



Hidalgo County Head Start Program

Policy Council Meeting Agenda Item

Enter into a MOU w Tropical Texas
Behavior Health

Ambrosio Tovar,
Procurement Director



Hidalgo County Head Start Program Policy Council Agenda

DATE: June 11, 2024

SUBJECT: Presentation for Discussion, Consideration and Approval to Enter Into a Memorandum of Understanding (MOU) Between Hidalgo County Head Start Program and Tropical Texas Behavioral Health

RATIONALE/NEED: Memorandum of Understanding (MOU) is to collaborate with Tropical Texas Behavioral Health to assist Head Start Children and Families.

RECOMMENDATION: Administration recommends approval.

COST: There is no cost.

RELATED INFORMATION INCLUDED: Memorandum of Understanding

INITIATED BY: Ambrosio Tovar, Procurement Director

REVIEWED BY: Dr. Nereyda Cantu, Assistant Director

EXECUTIVE DIRECTOR'S APPROVAL:

**MEMORANDUM OF AGREEMENT
BETWEEN
TROPICAL TEXAS BEHAVIORAL HEALTH
AND
HIDALGO COUNTY HEAD START PROGRAM**

THIS MEMORANDUM OF AGREEMENT (this Memorandum) is entered into by **Tropical Texas Behavioral Health (TTBH)**, a community mental health and intellectual and developmental disability center, and a governmental unit of the State of Texas under the provisions of Vernon's Texas Codes, Annotated, Health & Safety Code, §534.001, et. seq., and **Hidalgo County Head Start Program (HCHSP)** whose address is 1901 W. State Hwy 107, McAllen, Texas, for the purpose of establishing a continuity of care system for persons with mental illness.

In consideration of the mutual agreements contained within this Memorandum of Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by both parties, **TTBH** and **HCHSP** agree as follows:

**I.
HCHSP Obligations**

Services

- a. Identify and refer to **TTBH** students in need of screening and assessment for treatment services.
- b. Provide **TTBH**, its employees or agents access to its campuses for the purpose of establishing a continuity of care system. Such person(s) shall be allowed campus access on an as needed basis and at times and days mutually agreed upon by **TTBH** and **HCHSP**.
- c. Collaborate with the Center's outreach worker(s) for the purpose of making referrals to **TTBH** and for the purpose of providing continued care, assessments and treatment of those students identified as requiring services from **TTBH** for mental illness.

Confidentiality: **HCHSP** must maintain the confidentiality of information received during the performance of this Memorandum, including information which discloses confidential personal information or identifies any person served by **TTBH**, in accordance with applicable federal and state laws.

HCHSP agrees to follow, undertake, or institute appropriate procedures of safeguarding client information with particular reference to client identifying information. The term "client identifying information" includes, but is not limited to, a client's medical record, graphs or charts; statements made by the client, either orally or in writing, while receiving services; photographs, videotapes, etc.; any acknowledgment that a person is or has been a client of the facility, **TTBH**, or other designated Contractor; and protective health information (PHI) as such term is defined by the federal Health Insurance Portability and Accountability Act (HIPAA), as amended. **HCHSP** agrees to comply with HIPAA and all regulations promulgated thereunder, including, but not limited to, all provisions governing the use and disclosure of PHI.

Non-Discrimination: **HCHSP** will ensure that no person, on the basis of race, color, national origin, religion, sex, age, handicap, or political affiliation, will be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any of the policies of **TTBH**.

II. TTBH Obligations

Services

- a. Provide staff, at times mutually agreed upon by **TTBH** and **HCHSP**, access to campuses for the purpose of conducting intake screenings and assessment of referrals by the **HCHSP**.
- b. Provide mental health services, assessments and screenings to the identified student/family population at the designated location or through home visitation.
- c. Collaborate with the **HCHSP** regarding provision of follow-up mental health services and assessments to eligible persons.
- d. Provide service linkage to students for mental health services.
- e. Provide services to **HCHSP** students and families who have been identified as being in need of these services in accordance with **TTBH** policy as capacity permits.
- f. **HCHSP** acknowledges that as a service provider under agreement with **HCHSP** that **TTBH** has legitimate educational interest in the student data and information contained in the educational records provided to them in the execution of providing services to the **HCHSP**. **TTBH** agrees to keep confidential all educational records obtained by them and to comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g; 34 CFR Part 99). Disclosure to third parties by **TTBH** shall be in strict compliance with all FERPA requirements or by obtaining the written consent of the parent(s) and/or legal guardian of the student(s).

III. Insurance

HCHSP agrees to maintain at its sole cost and expense policies of general and liability insurance coverage in order to insure **HCHSP** and **TTBH** against any claim for damages, acts or omissions, which may arise in connection with this Memorandum, sufficient to meet the requirements of state law and workers' compensation insurance. **HCHSP** will furnish copies of said insurance policies and a certificate of insurance to **TTBH** upon request.

TTBH agrees to maintain at its sole cost and expense policies of general and liability insurance coverage in order to insure **TTBH** and **HCHSP** against any claim for damages, acts or omissions, which may arise in connection with this Memorandum, sufficient to meet the requirements of state law and workers' compensation insurance. **TTBH** will furnish copies of said insurance policies and a certificate of insurance to **HCHSP** upon request.

Nothing in this agreement shall be construed or interpreted to mean that the parties are engaged in a partnership, joint enterprise, or other cooperative arrangement other than what is stated in this agreement. The parties agree that they are independent contractors and are not borrowing servants under this agreement. Nothing in this agreement shall be construed or interpreted to mean that this provision requiring insurance by the parties obligates the parties to list the other as a loss beneficiary on any of the above-described policies.

**IV.
Indemnification**

HCHSP hereby agrees, to the extent permitted under the laws of the State of Texas, to indemnify and hold harmless **TTBH**, its board, employees, and agents from all suits, actions, claims, costs or liability of any character, type or description, including attorneys' fees and legal expenses brought, made for, or on account of any death, injury or damage received or sustained by any person or property arising out of or occasioned by the acts or omissions of **HCHSP**, its board, employees, or agents, if any, whether occurring during the performance or execution of this agreement.

TTBH hereby agrees, to the extent permitted under the laws of the State of Texas, to indemnify and hold harmless **HCHSP**, its board, employees, and agents from all suits, actions, claims, costs or liability of any character, type or description, including attorneys' fees and legal expenses brought, made for, or on account of any death, injury or damage received or sustained by any person or property arising out of or occasioned by the acts or omissions of **TTBH**, its board, employees, or agents, if any, whether occurring during the performance or execution of this agreement.

The Parties agree that nothing in this agreement shall be interpreted or construed as a waiver of any governmental, sovereign, official, qualified and/or statutory immunity that the **HCHSP** is entitled to pursuant to Federal and State law.

**V.
Miscellaneous**

Term: This Memorandum of Agreement will be effective on September 1, 2024 and expire August 31, 2025 unless otherwise terminated as provided herein.

Amendments: This Memorandum of Agreement may only be amended by written agreement between **HCHSP** and **TTBH**.

Termination: This Memorandum of Agreement may be terminated by either party upon ten (10) days written notice to the other party of its intent to terminate the Memorandum.

Assignment: No assignment of this Memorandum or the rights and obligations hereunder will be valid without the written consent of the non-assigning party.

Entire Agreement: This Memorandum of Agreement constitutes the entire agreement of the parties and supersedes any prior understandings or oral or written agreements between **TTBH** and **HCHSP** on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Memorandum shall be valid unless in writing and executed by the parties hereto.

Notice: Except as expressly provided within this Memorandum, any notice required or permitted to be given under this Memorandum must be in writing and delivered in person or by registered or certified mail, return receipt requested, postage prepaid, to the individual and address shown below:

HIDALGO COUNTY
HEAD START PROGRAM

Irma Peña
Executive Director
P.O. Box 0117
Edinburg, Texas 78540

TTBH

W. Terry Crocker
Chief Executive Officer
P. O. Drawer 1108
Edinburg, TX 78540

or to such other individual and address as provided in writing to the other party by the means specified above. The notice shall be effective on the date of delivery.

Other Agreements: TTBH and HCHSP agree that this Memorandum of Agreement shall not constitute a modification, amendment, waiver or change of any of the terms of any prior agreements between these parties.

Governing Law: This Memorandum of Understanding will be construed in accordance with the Laws of the State of Texas and is performable in Hidalgo County, Texas.

Consideration: This Agreement is being made in consideration of the following: Tropical Texas Behavioral Health and Hidalgo County Head Start Program agree that there will be no financial exchange of monies or other compensation.

Tropical Texas Behavioral Health

W. Terry Crocker, Chief Executive Officer

Date

Hidalgo County Head Start Program

Honorable Richard Cortez
Hidalgo County Judge

Irma Peña, Executive Director
Hidalgo County Head Start Program

Date

Date

ATTEST:

Arturo Guajardo, Jr.
Hidalgo County Clerk

Approved As To Form:
Ricardo González, P.C.
DBA, Oxford & González

By: _____
Ricardo González

AI-
Date Approved by Policy Council: .
Date Approved by Commissioner’s Court:

**BUSINESS ASSOCIATE
PROTECTED HEALTH INFORMATION DISCLOSURE AGREEMENT**

This Business Associate Protected Health Information Disclosure Agreement is entered into effective as of 09/01/2019, by and between **Tropical Texas Behavioral Health (TTBH)**, a community center under the provisions of Chapter 534 of the Texas Health & Safety Code Ann., as amended, and **Hidalgo County Head Start** (Business Associate).

RECITALS

- A. WHEREAS, Business Associate provides services to TTBH, and Business Associate receives, has access to, or creates Protected Health Information in order to provide those services in the United States;
- B. WHEREAS, TTBH is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information (Privacy Regulations) and the Security Standards for Electronic Protected Health Information by Business Associate if such a contract is not in place.
- C. WHEREAS, the Privacy and Security Regulations require TTBH to enter into a contract with Business Associate in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibited the Disclosure to or Use of Protected Health Information by Business Associate if such a contract is not in place.
- D. WHEREAS, Business Associate acknowledges that effective January 1, 2010, as a Business Associate, it is responsible to comply with the HIPAA Security and Privacy regulations pursuant to Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), including, but not limited to, Sections 164.308, 164.310, 164.312 and 164.316 of title 45 of the Code of Federal Regulations.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

- 1.1 Breach shall mean the unauthorized acquisition, access, use, or disclosure of unsecured Protected Health Information or PHI which compromises the security or privacy of such information, except where an authorized person to whom such information is disclosed would not reasonably have been able to retain such information.
- 1.2 Disclose and Disclosure means, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate's internal operations or to other than its employees.
- 1.3 Electronic Media means:
 - (a) Electronic storage media including memory devices in computers (hard drives) and any removable/ transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
 - (b) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, electronic mail/e-mail, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via

facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

- 1.4 Electronic Protected Health Information or E-PHI means Protected Health Information that is transmitted or maintained in electronic media.
- 1.5 HITECH shall mean the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act, and any amendments, regulations, rules and guidance issued thereto and the relevant dates for compliance.
- 1.6 Information System means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people.
- 1.7 Protected Health Information or PHI means information that (i) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual;(ii)identifies the individual, or for which there is a reasonable basis for believing that the information can be used to identify the individual; and (iii) is received by Business Associate from or on behalf of TTBH, or is created by Business Associate, or is made accessible to Business Associate by TTBH. Protected Health Information includes Electronic Protected Health Information.
- 1.8 Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information in, or interference with system operations of, an Information System which contains Electronic Protected Health Information.
- 1.9 Unsecured PHI shall mean PHI not secured through the use of a technology or methodology specified in guidance by the Secretary that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals.
- 1.10 Use or Uses mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such information within Business Associate's internal operations.
- 1.11 Data must reside in the United States. Business Associate shall not "offshore" or use, disclose, create, receive, transmit or maintain confidential information out of the United States.

ARTICLE II

OLBIGATIONS OF BUSINESS ASSOCIATE

- 2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate:
 - (a) Shall use and disclose Protected Health Information as necessary or appropriate to perform the services, as provided in Article II of this Agreement, and shall not use or disclose Protected Health Information other than as permitted or by law;
 - (b) Shall disclose Protected Health Information to TTBH upon request;
 - (c) Shall not "offshore" or use, disclose, create, receive, transmit or maintain confidential information out of the United States.
 - (d) may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities.
 - (i) use Protected Health Information; and
 - (ii) Disclose Protected Health Information if (a) the disclosure is required by law, or

(b) Business Associate obtains reasonable assurance from the person to whom the information is disclosed that the Protected Health Information will be held confidentially and use or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person agrees to notify Business Associate of any Protected Health Information has been breached.

All uses and disclosures of any requests by Business Associate for PHI are subject to the minimum necessary rule of the Privacy Standards and shall be limited to the information contained in a limited data set, to the extent practical, unless additional information is needed to accomplish the intended purpose, or as otherwise permitted in accordance with Section 13405(b) of HITECH and any implementing regulations.

Furthermore, Business Associate acknowledges that in receiving, storing, processing, or otherwise dealing with any information from TTBH about any individuals receiving services from TTBH, it is fully bound by the provision of the Federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and undertakes to resist in judicial proceedings any effort to obtain access to information governed by 42 CFR Part 2 as such information pertains to such individuals otherwise than as expressly provided for in 42 CFR Part 2.

- 2.2 Adequate Safeguards for Protected Health Information. Business Associate represents and warrants that it shall implement and maintain appropriate safeguards to prevent the use or disclosure of Protected Health Information in any manner other than as permitted by this Agreement. Effective as of January 1, 2010, specifically as to Electronic Protected Health Information, in accordance with Section 13401 (a) of HITECH, Business Association warrants that It shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information. To ensure the security and confidentiality of Electronic Protected Health Information pursuant to 45 C.F.R. § 164.312(e)(2)(ii) and Section 13401 (a) of HITECH, Business Associate shall implement a mechanism to encrypt Electronic Protected Health Information on all its Electronic Media containing any of TTBH's Protected Health Information.
- 2.2.1 Reporting Non-Permitted Use or Disclosure and Security Incidents. Business Associate shall immediately report to TTBH each use or disclosure that is made by Business Associate, its employees, representatives, agents or subcontractors which is not specifically permitted by this Agreement, as well as effective as of January 1, 2010, each security incident of which Business Associate becomes aware, in accordance with Section 13402(b) of HITECH. The initial report shall be immediately made by telephone call to the TTBH's Privacy Officer (Privacy Officer) at 956-289-7080 within twenty-four (24) hours from the time the Business Associate becomes aware of the non-permitted use or disclosure or security incident, followed by a written report to the Privacy Officer no later than ten (10) business days from the date the Business Associate becomes aware of the non-permitted use or disclosure or security incident.
- 2.4 Mitigation of Harmful Effect. Business Associate agrees to mitigate, to the extent practicable, any harmful effects of a use or disclosure of PHI by Business Associate or is known to Business Associate to be in violation of the requirements of this Agreement, including, but not limited to, compliance with any state law or contractual data breach requirement.
- 2.5 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of Protected Health Information available to the Secretary of the Federal Department of Health and Human Services for purpose of determining TTBH's compliance with the Privacy and Security Regulations. Business Association shall immediately notify TTBH of any requests made by the Secretary and provide TTBH with copies of any documents produced in response to such request.

- 2.6 Access to and Amendment of Protected Health Information. Business Associate and TTBH, to the extent either determines that any Protected Health Information retained constitutes a “designated record set” under the Privacy Regulations, shall: (a) make the Protected Health Information available to the individual(s) identified as being entitled to access and copy that Protected Health Information; and (b) make any amendments to Protected Health Information that are requested. Business Associate and TTBH shall provide such access and make such amendments within the time and in the manner specified by either party.
- 2.7 Documentation of Disclosure. Business Association agrees to document disclosures of PHI and information related to such disclosures as would be required for TTBH to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. At a minimum, Business Associate shall provide TTBH with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.
- 2.8 Accounting of Disclosures. Within the (10) days of notice by TTBH to Business Associate that it has received a request for an accounting of disclosure of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, Business Associate shall make available to TTBH information collected in accordance with Section 1.1 of this Agreement, to permit TTBH to respond to the request for an accounting of disclosure of PHI, as required by 45 C.F.R. § 164.528. In the case of an electric health record maintained or hosted by Business Associate on behalf of TTBH, the accounting period shall be (3) years and the accounting shall include disclosure for treatment, payment and healthcare operations, in accordance with the applicable effective date of Section 13402(a) of HITECH. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within two (2) days forward such request to TTBH. Business Associate hereby agree to implement an appropriate record keeping process to enable it to comply within the requirements of this section.
- 2.9 Obligations of TTBH. TTBH shall notify Business Association in writing of any current or future restrictions or limitations on the use of Protected Health Information that would affect Business Associate’s performance of the services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.
- 2.10 Term and Termination. The term of this Agreement shall continue until terminated by either party, Both party’s legal obligations under this Article II shall survive the termination or expirations of this Agreement.
- 2.11 Disposition of Protected Health Information Upon Termination or Expiration. Upon the termination of the Services Agreement or this Agreement for any reason, Business Associate shall return to TTBH or, at TTBH’s direction, destroy all PHI received from TTBH that Business Associate maintains in any form, recorded on any medium, or stored in any storage system, unless said information has been de-identified and is no longer PHI. This provision shall apply to PHI that is in the possession of Business Associates or agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Agreement, even after termination of the Services Agreement or Agreement until such time as all PHI has been returned, de-identified or otherwise destroyed as provided in this Section.
- 2.12 Breach of Contract by Business Associate. In addition to any other rights TTBH may have in the Services Agreement, this Agreement or by operation of law or in equity, TTBH may i) immediately terminate the Services Agreement and this Agreement if TTBH determines that Business Associate has violated a material term of this Agreement, or ii) at TTBH’s option,

permit Business Associate to cure or end any such violations within the time specified by TTBH. TTBH's option to have cured a breach of this Agreement shall not be constructed as a waiver of any other rights TTBH has in the Services Agreement, this Agreement or by operation of law or in equity.

- 2.13 Third Party Beneficiaries. The terms of this Agreement are not intended, nor should they be construed, to grant any rights to any parties other than Business Associate and TTHB, and any TTHB subsidiaries and affiliates.
- 2.14 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information for Business Association to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Agreement.
- 2.15 Relationship to Services Agreement Provisions. In the event that a provision of this Agreement is contrary to a provision of the Services agreement, the provision of this Agreement shall control. Otherwise, this Agreement shall be constructed under, and in accordance with, the terms of the Services Agreement.
- 2.16 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits TTHB to comply with the Privacy and Security Regulations. If there are any direct conflicts between the Agreement and this Agreement, the terms and conditions of this Agreement shall control.
- 2.17 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for TTBH to comply with the requirements of the Privacy and Security Regulations.
- 2.18 Indemnification. Business Association shall indemnify and hold harmless TTBH and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by TTBH arising from a violation by Business Associate of its obligations under this Agreement.

Any third parties that have access to personally identifiable information or confidential information shall indemnify and hold harmless TTHB and its officers, trustees, employees, and agents from legal liability arising out of the release such information due to the fault or negligence of the third party

- 2.19 Injunctive Relief. Business Associate acknowledge and stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to the Services Agreement or this Agreement would cause irreparable harm to TTBH, and in such event TTBH shall be entitled, if it so elects, to institute and prosecute proceeding in any court of competent jurisdiction, either in law or in equity, to obtain damages and injunctive relief, together with the right to recover from Business Associate costs, including reasonable attorney's fees, for any such breach of the terms and conditions of the Services Agreement or this Agreement.
- 2.20 Owner of PHI. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI used or disclosed by or to Business Associate pursuant to the terms of the Agreement.
- 2.21 Changes in the Law. TTBH may amend either the Services Agreement or this Agreement, as appropriate, to conform to any new or revised legislation, rules and regulations to which TTBH is subject now or in the future including, without limitations, HIPAA, HITECH, the Privacy Standards, Security Standards or Transaction Standards.
- 2.22 Exclusion from Limitation of Liability. To the extent that Business Association has limited its liability under the terms of the Services Agreement, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such

limitations, all limitations shall exclude any damages to TTBH arising from Business Associate's breach of its obligations relating to the use and disclosure of PHI.

2.23 Judicial and Administrative Proceeding. In the event Business Associate receives a subpoena, court or administrative order or other discovery requested or mandate for release of PHI, TTBH shall have the right to control Business Associate's response to such request. Business Associate shall notify TTBH of the request as soon as reasonably practicable, but in any event within forty-eight (48) business hours of receipt of such request.

IN WITNESS, WHEREOF, TTBH and Business Associate have caused this Agreement to be executed as of the effective date.

Tropical Texas Behavioral Health

W. Terry Crocker, Chief Executive Officer

Date

Hidalgo County Head Start Program

Honorable Richard Cortez
Hidalgo County Judge

Irma Peña, Executive Director
Hidalgo County Head Start Program

Date

Date

ATTEST:

Arturo Guajardo, Jr.
Hidalgo County Clerk

Approved As To Form:
Ricardo González, P.C.
DBA, Oxford & González

By: _____
Ricardo González

AI-
Date Approved by Policy Council:
Date Approved by Commissioner's Court:

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("Addendum") is a part of the Contract effective as of September 1, 2019 between **Tropical Texas Behavioral Health (TTBH)** (the "Provider") and the **Hidalgo County Head Start Program (the "Program")**. For purposes of this Addendum the Program is referred to as "Covered Entity" or "CE" and the Provider is referred to as "Associate". Unless the context clearly requires a distinction between the Contract document and this Addendum, all references herein to "the Contract" or "this Contract" include this Addendum.

RECITALS

- A. CE wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below).
- B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to this Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-1320d-8 ("HIPAA") as amended by the American Recovery and Reinvestment Act of 2009 ("ARRA")/HITECH Act (P.L. 111-005), and its implementing regulations promulgated by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160, 162 and 164 (the "Privacy Rule") and other applicable laws, as amended.
- C. As part of the HIPAA regulations, the Privacy Rule requires CE to enter into a contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504 (e) of the Code of Federal Regulations ("C.F.R") and contained in this Addendum.

The parties agree as follows:

1. Definitions.

- a. Except as otherwise defined herein, capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Privacy Rule at 45 C.F.R. Parts 160, 162 and 164, as amended. In the event of any conflict between the mandatory provisions of the Privacy Rule and the provisions of this Contract, the Privacy Rule shall control. Where the provisions of this Contract differ from those mandated by the Privacy Rule, but are nonetheless permitted by the Privacy Rule, the provisions of this Contract shall control.
- b. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to 45 C.F.R. Section 164.501.
- c. "Protected Information" shall mean PHI provided by CE to Associate or created or received by Associate on CE's behalf. To the extent Associate is a covered entity under HIPAA and creates or obtains its own PHI for treatment, payment and health care operations, Protected Information under this Contract does not include any PHI created or obtained by Associate as a covered entity and Associate shall follow its own policies and procedures for accounting, access and amendment of Associate's PHI

2. Obligations of Associate.

- a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate's obligations under this Contract and as permitted under this Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by CE, except that Associate may use Protected Information: (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Attachment A to this Addendum. Associate accepts full responsibility for any penalties incurred as a result of Associate's breach of the Privacy Rule.
- b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted pursuant to this Contract; (ii) for the proper management and administration of Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 C.F.R. Section 164,502(j)(l). To the extent that Associate discloses
- c. Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Contract. Associate shall comply with the requirements of the Security Rules, 164.308, 164.310, 164.312, and 164.316. Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities.
- d. Reporting of Improper Use or Disclosure. Associate shall report to CE in writing any use or disclosure of Protected Information other than as provided for by this Contract within five (5) business days of becoming aware of such use or disclosure.
- e. Associate's Agents. If Associate uses one or more subcontractors or agents to provide services under the Contract, and such subcontractors or agents receive or have access to Protected Information, each subcontractor or agent shall sign an Contract with Associate containing substantially the same provisions as this Addendum and further identifying CE as a third party beneficiary with rights of enforcement and indemnification from such subcontractors or agents in the event of any violation of such subcontractor or agent Contract. Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.
- f. Access to Protected Information. Associate shall make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) business days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the Privacy Rule, including, but not limited to 45, C.F.R. Section 164.524.
- g. Amendment of PHI. Within ten business (10) days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the Privacy Rule, including, but not limited to, 45 C.F.R.

Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify CE in writing within five (5) business days of receipt of the request. Any denial of amendment of Protected Information maintained by Associate or its agents or subcontractors shall be the responsibility of CE.

- h. **Accounting Rights.** Within ten (10) business days of notice by CE of a request for an accounting of disclosures of Protected Information, Associate and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528. As set forth in, and as limited by 45 C.F.R. Section 164.528, Associate shall not provide an accounting to CE of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 C.F.R. Section 164.506; (ii) individuals of Protected Information about them as set forth in 45 C.F.R. Section 164.502; (iii) pursuant to an authorization as provided in 45 C.F.R. Section 164.508; (iv) to persons involved in the individual's care or other notification purposes as set forth in 45 C.F.R. Section 164.510; (v) for national security or intelligence purposes as set forth in 45 C.F.R. Section 164.512(k)(2); (vi) to correctional institutions or law enforcement officials as set forth in 45 C.F.R. Section 164.512 (k)(5); (vii) incident to a use or disclosure otherwise permitted by the Privacy Rule; (viii) as part of a limited data set under 45 C.F.R. Section 164.514(e); or (ix) disclosures prior to April 14, 2003. Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate shall within five (5) business days of the receipt of the request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.
- i. **Governmental Access to Records.** Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's compliance with the Privacy Rule. Associate shall provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- j. **Minimum Necessary.** Associate (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure, in accordance with the Minimum Necessary requirements of the Privacy Rule including, but not limited to 45 C.F.R. Sections 164.502(b) and 164.514 (d).
- k. **Data Ownership.** Associate acknowledges that Associate has no ownership rights with respect to the protected information.

- l. Retention of Protected Information. Except upon termination of the Contract as provided in Section 4(d) of this Addendum, Associate and its subcontractors or agents shall retain all Protected Information throughout the term of this Contract and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years.
- m. Associate Insurance. Associate shall maintain casualty and liability insurance to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed the minimum insurance requirements of the Contract (e.g. occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status and notice of cancellation).
- n. Notification of Breach. During the term of this Contract, Associate shall notify CE within two business days of any suspected or actual breach of security, intrusion unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations such notice shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired or disclosed during the breach. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- o. Audits, Inspection and Enforcement. Within ten (10) business days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, Contracts, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure Contract, upon terms mutually agreed upon by the parties, if requested by Associate. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, Contracts, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or waiver of CE's enforcement rights under the Contract.
- p. Safeguards During Transmission. Associate shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of Protected Information transmitted to CE pursuant to the Contract, in accordance with the standards and requirements of the Privacy Rule, until such Protected Information is received by CE, and in accordance with any specifications set forth in Attachment A.
- q. Restrictions and Confidential Communications. Within ten (10) business days of notice by CE of a restriction upon uses or disclosures or request for confidential communications pursuant to 45 C.F.R. 164.522, Associate will restrict the use or disclosure of an individual's Protected Information, provided Associate has agreed to such a restriction. Associate will not respond directly to an individual's requests to restrict the use or disclosure of Protected Information or to send all communication of Protected Information to an alternate address. Associate will refer such requests to the

CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to Associate.

3. Obligations of CE.

- a. Safeguards during Transmission. CE shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Associate pursuant to this Contract, in accordance with standards and requirements of the Privacy Rule, until such PHI is received by Associate, and in accordance with any specifications set forth in Attachment A.
- b. Notice of Changes. CE shall provide Associate with a copy of its notice of privacy practices produced in accordance with 45 C.F.R Section 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may affect Associate's use or disclosure of Protected Information. CE shall provide Associate with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent it may affect Associate's permitted use or disclosure of PHI, CE shall notify Associate of any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 C.F.R. Section 164.522. CE may effectuate any and all such notices of non-private information via posting on CE's website. Associate shall review CE's designated website for notice of changes to CE's HIPAA privacy policies and practices on the last day of each calendar quarter.

4. Termination.

- a. Material Breach. In addition to any other provisions in the Contract regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of this Contract and shall provide grounds for immediate termination of this Contract by CE pursuant to the provisions of the Contract covering termination for cause, if any. If the Contract contains no express provisions regarding termination for cause, the following terms and conditions shall apply:
 - (1) Default. If Associate refuses or fails to timely perform any of the provisions of this Contract, CE may notify Associate in writing of the non-performance, and if not promptly corrected within the time specified, CE may terminate this Contract. Associate shall continue performance of this Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.
 - (2) Associate's Duties. Notwithstanding termination of this Contract, and subject to any directions from CE, Associate shall take timely, reasonable and necessary action to protect and preserve property in the possession of Associate in which CE has an interest.
 - (3) Compensation. Payment for completed supplies delivered and accepted by CE shall be at the Contract price. In the event of a material breach under paragraph 4a, CE may withhold amounts due Associate as CE deems necessary to protect CE against loss from third party claims of improper use or disclosure and to reimburse CE for the excess costs incurred in procuring similar goods and services elsewhere.
 - (4) Erroneous Termination for Default. If after such termination it is determined, for any reason, that Associate was not in default, or that Associate's action/inaction was excusable, such termination shall be treated as a termination for

convenience, and the rights and obligations of the parties shall be the same as if this Contract had been terminated for convenience, as described in this Contract.

- b. **Reasonable Steps to Cure Breach.** If CE Knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Contract pursuant to Section 4(a), then CE shall take reasonable steps to cure such breach or end such violation, as applicable. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall either (i) terminate the Contract, if feasible or (ii) if termination of this Contract is not feasible, CE shall report Associate's breach or violation to the Secretary of the Department of Health and Human Services.
 - c. **Judicial or Administrative Proceedings.** Either party may terminate the Contract, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
 - d. **Effective of Termination.**
 - (1) Except as provided in paragraph (2) of this subsection, upon termination of this Contract, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If Associate elects to destroy the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.
 - (2) If Associate believes that returning or destroying the Protected Information is not feasible, Associate shall promptly provide CE notice of the conditions making return or destruction infeasible. Upon mutual agreement of CE and Associate that return or destruction of Protected Information is infeasible, Associate shall continue to extend the protections of Sections 2(a)2(b), 2(c), 2(d) and 2(e) of this Addendum to such information and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.
- 5. Injunctive Relief.** CE shall have the right to injunctive and other equitable and legal relief against Associate or any of its subcontractors or agents in the event of any use or disclosure of Protected Information in violation of this Contract or applicable law.
- 6. No waiver of Immunity.** No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS 24-10-101 *et seq.* or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.* as applicable, as now in effect or hereafter amended.
- 7. Limitation of Liability.** Any limitation of Associate's liability in the Contract shall be inapplicable to the terms and conditions of this Addendum.
- 8. Disclaimer.** CE makes no warranty or representation that compliance by Associate with this Contract, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

9. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Addendum.

10. Amendment.

- a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule, The Final HIPAA Security regulations at 68 Fed. Reg. 8334 (Feb 20, 2003), 45 C.F.R. § 164.314 and other applicable laws relating to the security or privacy of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. CE may terminate this Contract upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this Contract when requested by CE pursuant to this Section or (ii) Associate does not enter into an amendment to this Contract providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.
- b. Amendment of Attachment A. Attachment A may be modified or amended by mutual Contract of the parties in writing from time to time without formal amendment of this Addendum.

11. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under the Contract, available to CE, at no cost to CE up to a maximum of 30 hours, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA, the Privacy Rule or other laws relating to security and privacy or PHI, except where Associate or its subcontractor, employee or agent is a named adverse party.

12. No Third Party Beneficiaries. Nothing express or implied in this Contract is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

13. Interpretation and Order of Precedence. The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. Together, the Contract and this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Contract shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule. This Contract supersedes and replaces any previous separately executed HIPAA addendum between the parties.

14. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, Associate's obligations under Section 4 (d) ("Effect of Termination") and Section 12 ("No Third Party Beneficiaries") shall survive termination of this Contract and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate. This Addendum shall remain in effect during the term of the Contract including any extensions.

15. Representatives and Notice.

- a. Representatives. For the purpose of the Contract, the individuals identified elsewhere in this Contract shall be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are hereby designated as the parties' respective representatives for purposes of this Contract. Either party may from time to time designate in writing new or substitute representatives.
- b. Notices. All required notices shall be in writing and shall be hand delivered or given by certified or registered mail to the representatives at the address set forth below.

Program/Covered Entity Representative:

Name: Irma Peña
Title: Executive Director
Address: Hidalgo County Head Start Program
P. O. Box 0117
Edinburg, Texas 78539

Provider/Business Associate Representative

Name: Tropical Texas Behavioral Health
W. Terry Crocker
Title: Chief Executive Officer
Department and Division: _____
Address: P.O. Drawer 1108, Edinburg, TX

Provider/Associate

By: _____
Print Name

Signature

Title

Program /Covered Entity

Hidalgo County Head Start Program

By: _____
Irma Peña, Executive Director