AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: User Agreement; Western Colorado University

Action Requested: County Manager Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Eric Barker will be using a office at Western Colorado Univesrity

Fiscal Impact:

Submitted by: Kari commerford **Submitter's Email Address:** kcommerford@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 10/9/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 10/9/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 10/9/2019 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 10/9/2019

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 10/15/2019

Revised April 2015

FACILITIES USE AGREEMENT
And

Gunnison County

THIS FACILITIES USE AGREEMENT (this "Agreement"), made this__**7**__**day of** _**October**_, _**2019**_, between Western Colorado University, ("Licensor"), and (**Gunnison County),** ("Rural Community Opioid Response Grant"), ("Licensee").

WITNESSETH

WHEREAS, Licensee desires to use the University's facilities as Further described below and the University is willing to permit Licensee to use the same on the terms and conditions set forth below.

WHEREAS, Licensee warrants that he or she is not an employee of Western Colorado University and is entering into this Agreement for purposes related to his or her employment.

NOW, THERFORE, in consideration of the mutual covenants and conditions contained herein, University and Licensee agree as follows:

1. **Gunnison County:** The Licensee shall make all arrangement related to their services, except those specifically made the responsibility of Licensor by this Agreement.

2. **Facilities:** The following described facilities (the "Facilities") located at 1 Western Way, Gunnison, Colorado, 81231 will be reserved for the Rural Community Opioid Response Grant (Gunnison County) for the sole purpose of holding this program

   Western Colorado University, Crystal Hall, Room Number 2, for a zero ($0) fee.

3. **Additional Space, Equipment, Services:** Licensor shall provide for the benefit of Licensee the space, equipment, and/or services as follows:
   i. **Laptop and Monitors**
   ii. **Keycard**
   iii. **Access to the Crystal Hall**

4. **Term:** Licensee shall be permitted to use the above described Facilities for the Rural Community Response Grant between the following dates and times.

   From September 17, 2019 TO 5:00PM on August 24, 2020.

5. **Fees:**

   i. **Licensee:** Licensee shall pay the University the License Fee and any additional fees incurred by Licensee and all staff members. The License fee shall be:

   _Zero__ Dollars ($0) per day, paid at the end of each month for the term of this agreement.

6. **Additional Fees:** Licensee shall be charged by University and shall pay University the following fees ***as incurred***.

   i. Additional Facilities: Any fees for the use of University's Facilities or other property, excluding the fees for the use of the accommodation Facilities which are charged to Licensee as part of the License Fee.

ii. Non-Returned Keys: For keys issued to Licensee participants and staff, University shall assess a lost-key charge of Fifty Dollars ($50.00) per key if not returned to University on the concluding day of the Agreement. In addition, if University deem(s) it necessary to change the locks, Licensee shall pay University a reasonable fee, as determined by University, for replacing such locks.

iii. Loss/Damage: Licensee shall pay for loss or damage to University Facilities, furnishings, equipment, or other property, normal wear accepted, caused by Licensee participants and staff. Loss/damage charges shall be determined by University. An itemized list of loss/damage charges shall be provided on an invoice.

iv. Audio-Visual Equipment: Audio-visual equipment is available upon request at various charges. Detailed information is available upon request.

7. **Licensee's Staff & Participants:** Licensee shall be responsible for supervising all its participants and staff and assuring that such persons adhere to all rules and regulations as may be established by University, including but not limited to the **Code of Conduct /Business Associate and Qualified Service Organization agreement** attached to this Agreement as **Exhibit A** and incorporated herein by this reference. Upon the request of University's Designee, Licensee shall immediately remove any such person not adhering to the rules and regulations of University.

8. **Control and Management:** It is understood and agreed that the University has the right to control and manage the Facilities and the campus and to enforce all necessary and proper rules for the management and operation of the same and for its authorized representatives to enter the Facilities or any other property at any time to make inspections regarding Licensee's conformity with the terms of this Agreement. The entry by or presence of University's representative(s) at the Facilities, Event or campus shall not cause University to assume any additional liability hereunder. University have the right, but not the duty, through their duly appointed representatives, to eject any objectionable persons from University property and Licensee hereby waives any and all claims for damages against University and any and all of their agents or employees resulting from the exercise of this authority.

   Any personnel of University, the Gunnison Volunteer Fire Department, and law enforcement agencies shall have the right to enter Facilities and all other portions of University's campus when deemed necessary by University.

9. **Standards of Conduct:** All participants must comply with the **Standards of Conduct** attached to this Agreement as **Exhibit A**.

10. **Parking:** University agrees that certain existing parking facilities will be open to such traffic as is occasioned by Licensee's use of Facilities, but Licensee agrees that University need not hold such parking facilities for the exclusive use of such traffic.

11. **Keys:** Licensee will obtain any and all keys to the Facilities from University's Designee or other representative. All such keys are the property of University, and the Licensee shall return them promptly and without notice or demand therefor at the end of the Agreement. If keys delivered are lost or not returned, Licensee shall pay University the additional fees described above in this Agreement.

12. **Additional:** Licensee understands and agrees that during the term of this Agreement other events may be held in other parts of University's facilities not included in this Agreement, and Licensee shall conduct its activities so as not to interfere with such other events.

13. **Time / Removal of Goods:** Time is of the essence with respect to this Agreement. In the event any portion of the Facilities or any other portion of University's campus are not vacated at the end of the term of this Agreement, then University shall be and is hereby authorized to remove from said premises, at the expense of Licensee, all goods, wares, merchandise and property of any kind or description which may be then occupying University's premises. All removal and/or storage charges must be paid to University by Licensee before such goods, wares, merchandise or property will be released to Licensee. In any event, University

may dispose of any such goods, wares, merchandise and property as it sees fit after the expiration of thirty (30) calendar days from the end of the Agreement. University shall not be liable for any damage to or loss of such goods, wares, merchandise or

property sustained either during the removal, storage or disposal of same and University are hereby expressly released from any and all claims for such loss or damage.

14. **Applicable Laws / Violation:** Licensee shall use and occupy the Facilities and University's campus in a safe and careful manner and shall comply with all applicable municipal ordinances of the City of Gunnison and the County of Gunnison and the laws of the State of Colorado and of the United States of America, and all other rules of governmental authorities as may be in force and effect during the term of this Agreement, including but not limited to, all applicable state, federal and local laws and regulations applicable to discrimination and unfair employment practices. If at any time the use(s) of the Facilities by Licensee violate said applicable ordinances or laws, Licensee shall either cease and desist from continuing such use(s) or shall surrender the Facilities and all other portions of University's premises upon demand of University's Designee.

15. **Notice:** Any notice to either party hereunder must be in writing signed by the party giving it, and shall be served either personally or by registered or certified mail addressed as follows or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee:

University:	**Licensee:**
Scott Cantril	Kari Commerford, M.A.
Director, Student and Health Wellness	GCSAPP- Director
Western Colorado University	Gunnison County
1 Western Way	200 East Virginia Avenue
Gunnison, CO 81231	Gunnison, CO 81230
(970) 943-2891	(970) 642-7396
scantril@western.edu	KCommerford@gunnisoncounty.org

16. **Successors / Assignment:** This Agreement may not be assigned, transferred or sublicensed without the prior written permission of University. Any attempt at assignment, transfer, or sublicensing without such consent shall be void. All assignments, transfers or sublicenses approved by University are subject to all of the provisions hereof. Except as otherwise provided above in this Section, this Agreement and all of its terms and conditions shall be binding on and inure to the benefit of the parties, their heirs, executors, administrators, personal representatives, successors and assigns.

17. **No Interest or Estate:** It is expressly agreed and understood that this Agreement shall not operate or be construed to create the relationship of landlord and tenant between the parties hereto under any circumstances whatsoever and no tenant remedies of a landlord/tenant relationship shall be available to Licensee. Licensee agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Facilities or any other property of University by virtue of this license or its occupancy or use hereunder.

18. **Force Majeure:** If either party's performance of any part of this Agreement is prevented, hindered or delayed or otherwise rendered impracticable by reason of any strike, embargo, flood, riot, fire, explosion, war, failure or inability of public utilities to provide equipment or service, acts of God, acts of government, or any other casualty or any other cause of any nature that is beyond the control of such party, it shall be excused from performance during the continuance of any such happening, provided that it shall use its best commercial efforts to remove the cause of nonperformance.

19. **Governing Law:** This Agreement and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Colorado.

20. **Amendment and Modification:** Subject to applicable law, this Agreement may be amended or supplemented only by written agreement of the parties hereto.

21. **Severability:** All provisions of this Agreement are severable and no provision hereof shall be affected by the invalidity of any other provision.

22. **Entire Agreement:** This Agreement, including the other documents referred to herein which form a part hereof, embodies the entire Agreement and understanding of the parties hereto with respect to the subject matter contained herein. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This Agreement supersedes all prior Agreements understandings between the parties with respect to such subject matter.
The waiver of any breach of a term, provision, or requirement of this Agreement shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.
Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., as now or hereafter amended.

23. **Sodexo:** Sodexo America, LLC ("Sodexo") is ***the exclusive caterer*** for the University Center. If Licensee would like to use an outside caterer, Licensee must receive written prior permission from Sodexo waiving its exclusive catering right for the University Center. Licensee, prior to the Event, provide a copy of such waiver to a representative of Licensor and shall notify Licensor of the company or individual who will be providing catering service.

24. **Alcohol: No alcohol may be consumed, served or sold at the University unless it is provided by Sodexo.** Licensee must submit Alcohol Request Form to Scott Cantril, Director of Student health and Wellness for approval prior to event. Licensee must abide by WCU policy guidelines pertaining to alcohol use on campus.

25. **Policies & Procedures:** Licensee shall follow Licensor's policies and procedures attached to this Agreement. Licensor has the right to enforce all rules and procedures at all times and eject any objectionable person(s) from the premises.

26. **Clean up and Damage:** Licensee must leave the room in the same condition it was found. Should Licensee neglect its cleanup duties, it will be charged as deemed necessary by Licensor. Any equipment requested and used during the agreement must be left in good working condition. Licensee will be charged for broken or missing equipment. Licensee is responsible for the actions of all its guests.

27. **Cancellation/Termination:** The parties shall have a right to terminate this Agreement by giving the other party at least thirty 30) days written notice. If notice is so given, this Agreement shall terminate on the expiration of the thirty (30) days.

28. **Compliance with Laws:** Licensee shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

29. **Responsibility & Insurance:** You are responsible for the supervision and control of your guests and attendees. You assume full responsibility for all loss, damage or expenses incurred by the University or any of its agents, employees or representatives, which is directly or proximately caused by your use of the Designated Space above, and you shall promptly reimburse the University for any and all such loss, damage or expenses.

    You expressly agree to indemnify and hold harmless the University, and its officers, employees, representatives, students and agents, from all cost, loss and expense arising out of any liability or claim of liability for the acts, omissions or wrongful conduct of yourself, and/or your guests and attendees, in connection with your operations, activities, occupancy or use of the Designated Space, regardless of whether such use was authorized or not. If you are a state or federal government agency, indemnification is not required where prohibited by law.

    If you are a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-01, et seq., as amended ("Act"), you shall at all times during the term of this Agreement maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet your liabilities under the Act. Upon our request, you shall show proof of such insurance.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the latest date that either party executes said Agreement, as indicated below.

LICENSEE:
Gunnison County

_____
Signature:

Name: _____

Title: _____

_____
Date:

LICENSOR:
WESTERN COLORADO UNIVERSITY

_____
Signature:

Name: Sherry Ford

Title: Manager, Business Services

_____
Date:

The Center for Mental Health

_____
Signature:

Name: Shelley Spalding

Title: Chief Executive Officer

_____
Date:

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Exhibit A- Code of Conduct /Business Associate and Qualified Service Organization Agreement

Code of Conduct Release and Hold Harmless

In consideration of the Board of Trustees of Western Colorado University, acting by and through Western Colorado University, its directors, officers, agents, employees, volunteers, representatives and any other persons or entities acting on their behalf ("Western Colorado University") participate in the Western Colorado University FUA, and all related events and activities (the "Program"), I do voluntarily and willingly acknowledge and enter into the following agreement ("Release").

I am exercising my own free choice to participate voluntarily in the Program and I promise to take due care during such participation. I hereby release, discharge, waive, indemnify and hold harmless Western Colorado University, and any successors and assigns, for any and all claims and demands of any kind that arise from or relate to my participation in the Program. I acknowledge and understand that this Release releases and discharges Western Colorado University from any and all liability and claims, including but not limited to any liability or claim by me or anyone else with respect to any bodily injury, personal injury, illness, death, property damage, or economic damage of any kind that may result from my participation, whether caused by me, a third party, the negligence of Western Colorado University, or otherwise.

If I use my private motor vehicle to transport myself, students, and/or any other persons to and from any Program, I hereby agree to have insurance coverage for my vehicle and any passengers as required by law, and I hereby certify that I presently have a policy of vehicle insurance providing at least, and as a minimum, coverage levels required by applicable law.

I agree not to use drugs or alcohol during my participation in the Program and understand that doing so will place me and others at risk. I will bring no weapons except as provided by law, make no threats of violence or engage in any conduct that threatens the safety of others. I agree that if I fail to abide by the agreements herein, I will be prohibited from further Program participation. I assume full responsibility for my choices during my involvement in the Program that may endanger my safety and/or the safety of other patrons.

I understand that this Release shall be construed broadly to provide a release and waiver to the maximum extent permissible under applicable law, and that if any portion of this Release is declared invalid, for whatever reason, the remaining portions shall continue to be valid and legally binding. I affirm that I have read the terms and provisions of the Release prior to its execution and that I have had the opportunity to consult with whomever I wish, including an attorney, and that Western Colorado University has made no representation, statement or inducement, directly or indirectly, on which I rely, and that this Release contains the entire agreement between Western Colorado University and me. I agree that this Release shall be governed by the laws of the State of Colorado, without regard to any conflict of law provisions. I fully understand and acknowledge that Western Colorado University has never expressly or impliedly assumed any responsibility for my participation in the Program. On my own free will, I hereby personally assume all risks in connection with participation in the Program or any other activity connected therewith. This Release shall be binding upon me, my spouse, my children, my heirs, administrators, personal representatives and assigns, forever.
Nothing in this Release shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available to Western Colorado University under the Colorado Governmental Immunity Act, Colorado Revised Statutes, §24-10-101, et seq.

Western Colorado University Event Policies and Procedures

The rules of conduct of Western Colorado University will apply. The Student Health and Wellness Director or authorized personnel shall have the right to order any person in violation of the policies and procedures to leave the building. WCU security personnel may be used to enforce policies and procedures.

Meeting Space:

- Activity must be confined to designated space.
- Please respect: yourself, others, personal property and this facility.
- Activity must stay within time granted for occupancy and not extended without permission of a University representative.
- Furniture and equipment property of University shall not be removed from space.
- Western Colorado University shall not be held responsible for any goods and materials brought in by event planner or outside contractors.
- Individuals, groups and organizations will be held accountable for any damages or losses occurring during or resulting from individual conduct or group activities here at the University. The amount of assessment will be in terms of actual cost of repair or replacement.
- The University Reserves the right to deny any activity or equipment usage that may cause damage to facility.
- Meeting space must be left in the same condition it was found. A cleaning fee of $25/hr. will be assessed for any extensive cleaning beyond standard service.
- This is a drug, alcohol, and tobacco-free facility.

Decorations:

- No stapling or tacking of linens or decorations to fixtures or furnishings including tables.
- No banners, placards or other materials may be attached to walls, ceilings or floor.
- Glitter and confetti are not permitted.
- Candles are not permitted unless fully contained and with permission.
- All personal decorations must be removed immediately before the end date

Audio/Visual Equipment:

- A/V equipment available when reserved in advance; other requests upon approval.
- Additional fee may be assessed for any A/V support beyond standard service provided.

Smoking and Alcohol:

- Smoking is not permitted within 60 feet of building.
- No alcoholic beverages may be consumed, served or sold at Western Colorado University unless provided by Sodexo.

Catering:

- Sodexo America, LLC is the exclusive caterer for all events hosted at Western Colorado University.
- Please contact Sodexo at (970) 943-2005 or email catering@western.edu to make arrangements for catering service.

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WESTERN
COLORADO UNIVERSITY

BUSINESS ASSOCIATE AND QUALIFIED SERVICE ORGANIZATION AGREEMENT

This Business Associate and Qualified Service Organization Agreement (this Agreement), made effective the 30th day of August 2019, by and between: The Center for Mental Health (the Covered Entity); and Gunnison County (the Business Associate Qualified Service Organization or BA-QSO).

ARTICLE 1
INTRODUCTION

1.1 Scope. This Agreement governs the terms and conditions under which the BA-QSO will use Protected Health Information as defined in 45 CFR § 160.103 and Records as defined in 42 CFR § 2.11 (Protected Health Information and Records are collectively referred to herein as Protected Health Information or PHI) pertaining to clients of the Covered Entity in performing services for, or on behalf of, the Covered Entity.

1.2 Purpose. The Covered Entity and the BA-QSO intend to protect the privacy and provide for the security of PHI disclosed pursuant to this Agreement and to comply with: (a) the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), the regulations promulgated thereunder (the HIPAA Regulations); (b) the Drug Abuse Prevention, Treatment, and Rehabilitation Act and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, and the regulations promulgated thereunder (the Part 2 Regulations); and (c) other applicable federal and state laws.

1.3 Service Functions. The service functions provided to the Covered Entity by the BA-QSO are described in a separate written or verbal service agreement or contract with the Covered Entity. This Agreement shall be considered an addendum to such service agreement or contract, and any terms of such separate service agreement or contract that conflict with this Agreement shall be void to the extent they are in conflict with this Agreement. The consideration exchanged for such service agreement or contract also serves as the consideration for this Agreement.

ARTICLE 2
DEFINITIONS

2.1 Definitions Incorporated. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations and Part 2 Regulations.

2.2 Definitions. For purposes of this Agreement:

2.2.1 “Breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under Subpart E of 45 CFR Part 164 that compromises the security or privacy of the PHI.

2.2.2 “Designated Record Set” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR § 164.501.

2.2.3 “Electronic Protected Health Information” or “ePHI” means PHI that is transmitted by or maintained in electronic media as defined in 45 CFR § 160.103.

2.2.4 “Individual” shall have the same meaning as the term “Individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

2.2.5 “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, subparts A and E.

2.2.6 “Protected Health Information” or "PHI" shall have the same meaning as the term “protected health information” in 45 CFR § 164.501, limited to the information created or received by BA-QSO from or on behalf of Covered Entity.

2.2.7 “Records” means any information, whether recorded or not, relating to a patient received or acquired by a federally assisted alcohol or drug program.

2.2.8 “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.501.

2.2.9 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

2.2.10 “Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in regulations or other guidance issued under Section 13402(h)(2) of HITECH.

ARTICLE 3
OBLIGATIONS AND ACTIVITIES OF THE BA-QSO

The BA-QSO agrees to:

3.1 Use and Disclosure. Not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.

3.2 Appropriate Safeguards. Use appropriate physical, technical, and administrative safeguards (a) to prevent use or disclosure of PHI other than as permitted under this Agreement or as required by law and (b) to reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that the BA-QSO creates, receives, maintains, or transmits on behalf of the Covered Entity.

3.3 Assurances. Provide the Covered Entity with written assurances that any PHI placed on any type of mobile media, including, but by no means limited to, laptop computers, iPads, tablets, and mobile phones, is encrypted in accordance with guidance issued by the Secretary.

3.4 Breach Reporting. Report in writing to the Covered Entity within two (2) business days after discovery, any suspected or actual: (a) access, use or disclosure of PHI not permitted by this Agreement; (b) Breach of unsecured PHI in accordance with 45 CFR § 164.410; (c) security breach or intrusion; (d) use or disclosure of PHI in violation of any applicable federal or state laws or regulations. The BA-QSO will implement a reasonable system for discovery of Breaches.

3.5 Mitigation. Mitigate, to the extent practicable, any harmful effect that is known to the BA-QSO of a use or disclosure of Protected Health Information by the BA-QSO in violation of the requirements of this Agreement.

3.6 Agents and Subcontractors. Ensure that any agent, including a subcontractor that creates, receives, maintains, or transmits PHI on behalf of the BA-QSO agrees to the same restrictions, conditions and requirements that apply through this Agreement to the BA-QSO with respect to such information.

3.7 Access to PHI. In the event that the BA-QSO maintains PHI in a Designated Record Set, the BA-QSO agrees to provide access, within ten (10) days of a request by the Covered Entity in the time and manner designated by the Covered Entity, to the PHI in a Designated Record Set, to the Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.

3.8 Amendment of PHI. In the event that the BA-QSO maintains PHI in a Designated Record Set, the BA-QSO agrees to make any amendment(s) to Protected Health Information in a designated record set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of the Covered Entity or an Individual, within ten (10) days of receipt of a request from the Covered Entity and in the time and manner designated by the Covered Entity.

3.9 Document Disclosures. Document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of the PHI in accordance with 45 CFR § 164.528.

3.10 Accounting of Disclosures. Within ten (10) days of notice by the Covered Entity of a request for an accounting of disclosures of PHI, provide to the Covered Entity, in the time and manner designated by the Covered Entity, information collected in accordance with Section 3.9, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

3.11 Compliance with Applicable Requirements. To the extent the BA-QSO is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

3.12 Electronic Transactions. If the BA-QSO conducts any Standard Transaction for or on behalf of the Covered Entity, the BA-QSO shall comply with the requirements under the Electronic Transaction Rule (as those terms are defined in the Security Rule).

3.13 Government Access. Make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the BA-QSO on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with the HIPAA Regulations and the Part 2 Regulations. In the event such a request comes directly from the Secretary, the BA-QSO agrees to notify the Covered Entity immediately of such request.

3.14 Inspection. Within ten (10) business days of a written request by the Covered Entity, the BA-QSO and its agents or subcontractors, if any, shall allow the Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Agreement for the purpose of determining whether the BA-QSO has complied with this Agreement; provided, however, that (a) the BA-QSO and the Covered Entity will mutually agree in advance upon the scope, location and timing of such an inspection, and (b) the Covered Entity will protect the confidentiality of all confidential and proprietary information of the BA-QSO to which the Covered Entity has access during the course of such inspection.

3.15 Identity Theft. Implementation of an Identity Theft Monitoring Policy and Procedure, to protect any patient information that may be breached by the BA-QSO to the extent applicable under the Federal Trade Commission's Red Flag Rules.

3.16 HITECH Compliance. The BA-QSO shall:

3.16.1 not receive, directly or indirectly, any impermissible remuneration in exchange for PHI or ePHI, except as permitted by HITECH § 13405(d) or the HIPAA Regulations;

3.16.2 comply with the marketing and other restrictions applicable to BA-QSO s contained in HITECH § 13406 and the HIPAA Regulations;

3.16.3 to the extent required under HITECH § 13404, fully comply with the applicable requirements of 45 CFR 164.502(e)(2) for each use or disclosure of PHI;

3.16.4 to the extent required under HITECH § 13401, fully comply with 45 CFR §§ 164.308, 164.310, 164.312, and 164.316;

3.16.5 to the extent required under HITECH §§ 13401 and 13404, comply with the additional privacy and security requirements that apply to covered entities in the same manner and to the same extent as the Covered Entity is required to do so; and

3.16.6 to the extent required under the HIPAA Regulations, comply with the privacy and security requirements that apply to business associates.

3.17 State Privacy Laws. The BA-QSO shall understand and comply with state privacy laws to the extent that such state privacy laws are not preempted by HIPAA or HITECH.

ARTICLE 4
PERMITTED USES AND DISCLOSURES BY THE BA-QSO

4.1 Limited Use and Disclosure. Except as otherwise limited in this Agreement:

4.1.1 The BA-QSO may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity, provided that such use or disclosure would not violate the HIPAA Regulations or the Part 2 Regulations if done by the Covered Entity.

4.1.2 The BA-QSO may disclose PHI for the proper management and administration of the BA-QSO, provided that disclosures are Required By Law, or BA-QSO obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA-QSO of any instances of which it is aware in which the confidentiality of the information has been breached.

4.2 Part 2 Compliance. In circumstances where the PHI to be used or disclosed by the BA-QSO constitutes Records subject to the Part 2 Regulations, the BA-QSO shall strictly comply with the confidentiality requirements of the Part 2 Regulations.

ARTICLE 5
OBLIGATIONS OF THE COVERED ENTITY

5.1 Notice of Privacy Practices. The Covered Entity shall provide the BA-QSO with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.

5.2 Permissible Requests. The Covered Entity shall not request the BA-QSO to use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations and the Part 2 Regulations if done by the Covered Entity.

ARTICLE 6
TERM AND TERMINATION

6.1 Term. The obligations set forth in this Agreement shall be effective as of the date the first PHI is released to the BA-QSO pursuant to this Agreement, and shall terminate only when all of the PHI provided by the Covered Entity to the BA-QSO, or created or received by the BA-QSO on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy the PHI, protections are extended to such information, in accordance with the termination provisions in this Article 6.

6.2 Termination for Cause. Upon the Covered Entity's knowledge of a material breach by the BA-QSO, the Covered Entity shall provide an opportunity for the BA-QSO to cure the breach or end the violation. The Covered Entity may terminate this Agreement if the BA-QSO does not cure the breach or end the violation within the time specified by the Covered Entity.

6.3 Effect of Termination.

6.3.1 Except as provided in Section 6.3.2, upon termination of this Agreement, for any reason, the BA-QSO shall return or destroy all PHI received from the Covered Entity, or created or received by the BA-QSO on behalf of the Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of the BA-QSO. The BA-QSO shall retain no copies of the PHI.

6.3.2 In the event that the BA-QSO determines that returning or destroying the PHI is infeasible, the BA-QSO shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return, or destruction of the PHI is infeasible, the BA-QSO shall extend the protections of this Agreement to 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 BA-QSO maintains such PHI.

ARTICLE 7
QUALIFIED SERVICE ORGANZATION

7.1 Part 2 Protections. Some of the PHI may also be protected by the Part 2 Regulations. Those regulations require a written confidentiality agreement.

7.2 Part 2 Compliance. The BA-QSO pursuant to the Part 2 Regulations, acknowledges that in receiving, storing, processing or otherwise dealing with any PHI from or for the Covered Entity: (a) it is fully bound by the Federal Alcohol and Drug Abuse Confidentiality Regulation, as it would apply to the Covered Entity; and (b) if necessary, will resist in judicial proceedings any efforts to obtain access to PHI, covered by the regulation, except as permitted by the regulation.

ARTICLE 8
MISCELLANEOUS

8.1 Indemnification. To the extent allowed by law, the BA-QSO agrees to indemnify, defend, and hold harmless the Covered Entity, its directors, officers, employees, contractors and agents, against, and in respect of, any and all claims, losses, expenses, costs, damages, obligations, penalties, and liabilities which the Covered Entity may incur by reason of the BA-QSO's breach of or failure to perform any of its obligations pursuant to this Agreement. Further, to the extent allowed by law, the BA-QSO agrees to indemnify, defend, and hold harmless the Covered Entity, its directors, officers, employees, contractors and agents, against all costs and expenses, including but not limited to, reasonable legal expenses, which are incurred by or on behalf of the BA-QSO in connection with the defense of such claims.

8.2 Disclaimer. The Covered Entity makes no warranty or representation that compliance by the BA-QSO with this Agreement, HIPAA, HITECH, the HIPAA Regulations, or the Part 2 Regulations will be adequate or satisfactory for the BA-QSO's own purposes. The BA-QSO is solely responsible for all decisions made by the BA-QSO regarding the safeguarding of PHI.

8.3 Assistance in Litigation or Administrative Proceedings. The BA-QSO shall make itself, and any subcontractors, employees, affiliates or agents assisting the BA-QSO in the performance of its obligations under this Agreement, available to the Covered Entity, at no cost to the Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, HITECH, the HIPAA Regulations, the Part 2 Regulations, or other laws relating to security and privacy, except where the BA-QSO or its subcontractor, employee or agent is named adverse party.

8.4 Survival. The respective rights and obligations of the BA-QSO under this section shall survive the termination of this Agreement.

8.5 Ownership of Information. The Covered Entity holds all right, title, and interest in and to the PHI and the BA-QSO does not hold and will not acquire by virtue of this Agreement or by virtue of providing goods or services to the Covered Entity, any right, title, or interest in or to the PHI or any portion thereof.

8.6 Right to Injunctive Relief. The BA-QSO expressly acknowledges and agrees that the breach, or threatened breach, by it of any provision of this Agreement may cause the Covered Entity to be irreparably harmed and that the Covered Entity may not have an adequate remedy at law. Therefore, the BA-QSO agrees that upon such breach, or threatened breach, the Covered Entity will be entitled to obtain injunctive relief to prevent the BA-QSO from commencing or continuing any action constituting such breach without having to post a bond or other security and without having to prove the inadequacy of any other available remedies. Nothing in this paragraph will be deemed to limit or abridge any other remedy available to the Covered Entity at law or in equity.

8.7 Regulatory References. A reference in this Agreement to a section in HIPAA, HITECH, the HIPAA Regulations, or the Part 2 Regulations, means the section as in effect or as amended.

8.8 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with the requirements of the HIPAA HITECH, and Part 2 Regulations.

8.9 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Entity to comply with the HIPAA, HITECH, and Part 2 Regulations.

8.10 Severability. In the event any part or parts of this Agreement are held to be unenforceable, the remainder of this Agreement will continue in effect.

8.11 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, the parties hereto have duly executed this Agreement as of the date first written above.

COVERED ENTITY:
The Center for Mental Health

By: _____ Date: _____

Name: Shelly Spalding

Title: Chief Executive Officer

BUSINESS ASSOCIATE QUALIFIED SERVICE ORGANIZATION:
Gunnison County

By: Gunnison County Date: _____

Name: _____

Title: _____

Western Colorado University

By: _____ Date: _____

Name: _____

Title: Manager, Business Services