

**CONSULTING AGREEMENT**

This consulting agreement ("Agreement") is made and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between \_\_\_\_\_ ("Hospital"), and \_\_\_\_\_ ("Consultant"), collectively, "the Parties".

**RECITALS**

**WHEREAS** Hospital owns and operates acute care hospitals in the state of California and is in need of an consultant to \_\_\_\_\_;

\_\_\_\_\_ ; and

**WHEREAS** Consultant has expertise, training, and experience in \_\_\_\_\_ and is willing to provide high quality and cost-effective services based on that background; and

**WHEREAS** Hospital desires to engage Consultant to provide assessment and consultation described herein, and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**TERMS**

1. **SERVICES.** Consultant's services (the "Services") shall relate to one or more of Hospital's health care facilities, including \_\_\_\_\_, \_\_\_\_\_, in addition to potential additional hospital acquisitions at any time.

Consultant's Services shall include, but not be limited to:

- \_\_\_\_\_;
- \_\_\_\_\_;
- \_\_\_\_\_;
- \_\_\_\_\_.

Consultant shall report directly to \_\_\_\_\_.

2. **COMPENSATION FOR SERVICES.** Hospital shall pay Consultant for the Services based on a \_\_\_\_\_ fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for a minimum of \_\_\_\_\_ (\_\_\_\_\_) hours per \_\_\_\_\_.

- Consultant's fee shall be payable monthly, no later than the Fifteenth (15th) day of the month following the period during which the Services were performed. Consultant shall complete a timesheet representing hours of Services performed and submit the same to Hospital on a monthly basis, along with an invoice.
- Upon termination of this Agreement, payments under this paragraph shall cease; provided, however, that Consultant shall be entitled to payments for periods or partial periods that occurred up to the date of termination and for which Consultant has not yet been paid.

**3. SCHEDULE.** The Parties agree that Consultant shall perform his/her Services during \_\_\_\_\_ hours.

**4. EXPENSE REIMBURSEMENT.** Hospital shall reimburse Consultant for reasonable out of pocket expenses actually incurred by Consultant in the performance of Services, in an amount not to exceed \_\_\_\_\_ (\$\_\_\_\_\_) Dollars per \_\_\_\_\_. Consultant agrees to prepare expense reports (form provided by Hospital), where appropriate, and to timely submit the same along with monthly timesheets and invoices.

**5. TERM/TERMINATION.** The term of this Agreement shall be \_\_\_\_\_ (\_\_\_\_\_) months.

- This Agreement may be terminated by either party for any reason upon Seven (7) days' written notice to the other party.
- Hospital reserves the right to terminate this Agreement without notice if:
  - a. Consultant is unable to competently provide the Services; or
  - b. Consultant breaches or defaults any material obligation in this Agreement and fails to cure such breach or default within Forty-Eight (48) hours of written notice from Hospital.

**6. RELATIONSHIP OF PARTIES.** Nothing contained in this Agreement shall be construed as or have the effect of constituting a relationship of employer and employee between the Parties to this Agreement. Consultant is, and throughout the term of this Agreement shall be, an independent contractor and not an employee or agent of Hospital. Consultant shall not be entitled to or receive any benefit normally provided to Hospital employees such as, but not limited to, vacation payment, retirement, healthcare or sick pay. Hospital shall not be responsible for withholding income or other taxes from the payments made to Consultant. Consultant shall be solely responsible for filing all returns and paying any income, social security or other taxes levied upon or determined with respect to the payments made to Consultant pursuant to this Agreement.

- 7. NO REPRESENTATION.** Consultant shall not represent himself/herself as an employee or agent of Hospital and Consultant does not have the authority to bind Hospital in any manner whatsoever.
- 8. INDEMNIFICATION.** Each of the Parties shall indemnify, defend and hold harmless the other party and its employees, agents, contractors, officers and directors against: (i) any and all liability arising out of such party's failure to comply with the terms of this Agreement, and any injury, loss, fines, claims, or damages arising from the negligent operations, acts, or omissions of each party or its employees or agents relating to or arising out of this Agreement; and (ii) any and all costs and expenses, including reasonable legal expenses, incurred by or on behalf of the other party in connection with the defense of such claims.
- 9. ASSIGNMENT.** Consultant's obligations under this Agreement may not be assigned or transferred to any other person, firm, or legal entity.
- 10. NO REFERRAL REQUIREMENT.** The Parties acknowledge that none of the compensation granted Consultant hereunder is conditioned on any requirement that Consultant make referrals to, be in a position to make or influence referrals to Hospital or its affiliates.
- 11. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA") and HEALTH AND HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT, ("HITECH Act") REQUIREMENT.** Consultant recognizes that her Services may include access to certain "protected health information" as defined in 45 C.F.R. §164.504 and "individually identifiable health information" as defined in 42 U.S.C. §1320d (collectively, "Protected Health Information" or "PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services to implement certain privacy and security provisions of HIPAA (the "HIPAA Regulations"), codified in 45 C.F.R. Parts 160 and 164. Consultant agrees not to use or further disclose PHI concerning a patient other than as permitted by this Agreement and the requirements of HIPAA, HITECH or regulations promulgated under HIPAA, including, without limitation, the Federal Privacy Regulations and the Federal Security Regulations. Consultant agrees to follow appropriate safeguards to prevent the use or disclosure of a patient's PHI while performing Services and will promptly report to Hospital any use or disclosure of a patient's PHI in violation of HIPAA, the HITECH Act, the Federal Privacy Regulations or the Federal Security Regulations of which Consultant becomes aware. Consultant further agrees to execute a Business Associate Agreement, attached hereto as Exhibit A.

- 12. COMPLIANCE PLANS.** To the extent applicable, Consultant represents that he/she has satisfied the federal and/or state requirements to establish a compliance plan that comports with the “core elements” established by the Federal Government pursuant to 42 U.S.C. § 1866(j)(7).
- 13. NOT AN EXCLUDED ENTITY:** Consultant, including any shareholder, partner, director, officer, agent, or employee of Consultant or to the knowledge of Consultant, any other person associated with or acting for or on behalf of Consultant, (a) was, is or is proposed to be, suspended, excluded from participation in, or sanctioned under, any federal or state health care program (including, without limitation, Medicare and Medicaid) (an “Excluded Individual”); (b) has been convicted of any criminal offense related to the delivery of any medical or health care services or supplies, or related to the neglect or abuse of patients; (c) has failed to maintain a current License to provide the services required to be provided by it to or on behalf of Consultant; or (d) is unable to obtain or maintain liability insurance consistent with commercially reasonable industry practices. Consultant represents that he/she is not presently conducting business in such a manner as to cause Consultant or any of its owners, directors, officers, employees or contractors to be an Excluded Individual, or otherwise to be ineligible to provide the services required to be provided by it to or on behalf of Consultant
- 14. CONFIDENTIALITY.** Consultant recognizes that Hospital has and will have proprietary information (“Information”) which are valuable, special and unique assets of Hospital and need to be protected from improper disclosure. In consideration for the disclosure of the Information, Consultant agrees that Consultant will not at any time or in any manner, either directly or indirectly, use any Information for Consultant’s own benefit, or divulge, disclose, or communicate in any manner any Information to any third party without the prior written consent of Hospital. Consultant will protect the Information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.
- 15. CONFIDENTIALITY AFTER TERMINATION.** The confidentiality provisions of this Agreement shall remain in full force and effect after the termination of this Agreement.
- 16. NON-DISPARAGEMENT.** Hospital and Consultant agree that they will not voluntarily make any public statement disparaging the other regarding Hospital’s and Consultant’s relationship or the terms of this Agreement. Statements made while under subpoena or deposition notice or in response to the request of any law enforcement or regulatory authority shall not be considered “voluntary” within the meaning of this Section.
- 17. COMPLIANCE WITH LAW AND ETHICAL STANDARDS.** Consultant shall at all times during the term of this Agreement, comply with all applicable Federal,

State and municipal statutes and ordinances, and all applicable rules and regulations of governing licensing and accrediting agencies and professional associations.

**18. NONDISCRIMINATION.** Consultant agrees:

- (a) not to differentiate or discriminate in her provision of Services because of race, color, national origin, age, ancestry, religion, sex, marital status, sexual orientation, physical and/or mental disability, health status or income level;
- (b) to render Services to all Hospital subcontractors that Consultant may engage without discrimination because of race, color, national origin, age, ancestry, religion, sex, marital status, sexual orientation, physical and/or mental disability, health status or income level;
- (c) to render Services in a culturally competent manner.

**19. RETURN OF RECORDS AND OR PROPERTY.** Upon termination of this Agreement, Consultant shall immediately, and in no event later than Twenty-Four (24) hours after termination of this Agreement, deliver all records, notes, data, memoranda, and equipment of any nature that are in Consultant's possession or under Consultant's control and that are Hospital's property or relate to Hospital's business.

**20. NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

**If for Hospital:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**If for Consultant:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone number: \_\_\_\_\_  
Email: \_\_\_\_\_

Such address may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

- 21. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the Parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the Parties.
- 22. AMENDMENT.** This Agreement may be modified or amended if the amendment is made in writing and is signed by the Parties.
- 23. SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.
- 24. WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- 25. APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of \_\_\_\_\_. In the event either Party brings any claim or action for any relief or collection against the other Party, declaratory or otherwise, arising out of this Agreement, the prevailing Party shall be entitled to a reasonable sum for attorneys' fees and costs as determined by a Court or through an arbitration.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the date first above written.

**HOSPITAL**

**CONSULTANT**

By: \_\_\_\_\_

By: \_\_\_\_\_