



**Office of Management and Budget
Division of Purchasing
Non-Competitive Contract Request Form**

Department	Public Health and Wellness	Department Contact	Briana Lyddane
Contact Email	briana.lyddane@louisvilleky.gov	Contact Phone	502-574-6690

Contract Type: check one	New	Amendment		
		Additional Funds	Time Extension	Scope
Professional Service	✓			
Sole Source (goods/services)	✓			
Requested Contract Dates (MM/DD/YYYY)	Start	End		
	07/01/2019	06/30/2020		

VENDOR INFORMATION

Vendor Legal Name	Custom Data Processing, Inc.			
DBA				
Point of Contact	Michelle Goins	Email	michelle.goins@cdpehs.com	
Street	1408 Joilet Road			
Suite/Floor/Apt		Phone	866-237-4814	
City	Romeoville	State	IL	Zip Code 60446
Federal Tax ID#		SSN# (if sole proprietor)		
Louisville Revenue Commission Account #	n/a			
Human Relations Commission Certified Vendors	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business	
Select if applicable				

FINANCIAL INFORMATION

Not to Exceed Contract Amount	\$71,000		(including reimbursement expenses, if applicable)	
Fund Source: General Fund	✓			
Federal Grant		Federal Granting Agency		
Other		Describe:		
Account Code String #	1101	605	4110	411658 521394
Payment Rate	per hour		per day	per service
	per month		Other	
Payment Frequency	✓	Monthly	Upon Completion / Delivery	
		Quarterly	Other	

AGREEMENT FOR SOLE SOURCE PURCHASE

THIS CONTRACT, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **LOUISVILLE METRO DEPARTMENT OF PUBLIC HEALTH AND WELLNESS**, herein referred to as "**METRO GOVERNMENT**", and **CUSTOM DATA PROCESSING, INC.** with offices located at 1408 Joliet Road, Romeoville, IL 60446, herein referred to as "**CONTRACTOR**",

WITNESSETH:

WHEREAS, the Metro Government wishes to purchase data collection and reporting services to support the state-mandated use of the Commonwealth of Kentucky's Patient Services Reporting System and its Environmental Health Management Information System; and

WHEREAS, the Contractor has been determined by the Metro Government to be a sole source to provide same,

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

I. SCOPE

A. Contractor shall provide the services described on Attachment A attached hereto and fully incorporated herein.

II. FEES AND COMPENSATION

A. The Metro Government shall pay Contractor for goods and services supplied as described on Attachment A. Total compensation payable to Contractor for services rendered pursuant to this Agreement shall not exceed **SEVENTY ONE THOUSAND DOLLARS (\$71,000.00)**.

B. The Metro Government shall make payment as required by Contractor's invoice, which shall describe in detail services and goods provided, and require payment within thirty (30) days of receipt of the invoice. Invoices that are not paid within thirty (30) days of receipt shall

bear interest at the rate of eight percent (8%) per annum. C. The Metro Government shall not reimburse out of pocket expenses under this Agreement.

III. DURATION

A. This Agreement shall begin July 1, 2019 and shall continue through and including June 30, 2020.

B. This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

C. In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement.

IV. RECORDS-AUDIT

Contractor shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Contractor's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Contractor shall include (without limitation): (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash.

V. OWNERSHIP AND CONFIDENTIALITY OF SOFTWARE

All Software used by Contractor in providing the services described in Attachment A, including its features and related information, are proprietary and confidential information of Contractor. Metro Government agrees not to disclose, release or provide any documentation concerning the Software, or any related information to any third party without written authorization from Contractor. Metro Government may not copy, resell, rent, lease, sublicense or redistribute the Software or its licenses or use or permit others to install or directly or indirectly access or use the Software, its functionality, or its licenses, except as provided in this Agreement. Metro Government may not reverse engineer, decompile, or disassemble the Software or otherwise attempt to derive its source code, except and only to the extent that any of these activities is permitted by applicable law. Metro Government may not modify or create derivative works of the Software. Metro Government may not use the Software for a purpose or in a manner not permitted by the terms of this Agreement including, without limitation, infringement of intellectual property rights.

VI. INSURANCE REQUIREMENTS

Insurance coverage shall be required of Contractor in accordance with Attachment B attached hereto.

VII. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

Contractor agrees to indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Contractor's (or Contractor's subcontractors if any) performance or breach of the contract provided that such claim, damage, loss, or expense is (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or from negligent acts, errors or omissions and (2) not caused by the negligent

act or omission of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall survive the termination of this Contract.

Regardless of any legal theory or any claim, in no event shall the amount of Contractor's maximum aggregate liability to Metro Government for damages, for indemnification or hold harmless obligation or duty and/or attorneys fees or court costs under this Agreement exceed Contractor's applicable insurance limits. Furthermore, in no circumstances shall Contractor's liability for damages or for any indemnification obligation or duty exist after the expiration of the applicable statute of limitations, or one year after this Agreement terminates, whichever first occurs.

VIII. REPORTING OF INCOME

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Contractor agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Contractor further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

IX. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of

proceedings relating to this Agreement or any rights or obligations arising thereunder.

Service of process may be accomplished by following the procedures prescribed by law.

X. AUTHORITY

The Contractor, by execution of this Agreement, does hereby warrant and represent that it is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

XI. CONFLICTS OF INTEREST

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein;

or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to

involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

XII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the

parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto. In the event of a conflict between the terms of this Agreement and the terms in any of the Attachments, this Agreement shall govern.

XIII. SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

XIV. SEVERABILITY

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

XV. COUNTERPARTS

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

XVI. CALCULATION OF TIME Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Contractor is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

XVII. CAPTIONS The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

XVIII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS The Contractor shall reveal any final determination of a violation by the Contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the Contractor or subcontractor. The Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of the contract.

XIX. MISCELLANEOUS

Contractor shall sign the HIPAA Business Associate Agreement attached hereto as Attachment C.

The Metro Government and Contractor agree to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et. seq.*) and all implementing regulations and executive orders, and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701) and the Kentucky Equal Employment Act of 1978 (K.R.S. § 45.550 to 45.640) and the Americans with Disabilities Act (42 U.S.C. § 12101 *et. seq.*). No person shall be excluded from participation in, be denied the benefits of, or be subject to discrimination in relation to activities carried out under this Agreement on the basis of race, color, age, religion, sex, disability or national origin. This includes provision of language assistance services to individuals of limited English proficiency seeking and/or eligible for services under this Agreement.

Contractor nor any of its employees or personnel shall speak on behalf of or as a representative of the Metro Government or the Department of Public Health and Wellness without the express authorization of the Director of that Department or his designee.

Nothing in this agreement shall abrogate Metro Government's duties under the applicable provisions of the Kentucky Open Records Act, and Metro Government agrees to notify Contractor of any requests received by Metro Government to provide Contractor's proprietary and confidential information to a third party pursuant to said act, prior to the release of such information.

ATTACHMENT A

Custom Data Processing Inc. — Scope of Work

The period within the current fiscal year in which the subject services are to be performed is from 7/1/2019 to 6/30/2020.

Custom Data Processing, Inc. agrees to perform the services hereinafter described particularly as follows (with accompanying rates):

Network Communication Connection:

- A. Supply the network communication connection necessary to support various on-line computer service applications at the following monthly rates:
 - (1) LMPHW Headquarters..... \$ 68.00
 - (2) Dixie Health Center..... \$ 68.00
 - (3) L & N Neighborhood Place..... \$ 68.00
 - (4) Newburg Health Center..... \$ 68.00
 - (5) Specialty Clinic \$ 68.00
 - (6) Public Health Lab..... \$ 68.00
 - (7) Southwest Jefferson Neighborhood Place..... \$ 68.00
 - (8) Westport TAPP \$ 68.00
 - Any Louisville Metro Department of Public Health & Wellness (LMPHW) satellite clinic, etc., (excluding school sites) that is added to the CDP System at a later time will be charged a monthly \$68 network communication charge.
 - Any LMPHW satellite clinic, etc., (including schools) that is added to the CDP system on a VPN connection at a later time will be charged a \$50 monthly VPN connection charge.
- B. Provide network support associated to LAN and WAN connectivity at the request of the LMPHW at a mutually agreed upon monthly rate.
- C. Provide special programming beyond those systems identified in the addendum design, programming and special processing on an as needed basis at the following rates:
 - (1) Systems design and programming \$105/hr
 - (2) Computer processing \$85/hr

Fees relative to the services rendered over the above Uniform State Contract rate/fees shall not exceed a total of \$48,000.

Lab Activity:

- A. On-line computer services associated to Lab Activity. Specifically:
 - 1. Process Lab Orders\$.075/ea.
 - 2. Process Lab Results\$.050/ea.
 - 3. Process encounters for non-health department entities \$.10/ea.
- B. Provide upon request programming services at a rate of: \$100.00/hr.
- C. Provide upon request special computer processing services: \$85.00/hr
- D. On-line computer services associated to the special Medicaid \$420.00/mo.
Billing activities as specified in the Managed Care Partnership Agreement.

The total payments for laboratory activity under the terms of this contract shall not exceed \$23,000.

Total Contractual Services shall not exceed \$71,000.

ATTACHMENT B

HOLD HARMLESS AGREEMENT AND INDEMNIFICATION CLAUSE AND INSURANCE REQUIREMENTS

5.1 HOLD HARMLESS AND INDEMNIFICATION CLAUSE

The Contractor shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Contractor's (or Contractor's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall survive the termination of this Contract. Regardless of any legal theory or any claim, in no event shall the amount of Contractor's maximum aggregate liability to Metro Government for damages, for indemnification or hold harmless obligation or duty and/or and attorneys fees or court costs under this Agreement exceed Contractor's applicable insurance limits. Furthermore, in no circumstances shall Contractor's liability for damages or for any indemnification obligation or duty exist after the expiration of the applicable statute of limitations, or one year after this Agreement terminates, whichever first occurs.

5.2 INSURANCE REQUIREMENTS

A. Prior to commencing work, Contractor shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. The Contractor shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to Metro Government and approved by the Metro Government's Risk Management Division. The Contractor shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by Contractor evidencing proof of coverages.

Without limiting Contractor's indemnification requirements, it is agreed that Contractor shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Metro Government. Metro Government may require Contractor to supply proof of

subcontractor's insurance via Certificates of Insurance, or at Metro Government's option, actual copies of policies.

B. The following clause shall be added to the Contractor's (and approved subcontractors) Commercial General Liability Policies:

1. "The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."

C. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on the contractors or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. COMMERCIAL GENERAL LIABILITY: via the Occurrence Form, primary and non-contributory, with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage and Products/Completed Operations, including:
 - a. Premises - Operations Coverage
 - b. Products and Completed Operations
 - c. Contractual Liability
 - d. Broad Form Property Damage
 - e. Independent Contractors Protective Liability
 - f. Personal Injury
2. WORKERS' COMPENSATION (if applicable): insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and EMPLOYERS' LIABILITY - \$100,000 Each Accident/\$500,000 Disease - Policy Limit/\$100,000 Disease - Each Employee.
3. PROFESSIONAL LIABILITY (Errors and Omissions Liability): insurance policy, which includes a minimum limit of liability of \$1,000,000 for each Wrongful Act, and \$2,000,000 aggregate limit. In the event that the Consultant's policy is written on a "Claims Made" Form, the Consultant shall, after work has been completed, furnish evidence that the liability coverage has been maintained for at least one year after completion of work, either by submitting renewal policies with a Retroactive Date of not later than the date work commenced under this contract, or by evidence that the Consultant has purchased an Extended Reporting Period Endorsement that will apply to any and all claims arising from work performed under this contract.

D. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A-VI", unless proper financial information relating to the Company is submitted to and approved by Metro Government's Risk Management Division.

E. MISCELLANEOUS

1. The Contractor shall procure and maintain insurance policies and shall furnish Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro Government at least fifteen (15) days prior to the expiration of any policy(s).
2. Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:

Louisville/Jefferson County Metro Government
Office of Management and Budget
Purchasing Division
611 West Jefferson Street
Louisville, Kentucky 40202

3. Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished via mail or e-mail to:

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202
riskreview@louisvilleky.gov

4. CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Contractor shall notify Metro Government's Risk Management Division of any policy cancellation within two business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Contractor shall notify Metro Government's Risk Management Division within two business days. If Contractor fails to notify Metro Government as required by this Agreement, Contractor agrees that such failure shall be a breach of this Agreement. Metro Government reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions.

When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro Government's Risk Management Division.

ATTACHMENT C

BUSINESS ASSOCIATE AGREEMENT

This agreement ("Agreement") is entered into by and between Louisville/Jefferson County Metro Government ("Covered Entity") and Custom Data Processing, Inc. ("Business Associate").

Recitals

Whereas, Business Associate, for purposes of patient data reporting, will receive recorded information some of which may constitute Protected Health Information ("PHI"), a description of which is described in Attachment A attached hereto and fully incorporated herein..

Whereas, Covered Entity and Business Associate are required to reasonably and appropriately protect the confidentiality, inappropriate use and disclosure of Protected Health Information and electronic Protected Health Information under the provisions of the Health Insurance Portability and Accountability Act ("HIPAA") OF 1996 and the Health Information Technology for Economic Clinical Health Act ("HITECH") and the corresponding Privacy Rule and Security Rule (45 CFR §§160, 162, and 164 ("HIPAA Rules"): and

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

Section 1 **Definitions**

(Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Security and Privacy Rule and HITECH)

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Custom Data Processing, Inc.
- b. **Covered Entity.** "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Louisville/Jefferson County Metro Government, acting by and through its Department of Public Health and Wellness.
- c. **HIPAA Rules.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160, 162 and 164
- d. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- e. **Electronic Protected Health Information (E-PHI).** "E-PHI" shall have the same meaning as the term, "Protected Health Information" in 45 CFR §160.103, limited to information transmitted by, or maintained in, electronic media received by Business Associate from, or on behalf of, Covered Entity.

- f. HITECH. "HITECH" shall mean the Health Information for Economic and Clinical Health Act, Subtitle D-Privacy (§§13400-13424) enacted as part of the America Recovery and Reinvestment Act of 2009.
- g. Individual. "Individual" shall have the same meaning as the term "Individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- h. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts §160 and §164, subparts A and E and includes relevant portions of HITECH.
- i. Security Rule. "Security Rule" shall mean the standards for security of Individually Identifiable Health Information at Subpart C of 45 CFR 164.

Section 2

Obligations and Activities of Business Associate

- 2.1 **Not to Use or Disclose PHI unless Permitted.** Business Associate agrees to not use or disclose Protected Health Information ("PHI") other than as permitted or required by this Agreement or as required or allowed by law.
- 2.2 **Safeguards/Security Rule.**
 - a. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement or as otherwise required or allowed by law. Business Associate agrees to comply with the Privacy Rule including the implementation of administrative, physical, and technical safeguards that reasonably protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall comply with Subpart C of 45 CFR 164.
- 2.3 **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- 2.4 **Report Certain Disclosure of PHI.**
 - a. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement or by law, including breaches of unsecured protected health information as required by 45 CFR 164.410, and any security incident of which it becomes aware. For any such use or disclosure, Business Associate agrees that it shall be responsible for the breach notification requirements contained in 45 CFR 164. An attempted unauthorized access, for purposes of reporting to the Covered Entity, means any attempted unauthorized access that prompts Business Associate to investigate the attempt, or review or change its current security measures. The parties acknowledge that the foregoing does not require Business Associate to report attempted unauthorized

access that results in Business Associate: (i) investigating but merely reviewing and/or noting the attempt, but rather requires notification only when such attempted unauthorized access results in Business Associate conducting a material and full-scale investigation (a "Material Attempt"); and (ii) continuously reviewing, updating and modifying its security measures to guard against unauthorized access to its systems, but rather requires notification only when a Material Attempt results in significant modifications to Business Associate's security measures in order to prevent such Material Attempt in the future.

- b. Business Associate agrees to notify Covered Entity of any breach by Business Associate (as "breach" is defined by HITECH) pertaining to unsecured protected health information without unreasonable delay and in no case later than 60 days after discovery of such breach by Business Associate.

2.5 **Compliance of Agents.** In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.

2.6 **Access.** To the extent the Business Associate maintains the Designated Record Set, Business Associate agrees to provide access to Protected Health Information in the original Designated Record Set, during normal business hours but only to the extent required by 45 CFR §164.524.

2.7 **Amendments.** Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual.

2.8 **Disclosure of Practices, Books, and Records.** Unless otherwise protected from discovery or disclosure by law or unless otherwise prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity or to the Secretary, for purposes of the Secretary determining compliance with the Privacy Rule, the Security Rule, and HITECH, but only to the extent such access is related to the use and disclosure of Protected Health Information received from the Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall have a reasonable time within which to comply with such requests.

2.9 Accounting.

- a. Business Associate agrees to maintain sufficient documentation to allow it to provide to Covered Entity a list of any disclosures of Protected Health Information by the Business Associate or its agents so as to allow the Covered Entity (or when appropriate for the Business Associate) to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

- b. To the extent applicable, if Business Associate makes a disclosure of PHI through an electronic health record for payment, treatment, or health care operations, Business Associate will include such disclosure on an accounting in addition maintaining an accounting of those other disclosures required by the Privacy Rule to be listed on the accounting under 45 CFR §164.528. To the extent applicable and required by the Privacy Rule and HITECH, Business Associate will provide an accounting of disclosures made through an electronic health record for payment, treatment, or health care operations.
- 2.10 **Release of Documentation of Certain Disclosures.** Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner information collected in accordance with Section 2.9 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528 and HITECH.
- 2.11 **Security and Privacy Requirements of HITECH.** In addition to the commitments made herein expressly, Business Associate will strive to comply with any other additional security or privacy requirements of HITECH applicable to Business Associate.

Section 3

Permitted Uses and Disclosures by Business Associate

- 3.1 **Use of PHI for Specified Purposes.** Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information only for purposes related to providing health care services provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Business Associate is not permitted to use the protected health information it receives to de-identify that information.
- 3.2 **Use of PHI for Business Associate's Management and Administration.** Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.3 **Disclosure Required by Law or With Reasonable Assurances.** Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information ("PHI") for the proper management and administration of the Business Associate and to carry out the services described in 3.1 and its related responsibilities, provided that disclosures are required by law or allowed by law, or provided that Business Associate obtains the following reasonable assurances from the person or entity to whom the Protected Health Information is disclosed: 1) the PHI will remain confidential; 2) the PHI will be used or further disclosed only as required or allowed by law or for the purposes for which it was disclosed; and, 3) the person or entity will notify the Business Associate of any instances of which the person or entity is aware in which the confidentiality of the information has been breached.

- 3.4 **Data Aggregation Services.** Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide DataAggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).
- 3.5 **Reporting Violations of the Law.** Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 §CFR164.502(j)(1).
- 3.6 **Minimum Necessary.** Absent an applicable exception to the minimum necessary rule as set forth in the Privacy Rule, as amended by HITECH, Business Associate shall limit use, disclosure, and requests of PHI to the minimum necessary (as defined by HIPAA and HITECH) to accomplish the intended purpose of the use or disclosure.

Section 4 **Impermissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule or Security Rule if done by Covered Entity, except that despite this Section 4, Business Associate may use or disclose Protected Health Information for data aggregation or management and administrative activities of Business Associate as is otherwise permitted by this Agreement.

Section 5 **Term and Termination**

- 5.1 **Term.** The Term of this Agreement shall be effective as of the signing of this agreement, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- 5.2 **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate of this Agreement, Covered Entity shall either:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

3. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

5.3 **Effect of Termination.** Except as provided in paragraph 5.2 of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

Section 6

Miscellaneous Provisions

6.1 **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule, Security Rule, or HITECH means the section as in effect or as amended, and for which compliance is required.

6.2 **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the Privacy Rule, Security Rule, or HITECH and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

6.3 **Survival.** The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement

6.4 **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules.

6.5 **Identity Theft Protection.** To the extent that Business Associate obtains access to patient information or other information constituting a "covered account" of Covered Entity within the meaning of the Identity Theft Red Flag Rules ("Red Flag Rules," 16 CFR 681.2), then Business Associate shall develop and implement an Identity Theft Prevention Program ("Program") that is designed to detect, prevent and mitigate identity theft in connection with such covered accounts. The Program shall be implemented and maintained in a manner such that if the covered accounts of Covered Entity were covered accounts of Business Associate, Business Associate would be in compliance with the requirements of the Red Flag Rules. Business Associate shall indemnify Covered Entity from all costs, fines and penalties associated with Business Associate's failure to fulfill the obligations of this Section 6.5. In addition, within five (5) days of receipt of a written request from Covered Entity for a copy of the Program and supporting documentation, Business Associate shall provide such documentation to Covered Entity evidencing its compliance with the obligations of this Section 6.5. Business Associate's performance of this Section 6.5 is a material term of the Agreement.

6.6 **Indemnification.**

Business Associate shall indemnify, hold harmless, and defend the Covered Entity, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Business Associate's (or Business Associate's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall survive the termination of this Contract. Regardless of any legal theory or any claim, in no event shall the amount of Contractor's maximum aggregate liability to Metro Government for damages, for indemnification or hold harmless obligation or duty and/or and attorneys fees or court costs under this Agreement exceed Contractor's applicable insurance limits. Furthermore, in no circumstances shall Contractor's liability for damages or for any indemnification obligation or duty exist after the expiration of the applicable statute of limitations, or one year after this Agreement terminates, whichever first occurs.

IN WITNESS WHEREOF, each of the undersigned Parties has caused this Agreement to be executed in its name and on its behalf as of the Effective Date.

Covered Entity:
Custom Data Processing, Inc.

Business Associate:
Louisville Metro Public Health and Wellness
400 East Gray Street
Louisville, KY 40202

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____