

STATE OF TEXAS           §  
                                          §  
COUNTY OF HIDALGO    §

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE  
UNIVERSITY OF TEXAS RIO GRANDE VALLEY AND THE COUNTY OF HIDALGO,  
TEXAS FOR LAB SERVICES  
C-20-303-06-23**

**THIS** Agreement is made on this the \_\_\_\_ day of June, 2020 by and between the UNIVERSITY OF TEXAS RIO GRANDE VALLEY, hereinafter referred to as the “UTRGV” and the COUNTY OF HIDALGO, TEXAS, hereinafter referred to as the “COUNTY” pursuant to the provisions of the Texas Interlocal Cooperation Act, Texas Gov’t Code 791.001 et seq., hereinafter referred to as the “Act”, as follows:

**WITNESSETH:**

**WHEREAS**, the University of Texas Rio Grande Valley is an institution of higher education as defined by Texas Education Code Section 61.003(8) and is located in COUNTY, Texas; and

**WHEREAS**, County is a local government as defined by the Act, and county in the State of Texas; and

**WHEREAS**, County is the recipient of CARES ACT Relief Funds that may be expended, pursuant to guidance provided by the United States Department of Treasury: (Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments) (the “Guidance”); and

**WHEREAS**, the Guidance allows COUNTY to transfer Coronavirus Relief Funds to another unit of government provided that the transfer qualifies as *a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act as outlined in the Guidance*;

**WHEREAS**, COUNTY is in need of additional laboratory testing for its patients and UTRGV can provide laboratory testing (the “Services”) and is willing to provide such Services for COUNTY’s patients; and

**WHEREAS**, UTRGV operates and maintains a properly equipped and staffed laboratory with the appropriate and current Clinical Laboratory Improvement Amendments (CLIA) certification necessary to provide laboratory testing services for COUNTY; and

**WHEREAS**, The COUNTY and UTRGV recognize that additional testing is a necessary medical action for the continued response to the public health emergency related to COVID-19; and

**WHEREAS**, The COUNTY desires to enter into an agreement for full service (turnkey) services utilizing clinical and laboratory services offered by UTRGV for its patients, and UTRGV is willing to provide such services, per the terms and conditions set forth in this Agreement.

**WHEREAS**, the UTRGV and COUNTY are authorized to enter into this Agreement pursuant to the Act, which authorizes local governments to contract with institutions of higher education to perform governmental functions and services under the terms of the Act;

**NOW, THEREFORE,** the University and County, in consideration of the mutual covenants expressed hereinafter, agree as follows:

**1. OBLIGATIONS OF UTRGV:**

UTRGV will perform the following as part of its Services to COUNTY under this Agreement:

- a. Provide SARS-CoV-2 IgG and COVID-19 Real Time-Polymerase Chain Reaction (RT-PCR) testing services offered by UTRGV through its CLIA-certified lab.
- b. Shall conduct specified test(s) to all identified patients, which includes administer test, collect specimen, process specimen and report lab results to COUNTY.
- c. Provide COUNTY with laboratory tests performed to identified patients.
- e. Use best efforts to process all specimens within 24-30 hours of receipt by UTRGV.
- f. Report test results to COUNTY via fax, email or through an EMR, if available; the same day results become available.
- g. In exchange for COUNTY payment for Services, UTRGV shall assign all rights to receive payment from patients or third parties for the Services provided under this Agreement to COUNTY.
- h. Use customary billing practices to bill COUNTY for all tests performed for COUNTY patients receiving SARS-CoV-2 IgG and COVID-19 Real Time-Polymerase Chain Reaction (RT-PCR) testing.
- i. Provide COUNTY the name and contact information of UTRGV employee who will be the contact person for any customer service or laboratory service-related issues.
- j. Continue and maintain certifications and qualifications as required by both federal and state law to provide such laboratory services to COUNTY patients, including all CLIA rules and regulations
- k. Commence providing Services on the Effective Date provided that enhanced throughput equipment and supplies have been received and validated in UTRGV's lab. UTRGV shall immediately advise COUNTY of any potential delays in its ability to perform all Services herein and of an estimated timeline when Services will be available.

**2. OBLIGATIONS OF COUNTY**

COUNTY is responsible for the following under this Agreement:

- a. Shall specify patient name, provide demographics, and designate the laboratory test to be performed by UTRGV hereunder on a laboratory requisition form provided by UTRGV.
- b. Shall make payment directly to UTRGV for Services provided hereunder.
- c. Provide UTRGV with the name and contact information of COUNTY employee who will be the contact person for test results and addressing contract related issues.
- d. Provide UTRGV with a fax number, and or dedicated secure email address, for providing test results.
- e. Shall not make any referrals or any payments under this Agreement that are prohibited by law.

**3. FEES AND BILLING**

**Billing.** UTRGV will bill COUNTY directly for all testing performed based on information provided by COUNTY at the agreed upon fee listed in Exhibit A attached hereto (the "Service Fees").

This pricing is agreed upon and may not be changed except by written agreement by both parties. COUNTY shall make payment to UTRGV upon receipt of UTRGV's written invoice-in compliance with the Texas Prompt Payment Act, Tex.Govt.Code Ch. 2251.

#### **4. TERM AND TERMINATION**

**Term.** The initial term of this Agreement shall commence on the Effective Date and end on the one (1) year anniversary of the Effective Date, unless sooner terminated in accordance with the terms hereof. Thereafter, this Agreement may be renewed for a period of two (2) additional one (1) year terms by written amendment executed by both parties.

**Termination With or Without Cause.** Either party may terminate this Agreement, without cause, upon no less than thirty (30) days advance written notice.

**Effect of Termination.** Upon expiration or termination of this Agreement, neither party shall have any further obligations hereunder, except for (i) obligations incurred prior to the date of expiration or termination, and (ii) other obligation set forth in this Agreement that specifically survive the expiration and/or earlier termination hereof.

#### **5. HOUSE BILL (HB) 300 AND THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

House Bill (HB) 300 and the Health Insurance Portability and Accountability Act sets rules and limitations on who can view and receive an individual's personal information whether it is verbal, electronic, or written. HB 300 and HIPAA will be enforced at all times and UTRGV - Nursing will be subject to compliance at all times.

The Parties agree that:

- a. Both COUNTY and UTRGV are covered entities for purposes of the Health Insurance Portability and Accountability Act of 1996, of 1996 as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act and the Privacy, Security and Breach Notification Regulations at 45 CFR §§ 160 and 164 (hereinafter collectively, "HIPAA") and subject to 45 CFR Parts 160 and 164 ("the HIPAA Administrative Simplification Regulations");
- b. Both COUNTY and UTRGV shall implement appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for by this agreement.
- c. Either COUNTY or UTRGV shall promptly report to the other party any use or disclosure of protected health information not in accordance with this agreement or in violation of HIPAA or HB 300, of which the party becomes aware of.
- d. Either COUNTY or UTRGV shall make its internal practices, books, and records related to the use and disclosure of protected health information available to the

other party, and as applicable, to the Secretary of Health and Human Services to the extent required for determining compliance with the HIPPA and HB 300.

- e. The Services being provided under this agreement by UTRGV create a “business associate” relationship as that term is defined in 45 CFR §160.103.
- f. Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by COUNTY or UTRGV by virtue of the provisions of this section.

## **5. MISCELLANEOUS**

**Parties Relationship.** UTRGV at all times will act as an independent contractor and not as a partner or agent of the other party. Neither COUNTY nor UTRGV will act or hold itself out to third parties as a partner, employee, joint venture, or agent of the other party in the provisions of services under this Agreement.

**No Waiver.** No waiver of a breach of any provisions of this Agreement will be construed to be a waiver of this Agreement, whether of a similar or different nature, and no delay in acting with regard to a breach shall be construed as a waiver of that breach.

**Amendments.** Any amendments to this Agreement will be effective only if in writing and signed by COUNTY and UTRGV.

**Notices.** Any notices permitted or required by this Agreement shall be sufficiently given in personally delivered or sent by registered or certified mail, postage prepaid, to the other party at the address set forth below or to such other person and address as either party may designate in writing:

**If to UTRGV:** The University of Texas Rio Grande Valley  
1201 W University Dr.  
Edinburg, TX 78539  
Attn: EVP, Health Affairs

**If to Hidalgo County:** County of Hidalgo  
100 East Cano Street 2<sup>nd</sup> Floor  
Edinburg, Texas 78539  
Attn: Richard Cortez, County Judge

**Severability.** The invalidity or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provision.

**Headings.** The headings used herein are for convenience only and do not limit the contents of this Agreement.

**Variation of Pronouns.** All pronouns and all variations thereof will be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of the person, persons, or entity may require.

**Governing Law and Venue.** The interpretation and enforcement of this Agreement will be governed by the laws of the State of Texas, without regard to any conflicts of law provisions contained therein. This Agreement is performable in Hidalgo County, Texas. Venue for any suit filed against UTRGV shall be in Hidalgo County, Texas.

**Assignment.** This agreement may not be assigned.

**Force Majeure.** Either party shall be excused for failures and delays in performance of its respective obligations under this Agreement due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, explosion or inability due to any of the aforementioned causes to obtain labor, materials or facilities. Nevertheless, each party shall use its best efforts to avoid or remove such causes and to continue performance whenever such causes are removed, and shall notify the other party of the problem.

**Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

**Authorization for Agreement.** The execution and performance of this Agreement by COUNTY and UTRGV have been duly authorized by all necessary laws, resolutions, and corporate action, and this Agreement constitutes the valid and enforceable obligations of COUNTY and UTRGV in accordance with its terms.

**Immunities.** Neither Hidalgo COUNTY nor UTRGV, via this agreement, waive governmental immunity from suit, or from liability, except as expressly set forth by the Texas Legislature in the Texas Government Code. The fact that Hidalgo COUNTY and UTRGV have entered into this agreement shall not in any way, constitute a deliberate waiver of immunity by either entity, which immunities are expressly reserved by both parties.

**Insurance.** Consistent with its status as an independent contractor and at its sole expense, UTRGV agrees that throughout the duration of the work under this contract and any extension hereof, it shall provide and maintain any and all insurances and abide by any requirements which may be necessary in providing Services or are otherwise required by law. Insurance policies shall cover, but are not limited to, UTRGV's activities and all persons, vehicles, equipment and property connected with providing Services. The amount of insurance required shall be in accordance with amounts specified by the COUNTY or as prescribed by law, but in no event shall any amount be less than the minimum amounts prescribed by law, including, but not limited to the Texas Tort Claims Act. UTRGV is responsible for ensuring all required insurance policies are valid for the duration of the contract. UTRGV shall furnish to COUNTY certificate(s) of coverage, and all renewals throughout the duration of the Project, issued by the insurer that such insurance is in full force and effect. (See Exhibit "C" attached hereto and incorporated herein for all purposes). For each applicable policy, UTRGV shall name the COUNTY as an additional insured. UTRGV shall make any other insurance documentation available to County upon request.

**Liabilities.** This Agreement is not intended to extend the liability of the Parties beyond that provided by law. Neither UTRGV nor COUNTY waive, nor shall be deemed to have hereby waived, any immunity or defenses that would otherwise be available to it against claims arising from third parties.

**Additional Documents.** The Parties agree that they will use reasonable, good faith efforts to execute each such other and further instruments and documents, including but not limited the Business Associate Agreement, as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

**Non-Discrimination.** The Services and all related activities shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law or UTRGV and/or COUNTY policy, including without limitation race, color, national origin, religion, sex, age, veteran status, or disability.

**Commitment of Current Revenues.** In the event that during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party.

**Required Contract Provision for Contracts Subject to Federal Award (if applicable):** Pursuant to 2 CFR 200.326, a non-federal entity's contracts must contain the applicable provisions described in appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Additionally, County contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. The applicable required contract clauses were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.

**IN WITNESS WHEREOF**, this Agreement is executed by the parties or their duly authorized representatives as of date specified above.

**[SIGNATURE PAGE TO FOLLOW]**

**Hidalgo County:**

Richard Cortez, CPA  
County Judge  
County of Hidalgo  
100 East Cano Street 2nd Floor  
Edinburg, Texas 78539

By: \_\_\_\_\_

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

**The University of Texas Rio Grande Valley  
(UTRGV):**

John H. Krouse, MD, PhD, MBA  
Dean, School of Medicine  
Executive Vice President, Health Affairs  
1201 W. University Drive  
Edinburg, Texas 78539

By: \_\_\_\_\_

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

**ATTEST:**

By: \_\_\_\_\_

Arturo Guajardo, Jr., County Clerk

**APPROVED AS TO FORM:**

Office of the Criminal District Attorney  
Ricardo Rodriguez, Jr.

By: \_\_\_\_\_

Victor Garza, Asst. District Attorney

<b>Exhibit B</b>
<b>Business Associate Agreement</b>

## HIDALGO COUNTY HEALTH AND HUMAN SERVICES DEPARTMENT BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“BAA” or “Addendum”) to the Underlying Agreement as referenced below is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between the **County of Hidalgo, Texas by and through the Hidalgo County Health and Human Services Department** (“Covered Entity”) and \_\_\_\_\_ (“Business Associate”) (as defined below and collectively the “Parties”) to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164 subparts A and E (“the Privacy Rule”) and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, subpart C (“the Security Rule”), and the modifications to HIPAA provided by Division A, Title XIII of the American Recovery and Reinvestment Act of 2009, known as The Health Information Technology for Economic and Clinical Health, Act 42 U.S.C. §3000 et. seq., and implementing regulations and guidance, including the regulations implemented in 78 Fed. Reg. 5566 (January 25, 2013).

**WHEREAS**, Covered Entity and Business Associate have entered or are entering into an Agreement (the “Underlying Agreement”) by which the Covered Entity has engaged Business Associate to perform services;

**WHEREAS**, Covered Entity possesses and is permitted to manage Protected Health Information (PHI) that is protected under HIPAA, House Bill 300 (HB 300)<sup>1</sup> and the HIPAA Regulations, HITECH Act and state law, including the Texas Medical Records Privacy Act (MRPA)<sup>2</sup>, and Parties desire to comply with the privacy and security protections contained therein;

**WHEREAS**, Business Associate may receive such information from Covered Entity, or create, receive, maintain or transmit such information on behalf of Covered Entity, in order to perform certain of the services under the Underlying Agreement;

**WHEREAS**, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Protected Health Information;

**WHEREAS**, the HIPAA Rules require that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received in the course of providing services to or on behalf of Covered Entity; and

**WHEREAS**, parties desire and agree to enter into this Addendum to the Underlying Agreement.

**NOW THEREFORE**, Covered Entity and Business Associate agree as follows:

A. Definitions. For purposes of this BAA:

1. **“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 Addendum, shall mean the person or entity indicated above.
2. **“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 Addendum, shall mean the County of Hidalgo
3. **“Individual”** shall have the same meaning as the term “individual” in 45 CFR § 164.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
4. **“HIPAA Rules”** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules and amendments codified and promulgated at 45 CFR Parts 160, 162, and 164 and the HITECH Act.
5. **“Protected Health Information”** or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR § 164.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
6. **“Required By Law”** shall have the same meaning as the term “required by law” in 45 CFR § 164.103.
7. **“Secretary”** shall mean the Secretary of the Department of Health and Human Services or his or her designee.
8. **Breach** shall have the meaning given such term under 45 C.F.R. § 164.402 as such regulation is revised from time to time.
9. **Breach of System Security** means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Sensitive Personal Information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data.
10. All other capitalized terms used in this Addendum shall have the meanings set forth in the applicable definitions under the HIPAA Rules and the HITECH Act, as amended.

<sup>1</sup> House Bill 300 passed by Texas Legislature on September 1, 2012, to enhance safeguards for Protected Health Information (PHI).

<sup>2</sup> Texas Medical Records Privacy Act, codified in Section 181 et seq. of the Texas Health and Safety Code and as implemented through regulations including the Standards Relating to the Electronic Exchange of Health Information, codified at Title 1, Section 390.1 et seq. of the Texas Administrative Code.

B. Obligations and Activities of Business Associate

1. Business Associate agrees to not use or disclose PHI other than as permitted or required by this BAA or as Required by Law.
2. 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 the use or disclosure of PHI other than as provided for by this BAA. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.
3. Business Associate shall have procedures in place to mitigate and agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA.
4. Business Associate agrees to report immediately, but no later than three (3) days, to Covered Entity any use or disclosure of PHI not provided for by this BAA of which it becomes aware including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware Breach notification will be written in plain language and will include, to the extent possible or available, the following:
  - a. The identification of the individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during the Breach;
  - b. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach;
  - c. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether the full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - d. Any steps Individuals who were subjects of the Breach should take to protect themselves from potential harm that may result from the Breach;
  - e. A brief description of what Business Associate is doing to investigate the Breach, to mitigate the harm to individuals, and to protect against further Breaches; and
  - f. Contact procedures for individuals to ask questions or learn additional information, including a toll free telephone number, an email address, Web site, or postal address.
5. Business Associate will pay or reimburse Covered Entity for all costs and penalties incurred by Covered Entity in connection with any incident giving rise to a Breach of PHI and/or a Breach of System Security, including without limitation all costs related to any investigation, any notices to be given, reasonable legal fees, credit monitoring (where applicable), and other efforts to mitigate the harm to Individuals or other actions taken to comply with HIPAA, the HITECH Act, or any other applicable law or regulation, where (i) the PHI was in the custody or control of Business Associate when the Breach of PHI and/or Breach of System Security occurred, or (ii) the Breach of PHI and/or Breach of System Security was caused by the negligence or wrongful acts or omissions of Business Associate and its employees, directors, officers, subcontractors, agents or other members of its workforce.
6. Business Associate agrees to ensure that any agents or 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.
7. Business Associate agrees to provide access, at the request of Covered Entity, in a reasonable time and manner, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 CFR § 164.524.
8. Business Associate agrees to make any amendment(s) to PHI 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, and in a reasonable time and manner.

9. Business Associate agrees to make internal practices, books, and records including policies and procedures and PHI relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a reasonable time and manner, for the purpose of permitting the Secretary to determine Covered Entity's compliance with the HIPAA Rules.
10. Business Associate agrees to document such disclosures of PHI and information 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 PHI in accordance with 45 CFR §164.528.
11. Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time, information collected in accordance with Section B.(10) of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
12. Business Associate agrees, to the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
13. Training. Business Associate shall provide such training in the privacy and security of PHI to its Workforce (as that term is defined by 45 C.F.R. § 160.103) as is required for Business Associate's compliance with HIPAA, HIPAA Regulations, HITECH, and the MRPA.
14. Sanctions. Business Associate shall apply appropriate sanctions in accordance with Business Associate's policies against any employee, subcontractor or agent who uses or discloses Covered Entity's PHI in violation of this Addendum or applicable law.

C. Permitted Uses and Disclosures of PHI by Business Associate

1. Parties agree to comply with HIPAA, HIPAA Rules, HB 300, the HITECH Act, and the MRPA.
2. Performance of Services. Except as otherwise permitted by this Addendum, Business Associate may create, receive, maintain or transmit PHI on behalf of Covered Entity only in connection with the performance of the services contracted for in the Underlying Agreement or as Required by Law (as that term is defined by 45 C.F.R. § 164.103).
3. Business Associate may only use or disclose PHI as permitted by the HIPAA Rules. Business Associate may use or disclose PHI to perform, manage and administer the activities or services required under the Underlying Agreement or other such arrangement between Covered Entity and Business Associate, including the de-identification of PHI, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity.
4. Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.
4. Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
5. Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
6. Minimum Necessary. Business Associate shall limit its uses and disclosures of, and requests for, PHI, to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.
7. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).
8. Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164, or MRPA, if done by the Covered Entity itself, except for the specific uses and disclosures set forth above.

D. Obligations of Covered Entity

1. Covered Entity shall notify Business Associate of any limitations in its notice(s) of privacy practices in accordance with 45 CFR § 164.520 to the extent that such limitations may affect Business Associate's use or disclosure of PHI.
2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent such changes may affect Business Associate's use and disclosure of PHI.
3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

E. Restriction on Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity, except Business Associate may use or disclose PHI for data aggregation or management and administrative activities of Business Associate.

F. Term and Termination

1. Term. The Term of this BAA and the obligations herein shall be deemed effective on the Effective Date and shall continue unless or until this Addendum terminates, the Underlying Agreement terminates, or the Business Associate has completed performance of the services in the Underlying Agreement, whichever is earlier.
2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - a. Provide an opportunity for Business Associate to cure the material breach or end the violation and terminate this BAA and Covered Entity's participation in the Addendum if Business Associate does not cure the material breach or end the violation within the reasonable time specified by Covered Entity; or
  - b. Immediately terminate this BAA and Covered Entity's participation in the Addendum if Business Associate has breached a material term of this BAA and a cure is not possible.
3. Effect of Termination.
  - a. Upon termination of this BAA for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
  - b. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible, including the need to retain PHI for audit, justification of work product or compliance with pharmacy or other applicable law. Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI.
  - c. Injunctions. Covered Entity and Business Associate agree that any violation of the provisions of this Addendum may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law or in equity, Covered Entity shall be entitled to seek an injunction or other decree of specific performance with respect to any violation of this Addendum or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.
  - e. **Indemnification. This indemnification provision is enforceable against the Parties only to the extent authorized under the constitution and laws of the State of Texas. The Parties will indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "indemnified party," against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of this Addendum or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under MRPA, HIPAA, the**

**HIPAA Rules, and the HITECH Act by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce.**

G. Miscellaneous

1. Regulatory References. A reference in this BAA to a section in the HIPAA Rules means the section as in effect, or as amended, and for which compliance is required.
2. Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of and changes in state and federal laws and regulations relating to the privacy, security and confidentiality of PHI. This BAA may be amended only in writing when signed by a duly authorized representative of each Party.
3. Survival. The respective rights and obligations of Business Associate under Section F.(3) of this BAA shall survive the termination of this BAA.
4. Interpretation. Any ambiguity in this BAA or in the Underlying Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules.
5. Conflicts. To the extent that this BAA may conflict with the Underlying Agreement, this BAA shall govern.
6. Governing Law. This Addendum is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Texas without regard to choice of law principles.
7. Notice: Except as may be otherwise specifically provided in this Addendum, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth in the Underlying Agreement with copy to:

The Hidalgo County Health and Human Services Department  
Attn: Chief Administrative Officer  
1304 S. 25<sup>th</sup> Ave.  
Edinburg, Texas 78539

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

8. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
9. Written Authorization. Nothing in this Addendum shall be construed to require Business Associate to use or disclose PHI without written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.
10. Offshore Work. In performing the functions, activities or services for, or on behalf of Covered Entity, Business Associate shall not, and shall not permit any of its agents or subcontractors who receive Covered Entity's PHI to, transmit or make available any PHI to any entity or individual outside the United States without prior written consent of Covered Entity.
11. Privilege. Notwithstanding any other provision in this Addendum, this Addendum shall not be deemed to be an agreement by Business Associate to disclose information that is privileged, protected, or confidential under applicable law to the extent that such privilege, protection or confidentiality (a) has not been waived or (b) is not superseded by applicable law.

**IN WITNESS WHEREOF**, the Parties have caused this Addendum to be executed by their respective duly authorized representatives in the manner legally binding upon them as of the effective date first written above.

**BUSINESS ASSOCIATE:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signature)

Name: \_\_\_\_\_  
(Type or Print)

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

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

**COVERED ENTITY:**

THE HIDALGO COUNTY HEALTH AND HUMAN SERVICES  
DEPARTMENT

By: \_\_\_\_\_  
(Authorized Signature)

Name: \_\_\_\_\_  
(Type or Print)

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

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