



**Green Mountain Care Board**  
144 State Street  
Montpelier, VT 05633-3601  
802-828-2177

# SEALED BID REQUEST FOR PROPOSAL

## DATA ANALYSIS AND COMMUNITY AND PROVIDER ENGAGEMENT TO SUPPORT HOSPITAL TRANSFORMATION

### Timeline Estimate Subject to Change

<b>ISSUE DATE</b>	<b>Wednesday, October 19, 2022</b>
<b>QUESTIONS DUE</b>	<b>Wednesday, October 26, 2022 – 4:30 PM (EST)</b>
<b>BIDDERS CONFERENCE</b>	<b>Monday, October 31, 2022, 2:00 PM (EST) via Microsoft Teams</b> <a href="#">Click here to join the meeting</a> Or call in (audio only) <a href="tel:+18028287667">+1 802-828-7667</a> , <a href="tel:+18028287667">109815508#</a>
<b>WRITTEN RESONSES TO QUESTIONS</b>	<b>Thursday, November 3, 2022</b>
<b>RFP RESPONSES DUE BY</b>	<b>Thursday, November 17, 2022 – 4:30 PM (EST)</b>
<b>ESTIMATED SELECTION NOTIFICATION</b>	<b>Thursday, December 8, 2022</b>

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

<https://gmcboard.vermont.gov/publication/rfps-contracts-grants/rfp>

**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.**

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## 1. OVERVIEW:

- 1.1. **SCOPE AND BACKGROUND:** Through this Request for Proposal (RFP) the Green Mountain Care Board (hereinafter the “State”) in close collaboration with the Agency of Human Services (AHS), is seeking a vendor or vendor with subcontractor(s) to contract with GMCB to conduct system-wide data analysis and focused participatory engagement processes, culminating in technical assistance for a cohort of Vermont hospitals to support localized transformation planning, with the goals of improving the health care delivery system and promoting the sustainability of Vermont’s hospital system, as enacted in Act 167 (2022). The engagement process will provide opportunities for meaningful participation by health care professionals and health care providers, hospital boards of directors, other health and human services organizations, employers, payers, Vermonters who have direct experience with all aspects of Vermont’s health care system, and Vermonters who are diverse with respect to race, income, sexual orientation and gender identity, age, disability status, and mental health and substance use treatment and services needs. Informed by this information, the State and contractor will engage with a cohort of interested hospitals to analyze organization-specific data and develop localized transformation plans. These processes should support Vermont hospitals in improving efficiency, lowering costs, improving population health outcomes, reducing health inequities, and increasing access to essential services while maintaining sufficient capacity for emergency management.

The Green Mountain Care Board is charged by Vermont statute with regulating the budgets of Vermont’s 14 community hospitals; GMCB also regulates health insurers in the individual, small group, and large group markets, oversees Vermont accountable care organizations, and reviews and approves requests for hospital and other health care organization capital expenditures. In addition, the GMCB is tasked with overseeing aspects of Vermont’s health care reform initiatives, and has statutory authority to launch payment reform pilots and set new health care payment models (see 18 V.S.A. § 9375). The GMCB’s mission is to drive system-wide improvements in access, affordability, and quality of health care to improve the health of Vermonters. For more information, see GMCB website or GMCB Overview. The Agency of Human Services holds the Office of Health Care Reform which leads the State’s policy direction and innovation in Health Care Reform and promotes payment and care delivery reform through value-based payment arrangements within its Medicaid programs and through the Agency’s Blueprint for Health. For more information, see AHS website.

The State of Vermont has significant concerns regarding Vermont hospitals’ financial health – and the balance between hospital financial health, health care quality, and consumer access and affordability – issues which were exacerbated by the pandemic. Over the past three years, suppressed revenue, increased acuity, and pandemic-related capacity and workforce challenges have left Vermont’s health care system in a highly vulnerable state. Vermont is in a critical space in which it must take steps to both shore up the immediate stability needs of its provider network and identify a path to long-term sustainability.

In its role as a regulator of Vermont hospitals, the GMCB has been working to engage hospitals and other health care system partners on the issue of long-term hospital sustainability since 2019, following multiple years of declining system-wide margins and other signs of financial vulnerability across Vermont’s hospitals. In the Spring of 2020, the Legislature passed Act 159, which required GMCB to deliver a report on “ways to increase the financial sustainability of Vermont hospitals in order to achieve population-based health improvements while maintaining community access to services.” Key findings from this report (Hospital Sustainability Report, Act 159 of 2020, Section 4) indicate that Vermont hospitals’ financial health is expected to continue to decline, making health care even less affordable, eroding quality of care over time, and threatening Vermonters’ continued access to care in their communities. The report concludes that Vermont must take action to address hospitals’ financial sustainability while also ensuring Vermonters’ access to high quality, affordable care, and points to accelerated payment and delivery system transformation as the path forward.

In continuation of Vermont’s hospital stabilization goals, this procurement seeks support to further the process described in Act 167 (2022), which is detailed below in the scope of work, with the goals of hospital sustainability as described in Act 167: reducing inefficiencies, lowering costs, improving population health outcomes, reducing health inequities, and increasing access to essential services while maintaining sufficient capacity for emergency management. The State’s goal is to encourage delivery system reform by working with hospitals and communities in a collaborative manner. This work

will be supported by multi-payer payment reform and regulatory changes in the current GMCB hospital budget review process reflecting the shift from fee-for-service to value-based payments in the context of the larger scale economic and demographic changes faced by Vermont's health care system. This will require coordination with other State of Vermont contractors working on payment reform, payment model development, regulatory redesign, and Vermont's All-Payer Model Agreement with the federal government.

- 1.2. **CONTRACT PERIOD:** Contracts arising from this RFP will be for a period of two 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 March 15, 2023.
- 1.3. **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.
- 1.4. **BIDDERS' CONFERENCE:** A non-mandatory bidders' conference will be held remotely at the date and time indicated on the front page of this RFP.
  - 1.4.1. If there is a remote bidders' conference, and call-in information is not provided on the front page of the RFP, all potential bidders may send an e-mail to the State Contact with Bidder's firm and contact info and shall then be provided call-in details.
- 1.5. **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 <https://gmcboard.vermont.gov/publication/rfps-contracts-grants/rfp>. 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.
- 1.6. **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 <https://gmcboard.vermont.gov/publication/rfps-contracts-grants/rfp>. Modifications from any other source are not to be considered.

## 2. DETAILED REQUIREMENTS/DESIRED OUTCOMES:

The successful bidder shall conduct a data-informed, patient-focused, community-inclusive sustainability engagement process for Vermont's hospitals, employers, and patients; provide data, information, and analysis to the State's decision-making and the Task 3 hospital technical assistance/localized transformation planning process; and, work intensively with a cohort of hospitals to develop Localized Transformation Plans. All three scopes of work will be undertaken with the Green Mountain Care Board and the Agency of Human Services.

A prime contracting relationship covering all tasks and subtasks is required for this contract. RFP responses should describe the bidder's prior experience and provide examples or descriptions of the bidder's approach to these tasks. Bidders may include subcontractors for all or part of the work described. In addition to the bid narrative, please complete attachments 6.1 (Certificate of Compliance) and 6.2 (Price Schedule).

Proposals should include a clearly delineated strategy that is data- and evidence-based, outlining timeline, proposed approach, necessary resources and partnerships, and proposed staffing.

The State reserves the right to narrow the scope of the contract resulting from this RFP if sufficient funds for all tasks are not available. In the response to Attachment 6.2, price schedule, bidders should provide an estimated price for each deliverable.

The successful bidder shall participate in regular and ad hoc meetings to discuss progress with State staff and State-identified key partners, provide written draft products for State review and feedback, and incorporate State feedback into final written products to the satisfaction of the State prior to payment. If requested, the successful bidder will participate in State meetings as attendees, presenters, or facilitators. The State reserves the right to award a successful bidder work on one or more tasks described in the major areas of potential work described below.

The successful bidder and any subcontractor(s) will also be trusted entities for hospitals and health care providers and have knowledge of change management, delivery system transformation, and/or health care cost and quality. Successful bids will include staff or subcontractors with direct clinical experience or executive leadership in a health care organization.

## **SCOPE OF WORK**

The State is seeking contract support for the following components:

### **TASK 1: Health System Data Analytics and Resource Estimate**

Act 167 requires GMCB to provide data, information, and analysis.

#### ***Task 1a: Health System Data Analytics (Months 1-6)***

The successful bidder will provide the State with data and information in a format agreed to by the State that describes:

- Current and projected states of the health care delivery system in each hospital service area (HSA), region, or group of HSAs, which may include assessments of population-based rates of service use, service availability, efficiency, cost, quality, equity, consumer affordability, access, and emergency management capacity, as well as analyses on how to improve in these dimensions. The analysis should consider current and projected demographic changes in each area.
- Readiness for and challenges to implementing value-based payments and delivery system reform in each HSA, region, or group of HSAs (e.g., workforce, data systems, financial health, quality performance).
- Effects of the use of hospitals in neighboring states by Vermonters on service availability, cost, and the financial solvency of Vermont hospitals.
- Options for hospital or health system redesign (e.g., service line changes, proposed centers of excellence, shared services between hospitals, consideration of new hospital designations) and their expected impact on cost, quality, the health care workforce, and access in each HSA. This could include options for redesign that consider new or different roles for other providers along the continuum of care.
- Impacts of the availability and quality of nonhospital health and social service providers (e.g., primary care, mental health, substance use disorder, emergency medical services, skilled nursing and long-term care facilities, visiting nurses and home health, etc.) on providers of primary, secondary and tertiary care in Vermont and, specifically, the extent to which hospital efficiency and quality is impeded by the lack of such services.
- Potential impacts of hospital or health system changes on other nonhospital health and social service providers, including potential changes to necessary capacity, service types, and workforce impacts such as increases in the numbers and types of workers needed.
- Continuing impacts of the COVID-19 pandemic or other public health emergencies as relevant.
- Stakeholder recommendations on a sustainable, high-quality health system.

Data gathering shall take place in collaboration with GMCB, AHS, hospitals and other health care provider organizations, payers and employers, and other stakeholders as appropriate.

The successful bidder shall leverage GMCB's existing data and analyses ; existing data and analysis provided by AHS and its departments; and any data and analysis provided by hospitals, independent providers, payers and employers, or other sources where appropriate

The successful bidder will combine financial, clinical, epidemiologic, geographic, small area variation analysis, and systematic community-based qualitative research expertise and have robust experience supporting care delivery optimization. The successful bidder will demonstrate understanding of federal and state health care reimbursement methodologies, value-based care models, and delivery system transformation initiatives. Bid responses should indicate how the bidder would organize this work and should be responsive to Vermont's mix of academic medical centers, community hospitals, and rural critical access hospitals.

In addition to review by the State, the successful bidder will review findings and underlying data with hospital leadership and/or hospitals' boards as appropriate and requested by the State.

It is expected that this work informs the hospital technical assistance and localized transformation planning described in Task 3.

**Task 1b: Resource Estimate (as needed)**

Act 167 (2022) also requires that GMCB develop an estimate of the resources necessary for hospitals to undertake reforms identified through the analyses described in Task 1a or through the localized transformation planning process described in Task 3; and resources necessary for non-hospital providers to implement related reforms or changes identified through this process. The successful bidder will assist GMCB, AHS, and hospitals in this estimation. The successful bidder will propose the appropriate timing of this work and how best to coordinate it with the other deliverables.

**TASK 2: Broad Engagement In and Across all HSAs (Months 1-6, with follow-up as needed)**

The successful bidder will plan and lead a data-informed, patient-focused, community-inclusive engagement process to gather feedback from a wide array of stakeholders and Vermonters regarding their experiences with Vermont's health care system and recommendations for future transformation efforts.

This process will provide opportunities for meaningful participation by health care professionals and health care providers (including those providing primary care services) both hospital-employed and independent or community-based, hospital boards of directors, other health and human services organizations, employers, payers, Vermonters who have direct experience with all aspects of Vermont's health care system, and Vermonters who are diverse with respect to race, income, sexual orientation and gender identity, age, disability status, and mental health and substance use treatment and service needs. Vermont hospitals and their nonprofit boards should be a starting place for engagement in each HSA in order to communicate the intent of this work, receive initial feedback, and build support for engagement. Successful bidders on this task will propose and rely on collaborative and community-inclusive processes to inform insights (e.g., strategies used in participatory research). This may require targeted engagement of sub-populations; please cross-reference the required Equity Plan in responding to this requirement. The engagement process should not duplicate the Community Health Needs Assessment process in which Vermont hospitals engage every three years.

Goals for this process include:

- Learning from health and human services providers and community members regarding unmet needs, local priorities, and barriers to delivery system transformation, and access to care challenges for Vermonters.
- Assessing and supporting hospital preparedness for value-based payment models that hold providers accountable for cost and quality, as well as for changes in the delivery system.
- Structuring engagement in such a way that it avoids duplication or added burden, particularly for health and human services providers, incorporating existing resources and information where possible, and drawing on timely existing data.
- Building collaboration and engagement at the local level through community town halls and other related outreach events.

The successful bidder will design and facilitate a community and provider engagement process within and across all HSAs to gain a deeper understanding of unmet health care needs and better assess local health system strengths and weaknesses. Engagement strategies may include public community meetings; smaller stakeholder meetings; focus groups; or other engagement modalities; and should ensure that engagement opportunities reach a wide array of perspectives and views. This should include intentional engagement with populations whose voices may otherwise not be sufficiently heard, such as the LGBTQ, BIPOC, refugee, immigrant, and other communities. Note that aspects of Task 1 and Task 2 should occur simultaneously, and that perspectives gleaned through the engagement process may help inform the data analysis in Task 1.

The successful bidder will provide facilitation for the community and provider engagement process over a six-month period, with the potential for extension, if necessary. The successful bidder will have experience facilitating successful community and provider engagement processes with diverse populations, ideally with specific expertise in engaging rural communities and working with a multitude of provider types. Knowledge of and relationships with Vermont communities strongly preferred; responses should highlight past work in Vermont.

The successful bidder will support the State in developing materials to be used as part of this deliverable. Examples of materials could include PowerPoint slides, handouts, or website content. Materials should be accessible and understandable to members of the public. The successful bidder should suggest what types of materials are needed to support this collaborative.

### **TASK 3: Technical Assistance for Hospitals to Develop Localized Transformation Plans**

#### ***Task 3a: Localized Sustainability Analysis and Technical Assistance for a Cohort of Hospitals (Months 7-24)***

The successful bidder, in collaboration with the State, will support a subset of Vermont hospitals and hospital-identified partners with more intensive engagement and technical assistance. While participation for hospitals will be voluntary, we anticipate their interest in this technical assistance will be strong. The successful bidder will support these Vermont hospitals in developing Localized Transformation Plans to increase health care system sustainability and improve health outcomes in their service areas.

The successful bidder will develop a process by which hospitals can indicate their desire to participate in the cohort. The State's goal is to include approximately 4 hospitals, regions, or groups of hospitals in this cohort. If the State receives more interest than the budget for this work can accommodate, the bidder will make recommendations to the State for how to prioritize interested hospitals based on demonstrated commitment to develop and implement a localized transformation plan and an identified relative need to address sustainability. As much as possible, the voluntary cohort of hospitals, regions, or groups of hospitals shall be diverse (e.g., with respect to size, designation, rurality); the State shall have final approval of the cohort selected. The cohort should be finalized within 6 months of contract execution.

#### *Engagement with Cohort using a Collaborative Research Model*

The successful bidder will examine cohort hospitals' lines of business within the context of local needs, the hospital's patient population, and patient migration patterns. Existing data and plans should be incorporated, including local Community Health Needs Assessment(s), information collected under this contract through deliverables in Task 1 and Task 2, and past GMCB and AHS reports. Using a participatory research method or other collaborative research model, the successful bidder will work with hospitals to conduct an in-depth analysis of their care delivery system, service lines in comparison to other nearby facilities, revenue forecasts, and expenditures.

The successful bidder will develop a workplan that reflects an active partnership between participating hospitals, the contractor, and the State of Vermont, utilizing the principles of participatory research or another collaborative research method for each hospital within the selected cohort. This work plan will identify the mechanisms, timeline, and planned parameters of the localized analysis. It is expected that the successful bidder shall have a health care researcher who is able to facilitate the participatory research process on-site in Vermont.

#### *Development of Localized Transformation Plans*

This process will result in a co-developed Localized Transformation Plan to advance the goals of hospital sustainability as described in Act 167 of 2022: Reducing inefficiencies, lowering costs, improving population health outcomes, reducing health inequities, and increasing access to essential services while maintaining sufficient capacity for emergency management.

This Localized Transformation Plan shall be developed in a public-private partnership and should incorporate findings and data developed through Tasks 1 and 2. The Localized Transformation Plan will specify localized actions that can be implemented in the short- (next 12 months); medium- (3-5 years); and long-term. Transformation plans should incorporate frequent data gathering and analysis to assess progress and make iterative changes as needed (agile development method).

If the Localized Transformation Plan includes proposals for hospital or health system redesign (e.g., service line changes, proposed centers of excellence, shared services between hospitals, consideration of new hospital designations), they should describe their expected timeframes and expected costs and long-term savings of the proposed redesign, including potential impacts on non-hospital health and social service providers in the area (e.g., workforce or resource needs) to support such change.

### **Task 3b: Learning Collaborative for a Cohort of Hospitals/Health Systems (Months 7-24)**

The successful bidder will design and implement a learning collaborative for hospitals participating in the technical assistance cohort to support collaboration, information sharing, and shared learning around successes and challenges. The collaborative will provide a confidential forum for participation in shared learning during the Localized Transformation Plan development and execution process described above. The proposed collaborative should meet recurrently with opportunities for agile development, collaboration, and implementation from which participants can report out and build upon.

The successful bidder will propose a learning collaborative plan with key topic areas and a timeline for engagement. GRCB, in collaboration with AHS, will review and approve the draft learning collaborative plan prior to finalization and implementation. The learning collaborative should convene within 1 month of the State's approval of the intensive engagement cohort.

The successful bidder will support the State in developing materials to be used as part of this deliverable. Examples of materials could include PowerPoint slides, handouts, or website content. The successful bidder should suggest what types of materials are needed to support this collaborative.

### **3. GENERAL REQUIREMENTS:**

- 3.1. **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.
  - 3.1.1. 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.
  - 3.1.2. **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.
  - 3.1.3. **Retainage.** In the discretion of the State, a contract resulting from this RFP may provide that the State withhold a percentage of the total amount payable for some or all deliverables, such retainage to be payable upon satisfactory completion and State acceptance in accordance with the terms and conditions of the contract.
- 3.2. **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.
  - 3.2.1. **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.
  - 3.2.2. **Presentation.** An in-person or 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.
- 3.3. **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.

3.3.1. **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.

3.3.2. **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.**

3.4. **EXECUTIVE ORDER 05-16: CLIMATE CHANGE CONSIDERATIONS IN STATE PROCUREMENTS:**

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.

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.

3.5. **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.

3.5.1. **Evaluation Criteria:** Consideration shall be given to the Bidder's project approach and methodology, qualifications and experience, ability to provide the services within the defined timeline, cost, and/or success in completing similar projects, as applicable, and to the extent specified below.

Criteria	Weight
Quality of Experience and Capacity	20%
Proposed Staff Capacity and Qualifications	20%
Responsiveness to specifications/Scope of Work	20%
Price	25%
Other (Compliance with terms and conditions, vendor demonstration, references)	15%

3.6. **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.



- 3.7. **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.
- 3.8. **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.
- 3.8.1. **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/>.
- 3.8.2. The contract will obligate the bidder to provide the services and/or products identified in its bid, at the prices listed.
- 3.8.3. **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.
- 3.8.4. **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.
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.
- 4.1. The bid should include a Cover Letter and Technical Response and Price Schedule.
- 4.2. **COVER LETTER:**
- 4.2.1. **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).
- 4.2.2. 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.
- 4.2.3. **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.

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

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

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

4.3.2.1. Identify all current or past State projects.

4.3.3. 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.

4.3.4. Bidders shall submit an equity plan which details how they will intentionally incorporate and engage with disparately impacted populations such as the LGBTQ, BIPOC, refugee, immigrant, and other communities in each area of the scope of work.

4.4. **REFERENCES.** Provide the names, addresses, and phone numbers of at least three companies with whom you have transacted similar business in the last 12 months. You must include contact names who can talk knowledgeably about performance.

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

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

4.7. **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:**

5.1. **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.

5.1.1. 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.

5.1.2. 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://gmcboard.vermont.gov/publication/rfps-contracts-grants/rfp>. 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.

5.2. **STATE SECURITY PROCEDURES: Please be advised extra time will be needed when visiting and/or delivering information to State of Vermont offices. All individuals visiting State offices must present a valid government issued photo ID when entering the facility.**

5.2.1. State office buildings may be locked or otherwise closed to the public. If this RFP permits hand delivery of bids, delivery instructions will be posted at the entrance to the State facility. **Any delay caused by State Security Procedures will be at the bidder's own risk.**

## 5.3. **BID DELIVERY INSTRUCTIONS:**

5.3.1. **ELECTRONIC:** Electronic bids will be accepted.

5.3.1.1. **E-MAIL BIDS.** Emailed bids will be accepted. Bids will be accepted via email submission to [jessica.mendizabal@vermont.gov](mailto:jessica.mendizabal@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.

5.3.1.2. FAX BIDS: Faxed bids will not be accepted.

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

7.1. Certificate of Compliance

7.2. Price Schedule

7.3. Worker Classification Compliance Requirement; Subcontractor Reporting Form

7.4. Standard State Contract with its associated attachments, including but not limited to, Attachment C: Standard State Provisions for Contracts and Grants (December 15, 2017) and Attachment D Other Provisions for IT Services

7.5. Attachment F – GMCB Data Use Agreements **(for reference only, not required with bid submission)**

## 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 Challenge<sup>SM</sup> 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**

**The contracts resulting from this RFP will be time and materials and will be for a period of two (2) years with an option to renew for up to two additional twelve-month periods.**

**A. Hourly Labor Rates, inclusive of travel costs:**

Service Category/Title of Positions	Hourly Rate	Hours Proposed	Total
<b>Task 1</b>	\$		\$
	\$		\$
	\$		\$
<b>Task 2</b>	\$		\$
	\$		\$
	\$		\$
<b>Task 3</b>	\$		\$
	\$		\$
	\$		\$

**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, 5<sup>th</sup> Floor  
    Montpelier, VT 05633-8000



## STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, \_\_\_\_\_ (hereinafter called "State"), and \_\_\_\_\_, with a principal place of business in \_\_\_\_\_, (hereinafter called "Contractor"). Contractor's form of business organization is \_\_\_\_\_. 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 data analysis and community engagement. 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 \$\_\_\_\_\_.00.

4. **Contract Term.** The period of Contractor's performance shall begin on \_\_\_\_\_, 20\_\_ and end on \_\_\_\_\_, 20\_\_.

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 \_\_\_ pages including the following attachments which are incorporated herein:

Attachment A – Statement of Work

Attachment B – Payment Provisions

Attachment C – "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 12/15/2017)

Attachment D – Other Terms and Conditions for Information Technology Contracts

Attachment E – Intentionally Omitted

Attachment F – GMCB Data Use Agreements

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 Contract Provisions for Contracts and Grants)

(4) Attachment A

(5) Attachment B

(6) Attachment F

**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 – STATEMENT OF WORK

### A. Background

The Green Mountain Care Board is charged by Vermont statute with regulating the budgets of Vermont's 14 community hospitals; GMCB also regulates health insurers in the individual, small group, and large group markets, oversees Vermont accountable care organizations, and reviews and approves requests for hospital and other health care organization capital expenditures. In addition, the GMCB is tasked with overseeing aspects of Vermont's health care reform initiatives, and has statutory authority to launch payment reform pilots and set new health care payment models (see 18 [V.S.A. § 9375](#)). The GMCB's mission is to drive system-wide improvements in access, affordability, and quality of health care to improve the health of Vermonters. For more information, see [GMCB website](#) or [GMCB Overview](#). The Agency of Human Services holds the Office of Health Care Reform which leads the State's policy direction and innovation in Health Care Reform and promotes payment and care delivery reform through value-based payment arrangements within its Medicaid programs and through the Agency's Blueprint for Health. For more information, see [AHS website](#).

The State of Vermont has significant concerns regarding Vermont hospitals' financial health – and the balance between hospital financial health, health care quality, and consumer access and affordability – issues which were exacerbated by the pandemic. Over the past three years, suppressed revenue, increased acuity, and pandemic-related capacity and workforce challenges have left Vermont's health care system in a highly vulnerable state. Vermont is in a critical space in which it must take steps to both shore up the immediate stability needs of its provider network and identify a path to long-term sustainability.

In its role as a regulator of Vermont hospitals, the GMCB has been working to engage hospitals and other health care system partners on the issue of long-term hospital sustainability since 2019, following multiple years of declining system-wide margins and other signs of financial vulnerability across Vermont's hospitals. In the Spring of 2020, the Legislature passed [Act 159](#), which required GMCB to deliver a report on “ways to increase the financial sustainability of Vermont hospitals in order to achieve population-based health improvements while maintaining community access to services.” Key findings from this report ([Hospital Sustainability Report](#), Act 159 of 2020, Section 4) indicate that Vermont hospitals' financial health is expected to continue to decline, making health care even less affordable, eroding quality of care over time, and threatening Vermonters' continued access to care in their communities. The report concludes that Vermont must take action to address hospitals' financial sustainability while also ensuring Vermonters' access to high quality, affordable care, and points to accelerated payment and delivery system transformation as the path forward.

In continuation of Vermont's hospital stabilization goals, this procurement seeks support to further the process described in [Act 167 \(2022\)](#), which is detailed below in the scope of work, with the goals of hospital sustainability as described in Act 167: reducing inefficiencies, lowering costs, improving population health outcomes, reducing health inequities, and increasing access to essential services<sup>1</sup> while maintaining sufficient capacity for emergency management. The State's goal is to encourage delivery system reform by working with hospitals and communities in a collaborative manner. This work will be supported by multi-payer payment reform and regulatory changes in the current GMCB hospital budget review process reflecting the shift from fee-for-service to value-based payments in the context of the larger scale economic and demographic changes faced by Vermont's health care system. This will require coordination with other State of Vermont contractors working on payment reform, payment model development, regulatory redesign, and Vermont's All-Payer Model Agreement with the federal government.

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<sup>1</sup> NOTE: The American Hospital Association's 2016 report on ensuring access to care for vulnerable populations defines “essential services” as the following service types: primary care, psychiatric and substance use treatment, emergency and observation services, prenatal care, transportation, diagnostic services, home care, dentistry, and a robust referral structure.

**B. Contractor shall perform the following tasks:**

**TASK 1: Health System Data Analytics and Resource Estimate**

***Task 1a: Health System Data Analytics (Months 1-6)***

Contractor shall provide the State with data and information in a format agreed to by the State that describes:

- Current and projected states of the health care delivery system in each hospital service area (HSA), region, or group of HSAs, which may include assessments of population-based rates of service use, service availability, efficiency, cost, quality, equity, consumer affordability, access, and emergency management capacity, as well as analyses on how to improve in these dimensions. The analysis should consider current and projected demographic changes in each area.
- Readiness for and challenges to implementing value-based payments and delivery system reform in each HSA, region, or group of HSAs (e.g., workforce, data systems, financial health, quality performance).
- Effects of the use of hospitals in neighboring states by Vermonters on service availability, cost, and the financial solvency of Vermont hospitals.
- Options for hospital or health system redesign (e.g., service line changes, proposed centers of excellence, shared services between hospitals, consideration of new hospital designations) and their expected impact on cost, quality, the health care workforce, and access in each HSA. This could include options for redesign that consider new or different roles for other providers along the continuum of care.
- Impacts of the availability and quality of nonhospital health and social service providers (e.g., primary care, mental health, substance use disorder, emergency medical services, skilled nursing and long-term care facilities, visiting nurses and home health, etc.) on providers of primary, secondary and tertiary care in Vermont and, specifically, the extent to which hospital efficiency and quality is impeded by the lack of such services.
- Potential impacts of hospital or health system changes on other nonhospital health and social service providers, including potential changes to necessary capacity, service types, and workforce impacts such as increases in the numbers and types of workers needed.
- Continuing impacts of the COVID-19 pandemic or other public health emergencies as relevant.
- Stakeholder recommendations on a sustainable, high-quality health system.

Data gathering shall take place in collaboration with GMCB, AHS, hospitals and other health care provider organizations, payers and employers, and other stakeholders as appropriate.

Contractor shall leverage GMCB's existing data and analyses; existing data and analysis provided by AHS and its departments; and any data and analysis provided by hospitals, independent providers, payers and employers, or other sources as requested.

Contractor shall combine financial, clinical, epidemiologic, geographic, small area variation analysis, and systematic community-based qualitative research expertise and have robust experience supporting care delivery optimization. Contractor shall demonstrate understanding of federal and state health care reimbursement methodologies, value-based care models, and delivery system transformation initiatives. Work should be responsive to Vermont's mix of academic medical centers, community hospitals, and rural critical access hospitals.

In addition to review by the State, Contractor shall review findings and underlying data with hospital leadership and/or hospitals' boards as appropriate and requested by the State.

***Task 1b: Resource Estimate (as needed)***

Act 167 (2022) also requires that GMCB develop an estimate of the resources necessary for hospitals to undertake reforms identified through the analyses described in Task 1a or through the localized transformation planning process described in Task 3; and resources necessary for non-hospital providers to implement related

reforms or changes identified through this process. Contractor shall assist GMCB, AHS, and hospitals in this estimation. Contractor shall propose the appropriate timing of this work and how best to coordinate it with the other deliverables.

## **TASK 2: Broad Engagement in and Across all HSAs (Months 1-6, with follow-up as needed)**

Contractor shall plan and lead a data-informed, patient-focused, community-inclusive engagement process to gather feedback from a wide array of stakeholders and Vermonters regarding their experiences with Vermont's health care system and recommendations for future transformation efforts.

This process will provide opportunities for meaningful participation by health care professionals and health care providers (including those providing primary care services) both hospital-employed and independent or community-based, hospital boards of directors, other health and human services organizations, employers, payers, Vermonters who have direct experience with all aspects of Vermont's health care system, and Vermonters who are diverse with respect to race, income, sexual orientation and gender identity, age, disability status, and mental health and substance use treatment and service needs. Vermont hospitals and their nonprofit boards should be a starting place for engagement in each HSA in order to communicate the intent of this work, receive initial feedback, and build support for engagement. Contractor shall propose and rely on collaborative and community-inclusive processes to inform insights (e.g., strategies used in participatory research). This may require targeted engagement of sub-populations; please cross-reference the required Equity Plan in responding to this requirement. The engagement process should not duplicate the Community Health Needs Assessment process in which Vermont hospitals engage every three years.

Goals for this process include:

- Learning from health and human services providers and community members regarding unmet needs, local priorities, and barriers to delivery system transformation, and access to care challenges for Vermonters.
- Assessing and supporting hospital preparedness for value-based payment models that hold providers accountable for cost and quality, as well as for changes in the delivery system.
- Structuring engagement in such a way that it avoids duplication or added burden, particularly for health and human services providers, incorporating existing resources and information where possible, and drawing on timely existing data.
- Building collaboration and engagement at the local level through community town halls and other related outreach events.

Contractor shall design and facilitate a community and provider engagement process within and across all HSAs to gain a deeper understanding of unmet health care needs and better assess local health system strengths and weaknesses. Engagement strategies may include public community meetings; smaller stakeholder meetings; focus groups; or other engagement modalities; and should ensure that engagement opportunities reach a wide array of perspectives and views. This should include intentional engagement with populations whose voices may otherwise not be sufficiently heard, such as the LGBTQ, BIPOC, refugee, immigrant, and other communities. Note that aspects of Task 1 and Task 2 should occur simultaneously, and that perspectives gleaned through the engagement process may help inform the data analysis in Task 1.

Contractor shall provide facilitation for the community and provider engagement process over a six-month period, with the potential for extension, if necessary.

Contractor shall support the State in developing materials to be used as part of this deliverable. Examples of materials could include PowerPoint slides, handouts, or website content. Materials should be accessible and understandable to members of the public. Contractor shall suggest what types of materials are needed to support this collaborative.

### **TASK 3: Technical Assistance for Hospitals to Develop Localized Transformation Plans**

#### ***Task 3a: Localized Sustainability Analysis and Technical Assistance for a Cohort of Hospitals (Months 7-24)***

Contractor shall, in collaboration with the State, support a subset of Vermont hospitals and hospital-identified partners with more intensive engagement and technical assistance. While participation for hospitals will be voluntary, we anticipate their interest in this technical assistance will be strong. Contractor shall support these Vermont hospitals in developing Localized Transformation Plans to increase health care system sustainability and improve health outcomes in their service areas.

Contractor shall develop a process by which hospitals can indicate their desire to participate in the cohort. The State's goal is to include approximately 4 hospitals, regions, or groups of hospitals in this cohort. If the State receives more interest than the budget for this work can accommodate, Contractor shall make recommendations to the State for how to prioritize interested hospitals based on demonstrated commitment to develop and implement a localized transformation plan and an identified relative need to address sustainability. As much as possible, the voluntary cohort of hospitals, regions, or groups of hospitals shall be diverse (e.g., with respect to size, designation, rurality); the State shall have final approval of the cohort selected. The cohort should be finalized within 6 months of contract execution.

#### *Engagement with Cohort using a Collaborative Research Model*

Contractor shall examine cohort hospitals' lines of business within the context of local needs, the hospital's patient population, and patient migration patterns. Existing data and plans should be incorporated, including local Community Health Needs Assessment(s), information collected under this contract through deliverables in Task 1 and Task 2, and past GMCB and AHS reports. Using a participatory research method or other collaborative research model. Contractor shall work with hospitals to conduct an in-depth analysis of their care delivery system, service lines in comparison to other nearby facilities, revenue forecasts, and expenditures.

Contractor shall develop a workplan that reflects an active partnership between participating hospitals, the contractor, and the State of Vermont, utilizing the principles of participatory research or another collaborative research method for each hospital within the selected cohort. This work plan will identify the mechanisms, timeline, and planned parameters of the localized analysis.

#### *Development of Localized Transformation Plans*

This process will result in a co-developed Localized Transformation Plan to advance the goals of hospital sustainability as described in Act 167 of 2022: Reducing inefficiencies, lowering costs, improving population health outcomes, reducing health inequities, and increasing access to essential services while maintaining sufficient capacity for emergency management.

This Localized Transformation Plan shall be developed in a public-private partnership and should incorporate findings and data developed through Tasks 1 and 2. The Localized Transformation Plan will specify localized actions that can be implemented in the short- (next 12 months); medium- (3-5 years); and long-term. Transformation plans should incorporate frequent data gathering and analysis to assess progress and make iterative changes as needed (agile development method).

If the Localized Transformation Plan includes proposals for hospital or health system redesign (e.g., service line changes, proposed centers of excellence, shared services between hospitals, consideration of new hospital designations), they should describe their expected timeframes and expected costs and long-term savings of the proposed redesign, including potential impacts on non-hospital health and social service providers in the area (e.g., workforce or resource needs) to support such change.

### ***Task 3b: Learning Collaborative for a Cohort of Hospitals/Health Systems (Months 7-24)***

Contractor shall design and implement a learning collaborative for hospitals participating in the technical assistance cohort to support collaboration, information sharing, and shared learning around successes and challenges. The collaborative will provide a confidential forum for participation in shared learning during the Localized Transformation Plan development and execution process described above. The proposed collaborative should meet recurrently with opportunities for agile development, collaboration, and implementation from which participants can report out and build upon.

Contractor shall propose a learning collaborative plan with key topic areas and a timeline for engagement. GMCB, in collaboration with AHS, will review and approve the draft learning collaborative plan prior to finalization and implementation. The learning collaborative should convene within 1 month of the State's approval of the intensive engagement cohort.

Contractor shall support the State in developing materials to be used as part of this deliverable. Examples of materials could include PowerPoint slides, handouts, or website content. Contractor shall suggest what types of materials are needed to support this collaborative.

### **C. Approach**

Contractor shall provide a project manager to work as the primary point of contact with the State. As a part of its project management duties, the Contractor Project Manager will attend an agreed upon number of informational and status meetings and, when appropriate, call and lead such meetings. Such meetings may include the Project Management Team, the Contract Administrator, other consultants, elected officials, and other stakeholders as designated by the State. The Contractor Project Manager shall work directly with the State GMCB representative to define, manage, and control the project scope, timeline, issue escalation and resolution processes. Contractor shall deliver written status reports on a weekly basis.

Status information shall include, at a minimum: all planned tasks accomplished, planned tasks that are incomplete, or behind schedule in the previous week (with reasons given for those behind schedule); all tasks planned for the upcoming two weeks; an updated status of tasks (entered into the project plan and attached to the status report – e.g., percent completed, resources assigned to tasks, etc.); and the status of any corrective actions undertaken. The report will also contain items such as the current status of the project's technical progress and contractual obligations; achievements to date; risk management activities; unresolved issues; requirements to resolve unresolved issues; action items; problems; significant changes to Contractor's organization or method of operation, to the project management team, or to the deliverable schedule, where applicable.

In addition, Contractor will create and routinely update the project plan, if any, to reflect changes in the nature and timing of project activities, all changes being subject to the State Project Manager's approval. Project deliverables and activities will be subject to the State's quality management process to be defined by the State prior to the project kick-off.

## 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.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, 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. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. EXPENSES: The fee for services shall be inclusive of Contractor expenses.
6. The Contractor agrees to a 10% retainage of the total contract fee subject to review, approval, and acceptance of Contractor's final report by the State. The State shall determine retainage, including any withholding or proration, of the total contract fee by deciding whether the Contractor's performance has met, to the State's satisfaction, the Contractor's requirements under Attachment A. Upon the state's acceptance of the final report, the Contractor shall submit a retainage statement to request any funds withheld.
7. Invoices shall be submitted to the State at [GMCB.BusinessOffice@vermont.gov](mailto:GMCB.BusinessOffice@vermont.gov).
8. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows: monthly.



**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED DECEMBER 15, 2017**

**“Attachment C: Standard State Provisions for Contracts and Grants” (revision version dated December 15, 2017) 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. 07/14/2022)**

**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 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.

**2.3 Confidentiality of State Information.** In performance of this Contract, and any exhibit or schedule hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq ("State Data"). Before receiving or controlling State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State.

State Data shall not be stored, accessed from, or transferred to any location outside the United States. The Contractor agrees that (a) it will use the State Data only as may be necessary in the course of performing duties or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and 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 State'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 will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

Contractor shall not access State user accounts or State Data, except in the course of data center operations, response to service or technical issues, as required by the express terms of this Contract, or at State's written request.

Contractor may not share State Data with its parent company or other affiliate without State's express written consent.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

### 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 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. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE**

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$1,000,000 per claim, \$2,000,000 aggregate. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, Contractor shall maintain first party Breach Notification Coverage of not less than \$2,000,000.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

- 6. 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.

**7. TERMINATION**

**7.1** 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.

**7.2 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.

- 8. 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.
- 9. SOV Cybersecurity Standard Update 2022-01:** 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 22-01*, 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 F**

## **Data Use Agreement for Release of a VHCURES Limited Use Health Care Claims Research Data Set (for reference only and not required with bid submission)**

### **1. Parties**

This agreement is made and entered into by and between the GMCB \_\_\_\_\_ (“Contractor”). 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"/>
<a href="#">Medicare Part D Event</a> - VT Residents	Not applicable	Not applicable	<input checked="" type="checkbox"/>
<a href="#">Medicare Part D Event</a> - 5% National Sample	Not applicable	Not applicable	<input checked="" type="checkbox"/>
Medicare <a href="#">MEDPAR</a>	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](mailto: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 12:00 a.m. on \_\_\_\_\_ ("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.

**Data Use Agreement for Release of Non-Public Data Elements from  
The Vermont Uniform Hospital Discharge Data Set  
(for reference only and not required with bid submission)**

**1. Parties**

This agreement is made and entered into by and between the GMCB and \_\_\_\_\_,  
hereinafter referred to as “the Authorized User,” for the Project Title<sup>2</sup>:  
\_\_\_\_\_.

**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.

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<sup>2</sup> The Project Title will be provided by the GMCB based on the Application.

- 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 type="checkbox"/> Inpatient	1997-2020	All available years
<input type="checkbox"/> Outpatient Procedures and Treatments	1997-2020	All available years
<input type="checkbox"/> Expanded Outpatient Procedures and Treatments	2006-2020	All available years

<input type="checkbox"/> Emergency Department	2003-2020	All available years
<input type="checkbox"/> Revenue	2006-2020	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,

- F. 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;
- G. ensuring appropriate safeguards are implemented to protect the confidentiality of the Data Set and prevent its unauthorized use or disclosure;
- H. 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;
- I. 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
- J. 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:

- H. 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,
  - iii. in a manner that is contrary to law; or
  - iv. 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.
- I. 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.
- J. 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.

- K. 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 fewer than 6 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 fewer than 6 in a table.
- L. 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.
- M. 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:

- D. the status of each individual data user for whom an IUA has been filed;
- E. 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
- F. 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**

- D. 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.
- E. 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:

- D. an electronic copy of the agreement between the Authorized User and the Sub-User;
- E. an IUA for each proposed individual data user; and
- F. 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 \_\_\_\_\_ (“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.

**Green Mountain Care Board**

**Authorized User**

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Principal Investigator (if different than  
Authorized User)**

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_