

MEMORANDUM OF UNDERSTANDING BETWEEN  
RIO GRANDE REGIONAL HOSPITAL AND  
HIDALGO COUNTY HEAD START PROGRAM

FILED  
AT 11:05 O'CLOCK A.M.

AUG 09 2016

ANTONIO GUAJARDO, JR., COUNTY CLERK  
HIDALGO COUNTY, TEXAS  
BY PLO DEPUTY

I. PARTIES

This Memorandum of Understanding (“MOU”) is entered into this \_\_\_ day of \_\_\_, 2016, by and between Columbia Rio Grande Healthcare, L.P. d/b/a **Rio Grande Regional Hospital** (“the **Hospital**”) and the **Hidalgo County Head Start Program** (“**HCHSP**”).

II. PURPOSE

The Hospital is participating in Regional Healthcare Partnership 5 (RHP 5) as part of the State of Texas’ Section 1115 Medicaid Demonstration Waiver (“the Waiver”). Part of the **Hospital’s** participation in the Waiver involves efforts to reform the delivery of healthcare to the region’s low-income and needy patient population. To that end, the **Hospital** has proposed establishing an evidence based health promotion program to help asthma at-risk children (the “students”) prevent and manage their diseases. The purpose of this MOU is to set forth the understanding of the parties whereby the **HCHSP** and the **Hospital** shall memorialize their collaboration under this Waiver project (the “Agreement”).

III. RESPONSIBILITIES OF THE PARTIES

Under the Agreement, the **HCHSP** agrees to provide the following services and facilities:

- Provide a learning experience for students to accomplish the goals of education, prevention and management of asthma for at-risk students;
- Facilitate **Hospital’s** implementation and execution of the Evidence Based Health Promotion Program for asthma education;
- Provide facilities and staff needed for Hospital’s program implementation; and
- Provide overall demographic information regarding the student population to **Hospital** as part of the projects.

Under the Agreement, the **Hospital** agrees to provide the following services and facilities:

- Provide a learning experience for students to accomplish the goals of education, prevention and management of asthma for at-risk students;
- Provide facilities and staff to implement the projects; and
- Provide evaluation, education, and ongoing assessment of asthma for at-risk students participating in the programs.
- Obtain clearance of any **Hospital** staff providing services under the MOU from the **HCHSP’s** Human Resources Department. Hospital staff will submit to a

background check and finger-printing as part of the clearance process, which process may be amended by the **HCHSP** from time to time;

- Will not handle or maintain any student educational records.
- Asthma education **free of charge** to all **HCHSP** students and families through this Evidence Based Project; and

Neither the Hospital nor the **HCHSP** shall pay any compensation to the other for the services or facilities provided under this MOU.

The names and addresses of the **HCHCP** sites that will be serviced by **Rio Grande Regional Hospital** are listed below.

Weslaco I Head Start  
310 N. Kansas  
Weslaco, TX 78596

La Herencia Head Start  
100 La Herencia Drive  
Mercedes, TX 78570

Mercedes Head Start  
1100 W. Expressway 83  
Mercedes, TX 78570

Weslaco III Head Start  
1317 W. Exp. 83  
Weslaco, TX 78596

Mercedes II Head Start  
3601 E. Mile 8 North  
Weslaco, TX 78596

Donna I Head Start  
1402 Silver Ave.  
Donna, TX 78537

Donna II Head Start  
1715 Miller Ave.  
Donna, TX 78537

Donna IV Head Start  
202 West South Avenue  
Donna, TX 78537

#### **IV. MUTUAL CONSIDERATION**

Both the Hospital and the **HCHSP** recognize an opportunity for mutual benefit when combining healthcare resources to deliver services within a community setting. This relationship, referred to as the Evidence Based Health Promotion Program and as defined in the approved proposal for the Waiver, is an implementation of an evidence based health promotion in Hidalgo County, Texas to target reducing asthma at-risk students through education, prevention and management for at-risk students. This arrangement is mutually beneficial in that it provides an educational experience for students as well as helps the **Hospital** achieve objects related to the Waiver. For both entities, this collaboration improves the likelihood of meeting their goals of improving community health and student wellness.

#### **V. TERM OF MOU**

The term of the MOU shall be for one (1) year, from August 1, 2016 through July 31, 2017, and shall renew automatically thereafter for additional one-year terms under the same terms and conditions unless amended or terminated according to terms set forth therein. Either party may terminate this MOU, with or without cause, by providing thirty (30) days prior written notice to the other party.

**VI. MISCELLANEOUS PROVISIONS**

1. For the purposes of this MOU and all services to be provided under the Agreement, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statement, representation, commitment, or take any action of any kind which shall be binding on the other party, except as may be expressly provided for herein or in writing.
2. No amendment or modification of this MOU shall be valid unless reduced to writing and signed by both parties.
3. Neither party shall voluntarily or by operation of law, assign or otherwise transfer the obligations incurred on its part pursuant to the terms of this MOU without the prior written consent of this other party. Any attempted assignment or transfer by either party of its obligations without such consent shall be void.
4. All notices which are, or may be required to be given by a party to the other party in connection with this MOU, shall be in writing and shall be deemed to have been properly given if and when delivered personally or sent by certified mail, return receipt requested, addressed to the parties to be notified, or at such other place or places as a party may from time to time designate by written notice to the other party.

**To the Hospital:**

Rio Grande Regional Hospital  
101 E. Ridge Road  
McAllen, Texas 78503  
Attn: Chief Executive Officer

**To School HCHSP:**

Hidalgo County Head Start Program  
P.O Box 0117  
Edinburg, Texas 78540  
Attn:Teresa Flores, Executive Director

5. This MOU shall be governed in all respects by the laws of the State of Texas. The invalidity or unenforceability of any terms or conditions hereof shall in no way affect the validity or enforceability of any other terms or condition of this MOU.
6. The Agreement that results from this MOU will represent the entire and only agreement between the parties relating to the subject matter contained herein and supersedes any and all discussions, negotiations, and representations of any kind and represents the entire understanding of the parties hereinabove mentioned. In the event any provision of this MOU is found to be legally invalid or unenforceable for any reason, the remaining provisions of the Agreement shall remain in full force and effect provided the fundamental rights and obligations remain reasonably unaffected.
7. Each party to this Agreement represents and warrants to the other party that it and its personnel and physicians providing services hereunder: (a) are not currently

excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. Section 1320a-7b(f) (the “Federal health care programs”); (ii) are not convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; and (iii) are not under investigation or otherwise aware of any circumstances which may result in such party and its personnel and physicians being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty and either party shall notify the other party of any change in status of this representation and warranty. Any breach of this section shall give the non-breaching party the right to terminate this MOU.

8. The parties to this MOU represent they are duly established and created pursuant to applicable law with all requisite power and authority to enter into this Agreement in all respects including corporate authority. The parties represent they have met all Texas Open Meeting Act requirements.

**[Signature page follows]**

**VII. ACCEPTANCE AND APPROVAL SIGNATURES**

This MOU is hereby acknowledged and accepted by the following authorized representative of the Hospital and the HCHSP:

**HOSPITAL:**

**COLUMBIA RIO GRANDE HEALTHCARE,  
L.P. d/b/a, RIO GRANDE REGIONAL HOSPITAL**

By: Rio Grande Regional Hospital, Inc.,  
Its: General Partner

\_\_\_\_\_  
Cris Rivera, Chief Executive Officer

\_\_\_\_\_  
Date

**HCHSP:**

**Hidalgo County Head Start Program**

Ramon Garcia  
Honorable Ramon Garcia Date  
Hidalgo County Judge

Teresa Flores 7-14-14  
Teresa Flores, Executive Director Date  
Hidalgo County Head Start Program

APPROVED BY  
COMMISSIONERS' COURT  
ON: 6/7/16 mb

ATTEST:

Arturo Guajardo, Jr.  
Arturo Guajardo, Jr.  
Hidalgo County Clerk



Approved As To Form:  
Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain  
Stephen L. Crain

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

By: Ricardo González  
Ricardo González

Date Approved by Policy Council: 5-25-2016  
Date Approved by Commissioner's Court: 6-07-2016

## HIPAA BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("Addendum") is a part of the Contract effective as of \_\_\_\_\_, 2016 between \_\_\_\_\_ (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 agreement 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 agreement. 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 main 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, agreements, 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 agreement, 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, agreements, 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 agreement 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: Teresa Flores  
Title: Executive Director  
Address: Hidalgo County Head Start Program  
P. O. Box 0117  
Edinburg, Texas 78539

Provider/Business Associate Representative

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Department and Division: \_\_\_\_\_  
Address: \_\_\_\_\_

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

Program /Covered Entity  
Hidalgo County Head Start Program

By: \_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
Teresa Flores, Executive Director

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title Name