



Burlington Fire Department



BUSINESS OFFICE

Three North Avenue

Burlington, Vermont 05401-8378

(802) 864-4552 • (802) 658-2700 (TTY)

Business Fax (802) 864-5945 • Central Station Fax (802) 865-5387

REQUEST FOR PROPOSALS (RFP)

AMBULANCE BILLING SERVICES

Date of Issuance: November 24, 2015

Issued by: City of Burlington Fire Department

Due Date for Proposals: **January 12, 2016**

Issuing Point of Contact: **Lise E. Veronneau, Business Administrator**
BURLINGTON FIRE & POLICE DEPARTMENTS
Information, Technology & Financial Affairs
One North Avenue
Burlington, VT 05401

Tel: (802) 540-2153
Fax: (802) 864-5945
lveronneau@bpdvt.org .

All questions regarding this procurement shall be directed in writing to Lise Veronneau and received no later than noon on December 15, 2015.

Any unauthorized contact between any prospective proposer and any official or employee of Burlington on or after date of issuance may, at the unilateral determination of the City, be grounds for disqualification of the proposer's proposal.

DEADLINE FOR RECEIPT OF PROPOSALS

All replies and proposals in response to the Request for Proposal must be received in a sealed envelope clearly marked "**Ambulance Billing Service RFP Response**" to the address and point of contact no later than 2:00 pm EST on the above due date at which time all submitted proposals will be publicly opened and recorded. Late proposals will not be accepted. Electronic proposals are preferred as long as they are received by the point of contact by the required deadline.

REVISIONS TO REQUEST FOR PROPOSAL

If it becomes necessary to revise any part of this RFP, an addendum will be sent to all persons who received the original document.

SCOPE OF WORK

The City of Burlington, Vermont (City) desires to contract for the following services related to the billing for the ambulance services provided by the City through its Fire Department for the period July 1, 2016 to June 30, 2017, or longer if a multi-year proposal is being offered:

- Mail clients patient insurance information request forms or otherwise obtain necessary billing information.
- Bill all clients receiving services.
- Follow-up with the Fire Department with any questions to verify information to facilitate coding for billing of services.
- Receive and process all paperwork and respond to all telephone calls for the Burlington Fire Department in relation to ambulance billing and collection.
- Record all cash receipts and send deposits weekly to City Hall (the City may consider alternative proposal for this service).
- Provide and pay for all computer-related hardware and software support and upgrade expenses related to maintaining automated record keeping and claims processing of ambulance client records.
- Provide collection services within the constraints of the City collection policies.
- Provide ambulance billing reports to the City each quarter. Such reports shall include, but are not necessarily to be limited to:
 - Ambulance Services Cash Receipts by month, by funding source;
 - Revenue by month, by funding source;
 - Monthly cash deposits report indicating deposits for the month and related month of service;
 - Billing and revenue by type of service;
 - Uncollected bills; Aging Reports; Type of bad debts/uncollectable
 - Additional reports are to be made available upon request.
- Work with any collection agency identified by the City of Burlington.
- Utilize the State of Vermont SIREN system to get billing data.

The successful bidder must dedicate the staffing needed to provide the required ambulance billing and collection services. All personnel working on Ambulance Billing services must pass fingerprint supported criminal background check. In addition, the successful bidder must be able to stay current with system upgrades needed to provide optimal billing performance and must train and supervise the ambulance billing staff and provide staff as needed for any aspect of the ambulance billing and reporting of collections. All personnel working on Ambulance Billing services must also adhere to all regulations and standards regarding privacy of medical record information, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

PROPOSAL FORMAT

Bidders are encouraged to be concise. All proposals must include, but are not limited to the following:

1. Letter of Transmittal and three (3) copies of the proposal (preferably double-sided) if sent through the mail. If sent electronically, all documents shall be in pdf format.
2. Lump sum bid price and estimated time to complete on all bid projects.
3. A brief description of your firm's history and experience with ambulance billing. If your firm intends to partner with another company, also provide pertinent information on the partner.
4. A work history of up to three (3) related projects showing for each:
 - a. Name, address and phone number for each client.
 - b. Brief project description.
 - c. Statement as to whether rollout was completed on time and within budget.
5. Location of the office from which the management of the project will take place.
6. Completion of Livable Wage, Outsourcing and Union Deterrence Certifications
7. State how long the bid is good for.
8. Sample of reports ie. billing and A/R reconciliation reports

PROPOSAL EVALUATION

Proposals will be reviewed and evaluated by Department staff based on the information provided in the proposal. Additional information may be requested prior to final selection. The selected bidder shall be willing to enter into an agreement with the City similar to the Draft Agreement provided in Appendix B.

CONTRACT REQUIREMENTS

Bidders are advised to review the Draft Agreement (Appendix A), the Livable Wage, Outsourcing Policy, and Union Deterrence Ordinances (Attachment B) and the Business Associate Agreement (Attachment C) in advance of submitting a proposal. The City of Burlington reserves the right to alter or amend any or all of these provisions in the project contract.

INDEMNIFICATION

The selected bidder will act in an independent capacity and not as officers or employees of the City. The successful bidder shall indemnify, defend and hold harmless the City and its officers and employees from liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the successful bidder's acts and/or omissions in the performance of this contract.

The City is responsible for its own actions. The successful bidder is not obligated to indemnify the city or its officers, agents and employees for any liability of the City, its officers, agents and employees attributable to its, or their own, negligent acts, errors or omissions.

PUBLIC RECORDS

Any and all records related to City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act and that the determination of how those records must be handled is solely within the purview of City. The successful bidder must agree to retain, in its files, and to produce to City within the time periods requested, all books, documents, accounting records, and other evidence related to City, at any time during this Agreement.

LIMITATIONS OF LIABILITY

The City of Burlington, Vermont assumes no responsibility and liability for costs incurred by parties responding to this RFP or responding to any further requests for interviews, additional data, etc., prior to the issuance of the contract.

REJECTION OF PROPOSALS

The City of Burlington reserves the right to reject any or all proposals, to negotiate with one or more parties, or to award the contract in the City's best interests, including proposed contractor's schedule. The City reserves the right to re-advertise for additional proposals and to extend the deadline for submission of the proposals.

OWNERSHIP OF DOCUMENTS

Proposals, plans, specifications, basis of designs, electronic data, designs and reports prepared under any agreement between the selected contractor and the city shall become the property of the City. Records shall be furnished to the City by the Contractor upon request at any time, however the Contractor may retain copies of the original documents.

All proposals received will be considered confidential and not available for public review until after a contractor has been selected.

APPENDIX B – DRAFT AGREEMENT

AGREEMENT FOR AMBULANCE BILLING SERVICES

BY AND BETWEEN THE
CITY OF BURLINGTON, VERMONT

AND

The City of Burlington, Vermont (City), a municipal corporation organized under the laws of the state of Vermont, and VENDOR agree:

1. **VENDOR responsibilities.** The VENDOR shall provide the City, through the Burlington Fire Department the following services:
 - Mail clients patient insurance information request forms or otherwise obtain necessary billing information.
 - Bill all clients receiving services.
 - Follow-up with the Fire Department with any questions to verify information to facilitate coding for billing of services.
 - Receive and process all paperwork and respond to all telephone calls for the Burlington Fire Department in relation to ambulance billing and collection.
 - Record all cash receipts and send deposits weekly to City Hall. (Subject to change with written approval of City)
 - Provide and pay for all computer-related hardware and software support and upgrade expenses related to maintaining automated record keeping and claims processing of ambulance client records.
 - Provide collection services within the constraints of the City collection policies.
 - Provide ambulance billing reports to the City each quarter. Such reports shall include, but are not necessarily to be limited to:
 - Ambulance Services Cash Receipts by month, by funding source;
 - Revenue by month, by funding source;
 - Monthly cash deposits report indicating deposits for the month and related month of service;
 - Billing and revenue by type of service;
 - Additional reports are to be made available upon request.
 - Work with any collection agency identified by the City of Burlington.
 - Utilize the State of Vermont SIREN system to get billing data.

2. **VENDOR staffing.** The VENDOR shall dedicate the staffing needed to provide the required ambulance billing and collection services. All personnel working on Ambulance Billing services shall pass fingerprint supported criminal background check. VENDOR shall stay current with system upgrades needed to provide optimal billing performance. VENDOR shall train and supervise the ambulance billing staff and provide staff as needed for any aspect of the ambulance billing and reporting of collections. VENDOR staff shall adhere to all regulations and standards regarding privacy of medical record information, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

3. **City responsibilities.** The City shall be responsible to:

- Make weekly delivery of incident related information/reports from the Burlington Fire Department to the VENDOR, signed for by the VENDOR.
- Establish billing and collection policies.
- Pay to VENDOR \$_____ to provide these services.

4. **Compliance with laws.** The VENDOR shall comply with all applicable City ordinances and state or federal laws, including but not limited to HIPAA and City's Livable Wage ordinance. The VENDOR shall file executed certificates of compliance with the Livable Wage ordinance as part of the execution of this agreement (Attachment A). The VENDOR shall also execute and file the City's Business Associate Agreement as part of its compliance with HIPAA (Attachment B).

5. **Insurance.** The VENDOR shall have for the duration of this contract the following insurance coverage and will provide the City of Burlington as evidence of the required coverage a Certificate of Insurance.

A. General Liability Insurance Coverage:

| | |
|--|--|
| General Aggregate: | 2,000,000 |
| Products/Completed Operations Aggregate: | 2,000,000 |
| Personal and Advertising Injury Each Loss: | 1,000,000 |
| Each Event Limit: | 1,000,000 |
| Medical Payments: | 10,000 |
| Endorsements: | City of Burlington is to be named as an "additional insured" |

B. Non-owned and hired Auto Liability: 1,000,000 CSL

C. Workers' Compensation Coverage: Statutory
Employers Liability Limits: 500,000/500,000/500,000

D. Crime Coverage:

a. Employee Dishonesty Coverage Limit: 100,000

*** All required crime coverage is to have deductibles no greater than \$2500.

****All required crime coverage crime is to include coverage for monies or other property in the VENDOR's care, custody and control.

E. Cyber Liability/ Network Security Coverage:

Each event coverage limit: 1,000,000

Notification expense coverage: 100,000

Regulatory Fines Coverage: 25,000

F. E&O Liability coverage:

Each event Limit: 1,000,000

Annual Aggregate Limit: 3,000,000

5. The VENDOR shall provide the City of Burlington with such Certificates of Insurance, as required, prior to the commencement of the Agreement. All Certificates shall contain a provision stating that the coverage's afforded under said policies will not be cancelled, materially changed or not renewed without thirty (30) days written prior notification.
6. **Term.** This Agreement shall commence on July 1, 2016 and shall continue until [DATE].
7. **Public records.** The VENDOR understands that any and all records related to City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act and that the determination of how those records must be handled is solely within the purview of City. The VENDOR agrees to retain, in its files, and to produce to City within the time periods requested, all books, documents, accounting records, and other evidence related to City, at any time during this Agreement.
8. This agreement shall be governed by Vermont law, and the VENDOR expressly agrees to submit to the jurisdiction of the courts of the State of Vermont.
9. **Entire Agreement and Amendments.** The parties acknowledge that this Agreement is the entire agreement between the parties and that there are no representations, inducements, arrangements, promises, or agreements outstanding between them, either oral or in writing, other than those. No provision of this Agreement shall be changed or modified except by a written instrument executed by both parties hereto.
10. **Waiver.** No waiver by City of any breach of this Agreement by the VENDOR shall constitute a waiver of any subsequent breach by the VENDOR, and no delay in enforcement of any breach shall be deemed a waiver of that breach.
11. **Severability.** If any provision of this Agreement is rendered invalid or unenforceable by the decision of any court of competent jurisdiction, that provision shall be severed, and all other provisions of this Agreement shall remain in full force and effect.
12. **No Assignment.** VENDOR may not assign its rights or obligations under this Agreement without the express written consent of City.
13. **Binding Nature.** This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

IN WITNESS WHEREOF in Burlington, Vermont this ____ day of _____, 2016.

VENDOR

CITY OF BURLINGTON

Duly Authorized

Duly Authorized

Attachment B

Certification of Compliance with the City of Burlington's Livable Wage Ordinance¹

I, _____, on behalf of _____ (Contractor) and in connection with _____ (City contract/project/grant), hereby certify under oath that (1) Contractor shall comply with the City of Burlington's Livable Wage Ordinance; (2) as a condition of entering into this contract or grant, Contractor confirms that all covered employees, as defined by Burlington's Livable Wage Ordinance, shall be paid a livable wage for the term of the contract as determined and adjusted annually by the City of Burlington's Chief Administrative Officer, (3) a notice regarding the applicability of the Livable Wage Ordinance shall be posted in the workplace or other location where covered employees work, and (4) payroll records or other documentation, as deemed necessary by the Chief Administrative Officer, shall be provided within ten (10) business days from receipt of the City's request.

Dated at _____, Vermont this ___ day of _____, 20__.

By: _____

Duly Authorized Agent

Subscribed and sworn to before me: _____

Notary

¹ In November of 2001, the City Council enacted an ordinance whose intention it was to provide a minimum level of compensation for city employees and employees of entities that enter into service contracts or receive financial assistance from the City of Burlington. Annually in May the livable wage is re-calculated. The re-calculated rates then becomes effective on July 1 of that same year. Further information on the livable wage is located at: <http://www.burlingtonvt.gov/CT/Livable-Wage-Ordinance/>

Certification of Compliance with the City of Burlington's Outsourcing Ordinance

I, _____, on behalf of _____ (Contractor) and in connection with _____ (City contract/project/grant), hereby certify under oath that (1) Contractor shall comply with the City of Burlington's Outsourcing Ordinance (Ordinance §§ 21-90 – 21-93); (2) as a condition of entering into this contract or grant, Contractor confirms that the services provided under the above-referenced contract will be performed in the United States or Canada.

Dated at _____, Vermont this ___ day of _____, 20__.

By: _____

Duly Authorized Agent

Subscribed and sworn to before me: _____

Notary

Certification of Compliance with the City of Burlington's Union Deterrence Ordinance

I, _____, on behalf of _____ (Contractor) and in connection with _____ (City contract/project/grant), hereby certify that Contractor (1) shall comply with the City of Burlington's Union Deterrence Ordinance; (2) has not advised the conduct of any illegal activity under that Ordinance, (3) does not currently, and will not over the life of the contract provide union deterrence services in violation of this Ordinance.

Dated at _____, Vermont this ___ day of _____, 20__.

By: _____

Duly Authorized Agent

CITY OF BURLINGTON
BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) supplements and is made a part of the contract (“Contract”) by and between the City of Burlington, Vermont (“Covered Entity”) and [Business Associate] (“Business Associate”), dated _____. This Addendum is effective as of _____ (the “Addendum Effective Date”). This Addendum shall have a term equal to the term of the Contract (as such contract may be amended, extended, renewed, renegotiated or replaced with a contract with an extended term) unless terminated earlier as provided for in Section 3 below.

RECITALS

- A. Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Addendum.
- D. Federal regulations also protect the confidentiality of alcohol and drug abuse patient records. To the extent that Covered Entity is a “program” as defined in 42 C.F.R. § 2.11, Business Associate shall be considered a “qualified service organization” and it shall be obligated to comply with the requirements of 42 C.F.R. part 2.

AGREEMENT

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. **Definitions**

- a. **Breach** shall have the meaning given to such term under 42 U.S.C. Section 17921 and 45 C.F.R. Section 164.404
- b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Health Record** shall have the meaning given to such term in the HITECT Act, including, but not limited to, 42 U.S.C. Section 17921.
- g. **Electronic Protected Health Information** shall mean Protected Health Information that is maintained in or transmitted by electronic media.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. **Program** shall have the meaning given to such term by 42 C.F.R Section 2.11.
- k. **Protected Health Information or PHI** shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103. Protected Health Information includes Electronic Protected Health Information.
- l. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
- m. **Qualified service organization** shall have the meaning given to such term by 42 C.F.R. Section 2.11.
- n. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- o. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

2. **Obligations of Business Associate**

- a. **Special Obligations Related to Drug and Alcohol Treatment Records.** To the extent that Covered Entity is a Program and Business Associate is a qualified service organization, Business Associate acknowledges that in receiving, storing, processing or otherwise dealing with any patient records from the Covered Entity it is fully bound by the provisions of 42 C.F.R. part 2 and if necessary, Business Associate will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations.
- b. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Contract and as permitted under the Contract and Addendum. Further, Business Associate shall not

use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, (iii) as required by law, or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].

- c. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Contract and as permitted under the Contract and Addendum. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(A), 164.504(e)(4)(i) and 164.504(e)(4)(ii)].
- d. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fund-raising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operation purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or services to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act [42 U.S.C. Section 17935(d)(2)]; however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Contract.
- e. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
- f. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Contract and Addendum, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than twenty-four (24) hours after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].

- g. **Business Associate's Agents.** Business Associate shall ensure that any person who performs functions for or provides services to Business Associate, including without limitation subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by Section 2.e. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(e)(1) and 164.530(f)). If the Business Associate knows of a pattern of activity or practice of an agent or subcontractor that constitutes a material breach or violation of such agent's and subcontractor's obligations under the agreement referenced above, the Business Associate must take reasonable steps to cure the breach or end the violation [45 C.F.R. 164.504(e)(1)(iii)]. If the steps are unsuccessful, the Business Associate must terminate the agreement or other arrangement if feasible or, if termination is not feasible, report the problem to the Secretary of DHHS [45 C.F.R. 164.504(e)(1)(iii)]. Business Associate shall provide written notice to such agent or subcontractor and Covered Entity of any pattern of activity or practice of such agent or subcontractor that Business Associate believes constitutes a material breach or violation of such agent's or subcontractor's obligations under the agreement or other arrangement within five (5) days of discovery and shall meet with such agent or subcontractor and Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- h. **Access to Protected Information.** Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- i. **Amendment of PHI.** Within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontracts shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
- j. **Accounting Rights.** Promptly upon any disclosure of Protected Information for which Covered Entity is required to account to an individual, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(c), as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business

Associate and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business Associate maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if know, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization; or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Section 2.c. of this Addendum [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this Section 2.j. shall survive the termination of this Agreement.

- k. **Business Associate Performance of Covered Entity Obligations.** To the extent that Business Associate is to carry out Covered Entity's obligation under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.
- l. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. Business Associate shall provide to Covered Entity a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- m. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure, [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- n. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.
- o. **Notification of Breach.** During the term of the contract, Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations, including without limitation, (i) the Security Breach Notice Act, codified at Title Nine of the Vermont Statutes, Chapter 62, Subchapter 2; (ii) the Document Safe Destruction Act, codified at Title Nine of the Vermont Statutes, Chapter 62, Subchapter 4; and (iii) the Social Security Number Protection Act, codified at Title Nine of the Vermont Statutes, Chapter 62, Subchapter 3. Business Associate shall take (i) prompt corrective action

to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

- p. **Mitigation.** Business Associate shall cooperate with Covered Entity in investigating any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI, and implementing mitigating measures deemed appropriate by Covered Entity, including notifying affected individuals even if not required by law and providing affected individuals with services to protect themselves against identity theft. Business Associate shall bear the expense of any mitigating measures Covered Entity deems appropriate.
- q. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the Addendum, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Contract or other arrangement if feasible or, if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of Covered Entity that Business Associate believes constitutes a material breach or violation of Covered Entity's obligations under the Addendum within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- r. **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Business Associate has complied with this Addendum; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Contract or Addendum, Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

3. Termination

- a. **Material Breach.** A breach of Business Associate of any provision of this Addendum, as determined by Covered Entity, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)]. Upon Covered Entity's knowledge of a material breach by Business Associate of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws,

Covered Entity shall either (i) provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, (ii) immediately terminate the Contract if Business Associate has breached a material term of this Addendum and cure is not possible; or (iii) if neither termination nor cure are feasible, Covered Entity shall report any HIPAA related violation to the Secretary. Covered Entity may seek equitable relief to stop any ongoing violation of the terms of this Addendum.

- b. **Judicial or Administrative Proceedings.** Covered Entity may terminate the Contract, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. **Effect of Termination.** Upon termination of the Contract for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible [45 C.F.R. Section 164.504(e)(2)(ii)(J)]. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed. The obligations of Business Associate under this Section 3.c. shall survive the termination of this Addendum.

4. **Indemnification**

Business Associate shall defend, hold harmless and indemnify Covered Entity from and against any claim, suit or action that arises or is alleged to have arisen as a result of the negligence or willful misconduct of Business Associate or breach by Business Associate of any term of this Addendum. Business Associate shall pay and be responsible for all losses, damages, liabilities, fines, penalties, and expenses (including reasonable attorneys' fees) that arise out of or result from any such claim, suit or action.

5. **Disclaimer**

Covered Entity makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

6. **Certification**

To the extent that Covered Entity determines that examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this Addendum.

7. **Amendment**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Covered Entity may terminate the Contract upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Contract or Addendum when requested by Covered Entity pursuant to this Section, or (ii) Business Associate does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

8. Assistance in Litigation or Administrative Proceedings

Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Contract or Addendum, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

9. No Third-Party Beneficiaries

Nothing express or implied in the Contract or Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

10. Effect on Contract

Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.

11. Notices

All notices to be delivered under this Addendum shall be in writing and shall be to the following addresses:

To Covered Entity: [Insert Address]

To Business Associate: [Insert Address]

12. Interpretation

The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

13. Miscellaneous

a. Entire Agreement. The parties acknowledge that this Addendum represents the entire agreement and understanding of the parties with reference to the subject matter of this Addendum. Each party acknowledges that no other promises, representations or agreements, written or verbal, have been made by the other party, its agents, employees or legal representatives as an inducement for the execution of this Addendum. The Addendum replaces all prior understandings and agreements of the parties, written or oral, with respect to the subject matter covered herein.

b. No Agency Between Parties. Nothing in this Addendum creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship between the parties. No party is or shall act as or be the agent or representative of any other party.

c. Validity. If any provision of the Addendum is determined to be unenforceable or invalid, such determination will not affect the validity of the other provisions contained in this Addendum. Failure to enforce any provision of this Addendum does not affect the rights of the parties to enforce such provision in another circumstance. Neither does it affect the rights of the parties to enforce any other provision of the Addendum at any time.

d. Assignment. The rights and duties of Business Associate and Covered Entity under this Agreement shall not be assignable by either party without the written consent of the other party.

e. Counterparts. This Addendum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Remainder of page intentionally left blank. Signature page follows.

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Addendum Effective Date.

COVERED ENTITY:

BUSINESS ASSOCIATE:

CITY OF BURLINGTON

[*Name of Business Associate*]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____