AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Midwestern Colorado Mental Health Center Business

Action Requested: County Manager Signature

Parties to the Agreement: Midwestern Colorado Mental Health Center, DHHS

Term Begins: 07/01/2015 **Term Ends:** 7/1/2016 **Grant Contract #:**

Summary:

Annual business agreement between DHHS and Center for Mental health with regard to the CORE budget from the CDHS.

Fiscal Impact:

Submitted by: Gillian Wilks **Submitter's Email Address:** gillian.wilks@state.co.us

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
Paragraph 5.1. requires the County to indemnify Midwestern. This would eliminate a protection provided to the County by the Governmental Immunity Act. I suggest crossing this paragraph out and initialing the cross-out. db
7/24/15

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 7/24/2015 Certificate of Insurance Required Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 7/31/2015

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted:

Agenda Date: 8/4/2015

Revised April 2015

MIDWESTERN COLORADO MENTAL HEALTH CENTER
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is made as of the effective date of January 10, 2011, by and between Midwestern Colorado Mental Health Center (the "Health Care Provider") with its principal office at P. O. Box 1208, Montrose, Colorado 81402 and Gunnison County Department of Health and Human Services (the "Business Associate") with a principal office in Gunnison, Colorado.

WHEREAS, Health Care Provider desires to disclose and Business Associate desires to use, disclose, create and/or receive, Individually Identifiable Health Information (i) on behalf of the Health Care Provider in the performance of certain functions or activities involving Individually Identifiable Health Information, or (ii) while providing certain designated services (including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services) to or for the Health Care Provider;

WHEREAS, Health Care Provider and Business Associate wish to comply with the Health Insurance Portability and Accountability Act of 1966 (42 U.S. Section 1320(d)("HIPAA") including without limitation the Standards of Privacy of Individually Identifiable Health Information (42 C.F.R., Part 160 and 164), the Standards for Electronic Transactions (45 C.F.R., Part 160 and 162) and the Security Standards (45 C.F.R., Part 142) (collectively, the "Standards") promulgated or to be promulgated by the Secretary of Health and Human Services (the "Secretary").

I. Definitions

The following terms, as used in this Agreement, shall have the meanings set forth below:

1. **"Data Aggregation"** means, with respect to Protected Health Information created or received by Business Associate in its capacity as the Business Associate of Health Care Provider, the combining of such Protected Health Information by Business Associate with the Protected Health Information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

1.2 **"Designated Record Set"** means a group of records maintained by or for Health Care Provider that are (i) the medical records and billing records about individuals maintained by or for Health Care Provider, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Health Care Provider to make decisions about individuals. As used in this Agreement, the term "Record" means any item, collection, or grouping of information that includes Protected Health information and is maintained, collected, used, or disseminated by or for the Health Care Provider.

1.3 **"Electronic Media"** means the mode of electronic transmissions. It includes the Internet, Extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, location to another using magnetic tape, disk, or compact disk media.

1.4 **"Individually Identifiable Health Information"** means information that is a subset of health information, including demographic information collected from an individual, and:

(a) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(b) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past present or future payment for the provision of health care to an individual; and (i) identifies the individual, or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

1.5 **"Protected Health Information"** or "PHI" means Individually Identifiable Health Information that is:

(a) transmitted by electronic media;

(b) maintained in any medium constituting Electronic Media; or

(c) transmitted or maintained in any other form or medium.

1.6 **"Protected Health Information"** excludes individually identifiable health information in:

(a) education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. Section 1232g;

(b) records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and

(c) employment records held by a covered entity in its role as employer.

II. Obligations of Business Associate with Respect to Protected Health Information

2.1 Use and Disclosures of Protected Health Information ("PHI")

Business Associate shall use and disclose PHI only as required to satisfy its obligations under the Agreement or as required by law and shall not otherwise use or disclose any PHI. Health Care Provider shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Standards for individually identifiable Health Information (hereinafter, referred to as the "Privacy Standards") if done by Health Care Provider.

2.2 Purposes and Limitations on Use or Disclosure of PHI

2.2.1 Purposes

Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Health Care Provider only for the following purposes, so long as such use or disclosure of PHI would not violate:

(a) the minimum necessary policies and procedures of Health Care Provider; and

(b) the Privacy Standards if used or disclosed by the Health Care Provider:

(i) to conduct surveys, measure trends for utilization management and identification of best practices and effective strategies to increase efficiencies.

2.2.2 Property Rights to PHI

Business Associate hereby acknowledges that, as between Business Associate and Health Care Provider, all PHI shall be and remain the sole property of Health Care Provider, including any forms of PHI developed by Business Associate in the course of fulfilling its obligations under this Agreement.

2.2.3 Minimum Necessary

Business Associate further represents that, to the extent Business Associate requests Health Care Provider to disclose PHI to Business Associate, such request is only for the minimum necessary PHI for the accomplishment of Business Associate's purposes.

2.2.4 Reporting Violations

Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. Section 164.502(j)(l).

2.3 Safeguards and Security

2.3.1 Safeguards

Business Associate agrees to use all appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement or as required by law.

2.3.2 Security

Business Associate shall establish security policies, processes and procedures in compliance with the Security Standards including without limitation administrative procedures, physical safeguards, technical security services, and technical security mechanisms, in order to protect the integrity and confidentiality of PHI exchanged electronically. Business Associate acknowledges and agrees that the legal, technical or business requirements for security of PHI may change and that, at any time during the term of this Agreement, Health Care Provider shall have the right to require Business Associate to adopt new policies, processes and procedures, or to require modifications to existing policies, processes and procedures. Health Care Provider shall communicate in writing such new or altered requirements to Business Associate, and Business Associate agrees to promptly implement such requirements. Business Associate shall supply a written copy of its security policies and procedures to Health Care Provider upon the execution of this Agreement.

2.4 Employees, Subcontractors and Agents.

Business Associate hereby represents and warrants that its employees and agents will be specifically advised of, and shall comply in all respects, with the terms and conditions of this Agreement. Business Associate shall obtain and maintain, in

full force and effect, a binding contract with each of its agents including, without limitation, subcontractors who will have access to PHI and whose PHI is received from, or created or received by, Business Associate on behalf of the Health Care Provider. Business Associate shall further ensure that any such agent agrees in such contract to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI.

2.5 Availability of Books and Records

Business Associate agrees to make internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Health Care Provider available to Health Care Provider, or to the Secretary, in a time and manner designated by Health Care Provider or designated by the Secretary, for purposes of the Secretary determining Health Care Provider's compliance with the Privacy Standards. The provisions of this section shall survive termination of this Agreement.

2.6 Notice of Request for PHI

Business Associate agrees to notify Health Care Provider within 2 business days of receipt of any request, subpoena or other legal process to obtain PHI or an accounting of PHI. Health Care Provider in its discretion shall determine whether Business Associate may disclose PHI pursuant to such request, subpoena, or other legal process. Business Associate agrees to cooperate fully with Health Care Provider in any legal challenge initiated by Health Care Provider in response to such request, subpoena, or other legal process. The provisions of this section shall survive the termination of this Agreement.

2.7 Data Aggregation

Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Health Care Provider as permitted by 42 C.F.R. Section 164.504(e)(2)(i)(B).

III. Qualified Service Organization

3.1 Part 2 Regulations

Some of the PHI may also be protected by the Federal Alcohol and Drug Abuse Confidentiality Regulation. 42.C.F.R. part 2. That regulation requires a written confidentiality agreement.

3.2 QSO Obligations

The Business Associate, also known as a Qualified Service Organization pursuant to the regulation [42 C.F.R. ? 2.11], acknowledges that in receiving, storing, processing or otherwise dealing with any PHI from or for the Covered Entity, (1) it is fully bound by the Federal Alcohol and Drug Abuse Confidentiality Regulation, as it would apply to the Covered Entity, and (2) if necessary, will resist in judicial proceedings any efforts to obtain access to PHI, covered by the regulation, except as permitted by the regulation.

IV. Term and Termination

4.1 Term

The term of this Agreement shall commence upon the Effective Date and shall continue thereafter until terminated in accordance with Section 3.2 below.

4.2 Termination

4.2.1 General Termination Provisions

Either Health Care Provider or Business Associate may terminate this Agreement at any time without cause with 30 days prior written notice.

4.2.2 Termination Upon Breach

Any other provision of this Agreement notwithstanding, this agreement may be terminated by Health Care provider upon five (5) business days written notice to Business Associate in the event that the Business Associate breaches any provision (including any covenant, representation, warranty, or condition) contained in Article II of this Agreement or any other such provision of this Agreement that relates to PHI and such breach is not cured within the 5 day notice period; provided, however, that in the event that termination of this Agreement is not feasible in Health Care Provider's sole discretion, Health Car Provider shall report the breach to the Secretary.

4.2.3 Return or Destruction of PHI Upon Termination

4.2.3.1 General Provisions

Upon termination of this Agreement, Business Associate shall either return or destroy, at the option of Health Care Provider, all PHI received from the Health Care Provider, or created or received by Business Associate on

behalf of the Health Care Provider and which Business Associate still maintains in any form. Business Associate shall not retain any copies of such PHI.

4.2.3.2 Alternative Arrangement

Notwithstanding the foregoing, to the extent that the Health Care Provider agrees that it is not feasible to return or destroy such PHI, Business Associate shall provide Health Care Provider with a written acknowledgment and notification of the conditions that make return or destruction infeasible. Business Associate hereby agrees to:

(a) extend the protections of this Agreement to such PHI only for those purposes that make the return or destruction infeasible,

(b) limit further uses and disclosures of such PHI to such purposes, and

(c) extend any term or provision of this Agreement relating to PHI so that such term or condition shall survive termination of this Agreement. Thereafter, such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

4.2.3.3 Applicability of Provisions

The provisions of this section of the Agreement shall apply, to the same extent that it applies to Business Associate, to PHI that is in the possession of agents of Business Associate.

4.2.4 Health Care Provider's Right to Cure

At the expense of Business Associate, Health Care Provider shall have the right to cure any breach of Business Associate's obligations under this Agreement with respect to PHI. Health Care Provider shall give Business Associate notice of its election to cure any such breach and Business Associate shall cooperate fully in the efforts by the Health Care Provider to cure Business Associate's breach. All requests for payment for such services of the Health Care Provider shall be paid within thirty (30) days of Business Associate's receipt of the request for payment.

V. Miscellaneous

5.1 Indemnification

Business Associate hereby agrees to indemnify and hold Health Care Provider and its employees and agents harmless from and against any and all loss, liability, or damages, including reasonable attorney fees, arising out of or in any manner occasioned by a breach of any provision of this Agreement by Business Associate, or its employees or agents.

5.2 Injunction

Business Associate hereby agrees that Health Care Provider will suffer irreparable damage if Business Associate breaches this Agreement and that such damages will be difficult to quantify. Business Associate hereby agrees that Health Care Provider may file an action for an injunction to enforce the terms of this Agreement against Business Associate.

5.3 Independent Contractor

Under this Agreement, Business Associate shall at all times be acting and performing in the status of independent contractor to Health Care Provider. Business Associate shall not be virtue of this Agreement be deemed a partner or joint venture of Health Care Provider. No person employed by Business Associate will be an employee of Health Care Provider, and Health Care Provider shall have no liability for payment of any wages, payroll taxes and other expenses of employment for any employee of Business Associate. Business Associate is constituted the agent of Health Care Provider only for the purpose of and to the extent necessary to carrying out its obligations under this Agreement.

5.4 Authorization for Agreement

Business Associate represents and warrants that the execution and performance of this Agreement by Business Associate has been duly authorized by all necessary laws, resolutions and corporate action, and this Agreement constitutes the valid and enforceable obligations of the Business Associate in accordance with its terms.

5.5 Governing Law and Choice of Forum

This agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance. The courts of the State of Colorado shall have exclusive jurisdiction to resolve any disputes arising out of this agreement and venue shall be in Montrose County, Colorado. To the extent that the Privacy Standards apply to any provision in this Agreement, any ambiguity shall be resolved to permit Health Care Provider to comply with the Privacy Standards.

5.6 Binding Agreement/Assignment

This Agreement shall inure to the benefit and be binding upon the parties hereto and their respective successors and assigns; provided, however, that Business Associate may not assign any rights or obligations under this Agreement without the prior written consent of Health Care Provider.

5.7 Notices

Any notice, request, demand, report, approval, election, consent or other communication required or permitted under the terms of this Agreement (collectively, "Notice") shall be in writing and either delivered personally, by registered or

certified mail, return receipt requested, postage prepaid, or by reputable overnight courier, addressed as follows:

To Health Care Provider

Midwestern Colorado Mental Health Center
P.O. Box 1208
Montrose, Colorado 81402

Attention: Jon Gordon, Executive Director

With a copy to:

Midwestern Colorado Mental Health Center
P.O. Box 1208
Montrose, Colorado 81402

Attention: Carol Keller, QI Director

To Business Associate:

Gunnison County Department of Health and Human Services
225 N. Pine Street
Gunnison, CO 81230

or at such other address as either party may designate by Notice. Notice shall be deemed to have been given when received if delivered personally, three (3) days after postmarked if sent by certified mail, or one day after deposited with an overnight courier.

5.8 Integration

This Agreement constitutes the sole and only agreement of the parties hereto with respect to the subject matter herein. Any and all prior agreements, promises, proposals, negotiations or representations, whether written or oral, which are not expressly set forth in this Agreement are hereby superseded and are of no force or effect.

5.9 Amendment

This Agreement may not be amended, modified or terminated orally, and no amendment, modification, termination or attempted waiver shall be valid unless in writing and signed by both parties.

5.10 Severability

Should any provision of this Agreement or application thereof by held invalid, illegal or unenforceable for any reason whatsoever, then notwithstanding such invalidity, illegality or unenforceability , the remaining terms and provisions of this Agreement shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law unless to do so would defeat the purposes of this Agreement.

5.11 Survival

All matters that:

(a) expressly survive the termination of this Agreement, including without limitation the provisions of Sections 5.2.3 and 5.2.4;

(b) relate to the termination of this Agreement, or

(c) in the normal course would not occur or be effectuated until after any such termination, as well as all rights and obligations of the parties pertaining thereto, shall survive any termination and be given full force and effect notwithstanding any termination of this Agreement.

5.12 Waiver

The failure at any time by either party to require or demand performance of any provision of this Agreement shall not constitute a waiver by such party of such provision and shall not affect such party's full right to require performance at any later time.

5.13 Legislative, Regulatory or Administrative Changes

In the event of a change in federal, state or local law, any of which could, in Health Care Provider's reasonable judgment, materially and adversely affect the manner in which either party may perform services under this Agreement, the parties shall immediately amend this Agreement to comply with the law, regulation, or policy and approximate as closely as possible the arrangements set forth in this Agreement as it existed immediately prior to the change in law, regulation or policy.

5.14 Joint Notices

If applicable, in this Agreement the term "covered entity" shall include all entities covered by a Joint Notice of Privacy Practices.

5.15 Business Associates That Are Covered Entities

In the event a Business Associate is a "covered entity" under the Privacy Standards, the Business Associate may designate a "health care component" of that entity, pursuant to 45 C.F.R. Section 164.504(a) as the Business Associate for purposes of this Agreement.

5.16 No Third Party Beneficiary

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties to this Agreement and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5.17 Headings

The headings to the various paragraphs of this Agreement have been inserted for convenient reference only and shall not modify, define, limit or expand the provisions of this Agreement.

5.18 Counterparts

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument.

5.19 Attorney Fees

In any proceeding for the resolution of any controversy or claim arising out of, or relating to, this contract, or its breach, the finder of fact shall determine and award to the prevailing party, their reasonable attorney fees.

5.20 Governmental Immunity

Nothing in this agreement shall be construed or enforced as a waiver of any provision of the Colorado Governmental Immunity Act, C.R.S. §§ 24-101 *et seq.*

IN WITNESS WHEREOF, Health Care Provider and Business Associate have caused this instrument to be duly executed by their authorized representatives as of the Effective Date.

Montrose Colorado Mental Health Center

By: _____ 7/15/2015
Jon Gordon, Executive Director **Date**

(Name of Business Associate/Title)

By: _____ _____
Name, Title **Date**