

ORIGINAL

AGREEMENT FOR SERVICES # 124-S0910

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as “County”) and Barton Memorial Hospital Management Services Organization, Inc. a Nevada Corporation, dba Barton Memorial Hospital, , duly qualified to conduct business in the State of California, whose principal place of business is 2170 South Avenue, South Lake Tahoe 96150, (Mailing: P.O. Box 9578, South Lake Tahoe, CA 96158); (hereinafter referred to as “Hospital”);

WITNESSETH

WHEREAS, Hospital desires to have a Medi-Cal/County Medical Services Program (Medi-Cal CMSP) Eligibility Worker (hereinafter referred to as “EW”) assigned to Hospital for purposes of processing Medi-Cal/CMSP and companion Food Stamps applications; and

WHEREAS, County Department of Human Services, Social Services Division (hereinafter referred to as “DHS”) is willing to provide the EW for the purposes of processing Medi-Cal/CMSP and companion Food Stamps applications; and

WHEREAS, it is the intent of the parties hereto that such services at Hospital be in conformity with all applicable federal, state and local laws; and

NOW, THEREFORE, County and Hospital mutually agree as follows:

ARTICLE I

Scope of Services:

- I. Hospital shall:
 - A. Provide adequate office space that shall protect both EW and client confidentiality and safety;

- B. Provide EW with ergonomically appropriate furniture, if needed, necessary to conduct business, i.e., a desk, chair, telephone, locking filing cabinet, guest chairs, shelving units, storage;
- C. Provide access to a copy machine and a fax machine;
- D. Provide janitorial services for the office space assigned to EW;
- E. Provide the EW with access to employee restrooms and break rooms;
- F. Schedule break times for the EW in accordance with mutually agreed upon written policy;
- G. Provide the EW with the opportunity to attend off-site DHS meetings and trainings;
- H. Provide the County with access to Hospital facility for purposes of installing and maintaining computer and communications equipment necessary to the EW's job;
- I. Provide ADA accessible parking spaces for clients and EW;
- J. Provide proper clerical support for EW staff assigned to the Hospital;
- K. Agree to assist EW staff to the extent reasonable and appropriate with special intake processing circumstances, including language differences, access to patients and information relevant to the intake process. Hospital agrees, at Hospital's cost, to make either personnel or access to accredited telephone translation services available for interpreter services;
- L. Provide training and orientation of EW staff related to Hospital environment and special precautions related to infectious diseases and ongoing legislation regarding patients' rights or other mandated requirements; such updates to mandated requirements shall be provided in written form to the DHS Program Manager;
- M. With DHS assistance, use its best effort to cooperatively assure that all material required to establish program eligibility is complete and obtained in a timely manner.
- N. Designate a liaison to communicate with DHS on a basis no less than once monthly;
- O. Provide comments or concerns regarding the EW's performance from the designated Hospital liaison. Communication shall be via telephone or written communication to the designated DHS supervisor or program manager. Comments are intended to provide a prompt update of the successful or unsuccessful resolution of all performance issues raised

regarding the EW. In absence of any written or verbal concerns, DHS shall assume performance of EW is satisfactory;

- P. Determine which patients Hospital desires to have referred to EW staff for application processing;
- Q. Provide insurance in accordance with the County's established standards;
- R. Complete any DHS-provided forms necessary to ensure proper claiming and reimbursement associated with costs for EW staff assigned to Hospital; and
- S. Maintain books, records, documents and other evidence pertaining to costs and expenses of the Agreement.

2. DHS shall:

- A. Be the appointing authority and the employer of EW staff, responsible for their selection, hiring, training, supervision and termination, and will provide the EW with the appropriate experience to handle the tasks herein required;
- B. As appointing authority, assume responsibility for maintaining Workers' Compensation or a self-insurance program, and will provide coverage for all other appropriate benefits covering EW staff assigned to Hospital under the Agreement;
- C. Assign EW staff to serve Hospital, during mutually acceptable times and days, which include mutually agreed upon scheduled break times;
- D. Provide information to the designated Hospital liaison immediately of the EW's planned or unplanned absences. DHS shall provide full time coverage during any planned or unplanned absence of the EW in duration of more than five (5) working days. During absences in duration of five (5) working days or less, DHS shall provide EW staff in emergency situations on an as-needed basis. DHS shall provide, via telephone or e-mail to the designated Hospital liaison, information regarding the need for the EW to attend training or meetings no less than 48 hours from the time of anticipated absence from the Hospital;
- E. Provide training for Hospital clerical staff to provide Medi-Cal/CMSP and Food Stamp verification as required by law;
- F. Assure that EW staff assigned to the Hospital conform to the reasonable rules and regulations of the Hospital applicable to all Hospital employees, including Health Insurance Portability and Accountability Act (HIPAA) regulations;

- G. Use its best efforts to assure that case processing and final eligibility determinations are accomplished in a timely manner and in accordance with applicable statutes and regulations including, but not limited to, regulations concerning the processing of applications for comatose patients and patients who are minors. Situations with special circumstances will be accommodated on a case-by-case basis;
- H. Assure that processed intake cases processed conform to state-established processing timeframes;
- I. Provide supervisory support and guidance to resolve any concerns arising out of EW performance of tasks herein required; and
- J. Provide the designated Hospital liaison with annual lists of approved County holidays.

Both parties agree to cooperate in providing information and documents which may be required to meet requirements of regulatory agencies to which either party may be accountable;

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall cover the period of July 1, 2008 through June 30, 2011.

ARTICLE III

Compensation for Services: Hospital agrees to pay DHS quarterly in arrears. Payment shall be made within thirty (30) days following receipt of itemized invoices in triplicate from DHS, an amount equal to DHS cost of performance hereunder. The current rate is \$75,622 per EW per year. This amount is subject to change, dependent upon the salary and benefits of the Eligibility Worker assigned.

Hospital may be relieved of the payment of any consideration to DHS should DHS fail to perform the covenants herein contained at the time and in the manner herein provided. The cost to Hospital shall be deducted from any sum due DHS under this Agreement, and the balance, if any, shall be paid DHS upon demand.

ARTICLE IV

Special Considerations: DHS acknowledges that applicable portions of the Social Security Act and the Omnibus Budget Reconciliation Act of 1980 require that this Agreement include a provision requiring DHS to allow Secretary of the Department of Health and Human Services (HHS) and other authorized federal officials, access to DHS books and records as they relate to services provided pursuant to this Agreement (in accordance with Section 1861 (v) (1) (I) of the Social Security Act). Hospital shall allow access to State and Federal Auditors, records made or maintained under this Agreement.

Any information regarding the beneficiaries referred to DHS is confidential and shall not be made public except as provided by Chapter 5 (commencing with Section 10850) of Part 2 of Division 9 of the Welfare and Institutions Code and any regulations adopted pursuant thereto. Hospital agrees to and shall require employees of Hospital to comply with the provisions of the cited Code and regulations.

ARTICLE V

Nondiscrimination: Assurance of compliance with the El Dorado County Department of Human Services nondiscrimination in state and federally assisted programs requirements as follows:

Hospital hereby agrees that it will comply with Title VI and VII of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended, and in particular Section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code Section 11135-11139.5, as amended; California Government Code Section 12940 (c), (h) (1), (i), and (j); California Government Code Section 4450; Title 22, California Code of Regulations Section 98000 – 98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84 and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall, because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed, or political belief, be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state financial assistance; and hereby give assurance that it will immediately take any measures necessary to effectuate this Agreement.

This assurance is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and the Hospital hereby gives assurance that administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

By accepting this assurance, the Hospital agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations, and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books, and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code Section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

This assurance is binding on the Hospital directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

ARTICLE VI

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VII

HIPAA Compliance: As a condition of EW performing services for the Hospital, Hospital shall execute that Business Associate Agreement which is attached hereto as Exhibit "A", which is incorporated herein for all intents and purposes.

ARTICLE VIII

Liability of Hospital Negligence: Hospital shall be liable for its own negligence and negligent acts of its employees. County shall not be charged with responsibility of preventing risk to Hospital or its employees.

ARTICLE IX

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE X

Default, Termination and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Hospital.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Hospital ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part seven (7) calendar days upon written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Hospital, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Hospital shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

ARTICLE XI

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

COUNTY OF EL DORADO
DEPARTMENT OF HUMAN SERVICES
3057 BRIW ROAD, SUITE A
PLACERVILLE, CA 95667

ATTN: CYNTHIA WALLINGTON, PROGRAM MANAGER

or to such other location as the County directs.

with a copy to

COUNTY OF EL DORADO
CHIEF ADMINISTRATIVE OFFICE
PROCUREMENT AND CONTRACTS DIVISION
330 FAIR LANE
PLACERVILLE, CA 95667
ATTN: BONNIE H. RICH, PURCHASING AGENT

Notices to Hospital shall be addressed as follows:

BARTON MEMORIAL HOSPITAL
P.O. BOX 9578
SOUTH LAKE TAHOE, CA 96158
ATTN: RICHARD DERBY, CHIEF FINANCIAL OFFICER

or to such other location as the Hospital directs

with a copy to

COUNTY OF EL DORADO
DEPARTMENT OF HUMAN SERVICES
3057 BRIW ROAD, SUITE A
PLACERVILLE, CA 95667
ATTN: BONNIE RICH, PURCHASING AGENT

ARTICLE XII

Indemnity: To the fullest extent of the law, the Hospital shall defend, indemnify and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees and the public, or damage to property or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Hospital's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Hospital, sub-contractor(s) and employee(s) or any of these, except for the sole or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Hospital to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XIII

Insurance: Hospital shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Hospital maintains insurance that meets the following requirements:

- A. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- B. Hospital shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- C. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- D. Hospital agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Hospital agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Hospital agrees that no work or services shall be performed prior to the giving of such approval. In the event the Hospital fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- E. The certificate of insurance must include the following provisions stating that:
 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- F. The Hospital's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Hospital's insurance and shall not contribute with it.
- G. Any deductibles or self-insured retentions must be declared to and approved by the County, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and

volunteers; or the Hospital shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- H. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- I. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- J. Hospital's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- K. In the event Hospital cannot provide an occurrence policy, Hospital shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- L. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE XIV

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Hospital under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XV

Interest of Hospital: Hospital covenants that Hospital presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Hospital further covenants that in the performance of this Agreement no person having any such interest shall be employed by Hospital.

ARTICLE XVI

California Residency (Form 590): All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The Hospital will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7%) percent of each payment made to the Hospital during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVII

Taxpayer Identification Number (Form W-9): All independent Contractors or Corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XVIII

County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

ARTICLE XIX

Administrator: The County Officer or employee with responsibility for administering this Agreement is Cynthia H. Wallington, Department of Human Services Program Manager, or successor.

ARTICLE XX

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXI

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXII

Venue: Any dispute resolution action rising out of this Agreement, including, but not limited to, litigation, mediation or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Hospital waives any removal rights it might have under Code of Civil Procedure Section 394.

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ARTICLE XXIII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

Requesting Contract Administrator Concurrence:

By: Cynthia H Wallington Dated: 7/8/08
Cynthia Wallington, Program Manager
Department of Human Services

Requesting Department Head Concurrence:

By: D. Nowka Dated: 7/8/08
Doug Nowka, Director
Department of Human Services

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

-- COUNTY OF EL DORADO --

Date: _____

By: _____

Chairman
Board of Supervisors
"County"

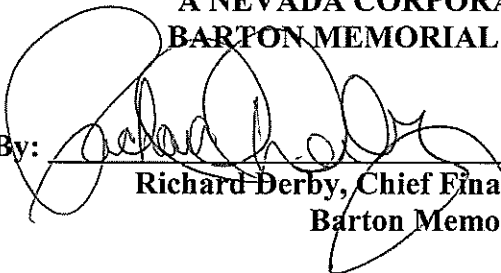
ATTEST:
Cindy Keck
Clerk of the Board of Supervisors


By: _____ Date: _____
Deputy Clerk

-- CONSULTANT --

Date: 7/11/2008

BARTON MEMORIAL HOSPITAL
MANAGEMENT SERVICES ORGANIZATION, INC.
A NEVADA CORPORATION DBA
BARTON MEMORIAL HOSPITAL

By:  _____
Richard Derby, Chief Financial Officer
Barton Memorial Hospital
"Hospital"

By:  _____
Corporate Secretary

Dated: 7/16/08

EXHIBIT "A"
HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement is made part of the base contract ("Underlying Agreement") to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which Contractor provides services to County, and in conjunction with the provision of such services, certain Protected Health Information ("PHI") and Electronic Protected Health Information ("EPHI") may be made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR, Parts 160 - 164 (the "Privacy and Security Rule"), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI pursuant to the Underlying Agreement; and

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and

WHEREAS, Contractor, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule; and

WHEREAS, "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 § 164.202(g); and

WHEREAS, the parties agree that any disclosure or use of PHI or EPHI be in compliance with the Privacy and Security Rule or other applicable law;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.

2. Scope of Use and Disclosure by Contractor of County Disclosed PHI
 - A. Contractor shall be permitted to use PHI disclosed to it by the County:
 - (1) on behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule if done by the County, or the minimum necessary policies and procedures of the County
 - (2) as necessary to perform any and all of its obligations under the Underlying Agreement.
 - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or Required by Law, Contractor may:
 - (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
 - (2) disclose the PHI in its possession to a third party for the purpose of Contractor's proper management and administration or to fulfill any

legal responsibilities of Contractor. Contractor may disclose PHI as necessary for Contractor's operations only if:

- (a) The disclosure is Required by Law; or
 - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI that the person or organization will:
 - (i) hold such PHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as Required by Law; and,
 - (ii) the third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
 - (3) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
 - (4) not disclose PHI disclosed to Contractor by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
 - (5) de-identify any and all PHI of County received by Contractor under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
- C. Contractor agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as Required by Law, or as otherwise permitted by law.

3. Obligations of Contractor. In connection with its use of PHI disclosed by County to Contractor, Contractor agrees to:
- A. Use or disclose PHI only as permitted or required by this Business Associate Agreement or as Required by Law.
 - B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement.
 - C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of this Business Associate Agreement.
 - D. Report to County any use or disclosure of PHI not provided for by this Business Associate Agreement of which Contractor becomes aware.
 - E. Require sub-contractors or agents to whom Contractor provides PHI to agree to the same restrictions and conditions that apply to Contractor pursuant to this Business Associate Agreement.
 - F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI created or received for or from the County.

- G. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the County and to follow generally accepted system security principles as required in final rule 45 CFR Parts 160-164.
 - H. Contractor will report any security incident of which it becomes aware to the County. Security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans or “pings”.
 - I. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
 - J. May use PHI to report violations of law to appropriate Federal and State Authorities, consistent with § 164.502(j) (1).
4. PHI Access, Amendment and Disclosure Accounting. Contractor agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County.
 - B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
 - C. To assist the County in meeting its disclosure accounting under HIPAA:
 - (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (2) Contractor agrees to provide to County or an Individual, within sixty (60) days, information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (3) Contractor shall have available for the County the information required by this section for the six (6) years preceding the County’s request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).
 - D. Make available to the County, or to the Secretary of Health and Human Services, Contractor’s internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor’s compliance with the Privacy Rule, subject to any applicable legal restrictions.
 - E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by Contractor.
 - F. Within sixty (60) days of receiving a written request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor’s possession constitutes a Designated Record Set.

- G. Not make any disclosure of PHI that County would be prohibited from making.

5. Obligations of County.

- A. County agrees that it will make its best efforts to promptly notify Contractor in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- B. County agrees that it will make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- C. County agrees that it will make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use of disclosure of PHI.
- D. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that Contractor can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term – this Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the Contractor, the County shall either:
 - (1) Provide an opportunity for the Contractor to cure the breach or end the violation and terminate this Agreement if the Contractor does not cure the breach or end the violation within the time specified by the County.
 - (2) Immediately terminate this Agreement if the Contractor has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.
- C. Effect of Termination.
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the Contractor shall return or destroy all PHI received from the County, created, or received by the Contractor on behalf of the County. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Contractor.

Contractor shall retain no copies of the PHI.

- (2) In the event that the Contractor determines that returning or destroying the PHI is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon {negotiated terms} that return or destruction of PHI is infeasible, Contractor 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 Contractor maintains such PHI.

7. HIPAA Business Associate Indemnity

Contractor shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Business Associate Agreement. Contractor shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such

interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.

In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

8. Amendment – the parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival – the respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References – a reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts - any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.

Dated: _____

7/11/2008

Signed: _____

Richard Derby
Chief Financial Officer
Barton Memorial Hospital

Dated: _____

7/8/08

Signed: _____

Doug Nowka
Director
Department of Human Services