

**PETRAK & ASSOCIATES, INC.**  
**HEALTHCARE REIMBURSEMENT CONSULTING**

**CONSULTING AGREEMENT**

This Consulting Agreement ("Agreement") is effective as of September 26, 2019, and is made by and between Mendocino Coast District Hospital, a California health care district created under § 32000 et. seq. of the California Health and Safety Code ("Hospital"), and Petrak & Associates, Inc., a California corporation ("Consultant").

**RECITALS**

A. Consultant is experienced and knowledgeable in issues relating to healthcare reimbursement.

B. Hospital is an acute care hospital.

C. Consultant contracts with various acute care hospitals for the provision of healthcare reimbursement consulting services.

D. Hospital wishes to engage Consultant as an independent contractor for the provision of healthcare reimbursement consulting services.

E. Hospital and Consultant are desirous of entering into this Agreement in order to provide a full statement of their respective responsibilities in connection with the provision of such consulting services.

**AGREEMENT**

The parties hereto agree as follows:

1. **Consulting Services.** The consulting services to be provided by Consultant ("Services") cover the Hospital's fiscal years ended June 30, 2020 thru 2022, (the "Covered Fiscal Years"). For the Covered Fiscal Years, the Consultant will: (1) Prepare and file the Medicare / Medi-Cal cost reports; (2) analyze the proposed Medicare and Medi-Cal audit adjustments; (3) represent the Hospital during Medicare and Medi-Cal audits and at Medicare and Medi-Cal exit conferences; (4) review and verification of all Medicare and Medi-Cal interim rate determinations, lump-sum adjustments and tentative settlements; (5) research and respond to any Hospital reimbursement requests; (6) preparation and filing of Medicare and Medi-Cal appeals and cost report reopening request; (7) determination and review of the Hospital's third party contractual allowance reserves and provide CPA audit support upon request from the Hospital; (8) address any and all Medicare and Medi-Cal issues that pertain to the Hospital; (9) be available to provide consulting services to the Hospital throughout the term of this Agreement on an "as needed" basis.

2. **Status.** Consultant is not an agent or employee of the Hospital, and has no fiduciary duty, nor any duty of care, disclosure or inquiry, other than as expressly set forth in this Agreement. Consultant shall be entitled to rely on the completeness and accuracy of all information, documents and materials provided by the Hospital to Consultant in connection with the Services and this Agreement.

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3. Compensation.

a) As compensation for the Services to be rendered under this Agreement, the Hospital will pay Consultant at the discounted rate of \$130.00 dollars per hour if payment for Services is received by the Consultant within 60 days after the Hospital's receipt of a billing invoice or if prior arrangements have been made for late payment. If not received by that date and without prior arrangements, interest will accrue at the rate of 7% for all Services covered by that billing invoice.

b) Payment shall be made without withholding and any deductions. Consultant shall be responsible for payment of all taxes, federal, state and local.

c) Hospital shall pay Consultant all out-of-pocket expenses.

d) Travel and related reimbursable expenses shall be billed at cost.

e) Consultant will prepare and deliver to the Hospital a monthly activity and billing invoice and will maintain adequate records of the Services performed under this Agreement.

f) Payment for Services is due within 30 days after the Hospital's receipt of a billing invoice.

4. Representations and Warranties of Hospital. Hospital represents and warrants to Consultant that: (i) Hospital owns or has the legal right to use all patents, copyrights, trademarks, trade names, service marks, service names, and other intangible property or property rights relating to the Services (collectively, the "Intellectual Property"); (ii) each item of Intellectual Property may be disclosed to and used by Consultant within the course and scope of performing the Services on behalf of Hospital; (iii) Hospital's disclosure or Consultant's use of the Intellectual Property as permitted under this Agreement will not infringe upon, misappropriate, or otherwise conflict with any property rights of third parties; (iv) all information provided by Hospital shall be complete and accurate in all material respects, and not misleading; (v) Hospital shall be solely responsible for the accuracy and completeness of all information provided by Hospital to Consultant and (vi) the Hospital will provide the financial and statistical data required to perform the Services in a timely manner.

5. Disclaimer of Warranties. Hospital acknowledges that the conduct of its business involves substantial regulatory risks, including but not limited to, risks relating to existing and future federal and state laws affecting governmental reimbursement policies. Hospital assumes sole responsibility for the assessment and assumption of any and all such risks, and for the compliance of its business and operations with applicable laws. Consultant warrants only that the Services provided under this Agreement will be performed by Consultant in a competent manner. Except for the foregoing limited warranty, Consultant makes no warranty, express or implied, and expressly disclaims: (i) any implied warranty of merchantability or fitness for a particular purpose; (ii) any warranty of any assumption or projection; and (iii) any warranty of the results or success of any strategy or recommendation made or otherwise included as part of the Services provided by Consultant to Hospital.

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6. Limitation of Liability. Consultant agrees that if liable to the Hospital for negligence and/or errors and omission; Consultant will only be liable to the extent covered by Consultant's professional liability insurance and/or comprehensive general liability insurance.

7. Indemnification. Hospital agrees to indemnify, defend and hold Consultant harmless from and against any and all liability, loss, damage, claim, cause of action or cost (including, but not limited to, court costs and attorneys' fees) which may result directly or indirectly, from any act, error, or omission of Hospital, or from any information, documents or materials provided by Hospital. However, the Hospital will not indemnify the Consultant for any liability, loss, damage, claim or cause of action resulting from any act, errors, or omissions by the Consultant which was not a result of the information, documents or materials provided by the Hospital.

8. Term and Termination.

a) Term. The term of this Agreement will commence as of September 26, 2019, and terminate when the Services to be provided by the Consultant (which are defined in paragraph 1 above) have been provided for the Covered Fiscal Years, unless sooner terminated in accordance with this Agreement.

b) Termination With Cause. Except as otherwise provided herein, this Agreement will automatically terminate without further action by the parties hereto upon the occurrence of any of the following events:

a. The failure of Hospital or Consultant to perform their duties and obligations hereunder, if such failure is not cured by the breaching party within thirty (30) days after the non-breaching party gives written notice of such failure to the other party.

b. The death, disability, or other unavailability of Consultant to perform consulting services hereunder.

c) Termination Without Cause. Notwithstanding anything herein to the contrary, Hospital or Consultant may terminate this Agreement without cause upon 90 days' prior written notice to the other party.

9. Cooperation. Hospital shall cooperate with Consultant in performing the Services hereunder by providing necessary data and documentation. It is understood and agreed that Consultant will rely upon Hospital to provide accurate and complete data. Consultant will have no liability for errors or omissions resulting from inaccurate or incomplete data. Consultant is not auditing, reviewing or verifying the completeness or accuracy of the data provided. Hospital agrees to indemnify and hold harmless Consultant from liability, cost or expense arising from or relating to any audit, investigation or proceeding which may arise as a result of the Services provided hereunder if errors are due to incomplete or inaccurate data, including without limit, attorney's fees and payment for Consultant's time (at the rate provided for herein) for Consultant's participation or work arising from any investigation, hearing or proceeding.

10. Proprietary Rights. All work product prepared for Hospital by Consultant shall belong exclusively to Consultant with hard copies of prepared products furnished to the Hospital. All

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work product prepared by Consultant for others, for itself, or prior to or after the term of this Agreement, shall remain the exclusive property of Consultant.

11. Non-Exclusivity. This Agreement shall be non-exclusive. Consultant may provide consulting services to Consultant's existing clients, and to any other persons or entities who may in the future become clients of Consultant.

12. Insurance. Each party shall maintain liability insurance covering the services to be performed by or on behalf of Hospital during the term of this Agreement, in a minimum amount of One Million Dollars (\$1,000,000.00) annual aggregate. Upon written request, each party shall provide the other party with certificates evidencing such insurance, with an insurer reasonably acceptable to the other. In the event the insurance policy obtained to comply with this section is a "claims made" policy and either party changes insurance carriers or terminates coverage upon or after termination of this Agreement, such party shall immediately obtain and maintain "tail" coverage in the amounts otherwise required under this section for at least five (5) years following the termination of this Agreement, and shall provide the other party with evidence of such tail coverage as the other party shall reasonably require.

13. Confidential Information. Hospital agrees to provide Consultant with all information in its possession or reasonably available to it that is necessary for Consultant to provide the Services. Consultant shall, under all circumstances, have the right to rely, without independent investigation or verification, on all such information provided by Hospital to Consultant. Consultant agrees not to disclose any confidential documents or information provided to Consultant by Hospital pursuant to this Agreement, except: (i) to the directors, officers, employees, subcontractors and legal counsel of Consultant who have a need to know such information for the purpose of assisting Consultant in the performance of this Agreement; and (ii) when required by law to do so, but only if Consultant first notifies Hospital and affords Hospital a reasonable opportunity to oppose such disclosure by such means as Hospital deems necessary or appropriate. Notwithstanding the foregoing, confidential information shall not include any information which (i) is on the date hereof, or hereafter becomes, generally available to the public other than as a result of a disclosure, directly or indirectly, by Consultant; (ii) was available to Consultant on a non-confidential basis prior to its disclosure to Consultant by Hospital, or its representatives; or (iii) becomes available to Consultant on a non-confidential basis from a source other than Hospital or its representatives.

14. Compliance with HIPAA. Hospital and Consultant agree to comply with those provisions of the Health Insurance Portability and Accountability Act of 1996 (PL 104-191) set forth in Title XI, Part C, of the Social Security Act (42 USC Section 1301 et seq.) and the regulations thereunder (42 CFR Parts 160, 162 and 164), as amended, or any successor law, if and to the extent applicable, which set forth standards for electronic transactions and standards for privacy of individually identifiable health information. All medical records and other individually identifiable health information disclosed to and held by Hospital and Consultant, in any form, whether communicated electronically, on paper, or orally, shall be protected from unlawful disclosure in accordance with applicable federal and state law.

15. General Terms. Consultant shall act as an independent contractor and not as an agent or employee of Hospital and Consultant shall make no representation that it is an agent or

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employee of Hospital. Consultant is responsible for all taxes as an independent contractor. Consultant shall not have the authority to bind Hospital or incur other obligations on behalf of Hospital, unless Hospital so directs Consultant in writing. This Agreement may not be assigned by either party without the written consent of the other party. California law will govern the interpretation and enforcement of this Agreement, and each party consents to the jurisdiction of the courts of California in any action or proceeding with respect to this Agreement. The prevailing party in any such proceeding shall be entitled to recover its attorneys' fees and costs.

16. Construction. Except as otherwise provided, this Agreement:

(a) Shall be interpreted according to its fair meaning and neither for nor against any of the parties hereto;

(b) Shall not be interpreted by reference to any of its titles or headings, which are inserted for purposes of convenience only;

(c) May be executed in one or more counterparts, all of which, together, shall be deemed to constitute one and the same Agreement.

17. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, understandings and agreements. This Agreement may not be modified or amended by the parties hereto except by a written instrument executed by all parties.

18. Notices. All notices or other communications that any party may deliver or may be required to deliver to any other party will be duly made and given if given in person, or by United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed as follows:

Hospital: Mr. Wayne Allen, CEO  
Mendocino Coast District Hospital  
700 River Drive  
Fort Bragg, California 95437

Consultant: Petrak & Associates, Inc  
c/o Mr. Derek F. Petrak  
2255 Morello Avenue, Suite 201  
Pleasant Hill, CA 94523

Any such notice sent by United States mail will be deemed to have been given forty-eight (48) hours after posting, addressed and prepaid as set forth above, and notices which are personally delivered will be deemed to have been given when delivered. Any party may change the address to which notices are to be delivered by giving notice as hereinabove provided.


19. Partial Invalidity. In the event it is determined that any part of this Agreement is in violation of applicable law, the remaining portions of the Agreement will continue in full force and effect.

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20. Waiver. Any waiver of any provision of this Agreement by any party hereto will not be effective unless set forth in writing signed by the party granting such waiver, and in no event will any such waiver be deemed to be a waiver of any other provision of this Agreement, whether or not similar, or to be a continuing waiver.

Hospital: Mendocino Coast District Hospital  
A California nonprofit district hospital

By:  10-1-19  
Wayne Allen / CEO Date

Consultant:  9/27/2019  
Derek F. Petrak, President Date  
Petrak & Associates, Inc.