



**WHEREAS**, the **Provider** and the **Program** mutually desire to outline their individual responsibilities with respect to the use and /or disclosure, safeguarding, and transmission of Protected Health Information (“PHI”) and electronic Protected Health Information (“ePHI”), as mandated by the Privacy Rule and Security Rule (jointly referred to as “the Rules”) under HIPAA and its implementing regulations at 45 C.F.R. Parts 160 and 164.

**NOW, THEREFORE**, in consideration of the foregoing and the following **Provider** and **Program** agrees as follows:

1. The term of this **Contract** shall commence on **August 1, 2020** and shall terminate on the **31<sup>st</sup>** day of **July, 2021** unless extended or earlier terminated as provided herein. This **Contract** may be extended for an additional one year on the same terms and conditions if Program elects to do so by providing written notice to **Provider** as provided elsewhere herein.
2. **Provider** represents that **Provider** is licensed by the State of Texas, if required by law to perform the **Services**, is qualified to perform and provide the **Services** described on Exhibit A attached hereto and incorporated herein at this point for all purpose. If such license is suspended or revoked, this **Contract** shall automatically be terminated. **Provider** shall immediately notify the **Program** of such suspension or revocation.
3. The **Provider** shall prepare, maintain and submit all records which are designated, required or prescribed by the **Program**, federal grantor agency, or County of Hidalgo. In addition, the **Provider** shall permit the **Program**, the Department of Health and Human **Services** and the County of Hidalgo to audit and inspect records and reports, review services and /or evaluate the performance of the **Services** provided hereunder at any reasonable time. The **Provider** shall provide access to all its records, books, reports and other pertinent data and

information needed to accomplish review of its activities, services and expenditures billed to the **Program**.

4. In consideration for the above and foregoing, the **Provider** shall submit a monthly billing statement to the **Program** at:

**Hidalgo County Head Start Program**  
**Attn: Mrs. Elma Carrera, CFO**  
**P.O. Box 0117**  
**Edinburg, Texas, 78540**

Said statement must provide an itemized list of **Services** rendered to the **Program** during the statement period. Upon receipt of said statement, the **Program** will process the requisition for payment in the usual customary manner utilized by the **Program**. The **Provider** shall be compensated based on the **Program's** fee schedule, a copy of which is attached as Exhibit "B" hereto.

5. The **Provider** must comply with all applicable **Program** and Hidalgo County policies.

Notwithstanding the foregoing sentence, the **Provider** represents and maintains that **Provider** is an independent contractor and is not an employee of the **Program** or Hidalgo County, Texas, or any agency thereof, and further represents and warrants that **Provider** does not desire or request any fringe benefits provided to employees of the **Program** or Hidalgo County, Texas, and/or any agency thereof, including, but not limited to benefits associated with Hidalgo County's civil service program. The **Provider** agrees to be responsible for any federal income tax, withholding or social security tax liability which might arise from payments received pursuant to this **Contract**.

6. The **Program** and the **Provider** agree that **Program** may terminate this **Contract** at

any time for any reason or no reason at all upon thirty (30) days prior written notice to the Provider.

7. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communication required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

**If to County:** Teresa Flores, Executive Director  
Hidalgo County Head Start Program  
P.O. Box 0117  
Edinburg, Texas 78540-0117

**If to Provider:** Ileana E. Castro  
3118 Center Pointe Dr.  
Edinburg, TX 78539

8. **Provider** agrees to at all times be insured for professional liability, general liability, premises liability, auto liability insurance, and worker's compensation insurance covering **Provider & Provider's** employee's activities and services to the **Program** in coverage limits not less than the minimum amounts prescribed by the Texas Tort Claims Act, §101.001, et seq., Texas Civil Practices and Remedies Code. **Provider** shall furnish the **Program** a certificate issued by their insurer that such insurance is in full force and effect.

9. Except as otherwise herein provided, the **Provider** may not assign the obligation or rights under this **Contract** to any person without the prior written consent of the **Program**.

10. The **Provider's** employees, if any, who perform services for the **Program** under this Contract, shall be bound by the provisions of the terms of this **Contract**. At the request of the **Program**, the **Provider** shall provide adequate evidence that such persons are the **Provider's** employees.

11. The **Provider** will indemnify and hold harmless and defend the **Program** and the County of Hidalgo from any and all claims, actions, liability, and expenses including all cost of judgments, settlements, court cost, and attorney's fees regardless of the outcome of such claim(s) or action(s) caused by, resulting from, or alleging negligent or intentional acts or omission(s) or any failure to perform any obligation(s) undertaken or any covenant(s) in this **Contract**, and further, whether such act, omission, or failure to perform any obligation undertaken or any covenant in this **Contract** was the **Provider's** or that of any person providing services hereunder through or for **Provider**. Upon written notice from Hidalgo County and the **Program**, **Provider** will resist and defend at its own expenses, and by counsel reasonably satisfactory to Hidalgo County and/or **Program**, any such claim(s) or action(s).

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

13. In case any one or more of the provisions contained in this **Contract** shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof and this **Contract** shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14. **Contract Extension.** Hidalgo County Head Start Program reserves the right to extend this **Contract** at the same rate, terms and conditions for one year from the date of termination of the **Contract** period on the same rate and terms as contained herein. If the **Program** elects to extend this **Contract**, **Program** shall provide ninety (90) days written notice of intention to extend this **Contract** to **Provider** prior to the expiration of this **Contract**.

15. **No amendment**, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

16. **Commitment of Current Revenues Only.** In the event that, the Commissioners Court does not appropriate sufficient funds to meet the obligations of the **Program** under this **Contract**, the **Program** may terminate this **Contract** upon ninety (90) days written notice to **Provider**. **Program** agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this **Contract** at the expiration of each budget period of **Program** pursuant to the provision of Tex. Loc. Govt. Code Ann. '271.903 (Vernon Supp. 1996).

17. **Provider** will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing the **Services** under this **Contract** or in the selection of associates, employees, or independent providers.

18. **Provider** will perform its **Services** at all times in compliance with federal, state, and local laws, rules and regulations, the policies, rule and regulations of the **Program**, and all currently accepted and approved methods and practices of the professional specialty relating to the **Services**.

19. **Provider** must have a procedure to ensure that no information about a child is disclosed in a form that identifies the child without a signed Consent for Release of Information by the child's parent or legal guardian. All Business Associates must be in HIPPA Compliance. **Provider** shall comply with all HIPPA laws and regulations stated in 45 CFR Part 160 and Part 164.

20. **Entire Contract.** This **Contract** contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or **agreement** in connection with this content not specifically set forth herein. This **Contract** may be modified or amended only by an **agreement** in writing executed by **Program** and **Provider** and not otherwise.

21. **Immunities.** Nothing in this Contract is intended to and **Program** does not hereby waive, release or relinquish any right to assert any of the defenses **Program** enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to **Program** as to any claim or action of any person, entity, or individual against **Program**.

**IN WITNESS WHEREOF**, the parties have caused their names to be hereunto subscribed personally or by a duly authorized officer or agent of each party, effective the day and year first written above. EXECUTED as of the day and year first written above.

**PROVIDER:**

BY: \_\_\_\_\_


**HIDALGO COUNTY HEAD START PROGRAM**

BY: Richard F. Cortez  
Richard Cortez, County Judge

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

APPROVED BY  
COMMISSIONERS' COURT  
ON: 1/28/20 rg

**ATTEST:**  
BY: Arturo Guajardo, Jr.  
Arturo Guajardo, Jr., County Clerk



**Approved as to form:**  
Oxford & Gonzalez  
By: Ricardo Gonzalez  
Ricardo Gonzalez

Approved by Policy Council: 06-17-2020  
Approved by Commissioner's Court: 07-28-2020  
C-20-002-08-01-C

## HIPAA BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) is a part of the Contract effective as of August 1, 2020 between **Ileana E. Castro** (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)(I). 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 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, 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 Contract 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.

[INTENTIONALLY LEFT BLANK]

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: Ileana E. Castro  
Title: Owner  
Department and Division: \_\_\_\_\_  
Address: 3118 Center Pointe Dr., Edinburg, TX 78539

**Provider/Associate**

**Program /Covered Entity  
Hidalgo County Head Start Program**

\_\_\_\_\_

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

# Exhibit A

## Description of Mental Health Services

The Providers shall in a satisfactory and proper manner, as determined by the Program, perform the following Behavioral Health Services on an “as needed basis”.

- (a) Assist in planning mental program activities.
- (b) Provide workshop/in-service training on mental health topics to Head Start staff/parents
- (c) Perform Classroom Observations.
- (d) Submit a typed written report on findings and recommendations to the Head Start Program two weeks from date of referral.
- (e) Provide Developmental Evaluation for children to determine nature of problem and / or rule out medical problems.
- (f) Provide individual and / or family counseling to those Head Start Children and Families that are referred.
- (g) Advise in the utilization of other community resources and referrals.
- (h) A summary report of services rendered will be submitted to the Head Start Program on a monthly basis and at the completion of therapy.
- (i) Indemnification – The contractor agreed to indemnify and hold harmless the Program, it’s director, officers, employees, servants, and agents for any and all reasonable expenses, claims lawsuits, and judgments which may incur as a result of any negligence on malpractice of the part of the provider in rendering services contemplated by this Contract.

The program shall furnish the following services, date and information to Provider:

- (a) A completed referral on children exhibiting a typical and emotional behavior is referred by site staff or parental concern.
- (b) Information released on a referral form will remain specific to the need for referral and services being requested.
- (c) The program will identify and provide names of children referred whose families have health insurance of Medicaid. The provider will submit insurance on Medicaid claims directly to insurance companies for services provided to minimize cost reimbursement due to Program.

### **IN – KIND SERVICE BY CONTRACTOR:**

1. The provider will provide the Program with a monthly listing of the following in-kind services provided when deemed appropriate:
  - (a) Classroom Observation and recommendation
  - (b) Developmental evaluation
  - (c) Individual / family counseling (per hour)
  - (d) Workshop / In-Service / Training