

STATE OF TEXAS       §  
                                  §  
COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT AND BUSINESS ASSOCIATE  
AGREEMENT BETWEEN THE COUNTY OF HIDALGO AND  
MERCEDES INDEPENDENT SCHOOL DISTRICT**

**THIS** Interlocal Cooperation Agreement and incorporated Business Associate Agreement are made on this the 23rd day of March, 2021, by and between MERCEDES INDEPENDENT SCHOOL DISTRICT, hereinafter referred to as the "District," 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., as follows:

**WITNESSETH:**

**WHEREAS**, Mercedes Independent School District is a school district located in Hidalgo County, Texas;

**WHEREAS**, County is a county in the State of Texas;

**WHEREAS**, County is the recipient of a Public Health Emergency Preparedness grant from the Department of State Health Services ("DSHS") to be used to improve local bioterrorism preparedness, and response to outbreaks of infectious disease and other public health threats and emergencies;

**WHEREAS**, the parties recognize the vulnerability of citizens in the County to a public health emergency that may result from natural or man-made causes;

**WHEREAS**, during such public health emergencies, it may be necessary to immunize or treat a large number of people in the area served by the County Public Health and Human Services Department;

**WHEREAS**, school facilities are well-suited to conduct mass immunizations because facility locations are usually known to large numbers of individuals, and the facilities have large assembly areas and other necessities, such as refrigeration, parking, and restrooms;

**WHEREAS**, public health preparedness and response can be exercised, if necessary, at or in cooperation with educational institutions to include Drills, Table-Top Exercises, and/or Full-Scale Exercises such as Operation Lone Star;

**WHEREAS**, the parties are committed to the health, welfare and safety of its constituents and the general public and believe these projects will assist in this regard;

**WHEREAS**, the parties acknowledge that this exchange of governmental functions or services results in an exchange that fairly compensates the performing parties for the services or functions performed under this Agreement;

**WHEREAS**, the District and County are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Texas Gov't Code 791.001 et seq., which authorizes local governments to contract with each other to perform governmental functions and services under the terms of the Act;

**NOW, THEREFORE**, the following Agreement shall supersede all previous Agreements made by the District and County for Public Health Preparedness and Response. The District and County, in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. **Activation of Agreement.** Provisions of this agreement will be activated for any exercises and drills that the District accepts to participate in with County. Additionally, if an emergency is declared by the Hidalgo County Medical Health Authority in coordination with the Director of the County Public Health and Human Services Department, or the Commissioner of Health of the Texas Department of State Health Services that requires a large-scale immunization or treatment program as a control measure for an outbreak of a communicable disease, County will notify the District and provisions of this agreement will be activated.
2. **Exercises and Training.** The District agrees to participate with County in exercises, drills, and emergency operations. The District agrees to predesignate an emergency operation staff roster with contact information and provide County proof of Incident Command System (ICS) qualifications and certifications. County agrees to provide preparedness and response training at no cost to the District.
3. **Facilities.** The District agrees to provide its school facilities to be used as Point of Dispensing (POD) sites and provide accommodations for at-risk populations and individuals with functional needs (i.e. placement of individuals with disabilities). Additionally, the District agrees to monitor populations at the congregate locations.
4. **Reporting.** The District agrees to work with County to investigate and report any adverse events that may take place throughout an exercise, drill, or emergency operation. Additionally, the District agrees to report any suspected or confirmed reportable condition, any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern to County under the Texas Administrative Code, Chapter 97.
5. **Data Sharing.** The District agrees to enforce the Texas Medical Records Privacy Act, (ch. 181 Tex. Health & Safety Code) as amended - House Bill (HB) 300, and

the Health Insurance Portability and Accountability Act (HIPAA) laws at all times and is aware that the District will be subject to compliance. The District is aware that any data use, reuse, release, or publication acquired from an exercise, drill, or emergency operation may only be collected and used with prior approval from County.

6. **Staffing and Volunteers.** The District agrees to provide emergency operation staffing, if available, to support medical services (i.e. injections, administer prophylaxis, critical testing, provide medical care instructions) or non-medical services (i.e. administrative duties: registering patients, data entry). Additionally, the District agrees to provide support with volunteer coordination for on-site operations to allow individuals to volunteer and assist with no expectancy of fiscal exchange.
7. **Materials and Supplies.** County agrees to supply all materials provided by Strategic National Stockpile (SNS) (i.e. vaccines, antibiotics, antitoxins, antivirals, syringes), forms necessary to administer medical countermeasures during an emergency, and other equipment or supplies needed for the event, if available. The District will provide any back-up equipment or supplies that may be needed, if available.
8. **Inventory.** The District takes accountability of resources received from County and agrees to coordinate inventory tracking for response operations. After a drill, event, or emergency operation, the District agrees to ensure reconditioning and return of all equipment and/or supplies to County. County shall be responsible for the disposal of medical waste.
9. **Liability.** In the event of injury, the District shall maintain worker's compensation coverage for staff. In the event of a needle-stick or other exposure to potential blood-borne pathogens, the employee will have access to medical evaluation and post-exposure prophylaxis through the District's policies. The District agrees to have mental/behavioral health services available to all staff and volunteers during and after exercises, drills, and emergency operations. The District shall provide professional liability indemnity coverage for staff and volunteers rendering services under this Agreement.
10. **Civil Liability.** The parties understand and agree that the services of the "District" under this Interlocal Cooperation Agreement are related to Homeland Security, as defined in Local Government Code Section 421.001, and therefore, any or all District administrators, instructors, professors, and students shall be immune from civil liability for any act or omission resulting in death, damage or injury while acting in good faith, and in the course and scope of its function to provide a service related to a Homeland Security Activity, as defined in accordance with Government Code Section 421.062.

11. **Homeland Security Activity.** For purposes of this Agreement and in accordance with Government Code Section 421.062, "Homeland Security Activity" means any activity related to the prevention or discovery of, response to, or recovery from a terrorist attack, natural or man-made disaster, hostile military or paramilitary action, or extraordinary law enforcement emergency.
12. **Term.** This agreement becomes effective when executed by both parties. Either party may cancel it by giving thirty (30) days' notice to the other party; otherwise it remains in effect for five (5) years, and may be renewed for a period of another five years by a written amendment signed by both parties. Any notice or communication required or permitted shall be given in writing.
13. **Conflict of Applicable Law.** Nothing in this Agreement shall be construed to require the commission of any act contrary to law; and when any conflict between this Agreement and any present or future law, ordinance, or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail. In such an event, the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements, and only during the time such conflict exists.
14. **Texas Law to Apply.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hidalgo County. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.
15. **Indemnification.** To the extent authorized by the Constitution and the laws of the State of Texas, the District shall indemnify and hold harmless Hidalgo County, its elected officials, employees and agents from any and all claims, damages, losses, and expenses including attorney's fees for the defense of any action against Hidalgo County arising out of, resulting from, or connected with acts or omissions by the District, its agents or employees, under this Agreement.
16. **Immunities.** Neither Hidalgo County nor the District, 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 the District have entered into this agreement shall not in any way constitute a deliberate waiver of immunity by either entity, in which immunities are expressly reserved by both parties.
17. **No Waiver.** No waiver by any party hereto of any breach of any provision of the Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.
18. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly

or through an agent or representative) any other representation or agreement in connection with this Agreement, not specifically set forth herein. This Agreement may be modified or amended only by an agreement in writing, executed by the District and County, and not otherwise.

19. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests, or communication 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 below, or at such other addresses as may have been heretofore specified by written notice and delivered in accordance herewith:

If to the District: Mercedes Independent School District  
Attention: Carolyn Mendiola, Superintendent of Schools  
206 West 6<sup>th</sup> Street  
Mercedes, Texas 78570

If to County: Hidalgo County  
Attention: Richard F. Cortez, County Judge  
100 E. Cano, Second Floor  
Edinburg, TX 78539

Each notice, demand, request, or communication 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.

20. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.
21. **Assignment.** This Agreement shall not be assignable.
22. **Headings.** The headings and captions contained in this Agreement are solely for convenience reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.
23. **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and singular shall include the plural whenever and as often as may be appropriate.
24. **Authority to Execute.** The execution and performance of this Agreement by the District and County have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the District and County in accordance with its terms.

25. **Performance of Governmental Functions.** Each party hereto is entering into this Agreement for the purpose of providing the services and functions outlined in this document and will pay for such services and any associated costs to execute this Agreement out of current revenues available to the paying party as herein provided.
26. **Liabilities.** This Agreement is not intended to extend the liability of the Parties beyond that provided by law. Neither the District 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.
27. **Additional Documents.** The Parties agree that they will use reasonable, good faith efforts to execute any other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement. Additionally, the Parties agree that to abide by the Business Associate Agreement (BAA) incorporated as part of this agreement for all purposes.
28. **Non-Discrimination.** The Program 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 the District and/or County policy, including without limitation race, color, national origin, religion, sex, age, veteran status, or disability, including, but not limited to the provisions of Title VI of the Civil Rights Act of 1964, as amended.
29. **Appendix II to CFR 200-Contract Provisions.** Pursuant to 2 CFR 200.326, a non-Federal entity's contract must contain the applicable provisions described in Appendix II 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Therefore, if applicable, the provisions of Appendix II 2 CFR 200 are attached and incorporated by reference into this agreement should it be subject to Federal award.
30. **Commitment of Current Revenues Only.** 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 hereto in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1996).
31. **BUSINESS ASSOCIATE AGREEMENT.** the following Business Associate Agreement (BAA) is incorporated into this Agreement between the Parties and shall supersede any previous BAA made by the District and County for the Public Health Preparedness and Response. The District and County, in consideration of the mutual covenants expressed hereinafter, agree as follows:

## HIDALGO COUNTY BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is made and entered into as of the date first written above (the “**Effective Date**”), and is incorporated for all purposes into this Agreement between the COUNTY OF HIDALGO, by and through its Hidalgo County Health and Human Services Department (“**Covered Entity**”) and the INDEPENDENT SCHOOL DISTRICT indicated above, (“**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 (HITECH) 42 U.S.C. §3000 et. seq., and implementing regulations and guidance, including the regulations implemented in 78 Fed. Reg. 5566 (January 25, 2013); as well as applicable state law.

**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 (TMRPA)<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 BAA to the Underlying Agreement.

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<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.

**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 BAA, 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 BAA, 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 BAA shall have the meanings set forth in the applicable definitions under the HIPAA Rules and the HITECH Act, as amended.

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 TMRPA.

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 BAA 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 TMRPA.
2. Performance of Services. Except as otherwise permitted by this BAA, 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.
5. 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.
6. 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.
7. 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.
8. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

9. Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164, or TMRPA, 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

1. 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 BAA 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 BAA 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 BAA 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 BAA 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 BAA or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.
- d. **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 BAA or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under MRP, 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 BAA 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 BAA, all notices, demands, requests or communications required or permitted hereunder shall be in accordance with the Notice provision found in No.19 above with copy to:

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

8. No Third Party Beneficiaries. Nothing express or implied in this BAA 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 BAA 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 BAA, this BAA 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 Interlocal Cooperation Agreement and Business Associate Agreement to be executed by their respective duly

Contract #

authorized representatives in the manner legally binding upon them as of the effective date first written above.

**[SIGNATURE PAGE TO FOLLOW]**

**MERCEDES INDEPENDENT SCHOOL DISTRICT/BUSINESS ASSOCIATE**

By:   
(Authorized Signature)

Name: Carolyn Mendiola  
(Type or Print Name)

Title: Superintendent of Schools

**HIDALGO COUNTY, TEXAS/COVERED ENTITY**

By: \_\_\_\_\_  
Richard F. Cortez, County Judge

**ATTEST:**

By: \_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

Approved by Commissioners Court: \_\_\_\_\_

**APPROVED AS TO FORM:**

Office of Criminal District Attorney,  
Ricardo Rodriguez, Jr.

By: \_\_\_\_\_  
\_\_\_\_\_, Assistant District Attorney