



**MEMORANDUM OF UNDERSTANDING (MOU)  
BETWEEN**

**PACIFIC CLINICS**

**AND**

**AZUSA UNIFIED SCHOOL DISTRICT**

This Memorandum of Understanding is entered into by the above parties and shall commence on **July 1, 2022** and continue through **June 30, 2024**.

The purpose of this agreement is to identify and stipulate the type and extent of services to be provided by **Pacific Clinics** to **Azusa Unified School District (District)**.

**I. PURPOSE**

The purpose of this program is to work together towards the mutual goal of providing **Outpatient Mental Health, Medication Support Services, and Drug and Alcohol Services** to at-risk children and adolescents and their families.

**II. GOAL**

The goal of the program is to address specific behaviors that interfere with student functioning within an educational setting and to reduce symptoms and restore or maintain levels of functioning consistent with requirements of learning, development, independent living and enhanced self-sufficiency.

**III. SERVICES PROVIDED**

**Pacific Clinics will:**

1. Act as lead agency, to provide outpatient site based, school linked/based and in-home mental health services, including psychiatric services, to Medi-Cal eligible children and their families.
2. Provide ongoing case consultation to school staff and other participating community organizations.
3. Provide prevention and early intervention through outpatient treatment with evidence-based practice, i.e., Trauma Focused Cognitive Behavioral Therapy (TFCBT), Aggression Replacement Therapy (ART), Interpersonal Therapy (IPT), MAP Managing Adaptive Practices, Parent Child Interaction Therapy (PCIT) and all other forms of intervention, as needed.
4. Provide prevention and early intervention services that may consist of education classes about alcohol and drug use, including why youth use, societal influences, the effects on the body, practicing peer refusal skills, personal awareness, improving social skills, suicide prevention, positive self-image, etc. Provide a Youth Assistance Program that includes brief interventions to

students that are experiencing early problems related to substance use, possession, or other similar issue.

5. Provide outpatient treatment services for substance use disorders, including but not limited to intake, assessment, treatment planning, discharge planning, individual counseling sessions, group counseling sessions, linkages, and referrals.
6. Crisis intervention.
7. Interventions involving family members and program participants through collateral and family therapy.
8. Provide outpatient treatment to children 0-5 years old.
9. Ensure that all staff will have successfully met the fingerprinting requirements as defined in the California Education Code §45125.1.
10. Provide liability insurance for site-based and in-home mental health services.
11. While protecting participants' confidentiality, ensure proper releases to provide information to District regarding attendance and participation.
12. In the event of continued school campus closure due to COVID19, Pacific clinic will provide these mental health services listed above via telephone or telehealth.

**District will:**

1. Act as partner agency in providing educational support to those children and adolescents identified as Medi-Cal eligible children/adolescents for mental health services and/or site-based drug and alcohol services.
2. Complete basic referral/documentation process for all youth referred to Pacific Clinics to receive services.
3. Provide ongoing case consultations to Pacific Clinics clinical staff, and other participating community organizations.
4. Support allowing the youth to attend prevention classes and/or treatment sessions during hours of operation, when appropriate.
5. Work collaboratively with Pacific Clinics in establishing and implementing procedures and protocols regarding child abuse reporting, confidentiality issues, and suicidal management.
6. Provide confidential office space as needed between the hours of 8:00 a.m. and 4:00 p.m., (Monday through Friday) telephone and photocopy machine access for attending counselors and clinicians, to accommodate Medi-Cal eligible children, adolescents, and their families.
7. Provide direct linkage between Pacific Clinics and identified children, adolescents and their families by obtaining, when available, Medi-Cal documentation, as well as, when appropriate, parent consent for services to help Pacific Clinics staff arrange intake sessions and other services.

8. Work collaboratively with Pacific Clinics in providing all services.

#### **IV. COMPLIANCE WITH LEGAL REQUIREMENTS:**

Pacific Clinics and District shall comply with all applicable HIPAA requirements and all federal, state and local laws and shall abide by all mandated statutes for the protection of family/client confidentiality. Pacific Clinics agrees to serve all clients without regard to color, creed, religion, ethnicity, sex, sexual orientation, nationality, and/or physical or mental disability. Further, Pacific Clinics specifically agrees to adhere to CA Code of Regulations, Title IX and LADMH contractual requirements for service delivery.

#### **V. CONFLICT OF INTEREST**

Pacific Clinics and District acknowledge that no prior or existing relationship exists nor any sanctions with Federal, State and County agencies that would prevent Pacific Clinics and District from entering into and fulfilling all obligations under this agreement.

#### **VI. CONFIDENTIALITY**

District shall, during the term of this Agreement and for a period of five (5) years thereafter, maintain the confidentiality of confidential information disclosed by Pacific Clinics ("Confidential Information") and to use such Confidential Information solely for the purpose expressly set forth herein. Confidential Information shall mean any and all information disclosed to District concerning Pacific Clinics or specifically in connection with the services performed pursuant to this Agreement, including but not limited to proprietary information, materials, know-how, and other data, both technical and non-technical. District shall have no obligation of confidentiality and non-use with respect to Confidential Information which:

- (a) Is or later becomes generally available to the public by use or publication or the like, through no act or omission of District;
- (b) Is obtained by a third party who had the legal right to disclose Confidential Information to District;
- (c) Is already in the possession of District as evidenced by written documentation that predates District's receipt of Confidential Information; or
- (d) Is required by law, rule or regulation.
- (e) District will also sign a Business Associate Agreement with Pacific Clinics (see **Appendix A**).

#### **VII. LIMITATION OF LIABILITY**

To the maximum extent provided by law, in no event shall either party be responsible for any special, indirect, consequential, exemplary damages of any kind, including loss profits and/or indirect economic damages whatsoever, and regardless of whether such damage arise from claims based upon contract, negligence, tort or otherwise.

#### **VIII. INDEMNIFICATION AND INSURANCE:**

Pacific Clinics and District shall mutually agree to defend, hold harmless, and indemnify the other and their officers, agents, and employees from any and all liabilities including, but not limited to any claims for damages from death, sickness, or other personal injury or injury to property, including without limitation all consequential damages, for any cause whatsoever

arising from or connected with its service hereunder, whether or not resulting from the negligence of their agents, or employees.

**IX. TERMINATION**

This Agreement may be terminated without cause by either party upon thirty (30) days written notice and delivered by certified mail to the address below or as otherwise informed; or provided in person.

**X. AMENDMENT**

This Agreement may be amended in writing and shall be signed by the parties.

**XI. AGREEMENT**

This Agreement contains the entire understanding of the parties and shall supersede any previous written or verbal communication regarding the Services.

**XII. COUNTERPARTS**

This Agreement may be executed in identical counterparts; when taken together shall constitute the entire Agreement and shall have binding affect once all parties have executed one of the identical counterparts

**XIII. GOVERNING LAW**

This Agreement shall be governed by the law of the State of California.

**XIV. OTHER**

All Exhibits are attached hereto and incorporated into this Agreement by reference.

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**EFFECTIVE DATE OF AGREEMENT**

This agreement shall become effective when signed by the following authorized persons. All notices or correspondence related to this agreement should be directed to:

**PACIFIC CLINICS**

800 S. Santa Anita Avenue  
Arcadia, CA 91006  
Tel: (626) 254-5000

DocuSigned by:  
  
76F295D9E476483...

5/13/2022

\_\_\_\_\_  
**Executive Management Signature**

\_\_\_\_\_  
DATE

(CEO & President, General Counsel, CFO  
VP Clinical Operations, VP Clinical Administration)

**AZUSA UNIFIED SCHOOL DISTRICT**

546 South Citrus Avenue  
Azusa, CA 91702  
Tel: (626) 967-6211

\_\_\_\_\_  
**Norma Carvajal-Camacho**  
Assistant Superintendent of  
Educational Services

\_\_\_\_\_  
DATE

## APPENDIX A

### BUSINESS ASSOCIATE AGREEMENT

WHEREAS, **Pacific Clinics, "Covered Entity"**, headquartered at 800 S. Santa Anita Avenue, Arcadia, California 91006, is a Covered Entity, as defined below, and wishes to disclose certain Protected Health Information ("PHI") to Azusa Unified School District "Business Associate" pursuant to the terms of the Contract for Services defined below and this Agreement ("Business Associate Agreement" or "BAA") and this Agreement is made a part of the Contract for Services or Independent Contractor Agreement, as appropriate; and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the July 1, 2022 Memorandum of Understanding "Contract for Services" in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("HITECH Act"), and any current and future regulations and amendments promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable law; and

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Agreement.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

#### I. Definitions

Terms used, but not otherwise defined, and terms with initial capital letters in this provision of the Agreement have the same meaning as defined under the Health Insurance Portability and Accountability Act of 1996, 42 USC §§ 1320d et seq. ("HIPAA") and the implementing regulations and with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("HITECH Act"), HIPAA Privacy and Security Breach Notification and Enforcement Rules, and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

- A. Agent** is defined as "one who represents and acts for another under the contract or relation of agency (Reference source: Black's Law Dictionary)".
- B. Breach**, as defined under HITECH, shall mean any reported, suspected, actual or alleged acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted or allowed under state or federal privacy laws that compromises the security or privacy of the protected health information (45 C.F.R. Section 164.402 2013)
- C. Breach Notification** as amended by HITECH, the CE shall, following the discovery of a breach of unsecured protected health information, notify each individual whose unsecured protected health information has been, or is reasonably believed by the covered entity to have been, accessed, acquired, used or disclosed as a result of such breach (45 C.F.R. Section 164.404 2013).
- D. Business Associate or "BA"** shall mean a person, independent contractor, subcontractor, organization, or agency other than a workforce member that provides specific functions, activities, or services that involve the use, creation, storage or disclosure of PHI for, or on behalf of, a HIPAA covered health care component, but not limited to, 45 C.F.R. Section 160.103 Examples of business associate functions are activities such as providing clinical services per contract, translation or interpretation services, claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit

management, practice management, and re-pricing; and legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

- E. Customer** is defined as individual(s) receiving services from Covered Entity (CE) and/or associated Business Associate, agent, and/or subcontractor.
- F. Covered Entity or "CE"** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- G. Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- H. Electronic Protected Health Information or "EPHI"** means Protected Health Information that is maintained in or transmitted by electronic media.
- I. Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- J. Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- K. HIPAA Rules** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules as outlined in 45 C.F.R. Parts 160 and 164.
- L. Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- M. Protected Health Information or "PHI"** means any customer health information, whether oral or recorded in any form or medium: (a) 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. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501]. As amended by HITECH, PHI is defined as individually identifiable health information: (1) except as provided in paragraph (2) of this definition, that is: (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or medium. (2) Protected health information excludes individually identifiable health information: (i) in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); (iii) in employment records held by a covered entity in its role as employer; and (iv) regarding a person who has been deceased for more than 50 years (45 C.F.R. Section 160.103 2013).
- N. Protected Information** shall mean PHI provided by CE to Business Associate or created or received by Business Associate on CE's behalf.
- O. Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- P. Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

## II. Business Associate Obligations and Activities

- A. Permitted Uses.** BA shall not use Protected Information except for the purpose of performing BA's obligations under the Contract for Services and as permitted under the Contract for Services and any

addendum. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information (i) for the proper management and administration of BA, (ii) to carry out the legal responsibilities of BA, or (iii) for Data Aggregation purposes for the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].

- B. Permitted Disclosures.** A Business Associate or its agents or subcontractors shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if disclosed by CE, except that BA may disclose Protected Information (i) in a manner permitted pursuant to the Agreement and Addendum, if any; (ii) as required by law, and, with prior written approval of CE which may be granted or withheld at CE's sole discretion either (iii) for the proper management and administration of Business Associate as reasonably determined by BA in good faith or (iv) for Data Aggregation purposes for the Health Care Operations of CE. To the extent that BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify BA of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Any access, use or disclosure of PHI for non- Treatment, Payment or Operations reasons must be pursuant to a signed customer (or their representative) written authorization [45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].
- C. Appropriate Safeguards.** BA shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract for Services. BA 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 BA's operations and the nature and scope of its activities and implement reasonable and appropriate policies and procedures in order to comply with standards, implementation specifications, and other requirements of the Privacy Rule. BA shall maintain a written (which may be electronic) record of any action, activity, or assessment under such policies and procedures. BA shall change and amend its policies and procedures as necessary and appropriate to comply with changes in state and federal law, and shall promptly document and implement the revised policy or procedure. BA shall implement the administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information that it creates, receives, maintains, or transmits on behalf of CE, and, in accordance with 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- D. Notification of Breach, Mitigation and Report of Inappropriate Use or Disclosure.** BA agrees to notify the designated Privacy Official of the CE of any use or disclosure of PHI by BA not permitted by this Agreement, any Security Incident (as defined in section H.4. below) of which it becomes aware, involving electronic PHI, and any breach of unsecured Protected Health Information within three (3) calendar days.
- a. BA shall provide the following information to CE within three (3) calendar days of discovery of a breach except when despite all reasonable efforts by BA to obtain the information required, circumstances beyond the control of the BA necessitate additional time. Under such circumstances, BA shall provide to CE the following information as soon as possible and without unreasonable delay, but in no event later than thirty (30) calendar days from the date of discovery of a breach: **(a)** the date of the breach; **(b)** the date of the discovery of the breach; **(c)** a description of the types of unsecured PHI that were involved; **(d)** identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed; and **(e)** any other details necessary to complete an assessment of the risk of harm to the individual.



- b. CE will be responsible to provide notification to individuals whose unsecured PHI has been disclosed, as well as the Secretary and the media, as required by Sec. 13402 of the HITECH Act, 42 U.S.C.A. § 17932;
- c. BA agrees to pay actual costs for notification and of any associated mitigation incurred by CE, such as credit monitoring, if Covered Entity determines that the breach is significant enough to warrant such measures.
- d. BA agrees to establish procedures to investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by CE.
- e. The parties agree that this section satisfies any notices necessary by BA to CE of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to CE shall be required. For purposes of this Agreement, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on BA's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic PHI.

**E. Business Associate List of Contacts.** BA shall provide to CE the appropriate BA contact information which shall include, at a minimum, the following information: BA or its agents or subcontractors name, type of service(s) provided, first point of contact (title, full name, phone, fax, email, complete address), second point of contact (title, full name, phone, fax, email, complete address) and website URL. As the contact names are changed internally within the BA and its agents or subcontractors, the BA shall provide to CE the updated contact names and associated information in a timely manner and at the time of BA contract renewal (see 45 C.F.R Sections 160.308 and 160.310).

**F. Business Associate, Agents, and Subcontractors** shall in accordance with 45 C.F.R. Sections 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BA shall ensure that any agents, including subcontractors, to whom it provides Protected Information agree in writing to create, receive, maintain, or transmit protected information on behalf of the BA in compliance with the same restrictions, conditions, and requirements that apply to the BA with respect to such information. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation [45 C.F.R. Sections 164.530(f) and 164.530(e)(1)].

**G. Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within five (5) business days of a request by CE to enable CE to satisfy covered entity's obligations under 45 C.F.R. Section 164.524. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).

**H. Electronic PHI.** If BA receives, creates, transmits or maintains EPHI on behalf of CE, BA will, in addition, do the following:

- a. Develop, implement, maintain and use appropriate administrative, physical, and technical safeguards in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320(s) or the United States Code and Title 45, Part 162 and 164 of CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted PHI received from or on behalf of CE.
- b. Document and keep these security measures current and available for inspection by CE.
- c. Ensure that any agent, including a subcontractor, to whom the BA provides EPHI, agrees to implement reasonable and appropriate safeguards to protect it.
- d. Report to the CE any Security Incident or suspected security incident of which it becomes aware. For the purposes of this Agreement, Security Incident means, as set forth in 45 C.F.R Section 164.304, "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system."

- I. Amendments to Protected Information.** Within five (5) business days of receipt of a request from Covered Entity, for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA or its agents or subcontractors shall make any amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations pursuant to 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify Privacy Officer of Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors shall be the responsibility of CE.
- J. Accounting of Disclosures.** Within five (5) business days of notice by CE of a request for an accounting of disclosures of Protected Information, BA 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. In addition, the BA and its agents or subcontractors maintain and make available the information required to provide an accounting of disclosures to either "covered entity" or "individual." 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, address of the entity or person; (iii) a brief description of Protected Information disclosed; and 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 BA or its agents or subcontractors, BA shall within three (3) business days of a request forward it to the Privacy Officer of the CE in writing. It shall be the CE's responsibility to prepare and deliver any such accounting requested. BA shall not disclose any Protected Information except as set forth in Agreement.
- K. Governmental Access to Records.** BA and its agents or subcontractors shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining compliance with the HIPAA Rules. BA shall provide to CE a copy of any Protected Information that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- L. Minimum Necessary.** BA or 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; 45 C.F.R. Section 164.514(d)(3). BA or its agents or subcontractors understand and agree that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary" and shall, to the extent practicable, access, use, and request only Protected Information that is contained in a limited data set (as defined in Section 164.514(e)(2) of the HIPAA Privacy and Security Rules), unless BA requires certain direct identifiers in order to accomplish the intended purpose. The information that constitutes the "minimum necessary" shall be determined by the CE based on the minimum amount needed to accomplish its intended purposes.
- M. Data Ownership.** The Business Associate not its agents or subcontractors shall hold any data ownership rights with respect to the Protected Information.
- N. Retention of Protected Information.** Throughout the term of the Agreement, BA and its agents or subcontractors shall retain all protected information and shall continue to maintain the information and documentation thereof for a period of six (6) years from the later of (i) the date of its creation or (ii) termination of the Agreement. BA shall review documentation periodically, and update as needed, in response to environmental and operational changes affecting the security of Protected Information (45 C.F.R. Sections 164.530(j)(2) and 164.526(d)).
- O. Audits, Inspection and Enforcement.** Within five (5) business days of a written request by CE, BA 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 Agreement for the purpose of determining whether BA has complied with this Agreement; provided, however, that (i) BA and CE shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) the confidentiality of all sensitive proprietary information of BA to which CE accessed during the course of such inspection shall be protected by the CE; and (iii) if requested by the BA, a mutually agreed upon nondisclosure agreement shall be executed between CE and BA. The fact that CE inspects, or fails to inspect, or has the right to inspect, BA 's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this Agreement.

The CE's (i) failure to detect or (ii) detection, but failure to notify BA or require BA's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract for Services or any addendum.

BA shall notify CE within five (5) business days of learning that BA has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

- P. Privacy, Security, and Breach Notification Compliance Plan.** During the term of this Agreement, Business Associate shall notify CE within three (3) calendar days of any suspected, actual, or Unauthorized Access to, Security Incident or other Breach of security or privacy, privacy event, improper or unauthorized use, intrusion and/or any actual or suspected use or disclosure of protected information in violation of this Agreement or any applicable federal or state laws, rules or regulations. Furthermore, the BA agrees to implement a necessary and appropriate comprehensive compliance plan and training program for the members of its workforce, agents, and subcontractors outlining the Privacy, Security, and Breach Notification Rules required to perform their workforce responsibilities.
- Q. Restrictions on certain disclosures of Protected Information.** Business Associate agrees to comply with any requests for restrictions on certain disclosures of Protected Information to which CE has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules and of which BA has been notified by CE. In addition, and notwithstanding the provisions of Section 164.522, BA agrees to comply with an individual's request to restrict disclosure of Protected Information to a health plan for purposes of carrying out payment or health care operations if the PHI pertains solely to a health care item or service for which CE has been paid in full by the individual or the individual's representative and to which CE has notified the BA of in writing. However, this restriction shall not affect payment by CE to BA for services provided pursuant to the Contract for Services.
- R. Remuneration for PHI.** Business Associate agrees that it will not directly or indirectly receive remuneration in exchange for any Protected Information of an individual without the written authorization of the individual or the individual's representative, except where the purpose of the exchange is (i) for public health activities as described in Section 164.512(b) of the Privacy and Security Rules; (ii) for research as described in Sections 164.501 and 164.512(i) of the Privacy and Security Rules, and the price charged reflects the costs of preparation and transmittal of the data for such purpose; (iii) for treatment of the individual, subject to any further regulation promulgated by the Secretary to prevent inappropriate access, use, or disclosure of Protected Information; (iv) for the sale, transfer, merger, or consolidation of all or part of Business Associate and due diligence related to that activity; (v) for an activity that BA undertakes on behalf of and at the specific request of the CE; (vi) to provide an individual with a copy of the individual's Protected Information pursuant to Section 164.524 of the Privacy and Security Rules; or (vii) other exchanges that the Secretary determines in regulations to be similarly necessary and appropriate.
- S. Remuneration for written communication.** Business Associate agrees that it will not directly or indirectly receive remuneration for any written communication that encourages an individual to purchase or use a product or service without first obtaining the written authorization of the individual or the individual's representative, unless: (i) such payment is for a communication regarding a drug or biologic currently prescribed for the individual and is reasonable in amount (as defined by the Secretary); or (ii) the communication is made on behalf of the CE and is consistent with the terms of this Agreement (iii) on and after February 17, 2010, BA agrees that if it uses or discloses individuals'

Protected Information for marketing purposes, it will obtain such individual's authorization before making any such use or disclosure.

- T. Secured vs. Unsecured PHI.** For all Protected Information accessed, used, or disclosed by the BA efforts shall be made, as feasible, to create, manage, disclose and destroy all PHI which is controlled by the BA in ways that meet the criteria established in C.F.R. Parts 160 and 164 Guidance Specifying the Technologies and Methodologies That Render Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements Under Section 13402 of Title XIII (Health Information Technology for Economic and Clinical Health Act) of the American Recovery and Reinvestment Act of 2009 thereby yielding 'secured' as opposed to 'unsecured' PHI which takes advantage of the safe harbor established that reduces the requirements for privacy Breach Notification. Faxes and paper copies of PHI are discouraged for all access, use and disclosure in favor of secured, according to the above definition, electronic access, use and disclosure.

### III. Obligations of Covered Entity.

- A. It shall not be permissible for a covered entity to ask a Business Associate, agent, or subcontractor to utilize or disclose protected information in any manner that would not be allowable under Subpart E of 45 C.F.R. Part 164 if done by covered entity except if the BA, its agent or subcontractors use or disclose protected information for Data Aggregation or management and administration and legal responsibilities of the BA per terms of the Contract for Services.
- B. CE shall notify BA as follows: (i) of any changes in or revocation of permission by individuals to Use or Disclose their PHI, if such changes affect BA's permitted or required Uses or Disclosures; (ii) of any restriction to the Use or Disclosure of PHI that CE has agreed to under 45 C.F.R. Section 164.522; (iii) of any amendment to the PHI that CE has agreed to.

### IV. Business Associate Agreement Term and Termination

- A. Term.** The Term of this Agreement shall be effective as of the executed signature date below, and shall terminate on the same date the Contract for Services terminates or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- B. Termination for Cause.** Business Associate authorizes termination of this Agreement by covered entity, if CE determines BA, its agents, or subcontractors have violated a material term of the Agreement.
- C. Material Breach.** A breach by BA of any provision of this Agreement, as determined by CE, shall constitute a material breach of the Contract for Services and shall provide grounds for immediate termination of the Contract for Services, any provision in the Contract for Services to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].
- D. Judicial or Administrative Proceedings.** Covered Entity may terminate the Contract for Services, effective immediately, if (i) BA, its agent or subcontractor is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA, its agent or subcontractor has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- E. Obligations of Business Associate upon Termination.** Upon termination of the Contract for Services for any reason, BA shall, at the option of CE, return, destroy, or transmit to another Business Associate all Protected Information that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections of Section 2 of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45

C.F.R. Section 164.504(e)(ii)(2)(I)]. BA, its agent or subcontractor are to continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected information to prevent use or disclosure of the protected information, other than as provided for in this Section, for as long as BA, its agent or subcontractor retains the protected information. Business Associate is responsible to ensure the appropriate return, destruction, or transmission of PHI created, received, or maintained by its agents and subcontractors. If Covered Entity elects destruction of the PHI, BA shall certify in writing to Covered Entity that such PHI has been destroyed.

#### IV. General Provisions

- A. Indemnification.** Business Associate and its agents or subcontractors shall indemnify, defend and hold CE and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") harmless against any and all claims, liability, attorney's fees and costs by the Indemnified Party arising out of or in connection with injuries or damages caused by Business Associate and its agents or subcontractors as a result of BA's, its agent's or subcontractor's actions, conduct, behavior, malfeasance or negligence which result in BA's failure to perform its duties and obligations under this Agreement. Accordingly, on demand, BA and its agent or subcontractor shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the BA's acts or omissions hereunder. BA's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.
- B. Disclaimer.** Covered Entity makes no warranty or representation that compliance by BA and its agents or subcontractors with this Agreement, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.
- C. Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that an amendment to the Contract for Services 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 HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from BA that BA, its agent or subcontractor 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 Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Covered Entity may terminate the Contract for Services upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract for Services or any addendum when requested by Covered Entity pursuant to this Section or (ii) BA does not enter into an amendment to the Contract for Services or any addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the Privacy Rule, and other applicable laws.

- D. Assistance in Litigation of Administrative Proceedings.** BA shall make itself, and any subcontractors, employees or agents assisting BA in the performance of its obligations under the Contract for Services or any addendum, available to CE, at no cost to CE, 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 HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is named adverse party.

- E. No Third-Party Beneficiaries.** Nothing express or implied in the Contract for Services or any addendum is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- F. Interpretation.** The provisions of this Agreement shall prevail over any provisions in the Contract for Services that may conflict or appear inconsistent with any provision in this Agreement. This Agreement and the Contract for Services shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA Rules.
- G. Survivorship.** The respective rights and responsibilities of BA related to the handling of PHI survive termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

**AZUSA UNIFIED SCHOOL DISTRICT**

Signature: \_\_\_\_\_

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

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

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

**PACIFIC CLINICS**



Authorized Signer: \_\_\_\_\_

Date: 5/13/2022

Print Name: Kim M. Wells

Title: General Counsel