AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Business Associate Agreement; CoreSource, Inc.

Action Requested: County Manager Signature

Parties to the Agreement: CoreSource, Inc and Gunnison County

Term Begins: 01/01/2019 **Term Ends:** **Grant Contract #:**

Summary:

New Business Associate Agreement between Gunnison County (the covered entity) and CoreSource, Inc. (the Business Associate) in accordance with HIPAA and Standards for Privacy of PHI. Replacing previous BAA 7/1/2013.

Fiscal Impact:

Submitted by: Cheryl Seling **Submitter's Email Address:** cseling@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok db 3/15/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 3/15/2019 Certificate of Insurance Required Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\emense Discharge Date: 3/15/2019

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted: 0

Agenda Date: 3/19/2019

Revised April 2015

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement"), dated as of January 1, 2019, is between Gunnison County (the "Covered Entity") and CoreSource, Inc. (the "Business Associate" and, together with the Covered Entity, the "Parties").

I. RECITALS

WHEREAS, in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and any amendments thereto (including the Final Rule at 78 Fed. Reg. 5565 (Jan. 25, 2013) known as the "Mega Rule") ("HIPAA"), the HIPAA Security Rule at 45 C.F.R. Part 160 and Part 164 (the "Security Rule") and the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164 (the "Privacy Rule" and, together with the Security Rule, the "HIPAA Security and Privacy Rules"), the Covered Entity and the Business Associate desire to enter into this Agreement in order to address the requirements of the HIPAA Security and Privacy Rules with respect to "business associates" (as defined in the HIPAA Security and Privacy Rules); and

WHEREAS, the Business Associate and its representatives are, or will be, performing certain functions, activities and services to or on behalf of the Covered Entity (collectively, the "Services") pursuant to one or more agreements between the Parties under which the Parties are subject to the requirements of HIPAA (as the same may be amended from time to time, the "Services Agreement").

NOW, THEREFORE, in connection with the Business Associate's creation, receipt, maintenance, transmission, use or disclosure of "Protected Health Information" (as defined in HIPAA and referred to herein as "PHI") as a "business associate" (as defined in the HIPAA Security and Privacy Rules) of the Covered Entity, the Parties hereby agree as follows:

II. GENERAL TERMS AND CONDITIONS

A. Capitalized terms used in this Agreement shall have the meanings ascribed to such terms in the HIPAA Security and Privacy Rules, unless otherwise defined herein.

B. All existing service agreements and amendments thereto between the Covered Entity, on the one hand, and the Business Associate, on the other hand, are subject to this Agreement and are hereby amended by this Agreement. In the event of a conflict between the terms of any service agreement and this Agreement, the terms and conditions of this Agreement shall govern.

C. Where provisions of this Agreement are different from those mandated by the HIPAA Security and Privacy Rules but are nonetheless permitted by the HIPAA Security and Privacy Rules, the provisions of this Agreement shall control.

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

E. As used in this Agreement, the term "PHI" does not include summary health information or information that has been de-identified in accordance with the standards for de-identification provided for in the HIPAA Security and Privacy Rules.

III. OBLIGATIONS OF THE BUSINESS ASSOCIATE

A. Compliance with Law. The Business Associate acknowledges that it is required by law to comply with all applicable requirements of the HIPAA Security and Privacy Rules, and all additional security requirements of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), Title XIII of the American Recovery and Reinvestment Act of 2009 (ARRA), that are applicable to "business associates" (as defined in the HIPAA Security and Privacy Rules). The Business Associate further acknowledges that it is required by law to comply with

the use and disclosure requirements of Section 164.504(e) of the HIPAA Security and Privacy Rules and that all other privacy requirements of Subtitle D of the HITECH Act that are applicable to "business associates" (as defined in the HIPAA Security and Privacy Rules).

B. Permissible Uses and Disclosures.

1. The Business Associate shall create, receive, maintain, transmit, use or disclose PHI only in a manner that is consistent with this Agreement and the HIPAA Security and Privacy Rules and only in connection with the provision and delivery of the Services to or on behalf of the Covered Entity pursuant to the terms and conditions of the Services Agreements. Accordingly, in providing the Services to or on behalf of the Covered Entity, the Business Associate, for example, may use and disclose PHI for Treatment, Payment and Healthcare Operations consistent with the HIPAA Security and Privacy Rules, without obtaining prior authorization for such use or disclosure.

2. Except as otherwise limited in this Agreement, the Business Associate may disclose PHI to other "business associates" (as defined in the HIPAA Security and Privacy Rules) of the Covered Entity to perform duties specifically authorized under the Services Agreements.

3. As permitted by 45 C.F.R. § 164.504(e)(2) and (4), the Business Associate may also use or disclose PHI that it receives if:

   a. the use relates to (1) the proper management and administration of the Business Associate or the carrying out of the Business Associate's legal responsibilities or (2) de-identification of PHI in performing data aggregation services on behalf of the Covered Entity as well as for the improvement of Business Associate's programs and services; or

   b. the disclosure of PHI received in such capacity is made in connection with a function, responsibility or service identified in Section III.B.3.a(1) above, and (1) such disclosure is required by law or (2) the Business Associate obtains reasonable assurances from the person to whom such PHI is disclosed that it will be held confidentially and such person agrees to notify the Business Associate of any breaches of such confidentiality.

4. The Business Associate may disclose PHI to report violations of law to appropriate Federal or State authorities, consistent with 45 C.F.R. § 164.502.

5. In performing its obligations under this Agreement and the Services Agreements, the Business Associate shall use, disclose or request only the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.

C. Recipients of PHI.

1. The Business Associate shall obtain reasonable written assurances from any person or entity to whom it discloses PHI that such PHI will be held confidentially and used or further disclosed only as required and permitted under the HIPAA Security and Privacy Rules and other applicable laws. Prior to receiving PHI from the Business Associate, each person or entity receiving PHI from the Business Associate must agree to be governed by the same restrictions and conditions contained in this Agreement, including the Business Associate's limitations on uses and disclosures of PHI.

2. The Business Associate shall enter into an agreement with each of its subcontractors pursuant to 45 C.F.R. § 164.308(b)(2) and § 13401 of the HITECH Act that is appropriate and sufficient to require each such subcontractor to protect PHI to the same extent required by the Business Associate hereunder.

3. Any person or entity who receives PHI from the Business Associate must notify the Business Associate of any potential breaches of confidentiality of such PHI within five (5) days of such potential breach.

4. The Business Associate and its agents and subcontractors shall comply with applicable requirements of the Standards for Electronic Transactions (45 C.F.R. §§ 160 and 162).

D. Safeguards.

1. The Business Associate shall establish, implement and maintain administrative, physical and technical safeguards that (a) reasonably protect the confidentiality, integrity and availability of all PHI (whether in electronic or other format) that the Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity as required by the HIPAA Security and Privacy Rules and (b) ensure that no PHI (whether in electronic or other format) created, received, maintained, transmitted, used or disclosed by the Business Associate in connection with the performance and delivery of the Services is used or disclosed except as permitted by this Agreement, including safeguards that satisfy the requirements of the Security Rule with respect to electronic PHI.

2. The Business Associate shall ensure that each agent, including a subcontractor, to whom the Business Associate provides PHI agrees to implement reasonable and appropriate safeguards to protect such PHI.

E. Reporting Requirements.

1. The Business Associate shall report to the Covered Entity any potential use or disclosure of PHI that may be in violation of this Agreement and not permitted under the HIPAA Security and Privacy Rules within ten (10) business days of becoming aware of such potential use or disclosure.

2. Pursuant to 45 C.F.R. § 164.410, in the event of a breach or potential breach by the Business Associate of unsecured PHI, as the terms “breach” and “unsecured PHI” are defined in 45 C.F.R. § 164.402, the Business Associate shall report such breach or potential breach to the Covered Entity within ten (10) business days of discovery of such breach or potential breach. A breach shall be treated as discovered by the Business Associate as of the first day on which such breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. The Business Associate’s report shall include all information available to the Business Associate and necessary to allow the Covered Entity to provide a notification of the breach consistent with 45 C.F.R. § 164.404.

3. The Business Associate shall report to the Covered Entity each potential “security incident,” as defined in 45 C.F.R. § 164.304, within ten (10) business days of discovery of such incident. A security incident shall be treated as discovered by the Business Associate as of the first day on which such incident is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. For the avoidance of doubt and notwithstanding the foregoing, the Parties acknowledge and agree that information systems are the frequent target of probes, scans, pings and other activities that may not indicate threats, whose sources may be difficult or impossible to identify and whose motives are unknown and that do not result in access or risk to any information system or PHI (each, an “**Access Attempt**”). Although Access Attempts generally do not result in any unauthorized access to or modification or disclosure of PHI, Access Attempts do constitute “security incidents,” as defined in 45 C.F.R. § 164.304, and, accordingly, the Business Associate is required to report each Access Attempt to the Covered Entity. The Covered Entity agrees to accept this Agreement as the notification required under § 164.314 and not require the Business Associate to provide any additional notification so long as the Business Associate

(a) ensures that all Access Attempts are recorded in the Business Associate's information technology records, (b) regularly reviews its information technology records to determine whether any Access Attempt resulted in unauthorized access to or modification or disclosure of PHI and (c) in the event that the Business Associate is unable to make the determination described in clause (b) following review of its information technology logs, takes all steps reasonably designed to determine whether an Access Attempt resulted in unauthorized access to or modification or disclosure of PHI.

4. The Business Associate shall report to the Covered Entity a request for access to PHI provided for in 45 C.F.R. § 164.524 within ten (10) business days of receipt of such request. The Business Associate shall not respond to such request without written authorization of the Covered Entity.

5. The Business Associate shall report to the Covered Entity within ten (10) business days of receipt of a request to amend PHI. The Business Associate shall not alter or amend PHI that it receives from the Covered Entity without specific written authorization of the Covered Entity, as provided for in 45 C.F.R. § 164.526.

6. If an individual submits to the Business Associate a request for restriction or a request for confidential communications as provided for in 45 C.F.R. § 164.522, then the Business Associate shall report such request to the Covered Entity within ten (10) business days of receipt. The Business Associate shall not respond to such requests without written authorization of the Covered Entity.

F. Accounting of Disclosures. The Business Associate shall respond to the Covered Entity within ten (10) business days of receipt of a request for information that would be appropriate for an accounting of disclosures of PHI as provided for in 45 C.F.R. § 164.528. The Business Associate shall not be required to maintain a record of disclosures of PHI (1) made for the purpose of Treatment, Payment or Healthcare Operations, (2) made to an individual who is the subject of the PHI or (3) made pursuant to an authorization that is valid under HIPAA.

G. Other Obligations.

1. To the extent that the Business Associate performs any obligations of a Covered Entity under the Privacy Rule, the Business Associate shall comply with the requirements of the Privacy Rule applicable to such Covered Entity in performing such obligations; provided, that unless the Covered Entity has notified the Business Associate of obligations specifically applicable to such Covered Entity, the Business Associate shall determine the extent and scope of such obligations in its reasonable judgment.

2. The Business Associate shall make available to the, the Secretary of Health and Human Services or its agents, the Business Associate's internal practices, books and records relating to the use and disclosure of PHI as required in 45 C.F.R. § 164.504.

3. The Business Associate acknowledges and agrees that from time to time the Department of Health and Human Services may modify the standard transactions now identified in 45 C.F.R. §§ 162.1101–162.1802. The Business Associate and its agents and subcontractors agree to abide by any changes to such standard transactions that are applicable to the Services.

4. The Business Associate shall cooperate with the Covered Entity to comply with the HIPAA Security and Privacy Rules.

5. If Business Associate conducts all or part of an electronic transaction on behalf of Covered Entity, Business Associate will comply, and will require any Subcontractor involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Parts 160 and 162.

6. Business Associate agrees that it is fully bound by the provisions of 34 U.S.C290dd-2(g) and C.F.R. § T. 42, Ch. I, Subch. A, Pt. 2 (Confidentiality of Substance Use Disorder Patient Records) upon receipt of patient identifying information as defined in 42 C.F.R. § 2.11. Business Associate shall implement appropriate safeguards to prevent unauthorized uses and disclosure of patient identifying information. Business Associate shall report to Covered Entity any unauthorized uses, disclosures, or breaches of patient identifying information within ten (10) business days of discovery of such unauthorized use, disclosure, or breach. Business Associate may not re-disclose patient identifying information to a third party unless that third party is a contract agent of the Business Associate, helping the Business Associate provide services under the Agreement, and only as long as the contract agent only further discloses the patient identifying information back to the Business Associate or Covered Entity.

IV. OBLIGATIONS OF THE COVERED ENTITY

A. If the Covered Entity wishes to receive PHI, it shall provide the Business Associate with the name or identity/job title of the individual(s) authorized to represent the Covered Entity and who can receive and disclose PHI for purposes of treatment, payment and operations. The Covered Entity shall also notify the Business Associate of any changes made with respect to the individuals so identified.

B. The Covered Entity shall provide the Business Associate with the Notice of Privacy Practices produced in accordance with 45 C.F.R. § 164.520 and any changes thereto.

C. The Covered Entity shall provide the Business Associate with the plan amendment produced in accordance with 45 C.F.R § 164.504.

D. The Covered Entity shall obtain all consents or authorizations necessary for the Business Associate's access to or creation, maintenance, use or disclosure of PHI subject to this Agreement.

E. The Covered Entity shall notify the Business Associate of any restrictions applicable to the Business Associate's use or disclosure of PHI that the Covered Entity has accepted and that apply to any access to or use or disclosure of PHI subject to this Agreement.

F. The Covered Entity shall notify the Business Associate of any restriction on the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522.

G. The Covered Entity shall not request that the Business Associate use or disclose PHI in a manner that would not be permissible under Subpart E of 45 C.F.R. Part 1764 if so disclosed by the Covered Entity.

H. The Covered Entity shall notify the Business Associate of any specific obligations of the Covered Entity applicable to any obligations of the Covered Entity that the Business Associate performs under this Agreement.

I. The Covered Entity shall be solely responsible for compliance with the Security Rule and the implementation of reasonable and appropriate safeguards with respect to PHI that is subject to this Agreement and that it provides to or receives from the Business Associate, prior to its receipt by the Business Associate, and upon and following its receipt by the Covered Entity from the Business Associate.

J. The Covered Entity shall provide the Business Associate with any changes in, or revocation of, or authorization by Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.

K. When making any disclosures subject to 34 U.S.C290dd-2(g) and C.F.R. § T. 42, Ch. I, Subch. A, Pt. 2 (Confidentiality of Substance Use Disorder Patient Records), the Covered Entity shall furnish the Business Associate with the required notice. The Covered Entity shall only disclose patient identifying information to the Business Associate as necessary for the Business Associate to perform its duties under the Agreement.

V. TERM AND TERMINATION

A. Term. This Agreement shall be effective as of the date first set forth above and shall terminate when all PHI previously provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity.

B. Termination for Cause. Upon either Party's knowledge or reasonable belief that the other Party is in or has committed a breach or violation of any material obligation set forth in this Agreement that is required pursuant to 45 C.F.R. § 314(a)(2)(i) or 45 C.F.R. § 164.504(e)(2), the non-breaching party may:

1. if the non-breaching party reasonably believes that such breach is or was due to the breaching party's willful neglect (as defined in the HIPAA Security and Privacy Rules), terminate this Agreement with immediate effect by delivering written notice of such termination to the breaching party regardless of whether such breach is continuing at the time the non-breaching party delivers such notice;

2. if the non-breaching party reasonably believes that such breach was due to reasonable cause (as defined in the HIPAA Security and Privacy Rules) and such breach was not continuing at the time the non-breaching party became aware of such breach, require the breaching party to demonstrate that it has taken appropriate steps (including an independent assessment, at the breaching party's expense, of the breaching party's compliance with the obligation in question) that are, in the non-breaching party's sole discretion, reasonably designed to prevent a recurrence of such breach; or

3. if the non-breaching party reasonably believes that such breach is due to reasonable cause (as defined in the HIPAA Security and Privacy Rules) and such breach was continuing at the time the non-breaching party became aware of such breach, notify the breaching party of such breach and grant to the breaching party thirty (30) days following the breaching party's receipt of such notice in which to cure such breach; provided, that such thirty (30) day period shall be extended to the extent reasonably necessary to permit the breaching party to cure such breach so long as the breaching party takes all steps reasonably designed to cure such breach during such initial thirty (30) day period; provided, further, that if such thirty (30) day period is extended, the non-breaching party may require the breaching party to engage an independent third party to conduct an independent assessment, at the breaching party's expense, of the breaching party's efforts if such breach has not been cured within a reasonable period of time after expiration of the initial thirty (30) day period.

C. Obligations of the Business Associate upon Termination. Upon termination of this Agreement pursuant to Section V.B, the Business Associate shall promptly return to the Covered Entity, or, if agreed to by the Covered Entity, destroy, all PHI previously created, maintained or received by the Business Associate on behalf of the Covered Entity that the Business Associate maintains in any form. The Business Associate shall retain no copies of such PHI.

D. Retention of PHI. The Business Associate may retain PHI to the extent reasonably necessary to permit the Business Associate to comply with applicable laws and so long as the Business Associate extends the protections of this Agreement to all such PHI and takes all actions necessary to limit further uses and disclosures of such PHI for so long as the Business Associate retains such PHI. If the Covered Entity and the Business Associate determine in good faith that

termination of this Agreement and the return or destruction of all PHI previously provided by the Covered Entity or the Health Plan to the Business Associate would cause irreparable business interruption or harm to customers of the Covered Entity, or if termination of this Agreement is otherwise not feasible, then (1) the Covered Entity and the Business Associate shall take all commercially reasonable actions to mitigate the effects of such situation, (2) the Covered Entity or the Business Associate may report such situation to the Secretary of Health and Human Services and (3) the Business Associate shall extend the protections of this Agreement to all such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. Upon termination of the condition that makes retention of PHI by the Business Associate necessary for the Business Associate's compliance with law or that makes return or destruction of PHI infeasible, the Business Associate shall return or destroy such PHI as instructed by the Covered Entity.

E. Survival. The obligations of the Business Associate under this Section V shall survive the termination of this Agreement.

VI. LEGAL PROVISIONS

A. Amendment. The Covered Entity and the Business Associate may amend this Agreement by mutual written consent.

B. Severability. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other portion of this Agreement. The entire Agreement will be construed as if it did not contain the particular invalid or unenforceable provision(s), and the rights and obligations of the Business Associate and the Covered Entity will be construed and enforced accordingly.

C. Waiver. The failure by one Party to require performance of any provision of this Agreement shall not affect such Party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

D. Entire Agreement. This Agreement supersedes and replaces any and all prior Business Associate Agreements between the Parties. To the extent that the Services Agreements address the rights and obligations contained in this Agreement, this Agreement supersedes and replaces all provisions in the Services Agreements related to the subject matter of this Agreement.

CORESOURCE, INC.

By: Kimberly A Fiori
Name: Kimberly A. Fiori
Title: Regional President

GUNNISON COUNTY

By: _____
Name:
Title: