

**COUNTY OF SAN BENITO AGREEMENT FOR PROFESSIONAL SERVICES (NOT
TO EXCEED \$25,000)**

This Professional Services Agreement ("Agreement") is made by and between the County of San Benito, a political subdivision of the State of California (hereinafter "County") and:

Hooper, Lundy & Bookman, Inc. (hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows:

Provide Analysis and assistance in responding to DRC letter of December 3, 2018.

2. **PAYMENTS BY COUNTY.** County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$25,000.

3. **TERM OF AGREEMENT.** The term of this Agreement is from December 18, 2018 to December 31, 2019, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A	Scope of Services/Payment Provisions
Exhibit B	HIPAA Business Associate Agreement

5. **PERFORMANCE STANDARDS.**

5.1 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.

5.2 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

5.3 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS.

6.1 CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require. The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.2 CONTRACTOR shall not receive reimbursement for travel expenses unless CONTRACTOR obtains written authorization for such expenses from County Counsel.

7. TERMINATION.

7.1 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination, in the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.2 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR, "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. INDEMNIFICATION: See Exhibit A.

9. INSURANCE.

9.1 Evidence of Coverage: Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate, In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

County acknowledges the receipt of Contractor's "Certificate of Insurance" and has provided a "Notice to Proceed" with the work under this Agreement.

9.2 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

9.3 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

9.4 Other Insurance Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional

insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

10.1 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information, CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information, CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement. The parties acknowledge and hereby incorporate by reference here, the Business Associate Agreement, dated February 19, 2019, attached as Exhibit B.

10.2 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.

10.3 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is

pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

10.4 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

11. **NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination, CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
<u>Barbara Thompson, County Counsel</u>	<u>Alicia Macklin, Esq.</u>
Address: 481 Fourth St., 2 nd Floor Hollister, CA 95023	Address: Hooper, Lundy & Bookman, P.C. 1875 Century Park East, Suite 1600 Los Angeles, CA 90067
Phone: 831-636-4040	Phone: 310-551-8161

15. **MISCELLANEOUS PROVISIONS.**

15.1 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

15.2 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

15.3 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

15.4 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

15.5 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.

15.6 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement,

15.7 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or

delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

15.8 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

15.9 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.

15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.

15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control,

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

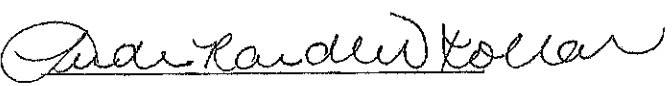
COUNTY OF SAN BENITO

By: 
County Administrative Officer

Date: 9/9/19

CONTRACTOR

Hooper, Lundy & Bookman, P.C.

By: 

Linda Randlett Kollar,
Name and Title Partner

Date: Feb. 26, 2019

EXHIBIT A
Hooper, Lundy & Bookman, P.C.

I. CONTACT INFORMATION

CONTRACTOR:

Alicia Macklin
Hooper, Lundy & Bookman, P.C.
1875 Century Park East, Suite 1600
Los Angeles, CA 90067
amacklin@health-law.com

COUNTY:

OFFICE OF THE COUNTY COUNSEL

Barbara Thompson
San Benito County Counsel
481 Fourth St., 2nd Floor
Hollister, CA 95023
BThompson@cosb.us

II. SCOPE OF WORK

CONTRACTOR shall:

- A. Assist with responding to DRC letter and investigation regarding San Benito County's Behavioral Health Department's policies and practices. Such assistance will be limited to negotiation and correspondence regarding issues raised in DRC's letter of December 3, 2018, and shall not include any litigation or related assistance/work.

III. PAYMENT PROVISIONS

- A. COUNTY shall pay CONTRACTOR according to Section 6, PAYMENT CONDITIONS, of this agreement.
- B. CONTRACTOR's fees are based upon the number of attorney hours devoted to a client's matters, and the then-existing hourly rates for the personnel involved. At present, CONTRACTOR's hourly rates range from \$800 to \$1025 for principals in the firm, \$785 for senior counsel, from \$440 to \$755 for associates, from \$370 to \$430 for paralegals, and \$200 to \$210 for litigation support. CONTRACTOR's hourly rates may be adjusted periodically. Variations in CONTRACTOR's current hourly rates may be made in some cases, either upward or downward, to account for complexity of issues, uniqueness of services, expertise of the involved attorney, etc. COUNTY shall be billed at preferred rates for CONTRACTOR's

attorneys who provide services for the County. At present, Alicia Macklin's standard hourly rate is \$630; COUNTY shall be billed at her preferred hourly rate of \$515. At present, Linda Kollar's hourly rate is \$835; COUNTY shall be billed at her preferred hourly rate of \$770. In addition to our fees, CONTRACTOR also charges for expenses incurred by CONTRACTOR on COUNTY's behalf. These expenses include, but are not limited to, long distance telephone calls, document processing, photocopying, facsimile, delivery costs and travel expenses. Travel expenses shall be paid in accordance with Section 6.2.

- C. CONTRACTOR shall submit an invoice to the COUNTY no later than the 20th of the month following the month of service. Invoices shall be submitted to:

Office of the County Counsel
Barbara Thompson, County Counsel
481 Fourth St., 2nd Floor
Hollister, CA 95023

- D. The maximum amount to be paid by COUNTY to CONTRACTOR under this agreement shall not exceed Twenty-Five Thousand Dollars (\$25,000.00).
- E. CONTRACTOR shall provide COUNTY with a detailed statement on a monthly basis, covering its current fees and expenses. It will describe services rendered, and will also show the amount of COUNTY's retainer remaining in its trust account or the amount owing to CONTRACTOR.
- F. It is understood that CONTRACTOR's fees and charges shall be paid out of Behavioral Health's budget and that CONTRACTOR's fees and charges shall not be paid out of the budget of County Counsel's Office.

IV. ADDITIONAL PROVISIONS

A. Reports

CONTRACTOR shall provide to San Benito County such reports as may be requested by the Board of Supervisors or County Counsel.

B. Agreement to Arbitrate and Mediate

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 in Los Angeles County before a retired judge of the Los Angeles County Superior Court pursuant to the provisions of California Code of Civil Procedure § 1280, et seq., and the Federal Arbitration Act. 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 pursuant to 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.

Notwithstanding the foregoing, in the event of an action by this firm to collect fees, Business and Professions Code § 6201 permits COUNTY to request non-binding arbitration through the local Bar Association, and if either party is unsatisfied with the outcome of the non-binding arbitration, they have the right to request a trial de novo in the Court. With respect to any action or proceeding by this firm to collect fees, COUNTY may elect within 30 days of notice of a demand for arbitration by this firm whether to proceed in accordance with the provisions for binding arbitration or whether to proceed in accordance with the procedures set forth in Business and Professions Code § 6201. If COUNTY does not, the resolution of any such dispute will proceed in accordance with the mediation and arbitration language set forth in the preceding paragraph.

- C. Indemnification. Paragraph 8 of the Agreement shall be replaced in its entirety with the following:

8. Indemnification.

Indemnification for Professional Liability. For liability arising from professional and technical services provided under this Agreement, CONTRACTOR shall indemnify, defend and hold harmless County, its governing board, officers, agents, and employees from any loss, injury, damage, expense and liability to the extent arising out of the negligence of CONTRACTOR, its employees, or agents. CONTRACTOR's indemnity obligation shall be limited to indemnity liability for which CONTRACTOR is insured by the program of insurance described in described in Paragraph 9 of the Agreement.

- D. Prior Agreements: This agreement supersedes any and all prior agreements entered into by and between the parties, including that certain Legal Engagement letter between the parties, dated January 16, 2019.

EXHIBIT B
BUSINESS ASSOCIATE AGREEMENT

[Attach Signed BAA Agreement]

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("BAA") supplements and is made a part of that certain Retainer Agreement ("Retainer Agreement") by and between San Benito County ("CE") and Hooper, Lundy & Bookman ("HLB" or "Business Associate"), dated February 26, 2019. This BAA is effective February 26, 2019 ("Effective Date").

RECITALS

WHEREAS, CE is a "Covered Entity" as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, as amended, and the regulations promulgated thereunder by the U.S. Department of Health and Human Services ("HIPAA"));

WHEREAS, HLB provides legal services to CE pursuant to the Retainer Agreement ("Services");

WHEREAS, CE may transmit or otherwise provide protected health information ("PHI"), as defined below, to HLB to enable HLB to provide the Services;

WHEREAS, in providing Services and receiving such PHI from CE, HLB may function as a "Business Associate" of CE, as defined below;

WHEREAS, CE and HLB intend to protect the privacy and provide for the security of PHI disclosed to HLB pursuant to the Retainer Agreement and this BAA in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("HITECH Act"), and other applicable laws;

WHEREAS, as a Covered Entity, CE is required under HIPAA to enter into this BAA with HLB, governing HLB's use and disclosure of PHI, and this BAA is an integral part of HLB's provision of legal services to CE.

NOW, THEREFORE, in consideration of the recitals, conditions and mutual promises below and in the Retainer Agreement, HLB and CE agree as follows:

AGREEMENT

1. Definitions.

- a. **Breach** shall have the meaning given under 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402.
- b. **Business Associate** shall have the meaning given to such term under 42 U.S.C. § 17938 and 45 C.F.R. § 160.103.
- c. **CE** shall include, as applicable, CE and any Covered Entities under common ownership or control of CE, whether for-profit or non-profit, including, without limitation, any providers or suppliers.

- d. **Common ownership** exists if the CE possesses greater than a five percent (5%) ownership or equity interest in a Covered Entity.
- e. **Common Control** exists if the CE has the power, directly or indirectly, significantly to influence or direct the actions or policies of a Covered Entity.
- f. **Covered Entity** shall have the meaning given to such term under 45 C.F.R. § 160.103.
- g. **Data Aggregation** shall have the meaning given to such term under 45 C.F.R. § 164.501.
- h. **Data Breach Notification Rule** shall mean the HIPAA Regulations that are codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- i. **Designated Record Set** shall have the meaning given to such term under 45 C.F.R. § 164.501.
- j. **Electronic Protected Health Information or ePHI** means Electronic Protected Health Information that is maintained in or transmitted by electronic media.
- k. **Electronic Health Record** shall have the meaning given to such term under 42 U.S.C. § 17921(5).
- l. **Health Care Operations** shall have the meaning given to such term 45 C.F.R. § 164.501.
- m. **Privacy Rule** shall mean the HIPAA Regulations that are codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- n. **Protected Health Information or PHI** means that information defined in 45 C.F.R. § 160.103 which is created or received by HLB from or on behalf of CE.
- o. **Security Rule** shall mean the HIPAA Regulations that are codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- p. **Subcontractor** shall mean a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate, pursuant to 45 C.F.R. § 160.103.
- q. **Unsecured PHI** shall have the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402 and guidance issued pursuant to the HITECH Act and corresponding regulations.

Terms used but not otherwise defined in this BAA shall have the same meaning as those terms in 45 C.F.R. Part 160 and Part 164, including sections 160.103, 164.103, 164.304 and 164.501.

2. **Obligations of Business Associate.**

- a. **Permitted Uses and Disclosures.** HLB shall not use or disclose PHI other than for purposes of providing the Services or as permitted or required by the Retainer Agreement, this BAA or as permitted or required by law. Further, HLB shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, HLB may use PHI from CE for Data Aggregation purposes for the Health Care Operations of CE in accordance with the Privacy Rule. To the extent that Business Associate carries out Covered Entity's obligation under the Privacy Rule, it must comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.
- b. **Business Associate Management and Administration.** Business Associate may use Covered Entity's PHI for the management and administration of Business Associate's law practice and to carry out Business Associate's own legal and ethical responsibilities. Business Associate may disclose PHI for these purposes if Business Associate is required to do so by law, or if Business Associate obtains reasonable assurances from the recipient of the information: (1) that it will be held confidentially, and used or further disclosed only as required by law or for the purpose for which it was disclosed to the recipient; and (2) that the recipient will notify Business Associate of any instances of which the recipient is aware in which the confidentiality of the information is breached.
- c. **Appropriate Safeguards.** HLB shall implement appropriate safeguards and comply where applicable, with the HIPAA Security Rule with respect to Electronic Protected Health Information to prevent the use or disclosure of PHI other than as permitted or required by the Retainer Agreement, this BAA or other applicable laws. To the extent HLB creates, maintains, receives or transmits ePHI on CE's behalf, HLB shall use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of such ePHI.
- d. **Mitigation.** HLB shall mitigate, to the extent practicable, any harmful effect that is known to HLB of a use or disclosure of PHI in violation of this BAA.
- e. **Reporting of Improper Access, Use or Disclosure.** HLB shall promptly report to CE in writing: (i) any access, use or disclosure of PHI not permitted by the agreement for legal services between HLB and CE, the Retainer Agreement, this BAA or applicable law; (ii) any security incident, as defined in the Security Rule; and (iii) any Breaches of Unsecured Protected Health Information of which it becomes aware as required by the Data Breach Notification Rule (45 C.F.R. § 164.410).
- f. **Business Associate's Subcontractors.** HLB shall ensure that any Subcontractors to whom it provides PHI, or who create, receive, maintain or transmit Protected Health Information on HLB's behalf agrees in writing to the same restrictions and conditions

that apply to HLB with respect to such PHI, including without limitation, the duty to notify HLB of the discovery of any Breach of Unsecured PHI without unreasonable delay and in no event later than sixty (60) days after discovery.

- g. **Access to PHI.** To the extent HLB maintains a Designated Record Set on CE's behalf, HLB shall make the PHI that HLB or its Subcontractors maintain in Designated Record Sets available to CE for inspection and copying within fifteen (15) days of a CE's request to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.524. HLB may charge a reasonable fee including its labor costs in responding to a request to access PHI and a cost-based fee for the production of non-electronic media copies. HLB shall notify CE within fifteen (15) days of receipt of any request for access to PHI.
- h. **Amendment of PHI.** To the extent HLB maintains a Designated Record Set on CE's behalf, within thirty (30) days of receipt of a request from the CE or an individual for an amendment of PHI or a record about an individual contained in a Designated Record Set, HLB or its Subcontractors shall make any amendments that CE directs or agrees to in accordance with the Privacy Rule. HLB may charge a reasonable fee including its labor costs in responding to a request to amend PHI and a cost-based fee for the production of non-electronic media copies. HLB shall notify CE within fifteen (15) days of receipt of any request for amendment to PHI.
- i. **Accounting Rights.** Within thirty (30) days of notice by CE of a request for an accounting of PHI disclosures, HLB and its Subcontractors shall make available to CE the information required to provide an accounting of the PHI disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.528, and its obligations under the HITECH Act, as determined by CE. The provisions of this Section 2(i) shall survive the termination of this BAA. The accounting must be provided without cost to the individual or the requesting party if it is the first accounting requested by such individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, HLB may charge the individual or party requesting the accounting a reasonable fee including its labor costs in responding to the request and a cost-based fee for the production of non-electronic media copies, so long as HLB informs the individual or requesting party in advance of the fee and the individual or requesting party is afforded an opportunity to withdraw or modify the request. HLB shall notify CE within fifteen (15) days of receipt of any request by an individual or other requesting party for an accounting of disclosures.
- j. **Governmental Access to Records.** HLB shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services ("Secretary") for purposes of determining CE's compliance with HIPAA. Nothing in this Section shall be construed to require HLB to disclose or produce to the Secretary communications that are subject to the attorney-client privilege or that otherwise may require HLB to violate its ethical obligations to CE or its professional responsibilities.

- k. **Attorney-Client Privilege.** Notwithstanding any provisions to the contrary in this BAA and to the maximum extent permitted by applicable law, CE hereby reserves and retains applicable attorney-client or other privileges in which CE has an interest with respect to HLB's performance of the Services or its obligations under the Retainer Agreement or this BAA. To the maximum extent permitted by applicable law, HLB hereby reserves and retains all applicable work product or other privileges or rights in which HLB has an interest with respect to its performance of its obligations under the Retainer Agreement, this BAA or the provision of Services to CE.
- l. **Minimum Necessary.** HLB (and its Subcontractors) shall request, use and disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

3. **Obligations of CE.**

- a. CE shall notify HLB of any limitation in its privacy practices, to the extent such limitation may affect HLB's access to or use or disclosure of PHI.
- b. CE shall notify HLB of any changes in, or revocation of an individual's authorization for CE to use or disclose PHI to the extent that such changes may affect HLB's access to or use or disclosure of PHI.
- c. CE shall notify HLB of any restriction to the use or disclosure of PHI that CE has agreed to (including, without limitation any agreement by CE not to disclose PHI to a health plan for payment or health care operations purposes) to the extent that such restriction may affect HLB's access to or use or disclosure of PHI.
- d. CE shall notify HLB of any amendments required to be made to PHI that HLB possesses in a Designated Record Set.

4. **Termination.**

- a. **Term.** The term of this BAA shall be effective as of the Effective Date and shall terminate when all of the PHI that CE provided HLB, or that HLB created or received on CE's behalf, is destroyed or returned to CE.
- b. **Material Breach by Business Associate.** Upon HLB's material breach of this BAA, CE shall provide HLB with written notice of the breach and HLB shall cure the breach within thirty (30) business days of receiving the written notice. If HLB does not cure the breach within the designated time period, CE shall have the right to terminate this BAA and the Retainer Agreement. CE will remain responsible for any and all fees incurred up to and including the effective date of the termination of the Retainer Agreement.
- c. **Material Breach by CE.** Pursuant to 42 U.S.C. § 17934(b), if HLB knows of a pattern of activity or practice of the CE that constitutes a material breach or violation of the CE's obligations under the BAA, HLB must take reasonable steps to

cure the breach or end the violation. If the steps are unsuccessful, HLB may be required to terminate the Retainer Agreement, this BAA or the provision of Services, if feasible. When evaluating its obligations upon discovering a pattern or practice of CE that may constitute a material breach of HIPAA, HLB will construe its obligations in accordance with its ethical obligations to the CE and general professional responsibilities.

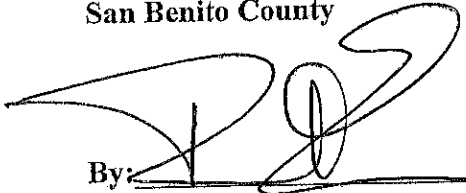
- d. **Effect of Termination.** Upon termination of the Retainer Agreement for any reason, HLB shall, at CE's option, return or destroy all PHI that HLB or its Subcontractors still maintain in any form, and shall retain no copies of the PHI unless such return or destruction is infeasible. CE acknowledges that HLB's professional obligations may require it to retain a record of the Services, and that return or destruction may not be feasible. If return or destruction of the PHI is not feasible, as determined by HLB, HLB shall continue to extend the protections of this BAA to such information, and limit further use of the PHI to those purposes that make the return or destruction of such PHI infeasible.
5. **Amendment To Comply With Law.** The parties acknowledge that they may be required to amend this BAA or Retainer Agreement to ensure compliance with state and federal laws relating to data security and privacy. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security, privacy or confidentiality of PHI. Upon either party's request, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws.
6. **No Third-Party Beneficiaries.** Nothing express or implied in the Retainer Agreement or BAA is intended to confer, nor shall anything herein confer upon any person other than CE, HLB and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
7. **Interpretation.** The provisions of this BAA shall prevail over any provisions in the Retainer Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Retainer Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act and the regulations promulgated there under, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Retainer Agreement shall remain in force and effect.
8. **Entire Agreement of the Parties.** This BAA supersedes any and all prior and contemporaneous business associate agreements or addenda between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Each party to this BAA acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter

hereof, have been made by either party, or by anyone acting on either party's behalf, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

9. **Regulatory References.** A reference in this BAA to a section of regulations means the section as in effect or as amended, and for which compliance is required.
10. **Professional Responsibility.** This BAA shall not be construed to require HLB to engage in any conduct that would be deemed unprofessional conduct under the laws or ethical requirements applicable to lawyers in any state in which HLB's attorneys are licensed to practice.
11. **Legal Advice.** HLB does not undertake in this BAA to provide legal advice to CE regarding the enforceability or adequacy of this BAA or its substantive provisions. **HLB RECOMMENDS THAT CE REVIEW THIS BAA WITH INDEPENDENT COUNSEL.**

IN WITNESS WHEREOF, HLB and CE have duly executed this BAA as of the Effective Date.

CE
San Benito County

By: 

Name: Ray Espinosa
Title: CAO
Date: 4/4/19

BUSINESS ASSOCIATE
Hooper, Lundy & Bookman, P.C.

By: 

Name: Linda Randlett Kollar
Title: Partner
Date: Feb. 26, 2019