# INTEGRATION AGREEMENT FOR
# THE CITY OF SAN ANTONIO
# EHR REPLACEMENT

# REQUEST FOR COMPETITIVE SEALED PROPOSAL
# NO.:  6100009023

# BETWEEN THE CITY OF SAN ANTONIO, TEXAS
# AND
# CUSTOM DATA PROCESSING, INC.

STATE OF TEXAS          §
                        §
COUNTY OF BEXAR         §

This Agreement is entered into by and between the City of San Antonio, Texas, a home-rule municipal corporation (City), and Custom Data Processing, Inc. ("CDP"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

## 1.0    CONTRACT DOCUMENTS

The terms and conditions for performance and payment of compensation for this Agreement are set forth in the following contract documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes, and shall be interpreted in the order of priority as appears below:

a.      This Integration Agreement;

b.      City's Request for Competitive Sealed Proposal (RFCSP) 6100009023, including all attachments, addendums, best and final offers, and clarification statements thereto (Exhibit A);

c.      CDP Statement of Work (Exhibit B); and

d.      CDP Response to RFCSP 6100009023 (Exhibit C-not attached, incorporated in the form signed and submitted by CDP).

## 2.0    TERM

The term of the Agreement will be for a one (1) year period. The City shall have the option to renew for up to four additional one-year periods without additional City Council approval.

## 3.0    INSURANCE

Prior to the commencement of any work under this Agreement, CDP shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Finance Department, Purchasing Division, which shall be clearly labeled "EHR Replacement" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf.  The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number.  The certificate should be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Finance Department, Purchasing Division. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement.  In no instance will City allow modification whereby City may incur increased risk.

CDP's financial integrity is of interest to the City; therefore, subject to CDP's right to maintain reasonable deductibles in such amounts as are approved by the City, CDP shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CDP's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than  A- (VII), in the following types and for an amount not less than the amount listed below:

| TYPE | AMOUNTS |
|---|---|
| 1.  Commercial General Liability Insurance to include coverage for the following:<br> a. Premises/Operations<br> b. Products/Completed Operations<br> c. Personal/Advertising Injury | For Bodily Injury and Property Damage of $1,000,000 per occurrence;<br>$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage |
| 2. Professional Liability | $1,000,000 per claim $1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omissions in providing professional service. |

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|---|---|
| | |

CDP agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of CDP herein, and provide a certificate of insurance and endorsement that names the CDP and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of CDP. CDP shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. CDP shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. CDP shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

CDP agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CDP shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend CDP's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies the City may have upon CDP's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order CDP to stop work hereunder, and/or withhold any payment(s) which become due to CDP hereunder until CDP demonstrates compliance with the requirements hereof.

It is agreed that CDP's insurance shall be deemed primary and non-contributory with respect to any

insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

CDP and any Subcontractors are responsible for all damage to their own equipment and/or property.

## 4.0    INDEMNIFICATION

**CDP covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CDP'S activities under this Agreement, including any acts or omissions of CDP, any agent, officer, director, representative, employee, consultant or subcontractor of CDP, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CDP AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CDP shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CDP known to CDP related to or arising out of CDP's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CDP's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CDP of any of its obligations under this paragraph.

Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of CDP, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CDP or any subcontractor under worker's compensation or other employee benefit acts.

The amount of CDP's indemnity obligation under this paragraph shall not exceed the greater of four million dollars ($4,000,000.00) or the insurance limits set forth in the insurance coverage table above.

## 5.0   LAW APPLICABLE

**5.1   THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

5.2   Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## 6.0   TERMINATION

6.1   For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated, or earlier termination pursuant to any of the provisions hereof.

6.2   Termination Without Cause. This Agreement may be terminated by City upon 30 calendar days written notice. In the event of such termination by City, City shall pay CDP for all work executed and materials delivered to City in accordance with this Agreement, and costs incurred by reason of such termination.

6.3   Termination For Cause. Upon written notice, either party may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

   6.3.1   The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, which shall not be reasonably be withheld,

   6.3.2   City's failure for a period of thirty (30) days to pay CDP for service and/or materials under of this Agreement.

   6.3.3   Bankruptcy or selling substantially all of company's assets

   6.3.4   Failing to perform or failing to comply with any covenant herein required

   6.3.5   Performing unsatisfactorily.

   6.3.6   Failure to meet acceptance test criteria approval on the third attempt.

6.4   Defaults With Opportunity for Cure.  Should CDP default in the performance of this Agreement in any manner, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. CDP shall have thirty (30) calendar days after receipt of the written notice to cure such default.  If CDP fails to cure the default within such thirty-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with an alternate to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with any subsequent vendor against CDP future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

6.5   Termination By Law.  If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

6.6 Regardless of how this Agreement is terminated, CDP shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by CDP, or provided to CDP, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CDP. Payment of compensation due or to become due to CDP is conditioned upon delivery of all such documents, if requested.

6.7 Termination not sole remedy.   In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue CDP for any default hereunder or other action.

6.8  If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation. In the event of such termination by City, CDP shall be entitled to payment in full for all work which CDP has performed in accordance with this Agreement and all equipment which CDP has delivered to the City pursuant to this Agreement.


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## 7.0   ENTIRE AGREEMENT

This Agreement, together with its exhibits, if any, constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless the same are in writing, dated subsequent to the date hereto, and duly executed by the parties.

**EXECUTED** and **AGREED** to as of the dates indicated below. This Agreement may be executed in multiple copies, each of which shall constitute an original.

**CITY OF SAN ANTONIO**                                    **CUSTOM DATA PROCESSING, Inc.**

_____              _____
Troy Elliott, CPA                                          Print Name: Michael Peth
Deputy Chief Financial Officer                             Title: Director, sales & Marketing
Date: _____              Date: June 7, 2018

Approved as to Form:


_____
Assistant City Attorney