor Personnel, in addition to any Contractor security policies and procedures, shall be required to comply with the security requirements in this Contract
- (c) Contractor shall conduct its hiring process in compliance with all applicable Federal and State laws to include, but not be limited to, anti-discrimination laws.
 - (i) **Eligibility for Employment:** Contractor shall verify that all prospective employees are eligible for employment in the United States.
 - (ii) **Criminal Records:** Contractor or an agent of Contractor shall perform criminal background checks on all prospective employees utilizing a national criminal database acceptable to the State. Before

any Contractor Personnel begin work on the Services x) such background check shall have returned a “no record” result or, y) to the extent that the result revealed that a felony record or records exist for a given individual, the associated conviction(s) shall be unrelated to the work to be performed as specified under the Equal Employment Opportunities Commission’s EEOC Enforcement Guidance regarding the employment of convicted felons issued April 25, 2012. Contractor shall provide the State with notice of proposed Contractor Personnel with felony or misdemeanor convictions that involve a crime against a person; a crime involving the use or misuse of computer network; a crime involving weapons, explosives or arson; a crime involving trade secret/proprietary information; a crime involving theft, dishonesty, embezzlement, breach of fiduciary duty, identity theft, or other financial-related crimes; a felony conviction for drug possession; or a crime involving the distribution or trafficking of illegal drugs and/or controlled substances.

- (d) All Contractor Personnel providing or assigned to provide Services or otherwise in a position to obtain or have access to State Information, shall execute a non-disclosure agreement in a form acceptable to the State.
- (e) The timing for transfer, reassignment or replacement of Contractor Personnel will be coordinated with requirements for timing and other elements of the Services so as to maintain continuity in the performance of the Services and avoid interruption or disruption to the Services or any failures to maintain Service Levels.

Contractor shall assign the following Contractor staff (“Key Project Staff”), to meet the Requirements of this Contract:

[INSERT]

Contractor will cause the Contractor Personnel filling the Key Project Staff positions to devote full time and dedicated effort to the provision of the Services and the achievement of Service Levels required for the Services, unless a lesser allocation during certain Project Phases may be agreed in writing.

6.1.4 KEY PROJECT STAFF CHANGES

Contractor shall not change the project assignment of _____, _____, and _____ for the period of project implementation. Contractor shall not change other members of Key Project Staff without providing the State written justification, a comprehensive transition plan and obtaining prior written approval of the State. State approvals for replacement of Key Project Staff will not be unreasonably withheld.

The replacement of Key Project Staff shall have comparable or greater skills and applied experience than being replaced and be subject to reference and background checks described above. If Contractor removes Key Project Staff for any reason without the State’s approval, Contractor agrees to replace the new Key Project Staff member if performance is unacceptable to State and provide the first thirty (30) days of a replacement resource with equivalent skill at no charge.

Notwithstanding the foregoing, the State acknowledges that Key Project Staff may become unavailable due to termination of employment for any reason, through disability or death, illness, or through leave of absence such as FMLA or National Guard duty for example. In such circumstances, Contractor shall promptly notify the State in writing of the impending or actual departure of any Key Personnel and of the qualifications and identity of proposed replacement Key Project Staff. The State has the right to reasonably disapprove of any replacement Key Project Staff.

6.1.5 CONTROL OF CONTRACTOR PERSONNEL. Contractor shall be fully responsible for the management, compensation, and performance of all Contractor Personnel, and the filing of any and all returns and reports and the withholding and/or payment of all applicable federal, State, and local wage tax, or employment-related taxes, including, but not limited to, income taxes, gross receipt taxes, taxes measured by income, social security taxes, and unemployment taxes for Contractor and Contractor's employees. Notwithstanding the foregoing, Contractor's employees shall adhere to the State's policies and procedures, of which Contractor is made aware while on State Premises, and shall behave and perform in a professional manner. The State, may, in its reasonable discretion, require Contractor to replace any Contractor Personnel, including but not limited to Key Project Staff, working hereunder who does not adhere to, behave, and perform consistent with the State's policies and procedures, or otherwise engages in unprofessional or unethical conduct, or abuses any illegal substance or alcohol, or engages in illegal activities or consistently underperforms. The State shall provide written notice to Contractor of the requirement of replacement, or with whom there are irresolvable personality conflicts. Contractor shall use reasonable efforts to promptly and expeditiously replace Key Project Staff and replace all other personnel within fifteen (15) business days of receipt of the written notice unless otherwise mutually agreed. The State's right to request replacement of Contractor personnel hereunder relates solely to the removal of individuals from work on this Contract with the State and does not create an employment relationship. Nothing in this Contract authorizes the State to direct the Contractor's termination of the employment of any individual.

6.1.6 CONTRACTOR THIRD PARTY CONTRACTS. The State acknowledges and understands that Contractor will enter into third party contracts with the following Contractor subcontractors: (i) _____ for _____; (ii) _____ for _____; and (iii) _____ for the performance of Services hereunder. Contractor shall deliver a copy of all such third party contracts to the State for review upon request. The State hereby consents to the use by Contractor of these subcontractors, provided however that any such consent is not deemed acceptance of the terms of any subcontracts by the State.

ATTACHMENT B PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation. Payments for subcontractors, if any, will only be made upon approval (See Attachment C, #15).
3. The Contractor will be paid based on documentation and itemization of work performed and included in invoicing as required by 32 VSA §463. On a monthly basis, the Contractor shall submit a detailed invoice itemizing all work performed during the invoice period, including the dates of service and, where applicable, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Invoices shall be submitted to the State at the following address: gmc.b.invoice@vermont.gov
5. Contractor shall submit invoices to the State upon State Acceptance of a deliverable in accordance with the Delivery Expectation Document and Delivery Acceptance forms (Attachment F) and rates for services performed set forth below:

6. EXPENSES: The fee for services shall be inclusive of Contractor expenses.

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 7, 2023**

“Attachment C: Standard State Provisions for Contracts and Grants” (revision version dated December 7, 2023) constitutes part of this Agreement and is hereby incorporated by reference as if fully set forth herein and shall apply to the purchase of all goods and/or services by the State under this Agreement. A copy of this document is available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>.

ATTACHMENT D
INFORMATION TECHNOLOGY PROFESSIONAL SERVICES
TERMS AND CONDITIONS (rev. 01/12/2024)

1. OWNERSHIP AND LICENSE IN DELIVERABLES

1.1 Contractor Intellectual Property. Contractor shall retain all right, title and interest in and to any work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements and any other intellectual property, tangible or intangible, that has been created by Contractor prior to entering into this Contract (“Contractor Intellectual Property”). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the items that Contractor is required to deliver to the State under this Contract, including Work Product (“Deliverables”), the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to use any such Contractor Intellectual Property that is incorporated into Work Product.

1.2 State Intellectual Property. The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “State Intellectual Property”).

Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

1.3 Work Product. All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State's internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State's obligations with respect to Confidential Information, authorize others to do the same on the State's behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

2. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

2.1 For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party's possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

2.2 Confidentiality of Contractor Information. The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with the performance of this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum

the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

3. SECURITY OF STATE INFORMATION.

3.1 Security Standards. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

3.2 Security Breach Notice and Reporting. The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a "Security Breach"), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation (“DFR”), within fourteen (14) business days of the Contractor’s discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor’s subcontractors, affiliates or agents which may be “data collectors” hereunder.

The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

4. CONTRACTOR’S REPRESENTATIONS AND WARRANTIES

4.1 General Representations and Warranties. The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no pending litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor’s ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the services as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the services or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor’s subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

4.2 Contractor’s Performance Warranties. Contractor represents and warrants to the State that:

- (i) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (ii) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software

routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

- (iii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

5. REMEDIES FOR DEFAULT. In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

6. TERMINATION

6.1. Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Data, State Intellectual Property or other State information and materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting any and all State data, in a format usable without the use of the Services and as agreed to by State, at no additional cost. Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

If the State determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Contractor and the State shall mutually prepare a Transition Plan identifying transition services to be provided.

6.2. Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Intellectual Property and State Data (including without limitation any Deliverables for which State has made payment in whole or in part), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

7. DESTRUCTION OF STATE DATA. At any time during the term of this Contract within thirty days of (i) the State's written request or (ii) termination or expiration of this Contract for any reason, Contractor shall securely dispose of all copies, whether in written, electronic or other form or media, of State Data according to National Institute of Standards and Technology (NIST) approved methods, and certify in writing to the State that such State Data has been disposed of securely. Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location according to National Institute of Standards and Technology (NIST) approved methods and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.

8. SOV Cybersecurity Standard Update 2023-01: Contractor confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with *State of Vermont Cybersecurity Standard 2023-01*, which prohibits the use of certain branded products in State information systems or any vendor system that is supporting State information systems, and is available on-line at:

<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

Attachment E – Data Use Agreements for VHCURES and VUHDDS

Data Use Agreement for Release of a VHCURES Limited Use Health Care Claims Research Data Set

1. Parties

This agreement is made and entered into by and between the GMCB and [REDACTED] (“Contractor”) as of [REDACTED]. The Agreement supplements and is made part of the contract to which it is attached.

2. Definitions

For purposes of this Agreement,

- A. “Agent” means those persons who are agents of the Authorized User, in accordance with the federal common law of agency.
- B. “Agreement” means this data use agreement detailing the Authorized User’s commitment to data privacy and security and setting forth restrictions, limitations, and conditions on the use and disclosure of the Data Set. The Agreement includes the following attachments:
 - 1. the Application, including the Authorized User’s Data Governance Policies and Procedures and all other attachments to the Application (Attachment A);
 - 2. if the Data Set includes Medicare data, the GMCB’s data use agreement with CMS (Attachment B);
 - 3. if the Data Set includes Medicaid data, the GMCB’s data use agreement with DVHA (Attachment C); and
 - 4. for Vermont agencies, the Vermont Agency Addendum (Attachment D).
- C. “Application” means the Authorized User’s Application for Access to VHCURES Limited Use Health Care Claims Research Data Set, as filed with and approved by the GMCB and, if applicable, DVHA.
- D. “Authorized User” means the individual or entity being given access by GMCB, and in the case of the Medicaid data subset, by DVHA, to the Data Set pursuant to this Agreement.
- E. “CMS” means the Centers for Medicare & Medicaid Services.
- F. “Data Set” means the VHCURES Limited Use Health Care Claims Research Data Set being released to the Authorized User, and all data therein.
- G. “Disclose” means to release, transfer, provide access to, or divulge in any manner information outside of the entity holding the information.
- H. “DVHA” means the Department of Vermont Health Access.
- I. “GMCB” means the Green Mountain Care Board established in Title 18, chapter 220 of the Vermont Statutes Annotated.

- J. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, including the Standards for the Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164 (“Privacy Rule”) and the Security Standards at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by subtitle D of the Health Information Technology for Economic and Clinical Health Act.
- K. “IUA” means an Individual User Affidavit, a form maintained by the GMCB.
- L. “Non-State Entity” means an individual or entity that is not a Vermont State Entity.
- M. “Principal Investigator” means the individual designated by the Authorized User to be responsible for ensuring compliance with the requirements in this Agreement. The Authorized User may also be the Principal Investigator.
- N. “Research” means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.
- O. “State” means the State of Vermont, including the GMCB.
- P. “Sub-User” means any person or entity (e.g., contractor, subcontractor, grantee, or subgrantee) that is given access to the Data Set by the Authorized User, other than as a member of the Authorized User’s workforce.
- Q. “Vermont State Entity” means an agency of the State of Vermont (a “Vermont agency”) or a contractor or other organization performing research that is directed and partially funded by the State of Vermont.
- R. “VHCURES” means the Vermont Health Care Uniform Reporting & Evaluation System, a health care database maintained by the GMCB pursuant to 18 V.S.A. § 9410.

3. Authority and Purpose

Pursuant to 18 V.S.A. § 9410, the GMCB maintains certain health care claims and eligibility data within VHCURES to enable it to carry out its statutory duties, including

- A. determining the capacity and distribution of existing resources; identifying health care needs and informing health care policy;
- B. evaluating the effectiveness of intervention programs on improving patient outcomes;
- C. comparing costs between various treatment settings and approaches;
- D. providing information to consumers and purchasers of health care; and
- E. improving the quality and affordability of patient health care and health care coverage.

To the extent allowed by HIPAA, the GMCB seeks to make some of this data available as a resource for individuals and entities to continuously review health care utilization, expenditures, and performance in Vermont. The purpose of this Agreement is to specify the conditions under which the GMCB will release VHCURES data, and to ensure that the data is accessed, maintained, used, and disclosed in compliance with all applicable statutory, regulatory, and contractual requirements.

4. Data Referenced by this Agreement

Claims and eligibility data within VHCURES that may be available under a data use agreement can be broadly grouped into three lines of business: commercial, Medicaid, and Medicare. The GMCB has independent discretion to manage data for the commercial line of business, while DVHA and the GMCB share discretion with respect to the Medicaid line of business. DVHA must approve the use and disclosure of Medicaid data and, if the Authorized User will be receiving Medicaid data, DVHA must sign this Agreement. Recipients of Medicaid data must comply, and, by signing this Agreement, agree to comply, with the requirements of the data use agreement between the GMCB and DVHA (Attachment C). Pursuant to a data use agreement between the GMCB and CMS, Medicare data is available only to Vermont State Entities for purposes of Research. Recipients of Medicare data must comply, and by signing this Agreement, agree to comply, with the requirements of the data use agreement between the GMCB and CMS (Attachment B).

The table below identifies the types of data that will be disclosed to the Authorized User under this Agreement.

FOR GMCB USE ONLY

File Type	Commercial Insurers	Medicaid	Medicare
Medical Eligibility	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Medical Claims	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Pharmacy Eligibility	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Not applicable
Pharmacy Claims	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Not applicable
Medical Eligibility- 5% Medicare National Sample	Not applicable	Not applicable	<input checked="" type="checkbox"/>
Medical Claims- 5% Medicare National Sample	Not applicable	Not applicable	<input checked="" type="checkbox"/>
<u>Medicare Part D Event</u> - VT Residents	Not applicable	Not applicable	<input checked="" type="checkbox"/>
<u>Medicare Part D Event</u> - 5% National Sample	Not applicable	Not applicable	<input checked="" type="checkbox"/>
Medicare <u>MEDPAR</u>	Not applicable	Not applicable	<input checked="" type="checkbox"/>

5. Responsibilities of the Principal Investigator

The Principal Investigator will act as the steward of the Data Set, including, but not limited to,

- A. ensuring that the GMCB has an IUA on file for each person that will be given access to the Data Set and that each such person understands and observes all the restrictions, limitations, and conditions specified in this Agreement;
- B. ensuring appropriate safeguards are implemented to protect the confidentiality of the Data Set and prevent its unauthorized use or disclosure;
- C. tracking and reporting to the GMCB on the uses and disclosures of the Data Set, including notifying the GMCB and, if appropriate, CMS, of any unauthorized uses or disclosures;

- D. seeking and obtaining the consent of the GMCB and, when applicable, DVHA, before disclosing the Data Set to a Sub-User or to any other entity not identified in the Application as the data user; and
- E. providing the GMCB with copies of any materials that contain data from the Data Set or information derived from the Data Set prior to its publication or release.

The Principal Investigator may delegate technical responsibility to other personnel within Authorized User's organization, as identified in Attachment A to this Agreement, for the implementation of appropriate safeguards to protect the confidentiality of the Data Set and to prevent its unauthorized disclosure or use.

6. Restrictions, Limitations, and Conditions of Use and Disclosure

The Authorized User, by and through the Principal Investigator, will ensure compliance with the following restrictions, limitations, and conditions:

- A. The Authorized User may not use, disclose, or otherwise grant access to the Data Set or any derivative data, including statistical tabulations derived from the data,
 - i. in a manner that is contrary to law; or
 - ii. for purposes other than those expressly specified in the Application and permitted by this Agreement, without the express written consent of the GMCB and, if applicable, DVHA, unless required by law.
- B. The Authorized User may not disclose the identity of enrollees, members, beneficiaries, patients, employer groups, purchaser groups, or abortion services providers from information contained in the Data Set and may not disclose any direct findings, listings, or other information from the Data Set that could be used to identify one or more of these individuals or groups.
- C. The Authorized User may not use the Data Set to identify or contact enrollees, members, beneficiaries, or patients, and must obtain the express written approval of the GMCB before attempting to link the Data Set in any manner with other data containing personally identifiable information that may enable the identification of one or more entities or individuals named in subsection B of this section.
- D. The Authorized User may not disclose, with or without direct physician identifiers, direct findings, listings, or information derived from Medicare data, if such findings, listings, or information can, by themselves or in combination with other data, be used to deduce a physician's total Medicare reimbursements.
- E. Prior to calculating aggregated values based on observations or elements, the Authorized User must censor any cell in a data table with a count of 10 or fewer along with another cell in the same row and another cell in the same column to prevent the identification of the cell with a count of 10 or fewer in a table.
- F. The Authorized User may not decrypt or attempt to decrypt any encrypted data for any purpose or disclose any information that has been encrypted or removed from the Data Set.
- G. The Authorized User may not produce, publish, disseminate, or make public any information that could be used to determine or ascertain information about insurers or providers that would be

deemed proprietary, such as the amount paid by identified insurers or to identified providers for individual procedure codes. This prohibition on public reporting is not applicable to reporting paid amounts at aggregate service levels, such as service bundles, episodes of care, and other types of service aggregations.

7. Disclosures Required by Law

The Authorized User may not disclose the Data Set on the basis that such disclosure is required by law without notifying the GMCB so that the GMCB and, if the Data Set includes Medicaid data, DVHA, have the opportunity to object to the disclosure and seek appropriate relief. If the GMCB or DVHA objects to the disclosure, the Authorized User shall refrain from disclosing the Data Set until the GMCB or DVHA have exhausted all alternatives for relief.

8. Safeguards

The Authorized User shall implement appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Data Set and prevent its unauthorized use or disclosure. Such safeguards must comply with HIPAA and, if the Data Set includes Medicare data, with section 7 of Attachment B.

9. Review of Publications

Unless a different time period is specified by the GMCB, the Authorized User must provide the GMCB a preview copy of any materials proposed to be published or otherwise disclosed at least fifteen (15) business days prior to publication or disclosure, if the materials contain data from the Data Set or information derived from the Data Set (this includes materials understood by the Authorized User to be consistent with the uses stated in the Application). The GMCB will review the proposed materials and determine whether they comply with all pertinent provisions of this Agreement. When multiple reports of a similar nature will be created from the Data Set, the GMCB may, on request, waive the requirement that any subsequent reports or publications be provided to the GMCB prior to release.

10. Reporting

While this DUA is in effect, the Authorized User must file periodic reports, at times specified by the GMCB, with updated information on

- A. the status of each individual data user for whom an IUA has been filed;
- B. proposed new users that will require access to the Data Set and who will be filing IUAs prior to gaining access to the Data Set; and
- C. details about data disposition and location, as required by the GMCB.

11. Attribution

The Authorized User must prominently state in written materials, publications, and presentations that the analyses, conclusions, and recommendations drawn from the Data Set are solely those of the Authorized User or the Principal Investigator and are not necessarily those of the GMCB.

12. Minimum Necessary

The Authorized User will limit, and will ensure that any Sub-User limits, access to the Data Set to the minimum number of individuals, data elements, and records necessary to achieve the purposes described in the Application or in a sub-agreement approved by GMCB under section 18 of this Agreement.

13. Notification of Unauthorized Access, Uses and Disclosures; Mitigation

- A. The Authorized User must immediately report to the GMCB whenever it (or any of its employees or Agents) becomes aware that the Data Set has been accessed, used, or disclosed in a way that is not permitted by state or federal law or that otherwise violates the terms of this Agreement. The Authorized User must require each Sub-User to immediately report to the Authorized User whenever it becomes aware that the Data Set has been accessed, used, or disclosed in a way that is not permitted by state or federal law or that otherwise violates the terms of this Agreement.
- B. In addition to the requirements of subsection A of this section, the Authorized User must report any release, disclosure, or publication of personally identifiable information (PII) from the Medicare data, including loss of these data or disclosure to any unauthorized persons, as a potential security or privacy breach to the GMCB and to the CMS Action Desk by telephone at (410) 786-2580 and by e-mail notification at cms_it_service_desk@cms.hhs.gov within one hour of the discovery of the breach by any individual data user, including the Principal Investigator and must cooperate fully in the federal security incident process.
- C. The Authorized User must mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of the Data Set. Mitigation may include providing notices to affected individuals. The Authorized User shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of the Data Set. If requested by the GMCB, the Authorized User shall make its mitigation and corrective action plans available to the GMCB. The Authorized User shall require each Sub-User to agree to these same terms and conditions.

14. Ownership

The Authorized User agrees that it has a license to use the Data Set pursuant to this Agreement only for the term established herein and does not obtain any right, title, or interest in the Data Set.

The Authorized User must acknowledge the GMCB as the owner and VHCURES as the source of the data in any public reports, publications, presentations, or other materials generated from the Data Set.

15. Reliance on Representations

The Authorized User represents that it is authorized to bind all individuals who may have access to the Data Set to the terms of this Agreement.

The Authorized User represents that the facts and statements made in the Application are complete and accurate and represent the total uses to which the Data Set will be put. The Authorized User further represents that the Data Set is the minimum amount of data necessary to achieve the purposes described in the Application.

The disclosure of the Data Set to the Authorized User is being made in reliance upon the accuracy of all representations made by the Authorized User, including the representations made by the Authorized User in the Application.

16. Termination of Individual Users' Access; Certificates of Destruction

The Authorized User must notify the GMCB at least fifteen (15) days prior to the date an individual user will no longer need access to the Data Set and follow procedures to ensure that the individual user's access has been terminated by this date.

The Authorized User must file certificates of data destruction with the GMCB for terminated users with data or data tables that were generated using the Data Set and were stored in distributed data systems external to the Authorized User.

17. Disclaimer of Warranties

The GMCB makes no warranty concerning the accuracy of the Data Set or its fitness for any particular purpose.

18. Sub-Agreements

The Authorized User may not assign any of its rights or obligations under this Agreement or disclose the Data Set to a Sub-User without the prior written approval of GMCB, and where applicable, DVHA. The Authorized User must notify the GMCB at least thirty (30) days prior to disclosing the Data Set to a Sub-User and must provide the GMCB with the following information:

- A. an electronic copy of the agreement between the Authorized User and the Sub-User;
- B. an IUA for each proposed individual data user; and
- C. any other information requested by the GMCB.

The Authorized User must ensure that any Sub-User to whom the Authorized User or Principal Investigator provides the Data Set is bound by a written agreement to the same restrictions and conditions that apply to the Authorized User and Principal Investigator under this Agreement. The written agreement must identify the GMCB and, if applicable, DVHA, as direct and intended third-party beneficiaries with the right to enforce any breach of the agreement upon request.

The Authorized User shall be responsible and liable for any use, publication, or other disclosure or release of the Data Set by any of its Sub-Users.

19. Insurance

Before receiving the Data Set, the Authorized User must provide certificates of insurance to show that the following minimum coverages are in effect: IT Professional Liability or Technology Professional Liability insurance with minimum third-party coverage of \$1,000,000.00 per claim, \$2,000,000.00 aggregate; and first party Breach Notification Coverage of not less than \$2,000,000.00. With respect to the first party Breach Notification Coverage, the Authorized User shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

20. Defense and Indemnity

The Authorized User shall defend the State and its officers and employees against all third-party claims or suits arising in whole or in part from any act or omission of the Authorized User or of any Agent or Sub-User in connection with their receipt, use, disclosure, or other involvement with the Data Set. The State shall notify the Authorized User in the event of any such claim or suit, and the Authorized User shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The

State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Authorized User may request recoupment of specific defense costs and may file suit requesting recoupment in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Authorized User shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Authorized User or of the Authorized User's Agent or Sub-User in connection with their receipt, use, disclosure, or other involvement with the Data Set.

The Authorized User shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Authorized User or of an Agent or Sub-User in connection with their receipt, use, disclosure, or other involvement with the Data Set.

The Authorized User agrees that in no event shall the State be obligated to defend or indemnify the Authorized User or any third party, or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Authorized User or third party.

21. Antitrust Violations

The Authorized User agrees to not bring suit for alleged antitrust violations on the basis of this DUA.

22. Sovereign Immunity

The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

23. Bankruptcy

The Authorized User agrees that, upon the filing of any petition in bankruptcy by the Authorized User or the initiation of any bankruptcy proceedings against the Authorized User or reorganization proceedings affecting the Authorized User or the claims of creditors of the Authorized User that the GMCB determines might affect the data, the data in whatever form shall automatically revert to GMCB free of all liens and encumbrances. To the extent allowed by federal law, the Authorized User hereby waives all rights to interpose any objections to the reversion or to aid or support the claims of any third party that are adverse to the rights of the GMCB under this provision.

24. Term; Survival

This Agreement shall expire at 11:59 p.m. on [REDACTED] ("Expiration Date"), unless, prior to the Expiration Date, the GMCB approves an extension or the Agreement is terminated. The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the Agreement's expiration or termination.

If the Authorized User is a Vermont agency, the Expiration Date will be two (2) years from the date the Agreement is executed. A Vermont agency must reapply at least sixty (60) days prior to the Expiration Date to ensure continuous access to data. Failure to submit new DUA applications to the GMCB in a timely and complete manner may result in gaps in access to data while the application is under review.

Authorized Users that are not Vermont agencies shall notify the GMCB at least sixty (60) days prior to the Expiration Date and request an extension. The Authorized User shall file any information required by GMCB pertaining to a request for an extension in a timely and complete manner. The term of any extension is wholly at the discretion of GMCB, which may also deny the request and require the Authorized User to file an application for a new DUA. A DUA may not be extended more than once.

25. Enforcement; Penalties

In the event the GMCB's data use agreement with CMS or DVHA is not renewed or is terminated, or in the event the Authorized User, the Principal Investigator, a Sub-User, or an individual data user fails to adhere to the terms of this Agreement, the GMCB and, when applicable, DVHA and/or CMS, may take any or all of the following actions: (i) terminate the Agreement and recall the data or require that the data be destroyed; (ii) revoke the permission of an individual or entity to use the data; (iii) require corrective actions; and (iv) pursue civil and criminal sanctions under applicable state and federal laws and regulations.

The following are examples of civil and criminal sanctions that may apply, depending on the types of data included in the Data Set:

- A. 18 V.S.A. § 9410, providing for the assessment of administrative penalties of up to \$1,000 per violation for knowing violations of the statute; up to \$10,000 per violation for willful violations of the statute; and up to \$50,000 per violation for knowing failures to comply with the confidentiality requirements of the statute or confidentiality rules adopted pursuant to the statute through use, sale, or transfer of the data or information for commercial advantage, pecuniary gain, personal gain, or malicious harm.
- B. 33 V.S.A. § 1902a, providing for assessment of an administrative penalty of up to \$1,000 for a first violation and up to \$2,000 for any subsequent violation.
- C. Those described in section 14 of Attachment B.

26. Location of Data Set

The Data Set may not be transmitted, stored, or transferred by any means outside the continental United States without the express written permission of the GMCB and, if applicable, DVHA.

27. Destruction of the Data Set; Certificates of Destruction

The Authorized User must ensure that the Data Set is deleted, destroyed, or otherwise rendered unreadable, as directed by the GMCB, within thirty (30) days of the Expiration Date or the termination of this Agreement, or by the date the Data Set is no longer needed for the purposes described in the Application, whichever comes first. The Principal Investigator shall certify that the Data Set has been deleted, destroyed, or otherwise rendered unreadable by submitting a written certificate of destruction to the GMCB, and when applicable, DVHA.

28. Amendment

This Agreement may only be modified or amended in writing upon mutual agreement of both parties. The Authorized User shall cooperate with GMCB to amend this Agreement from time to time to the extent necessary for the GMCB to comply with changes to 18 V.S.A. § 9410, HIPAA, or other legal requirements

that may apply to the Data Set.

29. Interpretation

Any ambiguity, conflict, or inconsistency in the Agreement shall be resolved to require compliance with 18 V.S.A. § 9410, HIPAA, and other requirements that may apply to the Data Set, including the GMCB's data use agreements with CMS and DVHA.

30. Governing Law, Jurisdiction, and Venue

This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Authorized User irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement.

31. Counterparts; Execution

This Agreement may be executed in counterparts and the exchange of signature pages to this Agreement (in counterparts or otherwise) by facsimile transmission or other electronic transmission (including in the form of a .PDF file) shall be sufficient to bind the parties to the terms and conditions of this Agreement.

Data Use Agreement for Release of Non-Public Data Elements from The Vermont Uniform Hospital Discharge Data Set (VUHDDS)

1. Parties

This agreement is made and entered into by and between the GMCB and [REDACTED] (“Contractor”) as of [REDACTED]. The Agreement supplements and is made part of the contract to which it is attached.

2. Definitions

For purposes of this Agreement,

- A. “Agent” means those persons who are agents of the Authorized User, in accordance with the federal common law of agency.
- B. “Agreement” means this data use agreement detailing the Authorized User’s commitment to data privacy and security and setting forth restrictions, limitations, and conditions on the use and disclosure of the Data Set.
- C. “Application” means the Authorized User’s Application for Access to VUHDDS.
- D. “Authorized User” means the individual or entity being given access by GMCB to VUHDDS pursuant to this Agreement.
- E. “Data Set” means the Vermont Uniform Hospital Discharge Data Set being released to the Authorized User, and all data therein.
- F. “Disclose” means to release, transfer, provide access to, or divulge in any manner information outside of the entity holding the information.
- G. “GMCB” means the Green Mountain Care Board established in Title 18, chapter 220 of the Vermont Statutes Annotated.
- H. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, including the Standards for the Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164 (“Privacy Rule”) and the Security Standards at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by subtitle D of the Health Information Technology for Economic and Clinical Health Act.
- I. “IUA” means an Individual User Affidavit, a form maintained by the Principal Investigator.
- J. “Principal Investigator” means the individual designated by the Authorized User to be responsible for ensuring compliance with the requirements in this Agreement. The Authorized User may also be the Principal Investigator.
- K. “Research” means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.
- L. “State” means the State of Vermont, including the GMCB.
- M. “Sub-User” means any person or entity (e.g., contractor, subcontractor, grantee, or subgrantee) that is given access to the Data Set by the Authorized User, other than as a member of the Authorized User’s workforce.

N. “VUHDDS” means the Vermont Uniform Hospital Discharge Data Set.

3. Authority and Purpose

Pursuant to 18 V.S.A. §§ 9410, 9456, and 9457, the GMCB administers hospital discharge data within VUHDDS. The Vermont Department of Health (VDH) manages the data set by agreement with the GMCB. VUHDDS also includes hospital discharge data for Vermont residents using hospitals in bordering states, including New Hampshire, New York, and Massachusetts that the GMCB receives under interstate agreements with agencies outside of Vermont. VUHDDS is used by the VDH and the GMCB for utilization analyses in the annually-published Vermont Hospitals Report.

To the extent allowed by HIPAA and 18 V.S.A. § 9457, the GMCB seeks to make some of this data available as a resource for individuals and entities to continuously review health care utilization, expenditures, and performance in Vermont. The purpose of this Agreement is to specify the conditions under which the GMCB will release VUHDDS data, and to ensure that the data is accessed, maintained, used, and disclosed in compliance with all applicable statutory, regulatory, and contractual requirements.

4. Data Referenced by this Agreement

Data within VUHDDS can be broadly categorized into three discharge file types: inpatient, outpatient procedures and treatments and emergency department. The GMCB has discretion to manage data for all three discharge file types, some of which may potentially be individually identifiable, either directly or indirectly.

The tables below identify the types of data that will be disclosed to the Authorized User under this Agreement.

Table 1: Files requested

Discharge File Type	Years Available	File Year(s) Requested
<input checked="" type="checkbox"/> Inpatient	1997-2018	All available years
<input checked="" type="checkbox"/> Outpatient Procedures and Treatments	1997-2018	All available years
<input checked="" type="checkbox"/> Expanded Outpatient Procedures and Treatments	2006-2018	All available years
<input checked="" type="checkbox"/> Emergency Department	2003-2018	All available years

5. Responsibilities of the Principal Investigator

The Principal Investigator will act as the steward of the Data Set, including, but not limited to,

- A. ensuring that the GMCB has an IUA on file for each person that will be given access to the Data Set and that each such person understands and observes all the restrictions, limitations, and conditions specified in this Agreement;
- B. ensuring appropriate safeguards are implemented to protect the confidentiality of the Data Set and prevent its unauthorized use or disclosure;
- C. tracking and reporting to the GMCB on the uses and disclosures of the Data Set, including notifying the GMCB of any unauthorized uses or disclosures;
- D. seeking and obtaining the consent of the GMCB before disclosing the Data Set to any person or entity not identified in the Application as a data user; and
- E. providing the GMCB with copies of any materials that contain VUHDDS data from or information derived from the Data Set prior to publication or release.

The Principal Investigator may delegate technical responsibility to other personnel within Authorized User's organization, as identified in Attachment A to this Agreement, for the implementation of appropriate safeguards to protect the confidentiality of the Data Set and to prevent its unauthorized disclosure or use.

6. Restrictions, Limitations, and Conditions of Use and Disclosure

The Authorized User, by and through the Principal Investigator, will ensure compliance with the following restrictions, limitations, and conditions:

- A. The Authorized User may not use, disclose, or otherwise grant access to the Data Set or any derivative data, including statistical tabulations derived from the data,
 - i. in a manner that is contrary to law; or
 - ii. for purposes other than those expressly specified in the Application and permitted by this Agreement, without the express written consent of the GMCB unless required by law.
- B. The Authorized User may not disclose:
 - i. personally identifiable information or the identity of abortion services providers from information contained in the Data Set and may not disclose any direct findings, listings, or other information from the Data Set that could be used to identify individual patients or abortion services providers.
- C. The Authorized User may not use the Data Set to identify individual patients and may not link the Data Set in any manner with other data containing personally identifiable information that may enable identification of individual patients.
- D. Prior to calculating aggregated values based on observations or elements, the Authorized User must censor any cell in a data table with a count of 6 or fewer along with another cell in the same row and another cell in the same column to prevent the identification of the cell with a count of 6 or fewer in a table.
- E. The Authorized User may not decrypt or attempt to decrypt any encrypted data for any purpose or disclose any information that has been encrypted or removed from the Data Set.

- F. The Authorized User may not produce, publish, disseminate, or make public any information that could be used to determine or ascertain information about insurers or providers that would be deemed proprietary, such as the amount paid by identified insurers or to identified providers for individual procedure codes. This prohibition on public reporting is not applicable to reporting billed or paid amounts at aggregate service levels, such as service bundles, episodes of care, and other types of service aggregations.

7. Disclosures Required by Law

The Authorized User may not disclose the Data Set on the basis that such disclosure is required by law without notifying the GMCB so that the GMCB has the opportunity to object to the disclosure and seek appropriate relief. If the GMCB objects to the disclosure, the Authorized User shall refrain from disclosing the Data Set until the GMCB has exhausted all alternatives for relief.

8. Safeguards

The Authorized User shall implement appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Data Set and prevent its unauthorized use or disclosure. Such safeguards must comply with HIPAA.

9. Review of Publications

Unless a different time period is specified by the GMCB, the Authorized User must provide the GMCB a review copy of any materials proposed to be published or otherwise disclosed at least fifteen (15) business days prior to publication or disclosure, if the materials contain data from the Data Set or information derived from the Data Set (this includes materials understood by the Authorized User to be consistent with the uses stated in the Application). The GMCB may review the proposed materials and determine whether they comply with all pertinent provisions of this Agreement. When multiple reports of a similar nature will be created from the Data Set, the GMCB may, on request, waive the requirement that any subsequent reports or publications be provided to the GMCB prior to release.

10. Reporting

While this DUA is in effect, the Authorized User must file periodic reports, at times specified by the GMCB, with updated information on:

- A. the status of each individual data user for whom an IUA has been filed;
- B. proposed new users that will require access to the Data Set and who will be filing IUAs prior to gaining access to the Data Set; and
- C. details about data disposition and location, as required by the GMCB.

11. Attribution

The Authorized User must prominently state in written materials, publications, and presentations that the analyses, conclusions, and recommendations drawn from VUHDDS are solely those of the Authorized User or the Principal Investigator and are not necessarily those of the GMCB.

12. Minimum Necessary

The Authorized User will limit, and will ensure that any Sub-User limits, Data Set access to the fewest individuals, data elements, and records necessary to achieve the purposes described in the Application or in a sub-agreement approved by GMCB under section 18 of this Agreement.

13. Notification of Unauthorized Access Uses and Disclosures; Mitigation

- A. The Authorized User must immediately report to the GMCB whenever it (or any of its employees or Agents) becomes aware that the Data Set has been accessed, used, or disclosed in a way that is not permitted by state or federal law or that otherwise violates the terms of this Agreement. The Authorized User must require each Sub-User to immediately report to the Authorized User whenever it becomes aware that the Data Set has been accessed, used, or disclosed in a way that is not permitted by state or federal law or that otherwise violates the terms of this Agreement.
- B. The Authorized User must mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of the Data Set. Mitigation may include providing notices to affected individuals. The Authorized User shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of the Data Set. If requested by the GMCB, the Authorized User shall make its mitigation and corrective action plans available to the GMCB. The Authorized User shall require each Sub-User to agree to these same terms and conditions.

14. Ownership

The Authorized User agrees that it has a license to use VUHDDS pursuant to this Agreement only for the term established herein and does not obtain any right, title, or interest in the Data Set.

The Authorized User must acknowledge GMCB as the data steward and VUHDDS as the source of the data in any public reports, publications, presentations, or other materials generated from the Data Set.

15. Reliance on Representations

The Authorized User represents that it is authorized to bind all individuals who may have access to the Data Set to the terms of this Agreement.

The Authorized User represents that the facts and statements made in the Application are complete and accurate and represent the total uses to which the Data Set will be put. The Authorized User further represents that the Data Set is the minimum amount of data necessary to achieve the purposes described in the Application.

The disclosure of the Data Set to the Authorized User is being made in reliance upon the accuracy of all representations made by the Authorized User, including the representations made by the Authorized User in the Application.

16. Termination of Individual Users' Access; Certificates of Destruction

The Authorized User must notify the GMCB at least fifteen (15) days prior to the date an individual user will no longer need access to the Data Set and follow procedures to ensure that the individual user's access has been terminated by this date.

The Authorized User must file certificates of data destruction with the GMCB for terminated users with data or data tables that were generated using the Data Set and were stored in distributed data systems external to the Authorized User.

17. Disclaimer of Warranties

The GMCB makes no warranty concerning the accuracy of the Data Set or its fitness for any particular purpose.

18. Sub-Agreements

The Authorized User may not assign any of its rights or obligations under this Agreement or disclose the Data Set to a Sub-User without the prior written approval of GMCG. The Authorized User must notify the GMCB at least thirty (30) days prior to disclosing the Data Set to a Sub-User and must provide the GMCB with the following information:

- A. an electronic copy of the agreement between the Authorized User and the Sub-User;
- B. an IUA for each proposed individual data user; and
- C. any other information requested by the GMCB.

The Authorized User must ensure that any Sub-User to whom the Authorized User or Principal Investigator provides the Data Set is bound by a written agreement to the same restrictions and conditions that apply to the Authorized User and Principal Investigator under this Agreement. The written agreement must identify the GMCB as direct and intended third-party beneficiaries with the right to enforce any breach of the agreement upon request.

The Authorized User shall be responsible and liable for any use, publication, or other disclosure or release of the Data Set by any of its Sub-Users.

19. Insurance

Before receiving the Data Set, the Authorized User must provide certificates of insurance to show that the following minimum coverages are in effect: IT Professional Liability or Technology Professional Liability insurance with minimum third-party coverage of \$1,000,000.00 per claim, \$2,000,000.00 aggregate; and first party Breach Notification Coverage of not less than \$2,000,000.00. With respect to the first party Breach Notification Coverage, the Authorized User shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

20. Defense and Indemnity

The Authorized User shall defend the State and its officers and employees against all third-party claims or suits arising in whole or in part from any act or omission of the Authorized User or of any Agent or Sub-User in connection with their receipt, use, disclosure, or other involvement with the Data Set. The State shall notify the Authorized User in the event of any such claim or suit, and the Authorized User shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Authorized User may request recoupment of specific defense costs and may file suit requesting recoupment in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Authorized User shall be entitled to recoup costs only upon a showing that such costs

were entirely unrelated to the defense of any claim arising from an act or omission of the Authorized User or of the Authorized User's Agent or Sub-User in connection with their receipt, use, disclosure, or other involvement with the Data Set.

The Authorized User shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Authorized User or of an Agent or Sub-User in connection with their receipt, use, disclosure, or other involvement with the Data Set.

The Authorized User agrees that in no event shall the State be obligated to defend or indemnify the Authorized User or any third party, or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Authorized User or third party.

21. Antitrust Violations

The Authorized User agrees to not bring suit for alleged antitrust violations on the basis of this DUA.

22. Sovereign Immunity

The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

23. Bankruptcy

The Authorized User agrees that, upon the filing of any petition in bankruptcy by the Authorized User or the initiation of any bankruptcy proceedings against the Authorized User or reorganization proceedings affecting the Authorized User or the claims of creditors of the Authorized User that the GMCB determines might affect the data, the data in whatever form shall automatically revert to GMCB free of all liens and encumbrances. To the extent allowed by federal law, the Authorized User hereby waives all rights to interpose any objections to the reversion or to aid or support the claims of any third party that are adverse to the rights of the GMCB under this provision.

24. Payment

Unless the Authorized User is a Vermont State Agency, the Authorized User shall pay VDH the cost associated with processing the approved data release under this agreement.

25. Term; Survival

This Agreement shall expire at 11:59 p.m. on [REDACTED] ("Expiration Date"), unless, prior to the Expiration Date, the GMCB approves an extension or the Agreement is terminated. The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the Agreement's expiration or termination.

If the Authorized User is a Vermont agency, the Expiration Date will be two (2) years from the date the Agreement is executed. A Vermont agency must reapply at least sixty (60) days prior to the Expiration Date to ensure continuous access to data. Failure to submit new DUA applications to the GMCB in a timely and complete manner may result in gaps in access to data while the application is under review.

Authorized Users that are not Vermont agencies shall notify the GMCB at least sixty (60) days prior to the Expiration Date and request an extension. The Authorized User shall file any information required by GMCB pertaining to a request for an extension in a timely and complete manner. The term of any extension is wholly at the discretion of GMCB, which may also deny the request and require the Authorized User to file an application for a new DUA. A DUA may not be extended more than once.

26. Enforcement; Penalties

The following are examples of civil and criminal sanctions that may apply, depending on the types of data included in the Data Set:

- D. 18 V.S.A. § 9410, providing for the assessment of administrative penalties of up to \$1,000 per violation for knowing violations of the statute; up to \$10,000 per violation for willful violations of the statute; and up to \$50,000 per violation for knowing failures to comply with the confidentiality requirements of the statute or confidentiality rules adopted pursuant to the statute through use, sale, or transfer of the data or information for commercial advantage, pecuniary gain, personal gain, or malicious harm.
- E. 33 V.S.A. § 1902a, providing for assessment of an administrative penalty of up to \$1,000 for a first violation and up to \$2,000 for any subsequent violation.

27. Location of Data Set

The Data Set may not be transmitted, stored, or transferred by any means outside the continental United States without the express written permission of the GMCB.

28. Destruction of the Data Set; Certificates of Destruction

The Authorized User must ensure that the Data Set is deleted, destroyed, or otherwise rendered unreadable, as directed by the GMCB, within thirty (30) days of the Expiration Date or the termination of this Agreement, or by the date the Data Set is no longer needed for the purposes described in the Application, whichever comes first. The Principal Investigator shall certify that the Data Set has been deleted, destroyed, or otherwise rendered unreadable by submitting a written certificate of destruction to the GMCB.

29. Amendment

This Agreement may only be modified or amended in writing upon mutual agreement of both parties. The Authorized User shall cooperate with GMCB to amend this Agreement from time to time to the extent necessary for the GMCB to comply with changes to 18 V.S.A. § 9410, HIPAA, or other legal requirements that may apply to the Data Set.

30. Interpretation

Any ambiguity, conflict, or inconsistency in the Agreement shall be resolved to require compliance with 18 V.S.A. § 9410, HIPAA, and other requirements that may apply to VUHDDS.

31. Governing Law, Jurisdiction, and Venue

This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought in connection with this Agreement shall be brought and enforced in the Superior Court of the State of

Vermont, Civil Division, Washington Unit. The Authorized User irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement.

32. Counterparts; Execution

This Agreement may be executed in counterparts and the exchange of signature pages to this Agreement (in counterparts or otherwise) by facsimile transmission or other electronic transmission (including in the form of a .PDF file) shall be sufficient to bind the parties to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective upon the Effective Date set forth above. Each person signing this agreement hereby represents that he or she is authorized by the organization on whose behalf he or she is signing to enter into the Agreement.

**Attachment F: Delivery Expectation & Delivery Acceptance Documents
Deliverable Expectation Document (DED) Template**

DELIVERABLE INFORMATION			
Client:			
Project:			
Initiated by:			
Date Initiated:			
Date Response Requested by:			
Deliverable Name:			
Deliverable Description:			
Deliverable Due Date:			
Acceptance Criteria:			
File Name and Location			
Deliverable	<input type="checkbox"/> Accepted <input type="checkbox"/> Accepted; Pending Open Item Resolution <input type="checkbox"/> Rejected		
Acceptance of the deliverable is conditional upon the completion of the following open items by the date indicated under resolution date.			
OPEN ITEMS	RESOLUTION DATE		
The above deliverable has been reviewed by the State and, subject to the open items noted above, meets the objectives expressed by the State and (VENDOR NAME), as well as passes the acceptance criteria agreed by the State and (VENDOR NAME) for this deliverable.			
APPROVALS			
Printed Name	Title	Signature	Date

Deliverable Acceptance Form (DAF) Template

DELIVERABLE ACCEPTANCE CERTIFICATE				
Client Name:				
Project Name:				
Submitted for:	<input type="checkbox"/> Partial Completion <input type="checkbox"/> Full Completion <input type="checkbox"/> OTHER			
TO BE COMPLETED BY SUBMITTER				
Date Submitted:	/	/	Submitted by:	
Date Requested for Response:	/	/		
Submitter's email:			Submitter's Phone #	- -
Describe Milestones Achieved and Basis for Acceptance				
Defined Success Criteria:				
Signature			Title	
TO BE COMPLETED BY CLIENT				
Date Returned:	/	/		
Returned by:				
Reviewers email:	@ .		Reviewer's Phone	- -
Action Taken:	<input type="checkbox"/> Accept <input type="checkbox"/> Reject <input type="checkbox"/> OTHER:			
If rejected, please indicate reason:	<input type="checkbox"/> Supporting documents are incomplete <input type="checkbox"/> Project Management Team disagrees with information provided <input type="checkbox"/> More information is needed (see below) <input type="checkbox"/> Other (see below)			
If rejected, other comments	Submitter will address the reason(s) for this rejection and resubmit this form within _____ business days.			
Other Comments, if any:				
Documents attached if any:				
Other:				
Authorized Signature			Title:	
Authorized Signature			Title:	
DELIVERABLE ACCEPTANCE CERTIFICATE				

This is to certify Client's final approval of the above-described Milestone. Client has conducted all inspections, analysis, and testing necessary for it to make this final determination of acceptance. This Milestone has been completed in accord with all contractual requirements relating to the Milestone. As a result of this final acceptance of the Milestone, Client authorizes (VENDOR NAME) to issue an invoice for the dollar amount of this certificate as set forth above, which amount shall be paid by the State in accordance with the payment terms of the above-referenced Contract between the parties. The individual signing this Certificate of Final Acceptance on behalf of Client does so with full authority to bind Client.