

## **AGREEMENT FOR LEGAL SERVICES**

This Agreement for Legal Services (“Agreement”) is made and entered into effective as of the date of the last signature (the “Effective Date”) by and between Hooper, Lundy & Bookman, P.C. (“HLB”) and \_\_\_\_\_,  
[INSERT ORGANIZATION NAME]  
 (“Client”) and is made with reference to the following facts:

### **RECITALS**

A. HLB is a law firm specializing in the provision of legal services to health care organizations. Among other areas, HLB has substantial experience and expertise in representing health care providers in Medicare reimbursement appeals and other Medicare matters.

B. Client is a hospital that participates in the Medicare Inpatient Prospective Payment System (“IPPS”) or a hospital system that includes more than one hospital that participates in IPPS.

C. The Secretary of Health and Human Services (the “Secretary”) has adopted a final rule (the “Final Rule”) that includes changes to the Medicare IPPS for the federal fiscal year ending September 30, 2020. The Final Rule includes several changes to the manner in which the Area Wage Index (“AWI”) is determined, which is a factor used in determining payments to hospitals under IPPS. Among the changes (the “Appeal Issues”) are:

1. A reduction to the standardized amount under IPPS to fund an increase in the AWI for hospitals with an AWI in the lowest quartile. This issue is referred to in this Agreement as “Issue 1.”

2. The exclusion from the determination of the rural wage index and the related rural floor the data from hospitals located in urban areas that have been reclassified by the Centers for Medicare and Medicaid Services as rural hospitals. The IPPS rates of hospitals in a state that are located in an urban area with an AWI that is lower than the state’s rural floor are computed using the rural floor rather than the AWI for the urban area. This issue is referred to in this Agreement as “Issue 2.”

D. Each of these changes to the AWI will adversely affect payment under IPPS to California hospitals.

E. The California Hospital Association (“CHA”) is sponsoring, coordinating, and making available to its members a vehicle to challenge one or both of the Appeal Issues (the “AWI Litigation”). CHA has engaged HLB to handle the AWI Litigation.

F. HLB intends to engage Toyon Associates, Inc. (“Toyon”) to assist HLB with the AWI Litigation. Toyon is a healthcare consulting firm with specific experience and expertise in relation to the AWI and in filing Medicare reimbursement appeals for providers.

G. Client desires to engage HLB to represent it in the AWI Litigation and HLB desires to accept this engagement.

AGREEMENT

1. **HLB Services**

HLB will represent Client in the AWI Litigation. HLB anticipates that the legal challenges will involve (a) appeals by hospitals and hospital systems of the Appeal Issues to the Medicare Provider Reimbursement Review Board (“PRRB”), (b) one or more requests for expedited judicial review (“EJR”) to the PRRB, (c) litigation in one or more United States District Courts, and (d) one or more appeals to the United States Court of Appeals for the Ninth Circuit.

Lloyd Bookman and David Vernon of HLB will be primarily responsible for the AWI Litigation. All of the resources of HLB will be available to assist with the AWI Litigation as necessary, appropriate, and cost-effective. HLB will keep CHA informed of the progress of the AWI Litigation, and CHA will keep Client informed of the progress of the AWI Litigation.

2. **Toyon Services**

Client understands that HLB intends to engage Toyon to provide it with certain services in connection with the AWI Litigation. Specifically, Toyon will identify the information required to file appeals for hospitals and hospital systems with the PRRB, will prepare the material required to file appeals with the PRRB on behalf of participating hospitals and hospital systems, and file the appeals with the PRRB. Toyon will also provide HLB with technical assistance in connection with the AWI, such as determining the impact of the challenged AWI Appeal Issues on payments to hospitals. Client agrees to HLB’s engagement of Toyon to provide these services.

3. **Appeal Issues**

Client understands that it may participate in the AWI Litigation for either Issue 1, Issue 2, or both Issue 1 and Issue 2. HLB will represent Client on only the issue or issues selected by Client. HLB shall have no responsibility to Client for an issue not selected by Client. Client shall select the Appeal Issue or Issues for which it engages HLB by placing a check mark or an “X” in the blank next to each such issue below.

Client hereby selects the following Appeal Issue(s):

Issue 1            \_\_\_\_\_

Issue 2            \_\_\_\_\_

The issues selected by Client are referred to in this Agreement as the “Selected Appeal Issues.”

4. **PRRB Appeals**

In order to pursue the Appeal Issues, a group appeal or group appeals (the “Group Appeal(s)”) must be filed with the PRRB on a timely basis. HLB and Toyon will file the first

appeal from the publication of the FFY 2020 IPPS Final Rule, which was first published online on August 2, 2019. HLB expects and will rely upon the Client's cooperation in meeting applicable deadlines, including, but not limited to, providing any information needed to perfect the appeal and signing one or more representation letters as requested by HLB or Toyon authorizing HLB or Toyon to serve as the Client's designated representative before the PRRB on this matter. Once the PRRB acknowledges receipt of the appeal, it will establish deadlines for the appeal.

HLB will represent the Client on the Selected Appeal Issues for its hospital's cost reporting periods that include any portion of FFY 2020, that is, any part of the period October 1, 2019 through September 30, 2020, and for any future periods, until the Appeal Issue(s) is/are resolved or withdrawn, or the representation is terminated.

#### 5. **CHA Sponsorship**

CHA, and not the Client, will be responsible for paying HLB's and Toyon's fees and costs incurred in connection with the AWI Litigation.

Client agrees that decisions relating to the conduct of the AWI Litigation, including, but not limited to, decisions regarding litigation strategy and settlement, shall be delegated to and made by the CHA Executive Committee. Such committee shall have the authority to authorize HLB to enter a settlement or settlements on behalf of the Client on such terms as the committee determines are acceptable.

Client agrees to abide by the decisions of the CHA Executive Committee concerning the AWI Litigation. If Client does not want the CHA Executive Committee to make decisions relating to the conduct of the AWI Litigation on its behalf, Client will be permitted to withdraw from the AWI Litigation at any time or to terminate HLB's representation of it in the AWI Litigation with reasonable notice and to engage other counsel at its own expense. HLB will cooperate reasonably with any such withdrawal or termination.

In the event Client discontinues its CHA membership during the course of the AWI Litigation, following the change in membership status, Client shall either (a) promptly withdraw from the AWI Litigation entirely; (b) at its sole cost and expense, transfer representation in the AWI Litigation to legal counsel other than HLB; or (c) continue to participate in the AWI Litigation with HLB, as its legal counsel, under a separate engagement letter under which Client is responsible to pay a portion of HLB's fees for services provided on or after the date Client discontinued its CHA membership, based on the amount that is at issue in the AWI Litigation for Client as compared to the aggregate amount at issue for all hospitals participating in the AWI Litigation, separately computed if reasonably possible for each issue.

Client understands that the payment of HLB's fees for the representation of Client by CHA may create a conflict of interest for HLB. California State Bar Rule 3-310 requires that HLB obtain informed consent from a client before HLB accepts payment from a third party for the legal services HLB has provided to you. Client's signature below confirms, among other

things, that Client consents to CHA paying for those HLB legal services rendered to you in connection with the AWI Litigation.

Client further understands that HLB's engagement by CHA and the authority Client agrees to grant to the CHA Executive Committee in connection with the AWI Litigation may create a conflict of interest. For example, the Executive Committee may direct HLB to pursue a legal strategy with which Client disagrees, may choose to move certain appeals more quickly than others in a manner that Client believes is not in its interest, may seek a remedy that is not as favorable to Client as an alternative remedy, or may elect to settle the litigation on terms that the Executive Committee determines are favorable to CHA members as a whole, but are not the most favorable terms that potentially could be negotiated for Client, individually. These are intended as examples of potential conflicts and not as a complete list of all potential conflicts. Client's signature below acknowledges that Client understands that conflicts may arise as a result of the authority provided to CHA's Executive Committee, and that Client waives any and all such conflicts.

6. **Termination and Withdrawal From the AWI Litigation**

Client may at any time withdraw from the AWI Litigation or terminate HLB's representation of it in the AWI Litigation and engage other counsel at its own expense. HLB will cooperate reasonably with any such withdrawal or termination.

HLB may withdraw at any time as the representative of any or all hospitals or hospital systems participating in the AWI Litigation in connection with that matter with respect to any or all fiscal periods at issue, and with respect to either or both of the Appeal Issues, upon giving reasonable notice to Client and upon taking reasonable steps to avoid any reasonably foreseeable prejudice to the rights of Client. Client agrees to execute any documents necessary to effectuate a substitution of attorneys upon request by HLB. To the extent that court or other adjudicatory body approval may be necessary for HLB to withdraw, Client will not oppose the motion by HLB to obtain such approval.

7. **Conflict Waiver**

Because of the specialized nature of its practice, HLB may, from time to time, represent a client in a matter and at the same time be asked by a second client to represent it in a separate matter that is unrelated to the work that HLB is performing for the first client, but where our work for the second client would be adverse to the interests of our first client. For example, while representing Client, HLB may be asked to represent a competitor of the Client in a business or litigation matter where Client is a counter-party, and where HLB's representation of the competitor therefore would be directly adverse to Client. HLB assures Client that when HLB represents an adversary of a client in a matter that is unrelated to HLB's work for that client, HLB will strictly preserve the confidential information of both clients, and that our duty of loyalty will run solely to the Client in connection with any and all matters in which HLB represents it. HLB is not aware that any such conflicts of interest exist with respect to the Client at this time, but they may arise in the future, and HLB therefore believes that their possibility should be addressed now. HLB would require your consent to engage in any representation of

an adversary of the Client as described above, and HLB is therefore asking that you now waive any conflicts of interest in connection with such representations in advance. Accordingly, by executing this engagement letter, you agree that the Client does not consider such representation by HLB of Client and any adversary as described above to be inappropriate, and Client therefore waives any objection to, or any conflict of interest arising from, any such future representation by us of adversaries of Client.

8. **Potential Conflicts**

HLB does not believe that any conflicts currently exist or are likely to arise that would prevent HLB from representing Client in the AWI Litigation, except any such conflicts for which HLB has obtained or will obtain necessary written waivers. However, HLB advises Client that there is a possibility that a party could attempt to intervene in some or all aspects of the AWI Litigation in a manner that is adverse to the interests of Client and its members. By way of example, it is possible that hospitals that are benefited by the increase in the AWI for hospitals in the lowest AWI quartile could try to intervene in the AWI Litigation on the side of the government, even though HLB intends only to seek as a remedy a reversal of the reduction to the AWI of CHA members and not a reduction to the payments to any hospitals. If a party intervenes on the side of the government and that party is an HLB client in a different matter, it is possible that HLB will have to resign from representing Client in some or all of the AWI Litigation. Client acknowledges and understands that HLB's withdrawal from some or all of the AWI Litigation could be difficult, expensive, or harmful to the interests of Client. In the unlikely event that this were to occur, HLB would take all reasonable steps to minimize any resulting harm to the interests of Client.

9. **Mediation and Arbitration**

In the event of any disputes between the parties to this Agreement over professional services rendered, the parties agree to resolve all such disputes through binding arbitration before a retired judge of the Los Angeles County Superior Court pursuant to the provisions of California Code of Civil Procedure § 1280, et seq. Such retired judge shall be selected by mutual agreement of the parties within 15 days of a demand for arbitration by any party. If the parties are unable to select an arbitrator through mutual agreement, an arbitrator shall be designated by the Los Angeles County Superior Court upon petition to that court by any party. The parties agree that speed and cost effectiveness of such arbitration are important to all parties to this agreement, and agree that any such arbitration shall be concluded within 120 days of the date of selection of the arbitrator. The parties also agree that prior to the arbitration, they shall engage in mediation with a mutually acceptable mediator, to be selected within 15 days of the date of the request for arbitration. If the parties are unable to agree upon a mediator within 15 days of the date of a demand for arbitration by any party, the mediator may be designated by the Los Angeles County Superior Court upon petition by any party. The mediation shall be completed within 60 days of the designation of a mediator. The parties shall share the costs of the arbitrator and the mediator, and each party shall bear its own attorneys' fees for both the mediation and the arbitration.

10. **Counsel Review**

This Agreement affects important legal rights of Client. In particular, this Agreement addresses several conflicts or potential conflicts of interest and provides that Client waive certain conflicts. HLB hereby advises Client to seek review of this Agreement by independent legal counsel.

11. **General Provisions.**

a. **Entire Agreement of the Parties.** This Agreement supersedes any and all agreements, either written or oral, between the parties hereto with respect to the subject matter contained herein. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

b. **Amendments.** Any amendment must be expressly set forth in writing and signed by both HLB and Client.

c. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction or applicable state or federal law and their implementing regulations to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect.

d. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, except to the extent such laws are preempted by any federal law, in which case federal law shall govern.

e. **Assignment.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties to it, and their respective heirs, legal representatives, successors and assigns. Neither party may assign any of his or her respective rights or delegate any of his or her respective duties hereunder without receiving the prior written consent of the other party.

f. **Waiver.** The waiver of any provision, or of the breach of any provision, of this Agreement must be set forth specifically in writing and signed by the waiving party. Any such waiver shall not operate or be deemed to be a waiver of any prior or future breach of such provision or of any other provision.

g. **No Third-Party Beneficiaries.** The obligations created by this Agreement shall be enforceable only by the parties hereto, and no provision of this Agreement is intended to, nor shall any provision be construed to, create any rights for the benefit of or enforceable by any third party.

h. **Headings.** The subject headings of the articles and paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

i. Counterparts. This Agreement may be executed in one (1) or more counterparts, all of which together shall constitute only one (1) Agreement. Furthermore, signatures delivered via facsimile transmission shall have the same force, validity and effect as the originals thereof.

Dated: \_\_\_\_\_

HOOPER, LUNDY & BOOKMAN, P.C.

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

Lloyd A. Bookman

Dated: \_\_\_\_\_

CLIENT

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

Its: \_\_\_\_\_