

Resolution # 9-1

WHEREAS, the Sangamon County Department of Public Health (“Department”) wishes to modernize Clinic services by transitioning to an Electronic Medical Record that will benefit both the patients and the staff of the department by increasing efficiency and reducing the need for paper files; and

WHEREAS, the Department also seeks to partner with a company to manage insurance billing for the Department which will improve insurance claiming processes and increase the number of insurance companies doing business with the Department; and

WHEREAS, Custom Data Processing (“CDP”) is a reputable company in Illinois that offers these services; and

WHEREAS, CDP is a sole source offering database integrations with State of Illinois databases; and

WHEREAS, CDP currently has a contract with the Department for database services in the Environmental Health division and the services they have provided for that division have been exemplary; and

WHEREAS, grant funding is available for the implementation and setup of the database services and the initial costs (Year 1) are approved to be paid for through grant funds from the COVID-19 Contact Tracing grant;

NOW, THEREFORE, BE IT RESOLVED, by the County Board of Sangamon County, Illinois in session this 10<sup>th</sup> day of November 2020, that this Board hereby approves amending the CDP Software Services Agreement to increase it by the amount of \$73,244.00.

\_\_\_\_\_  
Chairman, Sangamon County Board

ATTEST:

\_\_\_\_\_  
County Clerk

**FILED**

OCT 21 2020

*Don J. Hay*  
Sangamon County Clerk

**RECEIVED**  
2660

OCT 13 2020

Andy Goleman  
SANGAMON COUNTY AUDITOR



**SANGAMON COUNTY HEALTH DEPARTMENT / CDP  
SOFTWARE SERVICES AGREEMENT**

Come the parties to this Agreement, Custom Data Processing, Inc. ("CDP and/or Lessor"), 1408 Joliet Road, Romeoville, Illinois 60446, and The Sangamon County Department of Public Health located at 2833 South Grand Avenue East in Springfield, IL 62703 on October 5, 2018, and hereby enter into this Agreement whereby Sangamon County leases from CDP the following "Software":

- CDPims/CDPmobile Software for Environmental Health.

(Hereinafter jointly referred to as the "Software").

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions contained herein, and the payment of the fees specified herein, the Parties agree as follows:

**A. Ownership**

The Software is leased to the Lessee, not sold. All Software and any rights to this Software (including any changes made at the request or suggestion of Lessee) is the property of CDP hereinafter referred to as "Lessor". Title to each copy of the Software and all related intellectual property rights embodied in or represented by the Software will remain with Lessor at all times, as will all other rights not explicitly granted to Lessee under this Agreement.

**B. License grant**

Lessor grants Lessee a nonexclusive, limited license to use the Software solely in object code form, provided Lessee complies with all the terms and conditions of this Agreement. The nonexclusive limited license will terminate upon the breach of this Agreement, the expiration of the Agreement, or termination of this Agreement by either of the parties to this Agreement.

**C. Confidentiality**

All Software, including its existence and features and related information, are proprietary and confidential information of Lessor. Lessee agrees not to disclose, release or provide any documentation, or any related information to any third party during the duration of this agreement without written authorization from Lessor.

Lessor shall hold in trust for the Lessee, and shall not use or disclose to any other person, firm, or corporation during the term of this Agreement, or at any time thereafter, any confidential information of Lessee to which Lessor obtains access in connection with the provision of its services hereunder unless authorized to do so in writing by Lessee. Any such disclosure by Lessor or the Lessor's employees without Lessee's authorization shall represent a breach of this agreement and shall obligate Lessor to pay damages, which damages shall be limited to direct damages and shall in no event exceed the value of the contract and in no event shall Contractor be liable to the Lessee for any indirect, special, incidental, exemplary or consequential damages (including, without limitation, lost profits or goodwill) related to this Agreement or arising from any cause of action whatsoever. However, Lessor's obligation to pay damages is contingent upon (1) the claim(s) not arising, in whole or in part, out of the

action or inaction of the Lessee; and (2) the Lessee's not making any admission, concession, consent judgment, default judgment or settlement of the claim or any part thereof. It is agreed that Lessor has access to all confidential Lessee data and information maintained by the Lessor. The access and use of this data shall be limited to processing reports, development of new reports or functions and answering of questions for Lessee. Confidential information is information that relates to the Lessee's research and development, trade secrets or business affairs. Confidential information includes all information received by Lessor from Lessee except information in the public domain.

**D. Copying, Distribution and Use**

Lessee 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.

**E. Reverse Engineering, Decompilation, and Disassembly**

Lessee 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.

**F. Modifications and Derivative Works**

Lessee may not modify or create derivative works of the Software.

**G. Acceptable Use**

Lessee 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.

**H. Account Settings**

Each License is intended solely for Lessee's use (or use by another End User for whom Lessee has acquired and paid for a license). Lessee (and Lessee licensed End Users) are solely responsible for maintaining the confidentiality and security of Lessee Account Settings. Lessee is solely responsible and liable for any and all use of Lessee Account Settings and for activities that occur on or through Lessee Account(s). Lessee agrees to notify Lessor immediately about any unauthorized access to or use of any of Lessee Account Settings. The Software contains technological measures designed to prevent its unlicensed or illegal use. Lessee agrees that Lessor may use those measures.

**I. Accessibility**

For optimal access of the Software, Lessee is required to have an uninterrupted internet connection with a minimum bandwidth of 2mbps or greater, with the exception being CDPmobile that has ability to work offline.

**J. Patient data – Ownership & Responsibility**

Lessee is the owner of all data created by Lessee, or created by the Software with respect to Lessee and is also responsible for the accuracy of all such data. Lessee is solely responsible for preventing the unauthorized release or disclosure of Protected

Health Information (PHI), and any claims that may result from such unauthorized release or disclosure.

**Access To Files**

Lessor agrees that Lessee shall, at all times, either before, during or after the term of this Agreement, have access to the files of Lessee while said files are in the custody of Lessor. This right shall be deemed to survive the term of this Agreement. Lessor's obligation to retain said files shall be limited to a term of six (6) months following termination of this Agreement.

**Escrow**

Lessor will place the Software product(s) being utilized by the Lessee with an established escrow agent. The Lessee shall be the beneficiary of the Software product(s) being held in escrow when and, if Lessor (or its successor) discontinues providing on-going service to the Lessee as a result of no longer offering such service(s) or insolvency and discontinuance of its operation. The Lessee agrees to provide Lessor specific direction as to who at the Lessee's site shall be the person to whom the Software shall be delivered to and Lessor will advise the escrow agent accordingly. Under no circumstances shall the Lessee make the Software available to any other entity or attempt to compete with Lessor through offering similar service(s).

**K. Maintenance and support**

Support is provided with any Software subscription. Support includes support for usage of standard functions and any bugs that may be encountered. Bugs should be submitted via [customersupport@cdpehs.com](mailto:customersupport@cdpehs.com) with the exact error message and the steps that lead up to the identification of or cause of the error/action resulting in the Bug. Any Updates or Upgrades Lessor may provide the Lessee will be covered by and be subject to the terms of this Agreement. Lessor reserves the right to provide Lessee with updates or supplements to the Software when Lessor considers it necessary to do so to ensure that the Software functions properly and/or meets state or federal certification requirements. Any technical information Lessee provides Lessor in connection with support services it provides may be used by Lessor for its business purposes, including product and service development, subject to the terms of this Agreement. (See paragraph C.)

**L. Limited warranties and warranty disclaimer**

Lessor warrants that the Software will function substantially in accordance with its Documentation. As Lessee's sole exclusive remedy for breach of this warranty, Lessor will, at its option, fix the defective Software. Lessor will not be responsible for any breach of warranty under conditions of modification by Lessee, End User or a third party, or if the Software has been misused, or damaged; or any malfunctioning of the Software caused by hardware or network configuration or malfunctioning or by third party Software or services.

**M. Terms and Termination**

The terms of this Agreement will commence upon use of the Software. Thereafter, this agreement shall be automatically renewed for successive one (1) year periods from the ending of the initial term unless Lessee and Lessor enter into a new Agreement that

entirely replaces this Agreement or Lessee or Lessor terminates this Agreement as provided herein

Without prejudice to any other rights, Lessee or Lessor may terminate this Agreement if either party fails to comply with its terms and conditions. If Lessor terminates this Agreement, (i) Lessee must immediately stop using the Software, and (ii) Lessor will have no further obligation to provide any Services being provided to Lessee or any End Users as of the termination date. The parties' respective rights and obligations under Ownership, Limited Warranty and Warranty Disclaimer, Exclusion of Damages and Limitation of Liability, will survive the termination of this Agreement.

If, upon the termination of this Agreement, for any cause provided for herein, Lessee shall require of Lessor additional services in order to transfer the functions previously provided by Lessor, whether such transfer be wholly "in-house" to Lessee or to any successor vendor, Lessor agrees to provide such additional services based upon its current rates for programming and computer time associated therewith. In such event, Lessor shall also cooperate with Lessee or any successor vendor in order to transfer the functions previously serviced by Lessor to such successor. Lessor agrees to provide Lessee its data as follows:

- Environmental Health data will be provided in a CSV file.

This Agreement may be terminated in whole or in part by either party at its convenience, but only after the other party is given:

- Not less than ninety (90) days written notice of intent to terminate; and
- An opportunity for consultation prior to termination.

If termination is effected, Lessor shall be paid that portion of the compensation which has been earned as of the effective date of termination, but no amount shall be allowed for anticipated profit on unperformed services.

Upon receipt or delivery by Lessor of a termination notice, Lessor shall:

- Promptly discontinue all services affected (unless the notice directs otherwise); and
- Upon payment, deliver or otherwise make available to Lessee all completed deliverables.

Upon termination, Lessee may take over the deliverables and pursue the same to completion with another party. In the event Lessor shall cease conducting business, Lessee shall have the right to offer employment, on a permanent, temporary or contract basis, to any employee of Lessor previously assigned to the performance of this Agreement.

The rights and remedies of Lessee and the Lessor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

If, upon the termination of this Agreement, for any cause provided herein, Lessee shall require of Lessor additional services in order to transfer the functions previously provided by Lessor, whether such transfer be wholly "in house" to Lessee or to any

successor service provider of Lessor, Lessor agrees to provide such additional services based on its current rates.

**N. Severability**

If any provision of this Agreement is declared to be unenforceable for any reason, the remainder of this Agreement will continue in full force and effect, and the unenforceable provision will be deemed modified to the extent necessary to comply with the applicable requirements of law, while retaining to the maximum extent permitted by law its intended effect, scope and economic effect.

**O. Governing Law**

The interpretation and performance of this Agreement will be governed by the laws of the State of Illinois.

**P. Service Fees and Payment**

During the term of this Agreement, Lessee shall pay to Lessor, for the services provided hereunder, fees in accordance with Schedule A that is attached hereto and made a part hereof.

Lessor shall invoice Lessee for such fees and charges on a monthly basis and payment therefore shall be due upon invoicing. Invoices not paid within 45 days of issuance shall bear interest at the rate of 8% per annum.

The fees called for shall be subject to annual adjustment to reflect increases, in current charges for services of Lessor. Such adjustments shall not exceed five percent (5%) increase.

In the event that the Lessee defaults in the payment of any amount due Lessor under the terms of this Agreement and does not cure the default within ten days of written notice of this default by Lessor, Lessor may, in addition to other rights and remedies then available to it, immediately terminate this Agreement upon giving written notice to the Lessee. Lessor may recover its attorney's fees and court costs from Lessee if it initiates collection efforts, including but not limited to filing a lawsuit, to collect monies due Lessor pursuant to this agreement.

Remit payments to:

CDP, Inc.  
1408 Joliet Road  
Romeoville, IL 60446

Non-funding.

Lessor stipulates that Lessee is a public entity, governed by certain fiscal laws and constraints and that, therefore, funds available for payments to be made under this Agreement are not available beyond the fiscal year in which such funds are budgeted and appropriated. Lessor agrees that in the event funds necessary for payments to be made under this Agreement are not budgeted by Lessee's governing body for any succeeding fiscal year; or in the event funds, once budgeted, are limited or withdrawn by said governing body due to financial constraints, shortfall of public funds, or for any

other reason which, in the governing body's discretion, requires that said funds be limited or withdrawn; then this Agreement shall be deemed to have been terminated for convenience of Lessee, and Lessee shall not be deemed to be in default.

**Q. Assignment**

Lessor may assign, in whole or in part, its rights and obligations in connection with this Agreement to any affiliate.

**R. Additional Modules**

As technology changes or unanticipated needs arise, the Lessor will modify, adapt, create or otherwise make whatever changes as appropriate or needed. It is understood that for any and all new projects; requirements and estimated costs associated to work will be mutually agreed upon, and in writing.

Lessee may at any time by written order, make changes to the Scope of Work. If changes not contemplated in the current Software are requested by Lessee which causes an increase in Lessor's cost or time required for performance of any services under this Agreement, an equitable adjustment shall be made and this Agreement shall be modified in writing.

**S. Disclosure**

Lessor states at the time of signing that to the best of their knowledge all employees of the Lessor have never been convicted of a felony.

**T. Discrimination**

Lessor shall ensure that no person, on the grounds of race, color, age, religion, sex, marital status, immigration status, national origin, or otherwise qualified handicapped individual, solely by reason of his/her handicap (unless otherwise medically indicated), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity covered by this contract.

**U. Exhibits**

The following enumerated exhibits and schedules constitute the only addendums to this AGREEMENT.

- Schedule A – Cost Sheet
- Schedule B – IT Requirements
- Schedule C – Service Level Agreement (SLA)

**V. Indemnity and Insurance:**

1. Lessor agrees to indemnify, hold harmless and defend the Lessee from and against any and all losses, damages, injuries, liabilities, and claims, including claims for personal injury, death, or damage to personal property from, or arising out of, negligent acts or omissions by Lessor, its agents, representatives, officers, employees or subcontractors in the performance of this Agreement. Lessor's indemnity obligations shall be limited to direct damages and shall in no event exceed the value of this Agreement, and in no event shall Lessor be liable for any indirect, special, incidental, exemplary or consequential damages. Lessor's obligation to indemnify under this Section V.1 is contingent upon (1) the claim(s) not arising, in whole or in part, out of the action or

inaction of the indemnified party; and (2) the indemnified party's not making any admission, concession, consent judgment, default judgment or settlement of the claim or any part thereof.

2. In addition to the indemnification obligations in Section V.1 of this Agreement, Lessor will defend or settle any claim made or any suit or proceeding brought against the Lessee insofar as such claim, suit, or proceeding is based, in whole or in part, on an allegation that any of the software or media supplied to the Lessee, or viewed by the Lessee, pursuant to this Agreement, infringes the proprietary and intellectual property rights of any third party in or to any invention, patent, copyright or any other rights, provided that the Lessee will notify Lessor in writing promptly after the third party provides the Lessee notice of a claim, suit or proceeding against the Lessee, and will give Lessor information and such assistance as is reasonable in the circumstances. Lessor will have sole authority to defend or settle any such claim at Lessor's expense. Lessor will indemnify and hold the Lessee harmless from and against any and all such claims and will pay all damages and costs finally agreed to be paid in settlement of such claim, suit, or proceeding as long as Lessee is using Lessor's services in a fashion consistent with that dictated in the Licensing Agreement. However, Lessor's indemnity obligations shall be limited to direct damages and shall in no event exceed the value of this Agreement, and in no event shall Lessor be liable for any indirect, special, incidental, exemplary or consequential damages. If the software in any claim, suit or proceeding is held to infringe any proprietary or intellectual property rights of any third party and the use thereof is enjoined or, in the case of settlement as referred to above, prohibited, Lessor will have the option, at its own expense, to either (i) obtain for the Lessee the right to continue using the infringing item, or (ii) replace the infringing item or modify it so that it becomes non-infringing, provided that no such replacement or modification will diminish the performance of the software.

3. Lessor will at all times during the terms of this Agreement keep in force and effect commercial general liability, automobile liability, excess/umbrella liability, worker's compensation, and employer's liability insurance policies issued by a company or companies rated A- VII or better by AM Best and authorized to do business in the State of Illinois with the following minimum limits of coverage;

Commercial General Liability\*  
Each Occurrence \$1,000,000  
General Aggregate \$2,000,000  
Products - Comp/Op Agg \$2,000,000

Automobile Liability  
Combined Single Limit \$1,000,000

Excess/Umbrella Liability  
Each Occurrence \$1,000,000  
Aggregate \$1,000,000

Worker's Compensation Statutory Limits

Employer's Liability\*  
Each Accident \$100,000  
Disease Each Employee \$100,000  
Disease Policy Limit \$500,000

\*Or such higher limits sufficient for these insurance policies to be scheduled under the Umbrella policy.

1. Coverage afforded shall apply as a primary with Lessee named as an additional insured on the commercial general and excess/umbrella liability policies. Lessor shall give 30 days' advance written notice of cancellation or non-renewal of the insurance policy during the term of this Agreement.
2. The hold harmless, indemnity and insurance provisions of this Agreement shall not expire until the statute of limitations applicable to a claim made by the parties or by third parties pursuant to said provisions has expired or one year from the termination of this Agreement, whichever first occurs.
3. If any policies are written on a claims-made basis, Lessor shall not discontinue or change liability insurance policies in effect during any part of this Agreement without buying an extended or tail insurance policy to cover potential claims that may have occurred during the term of this Agreement.
4. Upon execution of this Agreement, the Lessor shall furnish, if desired, the Lessee with a certificate of insurance, showing evidence of compliance with the above requirements.
5. Lessor shall notify Lessee immediately upon the commencement of any litigation against Lessor where there is any possibility the Lessee may be made a party thereto.

**W. Conflict of Interest**

Lessor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Lessor further covenants, to its knowledge and ability, that in the performance of said services, no person having any such interest shall be employed by Lessor.

**X. Entire Agreement**

This Agreement and the aforementioned Exhibits attached hereto constitute the entire Agreement between the parties. Lessor makes no guarantees, express or implied, other than the warranties expressed in this Agreement. No representative or statement not expressly contained in this Agreement or incorporated by reference shall be binding upon Lessor. Agreement may only be modified or amended in writing with mutual consent by the Parties

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WITNESS THEREOF, the parties have executed this Agreement this 22<sup>nd</sup> day of April, ~~2018~~ <sup>2019</sup> kp

**Sangamon County Health Department**

**CDP, Inc.**

Phone 217-535-3100 x 2701

Phone: 800.888.6035

Fax 217-535-3104

Fax: 630.783.8841

Email: Gail.O'Neill@co.sangamon.il.us

Email: Kelly.pralle@cdpehs.com

Signature: *Gail O'Neill*

Signature: *Kelly Pralle*

Print Name Gail O'Neill

Print Name Kelly Pralle

Title: Director of Public Health

Title: CFO

Date: April 22, 2019

Date: 5/1/2019

SCHEDULE A – COSTS

Monthly Subscription/User License Fee	Volume		Fees	Monthly Totals	Annual Totals
CDPims - Unlimited	1		441.00	441.00	5,292.00
Monthly County Program Fee					
CDPims - Food Includes public web site for viewing of inspections	1		386.40	386.40	4,636.80
CDPims - OSW/Wells	1		386.40	386.40	4,636.80
CDPims - Complaints/Request for Service.	1		0.00	0.00	0.00
Food Borne Illness Module	1		0.00	0.00	0.00
Ad Hoc Reporting	2		27.30	54.60	655.20
CDPmobile/ims Sync	1		220.50	220.50	2,646.00
Menard County Included	1		262.50	262.50	3,150.00
One-Time (Upfront fee)		One-Time Fee			
CDPmobile Licenses \$1400					
Custom Programming (\$115/per hour)					
Annual fees		Annual Fee			
CDPmobile Maintenance due on annual anniversary dates	12	310.00			3,720.00
Totals				Monthly Totals	Annual Totals
				1,751.40	24,736.80

Prices reflect systems as-is currently being utilized in IL

## SCHEDULE B – IT REQUIREMENTS

### ***Beginning July 2018 CDPmobile/APP H/W requirements***

*Although CDPims web based application running on desktops can run with less than noted here, we recommend the following for CDPmobile/App for optimal performance.*

#### Windows App Optimized for Touch/Mouse/Keyboard

	Minimum	Recommended
Processor	Intel i3 based processor	Intel i5 dual core processor
Memory	1 GB	4 GB
Disk Storage	250 MB	5 GB
Operating System	Windows 7 Professional and above	Windows 8 or 8.1 Pro / Enterprise (x86/x64)
Pre-Requisites	US English regional settings .NET Framework v4.5.2	US English regional settings .NET Framework v4.5.2

#### iOS App

	Minimum	Recommended
Device	iPad Air, iPad Mini 2, iPhone 5s	iPad Air 2, iPad min 3 or iPhone 6
Operating System	iOS v8.0 or later	iOS v9.0 or later

#### Android App

	Minimum	Recommended
Device	Any device	Modern tablet or phone device *
Operating System	Android v4.4 or later	Android v6.0 or later

*\* Note that there are a wide variety of Android tablet devices and the Android App has not been tested on all of them. In general, CDP recommends reference devices such as the Nexus 5/7/10, Samsung Galaxy Tab series, and Lenovo IdeaTab series.*

*Due to the constant evolution of hardware platforms, we ask that you inquire about preferred or tested models at the time of decision making. Please note as long as the above specifications are met at the minimum level CDPmobile will work.*

Internet Connection Bandwidth	<p>Though we cannot accurately size up the bandwidth requirement vis-a-vis the number of users as well as other/non-CDP internet activity, we do minimally recommend that the following be considered as a broad guideline.</p> <ul style="list-style-type: none"> <li>• Up to 15 Users: 50 Mbps/download and 10Mbps/upload.</li> <li>• Up to 30 Users: 75 Mbps/download and 15 Mbps/upload.</li> <li>• Up to 50 Users: 100 Mbps/download and 20Mbps/upload.</li> </ul>
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## SCHEDULE C – SERVICE LEVEL AGREEMENT (SLA)

### Scope

The Lessor Software Service Level Agreement ("SLA") is intended to describe the level of availability of the Software production server that Lessor will provide to the Lessee.

During the term of the Agreement, Lessor's production servers will be operational and available to the Lessee for at least 99% of the time, excluding scheduled downtime, in any calendar month. If Lessor does not meet the SLA, and if the Lessee meets its obligations under this SLA, the Lessee will be eligible to receive the SLA Credits ("SLAC ") described below. This SLA states the Health Department Lessee's sole and exclusive remedy for any failure by Lessor to provide the Services covered by this SLA. (What is the SLA Credit?)

### Definitions

#### **Downtime**

Downtime is measured based on the in-accessibility rate of the Lessor hosted Software production servers due to server side failures only. If there is more than fifteen percent (15%) of the user community finding the Lessor Software production server in-accessible then this constitutes a Downtime.

#### **Downtime Period**

A period of thirty consecutive minutes of Downtime. Intermittent Downtime for periods less than thirty minutes is not counted towards Downtime Periods.

#### **Covered Services**

This refers to the access of the Lessor hosted Software production servers.

#### **Monthly Uptime**

$((60 \times 24 \times \text{Days of the calendar month}) - (\text{Number of minutes of Downtime from all Downtime Periods in the calendar month})) / (60 \times 24 \times \text{Days of the calendar month})$ .

#### **Scheduled Downtime**

Lessor will notify the Lessee of periods of downtime to the commencement of such downtime. Scheduled downtime is not considered downtime for purposes of this SLA, and is not counted towards any downtime periods.

#### **Services**

Covered Services under the Agreement.

#### **SLAC**

Monthly Uptime (Percentage)	SLAC (Days of Service)
< 99.0% & ≥ 95.0%	1
< 95.0%	5

**Health Department Responsibilities**

The Lessee must notify Lessor and request the SLAC within thirty days (30) from the time the Lessee becomes eligible to receive SLAC.

SLAC is only available to the Lessor Software hosted model of subscription.

Failure to comply with the above will forfeit the Lessee's right to receive SLAC.

**Exclusions**

The SLA does not apply to any service/s that expressly exclude this SLA or any performance issues: (i) caused by factors outside of Lessors reasonable primary control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Lessor's employees), or Internet service provider failures or delays, SSL provider failures and; (ii) that resulted from the Lessee's equipment or third party equipment/Software, or both (not within the primary control of Lessor).

**Maximum Credit**

The aggregate maximum number of SLAC to be issued by Lessor to the Lessee for all Downtime Periods that occur in a single calendar month shall not exceed fifteen days (15) of Service to be added to the end of the Lessee's term. SLAC may not be exchanged for, or converted to monetary/subscription amounts.

**Disclaimer**

Every effort has been made to ensure the accuracy and correctness of the information contained herein. However in the unlikely event of certain errors and/or omission, Lessor will not be liable to be held responsible for any loss whatsoever due to the usage of this document. Lessor also reserves the right to modify the contents of this document without any prior notice.

## **CDP / SANGAMON COUNTY DEPARTMENT OF PUBLIC HEALTH AMENDMENT NO. 1 TO CDP SOFTWARE SERVICES AGREEMENT**

This Amendment No. 1 is effective as of the 5th day of October 2020 and amends that certain CDP SOFTWARE SERVICES AGREEMENT Dated October 5, 2018 between Custom Data Processing, Inc. ("CDP and/or Lessor"), 1408 Joliet Road, Romeoville, Illinois 60446, and the Sangamon County Department of Public Health located at 2833 South Grand Avenue East in Springfield, IL 62703 ("Client and/or Lessee"); a copy of which Contract is attached hereto.

WHEREAS, the parties entered into the SOFTWARE SERVICES AGREEMENT under which CDP is providing the following services to the Lessee for the terms of this Agreement will commence upon use of the Software. Thereafter, this agreement shall be automatically renewed for successive one (1) year periods from the ending of the initial term unless Lessee and Lessor enter into a new Agreement that entirely replaces this Agreement or Lessee or Lessor terminates this Agreement as provided herein.

- CDP's Environmental Health Services software; and,
- CDP/ezEMRx Software for Electronic Health Records; and,
- Revenue Cycle Management (RCM) Service

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

The original Contract dated October 5, 2018 is amended by adding the following:

- **Schedule D:** ezEMRx and RCM costs
- **Schedule E:** ezEMRx IT Requirements
- **Schedule F:** Business Associate Agreement

All terms and conditions of the Contract remain in full force and effect.

WITNESS THEREOF, the parties have executed this agreement this \_\_\_\_ day of \_\_\_\_\_ 2020.

**Sangamon County  
Department of Public  
Health**

**CDP, Inc.**

Phone \_\_\_\_\_

Phone: 800.888.6035

Fax \_\_\_\_\_

Fax: 630.783.8841

Email: \_\_\_\_\_

Email: Kelly.pralle@cdpehs.com

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

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

Print Name \_\_\_\_\_

Print Name Kelly Pralle

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

Title: CFO

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### SCHEDULE D – ezEMRx / RCM COSTS

Sangamon County ezEMRx/RCM Project Pricing - 9.30.20		Client Charge	#s	One-time charges to Client	Monthly Charges	Annual Charges
<b>One-time Site implementation charge for ezEMRx &amp; RCM</b>						
Total charged for Implementation - <small>PHF Grant pays for \$3000</small>		\$0	1	\$0		
<b>Training for ezEMRx</b>						
On-Site: per day / per trainer, includes travel expenses		\$1,000	4	\$4,000		
Remote: per hour / per trainer		\$95		\$0		
<b>Data Conversion</b>						
Demographic data only conversion from Harris Systems (formerly Upp)		\$0				
All other conversion TBD billed hourly		\$125		\$0		
<b>Integration</b>						
Bi-directional flat fee of \$6,000/per - <b>anticipating none</b>		\$6,000		\$0		
Uni-directional flat fee of \$4,000/per - <b>anticipating none</b>		\$4,000		\$0		
I-CARE real-time integration included		\$0	1	\$0		
Lab, Hospital, etc. integration already built included		\$0		\$0		
<b>Revenue Cycle Management</b>						
Revenue Cycle Management service	Estimated monthly paid claim revenue	\$33,215.00	On Paid Claims	11.00%	\$3,653.65	\$43,843.80
<i>Percentage paid on actual monthly paid claim revenue</i>						
<b>Monthly ezEMRx license rates per user</b>						
Prescribers		\$125.00	3	\$375	\$4,500	
Overseeing Prescribers		\$0.00	0	\$0	\$0	
Providers (non-prescribers)		\$125.00	10	\$1,250	\$15,000	
P-T Providers (non-prescribers)		\$62.50	0	\$0	\$0	
Support staff (non-clinicians)		\$45.00	13	\$585	\$7,020	
System Administrator		\$0.00	1	\$0	\$0	
Optional Mobility for Clinicians: Additional charge of \$25 per user/per month in addition to regular license cost noted above.		\$25.00				
<b>Monthly Billing and A/R license rates per NPI</b>						
Per every billable NPI		\$95	1	\$95	\$1,140	
Real-time eligibility verification and clearing house charges for every billable NPI		\$145	1	\$145	\$1,740	
Billflash billed at actuals (if used). Split up by provider, BF charges 0.67 for sending each patient statement(print,fold,mail), 0.50 to update an address(on a return).		\$0.67 ?				
One-time Credentialing & Contract Negotiation per billing NPI: <small>PHF Grant pays</small>		\$100 ?				
<b>Blended hourly rate</b>		\$125			\$0	
				<b>One-time charges to Client</b>	<b>Monthly Charges</b>	<b>Annual Charges</b>
County costs				\$4,000	\$6,104	\$73,244

### SCHEDULE E – ezEMRx IT REQUIREMENTS

The following table describes the preferred list of equipment specifications required for access of CDP/ezEMRx product lines. These requirements are subject to change over time.

IT Equipment Type	Minimum Specifications
Desktop/Laptop	Processor age : Dual Core or better Memory : 8GB or better Display Monitor : 1280x720 or better OS Platforms : Windows 7 or better Mac OS
Laptop Tablet	Processor age : Dual Core or better Memory : 8GB or better Display Monitor : 1280x720 or better OS Platforms : Windows 7 or better Mac OS Screen type : Convertible laptop & stylus
iPads for Mobility App	User preference
Scanner	Fujitsu fi-61xx series
Printer	Any
Specimen Bar Code Printer	DYMO LabelWriter 450 Turbo Thermal Label Printer
Signature Pad	Topaz SigLite 1x5 HID-USB, Mfg. Part: T-S460-HSB-R
Wireless Access Point	Cisco Devices to meet HIPAA compliancy <ul style="list-style-type: none"> <li>• Cisco 5500 Series Wireless LAN Controllers</li> <li>• Cisco Aironet 3500 AP</li> <li>• Cisco 3310 Mobility Service Engine</li> <li>• Cisco Wireless Control System</li> </ul>
Network Switch	100Mb or better
Barcode Scanner	Capable of reading 1D and 2D barcodes. Ability to read code 39, code 128, and PDF417.  Recommended: Zebra DS4308
Internet Connection Bandwidth	CDP recommends a dedicated business class Internet connection. Network activity varies per

IT Equipment Type	Minimum Specifications
	<p>case, but the following are presented as broad guidelines:</p> <ul style="list-style-type: none"><li data-bbox="743 415 1198 443">• <b>15 Users:</b> 50 Mbps DL/10 Mbps UL</li><li data-bbox="743 449 1198 476">• <b>30 Users:</b> 75 Mbps DL/15 Mbps UL</li><li data-bbox="743 483 1198 510">• <b>50 Users:</b> 100 Mbps DL/20Mbps UL</li></ul>
Local Software Requirements	
Browser	Mozilla Firefox Extended Service Release (ESR) 68 – subject to change due to ESR updates from Mozilla.
Additional software	Adobe Reader, Latest Java Runtime Environment (JRE)

## SCHEDULE F – BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made and entered into as of the 19<sup>th</sup> day of February ("Effective Date"), by SANGAMON COUNTY HEALTH DEPARTMENT ("Covered Entity"), and CUSTOM DATA PROCESSING, INC. 1408 JOLIET ROAD, ROMEOVILLE, ILLINOIS 60446 ("Business Associate").

### RECITALS

- A. Covered Entity and Business Associate entered into an Agreement (the "Underlying Agreement") pursuant to which Business Associate agrees to perform certain services on behalf of Covered Entity (the "Services").
- B. In performing the Services, Business Associate may create, access, receive, maintain or transmit Covered Entity's Protected Health Information (defined below).
- C. The parties wish to enter into this Agreement to set forth their understanding with regard to Business Associate's Use and Disclosure of Protected Health Information (defined below) in accordance with the business associate Agreement requirements of the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 ("HITECH"), and all applicable implementing regulations, including, without limitation, the Privacy Rule, the Security Rule and the Breach Notification Rule (as those terms are defined below) (all such laws and regulations shall be collectively referred to herein as "HIPAA").

### AGREEMENTS

In consideration of the Recitals and the mutual Agreements which follow, Covered Entity and Business Associate agree as follows:

1. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in HIPAA.
  - a. "Breach Notification Rule" means the regulations for Breach Notification for Unsecured Protected Health Information published in the Federal Register on January 25, 2013.
  - b. "Electronic Protected Health Information" or "EPHI" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103, limited to information that Business Associate creates, accesses, receives, maintains or transmits on behalf of Covered Entity.
  - c. "Event" shall mean any Use or Disclosure of PHI (defined below) not provided for within this Agreement or otherwise not permitted under HIPAA or other applicable federal or state laws, including, without limitation, a Breach of Unsecured PHI or a Security Incident.

- d. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. parts 160 and 164, Subparts A and E, as currently in effect.
- e. "Protected Health Information" or "PHI" shall have the meaning set forth in the Privacy Rule, limited to the PHI that Business Associate creates, accesses, receives, maintains or transmits on behalf of Covered Entity. PHI includes EPHI.
- f. "Security Rule" means the Standards for Security for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. parts 160 and 164, Subpart C, as currently in effect.

## 2. Business Associate's Obligations.

- a. Acknowledgement of HIPAA Obligations. Business Associate acknowledges and agrees that it (i) is a "Business Associate" as defined by HIPAA and, (ii) as a Business Associate, has direct obligations under HIPAA with respect to its Use and Disclosure of PHI, in addition to those contractual obligations set forth in this Agreement.
- b. Privacy Rule Safeguards. Business Associate shall develop, implement, maintain and use administrative, technical and physical safeguards that are appropriate and sufficient to prevent Use or Disclosure of PHI other than as permitted or required by this Agreement. Business Associate shall train members of its workforce regarding their obligations to protect and safeguard PHI and immediately report Events.
- c. Security Rule Compliance. Business Associate represents and warrants that it is, and for purposes of this Agreement, shall be at all times, fully compliant with all aspects of the Security Rule and has fully implemented Administrative Safeguards, Technical Safeguards and Physical Safeguards that reasonably and appropriately preserve the confidentiality, integrity and availability of EPHI, including, without limitation, maintaining documentation of a current and completed security risk assessment and written security policies and procedures. Business Associate also shall comply with any and all applicable state data security laws.
- d. Use and Disclosure of PHI. Business Associate shall not use or disclose PHI other than: as permitted or required by this Agreement; as required to perform the Services; or as Required by Law. Business Associate shall not use or disclose PHI in any fashion that would constitute a violation of HIPAA if Covered Entity were to use or disclose the PHI in the same fashion. In using and disclosing PHI, Business Associate also shall comply with all federal and state laws that apply to the Use and Disclosure of PHI, including, without limitation, any applicable federal or state laws that are more restrictive than HIPAA.
  - i. Minimum Necessary. In requesting, using, and disclosing PHI to perform the Services or when doing so in accordance with the Privacy Rule for

Business Associate's proper management and administration or to carry out its legal obligations, Business Associate shall comply with the minimum necessary requirements of the Privacy Rule.

- ii. Use or Disclosure of PHI for Business Associate's Proper Management and Administration. As permitted by the Privacy Rule, Business Associate may use PHI to the extent necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities. Business Associate also may disclose PHI to the extent necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities only if the Disclosure is Required by Law and made in accordance with the procedures set forth in section 5 for Disclosures of PHI Required by Law or, if Business Associate obtains reasonable assurance evidenced by written contract from the third party to whom Business Associate will disclose PHI that the third party shall: [a] hold the PHI in confidence and use or further disclose it only for the purposes for which Business Associate disclosed it to such third party or as Required by Law; and [b] notify Business Associate of any instance of which it becomes aware in which the confidentiality of such PHI was breached in a time frame that permits Business Associate to comply with its reporting obligations set forth in section 2(e) below.
- iii. Data Aggregation Services. If authorized by the Underlying Agreement, Business Associate may perform Data Aggregation on behalf of Covered Entity.
- iv. De-Identification Services. If authorized by the Underlying Agreement, Business Associate may de-identify PHI in accordance with the de-identification safe harbor of the Privacy Rule set forth in 45 C.F.R. § 164.514(b)(2). Business Associate may not de-identify PHI using the statistical method of the Privacy Rule set forth in 45 C.F.R. § 164.514(b)(1) without Covered Entity's prior written consent. Business Associate acknowledges and agrees that Covered Entity owns all data created from its PHI in accordance with section 10 of this Agreement. Business Associate shall not de-identify Covered Entity's PHI for its own use or retain any de-identified PHI created to perform the Services.
- v. Limited Data Set. Business Associate may create a Limited Data Set to perform the Services, provided that Business Associate:
  - [a] Does not further use or disclose PHI contained in the Limited Data Set, except as necessary to perform the Services;
  - [b] Use appropriate safeguards to prevent the Use or Disclosure of PHI contained in the Limited Data Set other than as provided for by this Agreement;

- [c] Reports to Covered Entity any Use or Disclosure of PHI contained in the Limited Data Set of which Business Associate becomes aware that is not provided for by this Agreement;
  - [d] Ensures that any agents or Subcontractors to whom it provides access to the Limited Data Set agree, in writing, to the same restrictions and conditions that apply to Business Associate under this Agreement; and
  - [e] Does not re-identify PHI or contact the Individuals whose information is contained within the Limited Data Set.
- vi. Sale of PHI. Business Associate shall not receive direct or indirect payment in exchange for any PHI.
  - vii. Marketing. Unless authorized by the Underlying Agreement in order to perform Services on behalf of Covered Entity, Business Associate shall not use or disclose PHI for any marketing purpose.
  - viii. Use and Disclosure of PHI for Covered Entity's Privacy Rule Obligations. To the extent this Agreement or the Underlying Agreement requires Business Associate to carry out any of Covered Entity's obligations under the Privacy Rule (including, without limitation, those obligations set forth in section 2(g) below), Business Associate agrees to comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.
- e. Event Reporting.
- i. Unpermitted Use or Disclosure of PHI; Breach of Unsecured PHI. Except as provided in section 2(e)(ii) below, Business Associate agrees to notify Covered Entity of any Event of which it has reasonable suspicion of, or discovers, including any Breach of Unsecured PHI as required by 45 C.F.R. § 164.410. Business Associate shall furnish initial written notice to Covered Entity within two business days from when the Business Associate has a reasonable suspicion of, or discovers, that an Event has occurred. This initial notice shall identify one contact person of Business Associate with whom Covered Entity may correspond regarding the Event. Within five business days from the date of the aforementioned initial notice, Business Associate shall provide Covered Entity a written report containing a summary of the Event, which report shall include: a complete description of the Event, the date of the Event and the date of discovery; the names of the Individuals affected and any identifying account number, medical record number or date of birth; a description of the types of PHI involved in the Event; and a description of Business Associate's investigation and efforts to mitigate harm and protect against further Events.

- ii. Special Reporting Requirements for Security Incidents. Business Associate agrees to provide notice to Covered Entity in the manner and within the timeframes set forth in section 2(e)(i) above of all Security Incidents that: [a] result in unauthorized access, Use, Disclosure, modification or destruction of EPHI or interference with system operations; or [b] do not result in unauthorized access, Use, Disclosure, modification or destruction of EPHI or interference with system operations ("Unsuccessful Security Incidents") but which Business Associate reasonably determines are of a type or pattern that warrant further action. Notwithstanding the foregoing, the parties acknowledge and agree that this section (2)(e)(ii) of the Agreement constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents which are not of a type or pattern that warrant further action.
- f. Event Mitigation. Business Associate shall work diligently and cooperatively with Covered Entity to mitigate promptly, to the extent practicable, any harmful effect that is known to Business Associate of an Event and shall document all mitigation efforts undertaken pursuant to this section 2(f). Business Associate shall cooperate with Covered Entity's efforts to seek appropriate injunctive relief or otherwise prevent or curtail a threatened or actual Breach, or to recover the PHI, including complying with reasonable corrective action plans.
- g. Individual Rights.
  - i. Individual Right to Access. Upon request, Business Associate shall provide Covered Entity with the information necessary to respond, within the timeframes Required by Law, to a request from an Individual to access his or her PHI. Business Associate acknowledges and agrees that upon the verbal or written request of an Individual, or his or her legal representative, Covered Entity must [a] provide an opportunity to inspect all records pertaining to the Individual, including current clinical records, within twenty-four (24) hours (excluding weekends and holidays) and [b] following this inspection, if additionally requested, furnish a copy of the records or any portion thereof within two (2) business days. If Business Associate receives an access request from an Individual, Business Associate shall immediately notify Covered Entity.
  - ii. Individual Right to Amend. Within five business days of receipt of Covered Entity's notice to Business Associate of a request from an Individual to amend his or her PHI, Business Associate shall amend such PHI as directed by Covered Entity and provide to Covered Entity a written report detailing its handling of such request. If Business Associate receives an amendment request from an Individual, Business Associate shall, within two business days, notify Covered Entity of the details of such request. Following receipt of such notice, Covered Entity shall handle such request, unless Business Associate maintains a designated

record set, in which case, at the option and request of Covered Entity, Business Associate shall, within five business days of Covered Entity's request, amend such PHI as directed by Covered Entity and provide to Covered Entity a written report detailing its handling of such request.

- iii. Individual Right to Request Accounting. Within five business days of Covered Entity's notice to Business Associate of a request from an Individual for an accounting of Disclosures of his or her PHI, Business Associate shall make available to Covered Entity such information as is in Business Associate's possession and is required for Covered Entity to make the accounting required by 45 C.F.R. § 164.528, which includes, at a minimum, the following information:

- [a] The date of the Disclosure;
- [b] The name of the entity or person who received the PHI, and, if known, the address of such entity or person;
- [c] A brief description of the PHI disclosed; and
- [d] A brief statement of the purpose of such Disclosure that includes an explanation of the basis for such Disclosure.

If Business Associate receives a request for an accounting from an Individual, Business Associate shall, within two business days, notify Covered Entity of the details of such request. Following receipt of such notice, Covered Entity shall handle such request, except that, at the option and request of Covered Entity, Business Associate shall, within five business days of Covered Entity's request, respond directly to the Individual for purposes of providing the accounting, as directed by Covered Entity, and provide to Covered Entity a written report of the details of its handling of such requests. To the extent that Business Associate maintains or operates an electronic health record system on behalf of Covered Entity, Business Associate also shall maintain information for the preceding three-year period (but no earlier than the applicable Effective Date) sufficient to enable Covered Entity to make an accounting of Disclosures for treatment, payment and health care operations.

- h. Agents and Subcontractors. Business Associate shall ensure that any and all of its agents and Subcontractors to whom it provides PHI in connection with the Services, or that create, access, receive, maintain or transmit PHI on behalf of Business Associate, agree, in writing, prior to the receipt of PHI, to the same restrictions and conditions that apply to Business Associate under this Agreement and any additional restrictions or conditions necessary to permit Business Associate to comply with its obligations under this Agreement, including, without limitation, its Event reporting obligations set forth in section 2(e) above. Business Associate also shall ensure that all of its agents and Subcontractors to whom it provides PHI in connection with the Services, or that create, access, receive, maintain or transmit PHI on behalf of Business Associate, agree to comply with

the terms of the audit and record keeping provisions set forth in sections 2(i) and 2(j) of this Agreement. Business Associate shall maintain, and provide to Covered Entity upon request, a list of all agents or Subcontractors that access, create, receive, maintain or transmit PHI and a description of the PHI being accessed, created, received, maintained or transmitted by each such agent or Subcontractor.

- i. Audit. For purposes of determining Business Associate's or Covered Entity's compliance with HIPAA, upon request of Covered Entity or the Secretary of Health and Human Services, Business Associate shall: (i) make its HIPAA policies and procedures, related documentation, records maintained in accordance with section 2(j) below, and any other relevant internal practices, books and records relating to the Use and Disclosure of PHI, available to the Secretary of Health and Human Services or to Covered Entity and (ii) provide reasonable access to Business Associate's facilities, equipment, hardware and software used for the maintenance or processing of PHI. Business Associate shall promptly notify Covered Entity of communications with the Secretary regarding PHI and shall provide Covered Entity with copies of any information Business Associate has made available to the Secretary under this section 2(i).
- j. Record Keeping. Business Associate agrees to implement appropriate record keeping processes to enable it to comply, and to adequately evidence such compliance, with the requirements of this section 2, including, without limitation, the documentation required regarding agents and Subcontractors, records of Business Associate's workforce training and education, documentation related to any Event, and any written assurance of third parties with whom Business Associate discloses PHI for Business Associate's proper management and administration or as Required by Law. Business Associate shall continue to maintain all documentation required by this Agreement for a period of six years after the termination of this Agreement and shall make such information available to Covered Entity upon request.
- k. Identity Theft Prevention Program. Business Associate acknowledges that Covered Entity has adopted an Identity Theft Prevention program as required under the Red Flags Rule [16 CFR Section 681] for certain covered accounts. If the services contemplated by the contract with Covered Entity involve activities covered by the Red Flags Rule, such as opening or managing patient/Lessee accounts, billing patients/Lesseees, providing Lessee service or collecting debts, Business Associate agrees to conduct its activities in accordance with reasonable policies and procedures to detect, prevent and mitigate the risk of identity theft, which shall include reporting red flags (warning signs of possible identity theft) to Covered Entity and/or responding appropriately to prevent or mitigate identity theft.
- l. Insurance Coverage. Business Associate shall obtain and maintain insurance coverage against improper uses and disclosures of Covered Entity's PHI by Business Associate, in an amount not less than One Million Dollars (\$1,000,000)

per occurrence, and Three Million Dollars (\$3,000,000) in the aggregate. Business Associate shall provide a certificate evidencing such insurance coverage and naming Covered Entity as an additional insured. Business Associate shall also provide written notice thirty (30) days in advance of any cancellation or proposed cancellation of such coverage.

- m. Documentation. Business Associate agrees to document such disclosures of Covered Entity's PHI and PHI related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of Covered Entity's PHI in accordance with HIPAA. Business Associate agrees to provide to Covered Entity or an individual, in the time and manner designated by Covered Entity, but no less than thirty (30) days from the date of request, information collected in accordance with this Section and the underlying Agreement between Covered Entity and Business Associate to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of Covered Entity's PHI. If Business Associate uses or maintains Covered Entity's PHI in an Electronic Health Record, then Business Associate must account for disclosures made through the Electronic Health Record for purposes of treatment, payment, and health care operations and in accordance with 42 U.S.C. Section 17935.
- n. HITECH Act. Business Associate agrees to comply with the applicable provisions of the HITECH Act (Section 13401 of ARRA). The HITECH Act imposes on entities covered by HIPAA and their business associates federal breach notification requirements when "unsecured" PHI is disclosed to an unauthorized party. "Unsecured" means not secured through the use of a technology or methodology that renders the information "unusable, unreadable, or indecipherable" to unauthorized individuals. [Section 13401 of the American Recovery and Reinvestment Act of 2009]

### 3. Covered Entity's Obligations.

- a. Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation in its Notice of Privacy Practices, to the extent such limitation affects Business Associate's permitted Uses or Disclosures.
- b. Individual Permission. Covered Entity shall notify Business Associate of changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent such changes affect Business Associate's permitted Uses or Disclosures.
- c. Restrictions. Covered Entity shall notify Business Associate of any restriction in the Use or Disclosure of PHI to which Covered Entity has agreed; to the extent such restriction affects Business Associate's permitted Uses or Disclosures.
- d. Requests. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if used or disclosed by the Covered Entity.

- e. Data Use Agreement. Covered Entity acknowledges and agrees that the provisions of section 2(d)(v) of this Agreement shall constitute a Data Use Agreement between the parties.

4. Term and Termination.

- a. Term. This Agreement shall be effective as of the Effective Date and shall remain in effect until such time that Business Associate no longer creates, accesses, receives, maintains or transmits PHI on behalf of Covered Entity, subject to section 4(b) below.
- b. Termination for Cause. If either party to this Agreement becomes aware that the other party has breached a material term of this Business Associate Agreement, which includes a breach by either party of any provision relating to the unauthorized use or disclosure of Covered Entity's PHI or electronic PHI, then either party to this Agreement may, in its sole discretion:
  - i. Provide Business Associate an opportunity to cure the breach within a specified period of time and terminate this Agreement if Business Associate does not cure such breach within the time period specified; or
  - ii. Immediately terminate this Agreement.
- c. Effect of Termination.
  - i. Except as provided in section 4(c)(ii), and subject to any record retention provisions of the Underlying Agreement, upon termination, cancellation or expiration of this Agreement or the Underlying Agreement, Business Associate shall return to Covered Entity or destroy all PHI or de-identified PHI in its possession or in the possession of its Subcontractors or agents. Within 30 days of the date this Agreement is terminated, Business Associate shall provide to Covered Entity a written certification, signed by an authorized officer of Business Associate, verifying that Business Associate has fully complied with the requirements of this section 4(c)(i).
  - ii. In the event the parties mutually determine that returning or destroying the PHI or de-identified PHI is infeasible, Business Associate shall retain such PHI or de-identified PHI and extend the protections of this Agreement to such PHI or de-identified PHI until such time that Business Associate returns or destroys it.
  - iii. Business Associate's obligations under this section 4(c) shall survive termination of this Agreement and the Underlying Agreement.

5. Required Disclosure. If Business Associate is confronted with legal action to disclose any PHI, Business Associate shall promptly notify Covered Entity and assist Covered Entity, as reasonably requested, in obtaining a protective order or other similar order, and

shall thereafter disclose only the minimum amount of PHI that is required to be disclosed to comply with the legal action, whether or not a protective order or other similar order has been obtained.

6. Injunctive Relief. Business Associate acknowledges that its Use or Disclosure of PHI in violation of this Agreement would cause Covered Entity continuing, substantial and irreparable injury and that Covered Entity's remedies at law for such action will not be adequate. Accordingly, in such circumstances, Business Associate agrees that Covered Entity shall be entitled to immediate injunctive relief, and that such rights shall be in addition to, and not in limitation of, any other rights or remedies to which Covered Entity may be entitled at law or in equity.
7. Independent Contractor Status. The parties agree that in performing the Services and satisfying the obligations of this Agreement, Business Associate shall at all times be an independent contractor for Covered Entity and nothing in this Agreement shall be construed as creating an agency, employment, joint venture, partnership or other relationship. Covered Entity shall neither have nor exercise any control or direction over Business Associate. Business Associate shall avoid taking any action or making any representation or warranty whatsoever with respect to its relationship with Covered Entity which is inconsistent with its independent contractor status.
8. Indemnification.
  - a. Business Associate shall indemnify Covered Entity and all of its directors, officers, members, employees and agents against any and all claims, demands, losses, costs, expenses, obligations, liabilities, actions, suits, damages and deficiencies (including, without limitation, all costs and attorneys' fees) that arise out of or are proximately caused by (i) Business Associate's breach of this Agreement, including, without limitation, the failure of Business Associate to fulfill any of its obligations with respect to PHI under section 2 or (ii) any Use or Disclosure of PHI by Business Associate, its employees, agents, Subcontractors or independent contractors that is not permitted under this Agreement or that otherwise violates HIPAA.
  - b. In addition to any indemnity rights under section 8(a) of this Agreement, within 30 days of Covered Entity providing reasonable documentation, Business Associate shall reimburse Covered Entity for all actual costs and expenses Covered Entity incurs in connection with an Event resulting from the failure of Business Associate or its agent or Subcontractor to comply with this Agreement, including, without limitation, the costs of any notification process or credit monitoring for Individuals.
9. Limitation and Exclusion of Liability. Notwithstanding anything in the Underlying Agreement to the contrary, no limitation or exclusion of liability shall apply to liability arising from Business Associate's breach of its obligations under section 2 (Business Associate's Obligations), section 4(c) (Effect of Termination) or section 10 (Ownership) of this Agreement.

10. Ownership. Covered Entity shall be and remain the sole and exclusive owner of the PHI or any data created therefrom using any means of de-identification.
11. Automatic Amendment. Upon the effective date of any amendment to HIPAA, including, without limitation, the Privacy Rule, Security Rule or Breach Notification Rule, this Agreement shall automatically be deemed to be amended to incorporate such amendment to HIPAA so that Covered Entity and Business Associate remain in compliance with HIPAA.
12. Conflicts. Any provision of the Underlying Agreement that is directly contradictory to one or more terms of this Agreement ("Contradictory Term") shall be superseded by the terms of this Agreement only to the extent of the contradiction, as necessary for the parties' compliance with HIPAA and to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.
13. Notices. Any notices or other communications required or permitted to be given under this Agreement shall be in writing and delivered by personal delivery, overnight courier service, or registered or certified mail (return receipt requested, postage prepaid). Notices are deemed to have been given on the later of: (a) the date when personally delivered; (b) the date which immediately follows the date of delivery to an overnight courier service; or (c) the date which is three (3) days from the date of deposit in the United States Postal Service in the manner described in this section 13. Notices shall be addressed as indicated below, and either party may change its address in accordance with this section 13.
- |                     |  |
|---------------------|--|
| Covered Entity:     | Sangamon County Department of Public Health<br>2833 South Grand Avenue East<br>Springfield, IL 62703 |
| Business Associate: | Custom Data Processing, Inc.<br>1408 Joliet Road<br>Romeoville, Illinois 60446                       |
14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.
15. No Waiver. No failure by either party to insist upon the strict performance of any term, covenant or condition of this Agreement or to exercise any right or remedy herein shall constitute waiver thereof. No waiver of any breach of this Agreement shall affect or alter this Agreement, but each and every term, covenant and condition of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach of this Agreement.
16. No Assignment. Neither party shall assign the whole or any part of this Agreement without the other party's prior written consent.

- 17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The parties agree that any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against either party in the courts of the State of Illinois.
- 18. Judicial or Administrative Proceedings. Either party may terminate this Business Associate Agreement, effective immediately, if
  - a. (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA or
  - b. (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- 19. No Third-Party Beneficiaries. Nothing in the Business Associate Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or other liability whatsoever.

The parties have executed this Agreement as of the Effective Date.

**COVERED ENTITY:**

BY \_\_\_\_\_

Its \_\_\_\_\_

**BUSINESS ASSOCIATE: CUSTOM DATA PROCESSING, INC.**

BY \_\_\_\_\_

Its \_\_\_\_\_