6810-17-004186

206

RULE NISI

LOUISIANA HEALTH COOPERATIVE REHABILITATOR (Plaintiff)	**NUMBER C651069 SECTION 22**
	19th JUDICIAL DISTRICT COURT
vs.	**PARISH OF EAST BATON ROUGE**
TERRY S. SHILLING, ET AL (Defendant)	**STATE OF LOUISIANA**

TO: **LOUISIANA HEALTH COOPERATIVE REHABILITATOR, JAMES J. DONELON, COMMISSIONER OF INSURANCE**
THROUGH HIS COUNSEL OF RECORD:
J. E. CULLENS, JR.
12345 PERKINS RD., BLG. 1
BATON ROUGE, LA 70810

The Mover in this case filed a **EXCEPTION OF PREMATURITY; RULE TO SHOW CAUSE; MEMORANDUM** which the Court granted. Certified copies of this document and the Court's Order are attached.

You **MUST** come to Court at **9:30 AM** on **MAY 30, 2017** in Room **10-D** , 300 North Boulevard, Baton Rouge, Louisiana, and show cause why:

*** * * * * SEE ATTACHED ORDER * * * * *.**

This Rule was issued by the Clerk of Court for East Baton Rouge Parish on **02-MAY-2017**.

SEAL OF THE CLERK OF THE PARISH OF EAST BATON ROUGE, LA

Randy M. Monte
Deputy Clerk of Court for
Doug Welborn, Clerk of Court

Requesting Attorney: FREDERIC THEODORE LE CLERCQ

SERVICE INFORMATION:

Received on the _____ day of _____, 20____ and on the _____ day of _____, 20_____, served on the above named party as follows:

PERSONAL SERVICE: On the party herein named at _____.

DOMICILIARY SERVICE: On the within named _____, by leaving the same at his domicile in this parish in the hands of _____, a person of suitable age and discretion residing in the said domicile at _____.

DUE AND DILIGENT: After diligent search and inquiry, was unable to find the within named _____ or his domicile, or anyone legally authorized to represent him.

RETURNED: Parish of East Baton Rouge, this _____ day of _____, 20_____.

SERVICE: $_____
MILEAGE $_____
TOTAL: $_____

_____
Deputy Sheriff

RECEIVED
MAY 03 2017
EBR SHERIFF'S OFFICE

EBR4150764

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. 651069 **SECTION 22**

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.

v.

TERRY S. SHILLING, GEORGE G. CROMER, WARNER L. THOMAS, IV, WILLIAM A. OLIVER, CHARLES D. CALVI, PATRICK C. POWERS, CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INC., BEAM PARTNERS, LLC, AND TRAVELERS AND SURETY COMPANY OF AMERICA.

FILED: _____ _____
DEPUTY CLERK

COST OK $ 77.00

FEB 22 2017
DEPUTY CLERK OF COURT

EXCEPTION OF PREMATURITY
OR, ALTERNATIVELY, MOTION TO STAY PROCEEDINGS
ON BEHALF OF BEAM PARTNERS, LLC

NOW INTO COURT, through undersigned counsel, comes defendant Beams Partners, Inc. ("Beam") who excepts to the Petition for Damages and Jury Demand ("Petition for Damages") and First Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial (Supplemental Petition") (referred to collectively hereafter as "Petitions") filed by James J. Donelon on behalf of the Louisiana Health Cooperative, Inc.'s ("Healthcare CO-OP"). The Petitions assert claims against Beam for breach of contract and negligence based upon the breach – claims that fall under the scope of the arbitration clause to which they contractually agreed.

To permit the Healthcare CO-OP's lawsuit against Beam to proceed in state court contravenes the parties' contract and applicable state law. Beam respectfully requests that this Court maintain this exception and dismiss the claims against Beam. Alternatively, Beam prays that this Court grant its motion to stay all proceedings against it in this action until arbitration between the parties has been convened and completed.

Respectfully submitted,

Frederic Theodore Le Clercq (#23517)
ted@deutschkerrigan.com
Charles E. Leche (#08218)
Joanne Rinardo (#24201)
Isaac H. Ryan (#23925)
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755 Magazine Street
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Telephone: (504) 581-5141
Facsimile: (504) 566-1201
Attorneys for Beam Partners, LLC

PLEASE SERVE:

JAMES J. DONELON
Commissioner of Insurance, Rehabilitator
Louisiana Health Cooperative, Inc.
Through His Counsel of Record:
J.E. Cullens, Jr.
12345 Perkins Road, Bldg. One
Baton Rouge, LA 70810

CERTIFICATE OF SERVICE

I hereby certify that a coy of he above and foregoing pleading has been served upon all known counsel of record by email, facsimile and/or by placing same in the U.S. Mail, properly addressed and postage prepaid, this 17th day of February, 2017.

FREDERIC THEODORE LE CLERCQ

FILED
EAST BATON ROUGE PARISH, LA
2017 FEB 22 PM 12:53
DEPUTY CLERK OF COURT

CERTIFIED TRUE AND CORRECT COPY
MAY 02 2017
East Baton Rouge Parish
Deputy Clerk of Court

19TH JUDICIAL COURT FOR THE PARISH OF EASY BATON ROUGE

STATE OF LOUISIANA

NO. 651069 **SECTION 22**

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.

v.

TERRY S. SHILLING, GEORGE G. CROMER, WARNER L. THOMAS, IV, WILLIAM A. OLIVER, CHARLES D. CALVI, PATRICK C. POWERS, CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INC., BEAM PARTNERS, LLC, AND TRAVELERS AND SURETY COMPANY OF AMERICA.

FILED: _____ _____
DEPUTY CLERK

RULE TO SHOW CAUSE

Considering the foregoing premises,

IT IS ORDERED that James J. Donelon, Commissioner of Insurance for the State of Louisiana, in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., show cause on the 30th day of May, 2017, at 9:30 a.m., why Beam Partner, LLC's Exception of Prematurity or Alternatively, Motion to Stay should not be maintained and why this matter should not be stayed.

Baton Rouge, Louisiana, this 20 day of April, 2017.

FILED
EAST BATON ROUGE PARISH, LA
2017 FEB 22 PM 12:53
DEPUTY CLERK OF COURT

DISTRICT JUDGE

PLEASE SERVE

JAMES J. DONELON
Commissioner of Insurance, Rehabilitator
Louisiana Health Cooperative, Inc.
Through His Counsel of Record:
J.E. Cullens, Jr.
12345 Perkins Road, Bldg. One
Baton Rouge, LA 70810

CERTIFIED TRUE AND CORRECT COPY
MAY 02 2017
East Baton Rouge Parish
Deputy Clerk of Court

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. 651069 **SECTION 22**

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.

v.

TERRY S. SHILLING, GEORGE G. CROMER, WARNER L. THOMAS, IV, WILLIAM A. OLIVER, CHARLES D. CALVI, PATRICK C. POWERS, CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INC., BEAM PARTNERS, LLC, AND TRAVELERS AND SURETY COMPANY OF AMERICA.

FILED: _____ _____

DEPUTY CLERK

MEMORANDUM IN SUPPORT OF EXCEPTION OF PREMATURITY OR, ALTERNATIVELY, MOTION TO STAY PROCEEDINGS ON BEHALF OF BEAM PARTNERS, LLC

MAY IT PLEASE THE COURT:

Plaintiff, James J. Donelon, standing in the shoes of the Louisiana Health Cooperative, Inc. ("Healthcare CO-OP"), alleges that Beam Partners, Inc. ("Beam") breached a Management and Development Contract ("Contract") agreed to between the Healthcare CO-OP and Beam. Beam submits this Memorandum in Support of its Exception of Prematurity or, Alternatively, Motion to Stay, pursuant to the mandatory contractual arbitration provision in the Contract.[1] That arbitration provision is expansive. The arbitration provision encompasses the claims alleged against Beam in both the Petition for Damages and Jury Demand ("Petition for Damages") and First Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial ("Supplemental Petition") (referred to collectively hereafter as "Petitions") filed by James J. Donelon on behalf of the Healthcare CO-OP.

The Louisiana Binding Arbitration Law ("Binding Arbitration Law") provides that a contractual provision to arbitrate "**shall** be valid, irrevocable, and enforceable . . ." See La. Rev. Stat. 9:4201 (emphasis added). The Binding Arbitration Law underscores and ratifies the strong public policy favoring enforcement of the contract and agreement to arbitrate as the preferred method of dispute resolution so that the parties may settle their differences in a fast, inexpensive manner, and all done on a tribunal contractually agreed to by the parties. To permit the Healthcare CO-OP's lawsuit against Beam to proceed in state court contravenes the parties' contract, their

[1] The arbitration provision 10.6 is found in the Contract plaintiff attached to both Petitions as Exhibit "3").

intent, and the Binding Arbitration Law. Therefore, Beam respectfully requests that this Court enter an order granting Beam's Exception of Prematurity or, Alternatively, Motion to Stay Pending Arbitration.

FACTUAL BACKGROUND

I. History of the Healthcare CO-OPs

The Patient Protection and Affordable Care Act, commonly called the Affordable Care Act ("ACA"), is a United States federal statute enacted on March 23, 2010. The stated reason for the ACA was to increase health insurance quality and affordability, lower the uninsured rate by expanding insurance coverage, and affect the costs of healthcare. It introduced mechanisms to advance those objectives by requiring such things as mandates, subsidies, and insurance exchanges. This Healthcare CO-OP was a qualified health plan participating on the federal exchange in Louisiana.

To further a competitive marketplace within each state, the ACA created a Consumer Operated and Oriented Plan program ("CO-OP") through which each state could create nonprofit, member-controlled health insurance plans that would offer ACA-compliant policies in the individual and small business markets. See Title I, Part 3, §1322, et al., Pub. Law No. 111-148 as amended by Pub. Law No. 111-152. These CO-OPs were intended to increase competition and improve choice. The Centers for Medicare & Medicaid Services (CMS) controlled and administered the CO-OP program which initially had 24 organizations applying to become CO-OPs.

II. Louisiana Healthcare CO-OP

The Louisiana Healthcare CO-OP applied with CMS for funding to establish a non-profit health plan under the ACA. After a lengthy and detailed process, including over 125 CMS required steps, and after undergoing extensive review and background checks that included public records searches at the local, state, and national level, as well as searches of federal debarment databases, CMS approved the Healthcare CO-OP for funding under the CO-OP program and, ultimately, to operate on the healthcare exchanges as a qualified health plan. The Healthcare CO-OP was incorporated on September 11, 2011, with the majority of the Healthcare CO-OP's start-up processes to be contracted to outside entities.

On October 8, 2012, the Healthcare CO-OP signed an Contract with Beam for it to: provide training and orientation of the Healthcare CO-OP Board Members; develop the application of state licenses; obtain tax-exempt status for the Healthcare CO-OP; develop a network of providers;

recruit, verify the credentials, and interview candidates for positions with the Healthcare CO-OP; create processes, systems, and forms for the operation of the CO-OP; and identify, negotiate and execute administrative services for the operation of the CO-OP. (See Contract attached as Exhibit "A" and Affidavit of T. Shilling attached as Exhibit "B," identifying and authenticating the Contract). In the Contract and its subsequent amendments, Beam and the Healthcare CO-OP agreed to arbitrate any issues arising from their contractual obligations. (See Contract, Exhibit "A" and Amendments 1, 2, and 3 attached, *in globo*, as Exhibit "C" and Affidavit of T. Shilling, Exhibit "B," identifying and authenticating the Amendments).

Beam's legal relationship with the Healthcare CO-OP ended on March 31, 2014, shortly after the Healthcare CO-OP began offering insurance to Louisiana residents. Notably, Beam is not an insurer and never provided insurance to any citizen of Louisiana. Rather, Beam was contracted by the Healthcare CO-OP only to provide certain start-up services for the Healthcare CO-OP.

III. Nationwide Failure of CO-OPs

Due to a myriad of reasons and funding curtailment, almost all the CO-OPs ultimately failed, including the Healthcare CO-OP in Louisiana. Lawmakers had originally planned to provide $10 billion in grants to get the CO-OPs up and running in every state, but Congress reduced the total to $6 billion. Furthermore, the CO-OPs were not permitted to use federal loan money for marketing purposes which impacted the ability to grow membership. See Title I, Part 3, § 1322(a)(2)(C)(ii)(II). Then, during budget negotiations in 2011, the appropriated loans were cut by another $2.2 billion, and in 2012, CO-OP funding was reduced even further.

Ultimately, the CMS awarded about $2.4 billion in loans to 23 CO-OPs across the country (there were 24 CO-OPs, but Vermont CO-OP never became operational). Seventeen of the 23 CO-OPs across the country projected negative income in their first year, as start-ups often do. But by the end of 2014, 20 of them had lost more money than expected. Together, they lost $376 million, 10 times higher than initially budgeted, according to a July analysis by the U.S. Department of Health and Human Services' Office of Inspector General. By the beginning of 2016, only eleven of the 23 were still offering health plans. As of 2017, fewer than five CO-OPs are still functioning.

It has been speculated that the CO-OPs failures have been due in large part to a combination of factors, such as funds not available for marketing, benefits being too generous for the premium charged, enrollees who were sicker than anticipated, competition from bigger carriers with larger

reserves, the risk corridor shortfall that was announced in the fall of 2015, and the risk adjustment payment announcements that were made in June 2016.

IV. Louisiana's Healthcare CO-OP Placed in Rehabilitation

Unfortunately, the Healthcare CO-OP was one of the numerous CO-OPs that failed to become financially viable. On September 21, 2015, and pursuant to La. Rev. Stat. 22:2001 *et seq.*, the 19th JDC placed the Healthcare CO-OP in rehabilitation "under the direction and control of the Commissioner of Insurance for the State of Louisiana ("Commissioner" or "Donelon"). . ." (See Order attached as Exhibit "D"). Billy Bostick was named as the Receiver of the Healthcare CO-OP.

On August 31, 2016, James J. Donelon, in his capacity as Rehabilitator for the Healthcare CO-OP, filed a Petition for Damages and Jury Demand suing various entities and individuals who had operated the Healthcare CO-OP. (See Petition attached as Exhibit "E"). On November 29, 2016, Donelon filed a First Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial which added several more defendants. (See Supplemental Petition attached as Exhibit "F").

In those petitions, the Healthcare CO-OP alleges that Beam breached the Contract, and that the breach was somehow negligent. Despite the Contract's clear language requiring arbitration of issues arising from the Contract, neither Donelon nor Bostick has requested arbitration with Beam. Instead, Donelon, on behalf of the Healthcare CO-OP, sued Beam in state court.

LEGAL ARGUMENT

This Court should uphold the parties' contract to arbitrate the claims in plaintiff's Petitions because of Louisiana's strong legislative policy favoring the enforcement of contracts and arbitration clauses. La. Rev. Stat. 9:4201; see *Mack Energy Co. v. Expert Oil & Gas, L.L.C.,* 2014-1127 (La 1/28/15), 159 So.2d 437 (upheld requirement to arbitrate and arbitration award because of strong policy favoring arbitration, thereby upholding the requirement to arbitrate); *Snyder v. Belmont Homes, Inc.*, 2004-0445 (La. App. 1 Cir. 2/16/05), 899 So.2d 57, *writ denied*, 2005-1075 (La. 6/17/15), 904 So.2d 699; *Arkel Constructors, Inc. v. Duplantier & Meric, Architects, LLC,* 2006-1950 (La. App. 1 Cir. 7/25/07), 965 So.2d 455, 459-460; and *Integrity Flooring, LLC v. Mid South Contractors, LLC,* 2002-2636 (La. App. 1 Cir. 9/26/03), 857 So.2d 582.

I. Louisiana Favors Arbitration and It Shall Be Ordered Where the Two Part Test is Met.

Consistent with this strong legislative policy favoring arbitration, the Binding Arbitration Law mandates that a court shall stay the trial of an action to allow arbitration to proceed when either

party applies for a stay and shows (1) that there is a written arbitration agreement, and (2) the dispute in question falls within the scope of the arbitration agreement. La. Rev. Stat. 9:4202; see *Coleman v. Jim Walter Homes, Inc.*, 2008-1221 (La. 8/17/09), 6 So.3d 179; *Aguillard v. Auction Management Corp.*, 2004-2804 (La. 6/29/05), 908 So.2d 1. In this case, Beam and the Healthcare CO-OP agreed to arbitrate any issue arising from the obligations created in the Contract, such as the obligations at issue in this suit.

A. The Parties Executed a Binding Contract and The Arbitration Clause in it is Sweepingly Broad, including "Any Claim or Dispute."

A party who seeks to enforce the arbitration clause first must show the existence of a valid contract to arbitrate. See *FIA Card Services, N.A. v. Weaver*, 10–1372 (La. 3/15/11), 62 So.3d 709, 719; *Kosmala v. Paul*, 569 So.2d 158, 162 (La. App. 1 Cir. 1990), *writ denied*, 572 So.2d 91 (La. 1991). Here, there is a valid contract between the parties which serves as the basis for the claims against Beam. That Contract contains an enforceable arbitration clause which covers the claims for which the Healthcare CO-OP is suing Beam. Because the Contract mandates arbitration, and these claims fall within its scope, state law tells us that the claims against Beam must be arbitrated.

It is unequivocal that the parties signed the Contract and agreed to its terms. The Healthcare CO-OP not only refers to the Contract and its Amendments in both petitions, but attached to each of them a "true and correct copy of the Management and Development Agreement." (See Petition, ¶¶ 54, Exhibit "E" and Supplemental Petition, ¶¶ 57, Exhibit "F").

It is also unequivocal that the parties agreed to arbitrate any claim or dispute arising under or relatively to this contract. (See Contract §10.6, Exhibit "A"). It has long been established by the Louisiana Civil Code and jurisprudence that the goal in the interpretation of a contract is the determination of the parties' common intent. La. Civ. Code art. 2045. When the words of a contract are clear, explicit, unambiguous, and lead to no absurd consequences, no further interpretation other than that found in the four corners of the document may be made in search of the parties' intent. La. Civ. Code art. 2046.

In the Contract, the parties agreed that any disputes arising under, or even relating to, the obligations created by their Contract must be arbitrated:

> 10.6 Dispute Resolution
>
> The parties agree that any claim or dispute arising under, or relating to this Agreement **shall be resolved through this dispute resolution process**. Either party may initiate the dispute resolution process by a written notice to the other and both parties shall use reasonable efforts to attempt to resolve the dispute informally and quickly. If

> Developer [Beam] and the Cooperative [HEALTHCARE CO-OP] are unable to resolve the dispute through informal means after a period of thirty (30) days, either may submit the dispute to arbitration using the arbitration rules of the American Health Lawyers Dispute Resolution Services [http://www.healthlawyers.org/adr], except to the extent that provisions in this Agreement supersede provisions in those rules, this Agreement shall control. If there is a readily determinable amount in dispute and it is $10,000 or less, a single arbitrator shall be used; if the amount exceeds $10,000 or cannot be readily determined, the parties shall each select an independent reviewer/arbitrator with experience in the subject matter in dispute. These two reviewers/arbitrators shall select the third reviewer/arbitrator. The parties shall share the costs of the arbitrator(s) and any fee imposed by AHLA to use the service. All other costs and expenses of the dispute resolution process, including actual attorneys' fees, shall be paid by the party that incurred them. The parties agree that the decision of the arbitration panel is final, binding, and not appealable. Any arbitration must occur in Lexington, Louisiana. Neither the filing of a dispute nor participation in the dispute resolution process pursuant to this Section 10.6 shall constitute grounds for the termination of this Agreement. (Emphasis added).

(See Contract, 10.6, Exhibit "A"). Here, the choice to arbitrate is expressed contractually, the scope of what to arbitrate is exceedingly broad ("any claim or dispute"), and the legislature and our Supreme Court have dictated that the choice to arbitrate is binding on the parties. See La. Rev. Stat. 9:4201; *Mack Energy Co. v. Expert Oil & Gas, L.L.C.*, 159 So.2d at 441.

In fact, the parties mutually agreed to arbitrate contractual disputes three more times, underscoring their intent to be contractually bound to arbitrate any and all disputes. The Contract expired on December 31, 2012, with options for limited renewals. The Contract was renewed by both parties on December 31, 2012, for a term ending March 31, 2013 ("Amendment 1"). On that date, Amendment 2 was signed extending the Contract until December 31, 2013. The last extension, Amendment 3, expired on March 31, 2014, and was not renewed. (See Amendments 1, 2, and 3 attached, *in globo*, as Exhibit "C").

None of the three subsequent amendments modified or eliminated the Arbitration Provision. (See Amendments, Exhibit "C"). In fact, Amendments 1, 2 and 3 provide that "[e]xcept as modified herein, the Contract shall remain in full force and effect." See *Dufrene v. HBOS Mfg., LP*, 03–2201, p. 2 (La. App. 4 Cir. 4/7/04), 872 So.2d 1206, 1209) (quoting *Woodson Const. Co. v. R.L. Abshire Const. Co.*, 459 So.2d 566, 569 (La. App. 3 Cir.1984)) (the jurisprudence "allow[s] an arbitration agreement to apply if 'an arbitration clause is incorporated by reference to another written contract'"). Thus, the arbitration provision in the Contract is valid and enforceable.

Furthermore, the arbitration clause must be enforced against Donelon as it would be enforced against the La. Healthcare CO-OP. Donelon, as the Rehabilitator, is vested with the title to all

property and contracts of the Healthcare CO-OP as of the date of the order directing rehabilitator liquidation. La. Rev. Stat. 22:2008(A). Thus, he is vested with title to the Contract and its terms are enforceable against him just as they would be against the Healthcare CO-OP.

B. Claims Here Arise Out Of and Relate to the Contractual Obligations and the Louisiana Supreme Court Construes "Broad Scope Clause" To Favor Arbitration.

La. Rev. Stat. 9:4201 provides:

> A provision in any written contract to settle by arbitration a controversy thereafter **arising out of the contract**, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. (Emphasis added).

Thus, after it is established that there is a valid agreement to arbitrate, the court must then determine whether the claims at issue fall under the scope of the arbitration clause. Here, there is no doubt that the disputes at issue are covered by Section 10.6 of the Contract, which provides that the parties "agree that any claim or dispute arising under, or relating to this Agreement shall be resolved through this dispute resolution process." (See Contract, 10.6, Exhibit "A").

In both petitions, the Healthcare CO-OP alleges that Beam breached the Contract and that the breach amounted to gross negligence. (See Petition, ¶¶ 37, 51-69, Exhibit "E" and Supplemental Petition, ¶¶ 41, 54-73, Exhibit "F"). In ¶ 56 of the Petition and ¶ 59 of the Supplemental Petition, Healthcare CO-OP alleges that Beam "failed to meet its contractual obligations owed to Healthcare CO-OP, and breached its obligations and warranties set forth in the Agreement . . ." Healthcare CO-OP alleged that "[t]he numerous failures of Beam Partners to perform its obligations owed to Healthcare CO-OP constitute gross negligence, if not a conscious disregard for the best interests of Healthcare CO-OP . . ." (See Petition, ¶ 57, Exhibit "E" and Supplemental Petition, ¶ 60, Exhibit "F"). Healthcare CO-OP reiterated in subsequent paragraphs that Beam breached contractual duties, making it negligent.

Notably, the Healthcare CO-OP improperly casts the breach of contract claim as "gross negligence," when, in fact, it merely restates the breach of contract allegation. Nevertheless, the claim for alleged gross negligence must be arbitrated because, irrespective of how the claims are characterized, they fall under the scope of the clause. That agreed-upon arbitration clause requires that all claims "arising under, or relating to this Agreement shall be resolved through this dispute resolution process."

Even if there were doubt regarding whether the claims arose from the contractual obligations, which there is not, arbitration is still favored. As the Louisiana Supreme Court stated:

> . . . even when the scope of an arbitration clause is fairly debatable or reasonably in doubt, the court should decide the question of construction in favor of arbitration. The weight of this presumption is heavy and arbitration should not be denied **unless it can be said with positive assurance that an arbitration clause is not susceptible of an interpretation that could cover the dispute at issue.** Therefore, even if some legitimate doubt could be hypothesized, this Court, in conjunction with the Supreme Court, requires resolution of the doubt in favor of arbitration. (Emphasis added).

Aguillard v. Auction Mgmt. Corp., 908 So.2d at 18 (determining that the scope of any arbitration agreement should be considered broad). In this case, the broad language in the Arbitration Clause coupled with the holding in *Aguillard* requires that the parties be ordered in binding arbitration.

With a valid agreement to arbitrate and a broad-scope arbitration clause encompassing the claims at issue, the burden of proof shifts to the party opposing the exception "to show its claims [fall] outside the arbitration clause." *Saavedra v. Dealmaker Developments, LLC*, 08–1239 (La. App. 4 Cir. 3/18/09), 8 So.3d 758. Here, the Healthcare CO-OP will not be able to do so because but for the obligations created in the Contract, the Healthcare CO-OP would have no basis to assert any claims against Beam. Thus, this Court is required to either dismiss this suit as premature or, alternatively, stay the proceedings regarding these parties and send them to arbitrate.

C. Arbitration between the Healthcare CO-OP and a Former Consultant Is Not Prohibited by the Louisiana Uniform Insurers Liquidation Law, the Louisiana Binding Arbitration Law, or the Order of Rehabilitation and Injunctive Relief Rendered in *James J. Donelon, Commissioner of Insurance for the State of Louisiana v. Louisiana Health Cooperative, Inc.*, Civ. No. 641928, 19th JDC, State of Louisiana.

Although Donelon, as the Rehabilitator for the Healthcare CO-OP, has the authority to take legal action to pursue remedies available to the Healthcare CO-OP, there is no statutory requirement that any suits filed by the Healthcare CO-OP against a non-insurer must be adjudicated in state court in contravention of an arbitration agreement between the parties. The only provision in Louisiana's Uniform Insurers Liquidation Law ("LUILL") that specifically limits jurisdiction is when filing for injunctive relief:

> The court shall have jurisdiction over matters brought by or against the Department of Insurance or the commissioner of insurance, at any time after the filing of the petition, to issue an injunction restraining such insurer and its officers, agents, directors, employees, and all other persons from transacting any insurance business or disposing of its property until the further order of the court. . .

La. Rev. Stat. 22:2006. In addition, the venue provision of the LUILL states that

> An action under this Chapter brought by the commissioner of insurance, in that capacity, or as conservator, rehabilitator, or liquidator **may** be brought in the Nineteenth Judicial District Court for the parish of East Baton Rouge or any court where venue is proper under any other provision of law. (Emphasis added).

La. Rev. Stat. 22:2004(A). If it was the legislative intent that all proceedings, including those that are derivative of the injunction for rehabilitation, be adjudicated in state court, the word "shall" would have been used instead of "may."

In addition, there are no statutory prohibitions in the Louisiana Binding Arbitration Law that apply here. The exclusions to arbitration are provided as follows:

> Nothing contained in this Chapter shall apply to contracts of employment of labor or to contracts for arbitration which are controlled by valid legislation of the United States or to contracts made prior to July 28, 1948.

La. Rev. Stat. 9:4216.

Lastly, the Permanent Order of Rehabilitation and Injunctive Relief issued by this Court is silent as to mandated venues for derivative or collateral suits. (See Order, Exhibit "D"). Because there are no statutory exceptions under these circumstances, this Court should order arbitration because it is mandated by the Louisiana Binding Arbitration Law and the parties' contract to arbitrate.

II. Proceedings against Beam Should Be Dismissed or, in the Alternative, Stayed.

As stated *supra,* this matter is governed by the Binding Arbitration Law, La. Rev. Stat. 9:4201 *et seq*. It is axiomatic that the starting point for the interpretation of a statute is the language of the statute itself. *International River Center v. Johns-Manville Sales Corporation*, 02-3060 (La. 12/3/03), 861 So.2d 139, 141. Where suit is brought prior to the invocation of the arbitration clause, as was done in this case, La. Rev. Stat. 9:4202, entitled "Stay of Proceedings Brought in Violation of the Arbitration Clause," applies:

> If any suit or proceedings be brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which suit is pending, upon being satisfied that the issue involved in the suit or proceedings is referable to arbitration under such an agreement, **shall** on application of one of the parties stay the trial of the action until an arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with the arbitration.

(Emphasis added). Thus, once a party applies for a stay (pending arbitration), and shows (1) that there is a written arbitration agreement, and (2) the issue is referable to arbitration under that arbitration agreement, as long as that party is not in default in proceeding with the arbitration, the court shall stay the trial of the action in order for arbitration to proceed.

The failure of a party to arbitrate in accordance with the terms of an agreement "may be raised either through a dilatory exception of prematurity demanding dismissal of the suit *or* by a motion to stay the proceedings pending arbitration." *Long v. Jeb Breithaupt Design Build Inc.*, 4 So.3d at 935 (emphasis in original); *Cook v. AAA Worldwide Travel Agency*, 360 So.2d 839, 841 (La. 1978); *O'Neal v. Total Car Franchising Corp.*, 44,793 (La. App. 2 Cir.12/16/09), 27 So.3d 317, 319.[2] When the issue is raised by the exception of prematurity, the party pleading the exception ". . . has the burden of showing the existence of a valid contract to arbitrate, by reason of which the judicial action is premature." *Id.* Beam has met this burden.

Once the existence of a valid contract to arbitrate has been established, Louisiana courts have sustained the defendant's exception and dismissed the plaintiff's suit. See *Tresch v. Kilgore*, 2003-0035 (La. App. 1 Cir. 11/7/03), 868 So.2d 91, citing *Ciaccio v. Cazayoux*, 519 So.2d 799 (La. App. 1 Cir. 1989); see also La. Code Civ. Proc. art. 933.

Alternatively, should the Court decline to dismiss the claims against Beam, Beam prays that this Court stay the proceedings pending arbitration in accordance with the mandates of La. Rev. Stat. 9:4202.

CONCLUSION

As noted by the Louisiana Supreme Court, the Binding Arbitration Law "makes clear that the only two issues with which the trial court may concern itself are (1) whether there is a dispute as to the making of the agreement and (2) whether a party has failed to comply with the agreement. If the trial court determines that those two facts are not in issue, the court 'shall issue an order directing the parties to proceed to arbitration.'" *International River Center v. Johns-Manville Sales Corp.*, 861 So.2d at 142. In this case, the Contract is valid and the claims in this suit fall under the scope of the agreed upon arbitration clause. Pursuant to the Binding Arbitration Law, the choice of the parties to arbitrate is binding.

Beam respectfully urges this Court to maintain this exception and dismiss the claims against Beam. Alternatively, Beam prays that this Court grant its motion to stay all proceedings against it in this action until arbitration between the parties has been convened and completed.

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[2] A dilatory exception is an option because the objection of prematurity raises the issue of whether the judicial cause of action has yet to come into existence because some prerequisite condition has not been fulfilled. *Armand v. Lady of the Sea General Hosp.*, 11–1083 (La. App. 1 Cir.12/21/11), 80 So.3d 1222, 1225–26, *writ denied*, 12–0230 (La.3/30/12), 85 So.3d 121.

Respectfully submitted,

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Attorneys for Beam Partners, LLC

PLEASE SERVE:

JAMES J. DONELON
Commissioner of Insurance, Rehabilitator
Louisiana Health Cooperative, Inc.
Through His Counsel of Record:
J.E. Cullens, Jr.
12345 Perkins Road, Bldg. One
Baton Rouge, LA 70810

CERTIFICATE OF SERVICE

I hereby certify that a coy of he above and foregoing pleading has been served upon all known counsel of record by email, facsimile and/or by placing same in the U.S. Mail, properly addressed and postage prepaid, this 17th day of February, 2017.

FREDERIC THEODORE LE CLERCQ

FILED
EAST BATON ROUGE PARISH, LA
2017 FEB 22 PM 12:54
DEPUTY CLERK OF COURT

CERTIFIED TRUE AND
CORRECT COPY
MAY 02 2017
East Baton Rouge Parish
Deputy Clerk of Court

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Management and Development Agreement

By and between Beam Partners LLC

And the

Louisiana Health Cooperative, Inc.

This Management and Development Agreement ("Agreement") is made as of the Effective Date, by and between Beam Partners LLC, a Georgia Limited Liability Company, having its principal office at 2451 Cumberland Parkway, Suite 3170, Atlanta, GA 30339 ("Developer") and the Louisiana Health Cooperative, Inc., a Louisiana nonprofit corporation located at 3445 North Causeway Blvd, Suite 301A, Metairie, LA 70002 (the "Cooperative").

Recitals

WHEREAS, the Cooperative has been organized to operate as a qualified nonprofit health insurance issuer within the meaning of Section 1322(c)(1) of the Affordable Care Act (Pub. L. 111-148) (the "CO-OP Program"), offering health insurance plans that assist providers to deliver high quality health care to citizens of the State of Louisiana; and

WHEREAS, the Cooperative has had adequate opportunity to observe the services previously provided by Developer and found them to be satisfactory; and

WHEREAS, the Cooperative approves of all activities taken on its behalf to date, including those taken by the Developer; and

WHEREAS, Developer is willing to provide or cause to be provided certain services to the Cooperative as described below and in accordance with the terms set forth below;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, it is hereby agreed as follows:

Article 1. Definitions

1.1 Applicable Law

All federal or state laws, rules, regulations, and administrative agency directives, such as Louisiana Department of Insurance or the federal Department of Health and Human Services ("HHS") Consumer Operated and Oriented Plan ("CO-OP") program requirements for loan recipients, including sub-regulatory standards such as instructions or guidelines that govern or regulate the actions of the Cooperative or Developer, as applicable.

1.2 Applicable Regulatory Agency.

Any federal agency or agency of the State of Louisiana to the extent that it has jurisdiction or authority over the parties to this Agreement or its subject matter, including but not limited to HHS and the Louisiana Department of Insurance.

1.3 Developer Affiliate

Any person or business entity that is employed by or contracts with Developer to provide services to Developer clients, including professional corporations and "S" Corporations.

EXH. "A"

1.4 Effective Date

The date this Agreement becomes effective as indicated on the signature page below.

1.5 Management and Support Services

Those services described in Section 2.1, to be supplied by the Developer and Developer Affiliates in accordance with this Agreement. The Management and Support Services shall also be referred to as the "Services."

1.6 Performance Period

The period of HHS oversight under the CO-OP Program which includes the period during which any CO-OP Program loan is outstanding plus ten (10) years.

Article 2. Description of the Management and Support Services

2.1 Types of Services

For the term of this Agreement, Developer shall make available to the Cooperative the services ("Services") identified on Exhibit 1 as the Cooperative may from time to time request. As the Cooperative's business needs change, the Cooperative and Developer shall revise the description of Services in Exhibit 1 in the manner described in Section 10.4. Administrative Services shall support the day-to-day operation of the Cooperative's business.

2.2 Personnel

Developer shall make available to the Cooperative the Services described in Exhibit 1. Developer shall assign its staff or Developer Affiliates to the Cooperative to provide such Services, and to report as appropriate directly to the Chair of the Board or President and CEO of the Cooperative or his designee, including the appropriate department head of the Cooperative, and to carry out the Cooperative's reasonable and lawful orders in connection with the furnishing of such Services. Developer Affiliates may be assigned on a part or full time basis and shall be compensated by, and shall remain as employees or consultants of Developer. Developer shall ensure that it has appropriate contracts, including confidentiality agreements and business associate agreements, with all Developer Affiliates.

2.2.1 In accordance with Section 10.4, Developer has supplied the Cooperative with a list of Developer Affiliates attached to this Agreement as Exhibit 5, as may be updated from time to time by Developer. The Cooperative may review the credentials of any proposed Developer Affiliate and his or her specific qualifications to perform the Services. The Cooperative may request that a specific Developer Affiliate discontinue services under this Agreement by providing written notice to Developer.

2.2.2 Developer warrants that its arrangements with Developer Affiliates entitle it to bill for, and receive payment for Services provided by such Developer Affiliates under this Agreement. Developer acknowledges that neither Developer nor Developer Affiliates are entitled to any employment-related benefits from the Cooperative. Without limiting the generality of the prior sentence, Developer agrees that neither Developer nor Developer Affiliates are entitled to medical, dental, health, pension or retirement, workers compensation or severance benefits from the Cooperative.

2.3 Requests for and Timing of Services

The Services shall be made available to the Cooperative in accordance with requests made by the Cooperative and shall be performed by Developer Affiliates in a reasonably prompt manner subject to the requirements of Applicable Law and Applicable Regulatory Agencies, the availability of personnel and the level of tasks generally demanded of them. The parties shall establish a project plan containing a detailed set of deliverables and due dates, attached as Exhibit 2. Time is of the essence in the performance of the Services.

2.4 Screening for Individuals Excluded from Federal Programs

Developer agrees not to employ or contract with an individual or entity that is excluded from participation in Medicare or Medicaid, or with an entity that employs or contracts with such an excluded individual or entity. Developer agrees to maintain a system of monitoring its employees and contractors to ensure compliance with this requirement.

2.5 Performance Standards for Administrative Services

Developer shall cooperate with the Cooperative to ensure that the Services performed by Developer Affiliates are in accordance with Applicable Law, consistent with the obligations of the Cooperative in its agreements to arrange for health services, including the CO-OP program, free from undue influence from pre-existing health insurance issuers and in accordance with the performance standards in Exhibit 2. The parties agree that Exhibit 2 shall be amended from time to time as the Cooperative requests specific services and the parties negotiate the performance standards applicable to each service.

Article 3. Responsibility for Oversight

The parties acknowledge that the Cooperative is overseen by and accountable to CMS as a participant in the CO-OP program and shall also be accountable to the Louisiana Department of Insurance as a licensed insurer. The Cooperative shall monitor the operational performance of all Administrative Services on an ongoing basis through regular monitoring, compliance reporting or other mutually agreed upon methods. Developer agrees to comply with the Corrective Action Procedures set forth in Article 7. The Cooperative, being at risk and having ultimate control and responsibility for the functions delegated to Developer, at all times shall have the ultimate authority with respect to all matters pertaining to the business written hereunder and to the general welfare of the Cooperative.

3.1 The Cooperative Remedy for Non-Compliance

In addition to the Cooperative's ability to request removal of an individual Developer Affiliate as described in Section 2.2, the Cooperative shall have the right to terminate this Agreement in accordance with Section 7.2, if Developer or Developer Affiliates fail to comply in a material manner with i) the Performance Standards in Exhibit 2; ii) the Standards for Arms Length Transactions in Exhibit 3; or iii) the requirements of Applicable Law.

3.2 Delegation by Developer

Developer shall not contract or subcontract responsibility for any of the Services to any entity other than an approved Developer Affiliate without first obtaining written authorization from the Cooperative, including assurances that the Cooperative has received any required regulatory approvals. If Developer contracts or subcontracts responsibility for any of the Services to other than an approved Developer Affiliate, Developer shall (i) specify that the contractor or subcontractor shall comply in a material manner with all Applicable Laws; (ii) provide for

oversight to ensure that the contractor or subcontractor complies with its obligations under the contract including exhibits, and with Applicable Law to the same extent as Developer Affiliates; (iii) ensure that the provisions of Section 2.4 apply to such contractor or subcontractor; (iv) obligate the contractor or subcontractor to maintain records and allow audits to the same extent as required by Section 3.3; and (v) provide that Developer or the Cooperative or their designees have the ability to terminate the contractor or subcontractor's responsibilities upon a determination by any of them that the Services are not being performed in accordance with this Agreement.

3.3 Record Keeping

The Cooperative shall keep records of the services provided. Developer shall keep reasonable records as evidence of the basis for its charges to the Cooperative and to document its performance of the Services, including whether and the extent to which it met the Performance Standards in Exhibit 2. Unless applicable statutes or regulations require a longer time period, Developer shall retain and maintain such records and any related contracts for the period in Section 3.4, below.

3.4 Applicable Regulatory Agency Audits and Direct Access

Developer shall allow the Cooperative access upon reasonable notice and at reasonable times to examine records related to the performance of the Services, including books, contracts, medical records, patient care documentation and other records related to the Services performed pursuant to this Agreement. Developer agrees to cooperate with any audit request by an Applicable Regulatory Agency, including allowing access by the Comptroller General and HHS, the General Accounting Office or their designees with jurisdiction over the subject of this Agreement, including permitting on site audits and providing books and records to such government agencies directly or through the Cooperative until the end of the Performance Period or, if later, from the date of completion of any audit, evaluation or inspection, unless HHS determines that there is a special need for retaining the records and gives notice at least 30 days before the normal disposition date; or if: i) the Cooperative has terminated participation in the CO-OP Program; ii) an allegation of fraud or other fault has been made involving the Developer, then for six (6) years following the final resolution of the termination, dispute, fault or fraud allegation.

3.5 Data Submission

If Developer submits data to any Applicable Regulatory Agency on behalf of the Cooperative, Developer will certify to the Cooperative regarding the accuracy, completeness, and truthfulness of the data and acknowledge that the data submitted on behalf of the Cooperative will be used for purposes of obtaining Federal reimbursement.

3.6 Obligation to Report Noncompliance

Developer shall submit a written report to the Cooperative within thirty (30) calendar days of Developer's knowledge of any and all civil judgments and other adjudicated actions or decisions against Developer related to the delivery of any healthcare item or related service (regardless of whether the civil judgment or other adjudicated action or decision is the subject of a pending appeal).

Article 4. Health Data Security and Privacy

4.1 Confidential Health Information

All health data or related information, whether stored electronically or on paper, about individuals enrolled in the Cooperative plans, prospects, members, employees, providers and others is Confidential Information and subject to the terms of this Agreement. Developer shall, and shall require all Developer Affiliates and others providing Services under this Agreement to treat all Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 "HIPAA") and all related provisions, standards, policies, rules and regulations, as proposed and adopted from time to time, with the same care as they protect their own confidential information and in accordance with all applicable Federal and state laws and regulations, and specifically in accordance with HIPAA.

4.2 HIPAA Compliance and Business Associate Agreement

The parties agree that to the extent that Protected Health Information is disclosed to Developer or Developer Affiliates, the receiving party will adhere to the health data and information privacy policies and standards as may be promulgated under HIPAA in final form, and as deemed to be effective and applicable, as well as with any and all applicable health data or information privacy and security standards, rules, regulations and laws of the United States or of any states where the parties conduct business, including without limitation any Cooperative privacy and security standards applicable to Developer's operations. The parties further incorporate by reference, as if fully stated herein, the Business Associate Addendum by and between the Cooperative and Developer, attached hereto as Exhibit 4 and the Data Security Addendum attached as Exhibit 7.

4.3 Return of Health Information

Consistent with the terms of the Business Associate Addendum, upon the termination of this Agreement, for whatever cause or reason, Developer shall and shall ensure that Developer personnel and contractors, promptly return to the Cooperative or its designated representative or destroy, all Protected Health Information except for programs, documents and materials confidential to Developer. The terms, provisions and representations contained in this Article shall survive the termination of this Agreement. Nothing in this Section 4.3 is intended to conflict with the recordkeeping requirements in Section 3.3.

4.4 Protection of Developer Proprietary Information

The Cooperative agrees that it will be exposed to information that is non-public, confidential and/or proprietary in nature such as financial, technical, process or other business information including processes and proprietary software that was developed by and is the pre-existing property of Developer (the "Confidential Information"). The Cooperative further acknowledges that the Confidential Information has or may have competitive value in the market. Developer desires to preserve and protect the confidential nature of the Confidential Information. The Cooperative acknowledges that disclosure of the Confidential Information would cause Developer substantial and irreparable harm. The Cooperative agrees to receive and hold all such Confidential Information in confidence, whether presented in oral, electronic or written form and to use it only for the purpose of performing the Services or evaluating the Services, irrespective of whether the information independently qualifies as entitled to legal protection. The Cooperative shall not, without the prior written consent of Developer, sell, market or disclose (directly or indirectly, in whole or in part) Confidential Information to any third person, firm, corporation, entity or association, or take any action or make any disclosure that permits any third person, firm, corporation, entity or association to use or benefit from such Confidential Information. The Cooperative further agrees to adhere to, and fully comply with, any additional

restrictions or limitations as may be specifically indicated on the disclosed documents or information, or as may be otherwise communicated in writing by Developer or its representative. Such additional restrictions or limitations, or the lack thereof, on any documents or information disclosed by Developer shall not negate in any way the general requirements of this Agreement.

Article 5. Charges for Services

5.1 Payment to Developer. As consideration for the Administrative Services to be provided under this Agreement, the Developer shall bill Cooperative, and Cooperative shall pay Developer weekly at the payment rate set forth in Exhibit 5 on or before 10 business day following receipt of each invoice.

Developer represents and warrants that Developer is an independent contractor and therefore no taxes will be withheld from payments made under this Section. Developer understands and agrees that it will be responsible for any and all federal, state and local taxes, if any, owed on such fees or for Services provided by Developer and Developer Affiliates.

5.2 Developer Expenses

The Cooperative shall pay the reasonable expenses of the Developer and Developer Affiliates, if: i) Developer submits expense reports documenting the expenses; ii) all expenses incurred are consistent with the Cooperative's policies, e.g., travel policies; and iii) the expenses are either prior-approved by the Cooperative or provided for in the Cooperative's budget.

5.3 Member Hold Harmless. Developer agrees that it shall not hold members liable for fees that are the responsibility of the Cooperative. Developer agrees that in no event, including, but not limited to, nonpayment by the Cooperative, the Cooperative's insolvency, or breach of the Agreement with Developer, shall Developer, or its subcontractors, bill, charge, or collect a deposit from, seek compensation, remuneration, reimbursement or payment from, or have recourse against, members for covered services provided pursuant to this Agreement.

5.4 Federal Funds. Developer acknowledges that payments made under this Agreement shall be made, in whole or in part, with federal funds.

Article 6. Responsibility

6.1 Relationship of Parties

Nothing in this Agreement shall be construed as (a) an assumption by Developer of any obligation or legal duty of the Cooperative; (b) a guarantee of the success of the Cooperative's operations; (c) an assumption by Developer of any financial obligation of the Cooperative; (d) the creation of any relationship of employment between the Cooperative and employees or consultants of Developer, Developer Affiliates or associated companies; (e) an assumption by Developer of any responsibility for the work performed by outside suppliers employed by the Cooperative at the suggestion or recommendation of Developer; or (f) the delegation of any function or authority of the Cooperative to Developer or any Developer Affiliate; it being understood that Developer will make recommendations and offer advice pursuant to this Agreement, but that all decisions with respect thereto and otherwise shall be and remain dependent upon appropriate action of the Board of Directors or the authorized officers of the Cooperative.

6.2 Compliance with Developer Agreements and Applicable Law

The Cooperative shall negotiate and administer all agreements with employers, subscribers, providers and health insurance exchanges. The Cooperative maintains ultimate responsibility for complying with the terms of is agreements. Nothing in this Agreement shall be construed to terminate or modify the obligations of the Cooperative set forth in its agreement with any employer, subscriber, provider or health insurance exchange.

6.3 Ownership of Technology

Except as agreed by the parties for innovations related to Services performed specifically for the Cooperative, any patents, copyrights, trade secrets or other property rights arising out of work performed by Developer or Developer Affiliates that is shared with, used for or used by the Cooperative or licensed to the Cooperative shall be the sole property of Cooperative.

Article 7. The Cooperative Monitoring and Oversight

The Cooperative shall be responsible for monitoring the performance of Developer and Developer Affiliates on an ongoing basis to verify that the performance standards applicable to the Administrative Services as set forth in Exhibit 2 are being met.

7.1 CAP Procedure

If the Cooperative determines, in its sole reasonable discretion, that Developer is not performing a Service in accordance with Applicable Law, this Agreement including Exhibits, or the Cooperative policies, procedures or interpretations, the following procedures shall apply:

A. The Cooperative shall issue a corrective action request ("CAR") to Developer;

B. Upon receipt of the CAR, Developer must: (i) if reasonable and possible, take immediate action if such is indicated in the CAR, (ii) submit to the Cooperative a corrective action plan ("CAP"), within thirty (30) business days (unless otherwise specified in the CAR) that includes specific time frames for achieving compliance;

C. Developer shall immediately implement the CAP, provided that the Cooperative may reject (or amend) a CAP if it reasonably determines that such CAP is inadequate. If the Cooperative rejects a CAP, the Cooperative and Developer shall work together to develop a mutually agreeable CAP. The Cooperative may, at the Cooperative's expense, audit Developer to determine Developer's compliance with the CAP;

D. If the parties cannot reach agreement on a CAP or in the event of repeated noncompliance with any provision of a CAP, then the Cooperative, may in addition to any other remedy provided hereunder, revoke delegation of one or more Services that are the subject of the CAR, identify a third party to perform such Service or assume responsibility for performing the Service subject to the approval of any Applicable Regulatory Agency.

If Developer fails to comply with a CAP or notifies the Cooperative that it has determined that it is unable to comply with a CAP, then the Cooperative, in its sole discretion may take one or more of the following actions:

(a) amend the time to comply with a CAP;

(b) increase the frequency of review and audits;

(c) provide Developer with the Cooperative's resources to perform functions necessary to comply; or

(d) revoke any or all Services upon written notice to Developer.

7.2 Immediate Revocation of Services

The Cooperative may revoke any Service immediately upon notice if:

(a) The Cooperative reasonably determines that Developer or Developer Affiliate(s), in performing the Services, threatens the health or safety of a member, or fails to comply with Applicable Law, or may subject the Cooperative to regulatory or legal actions or adverse actions from any Applicable Regulatory Agency or accreditation agency;

(b) As a direct result of Developer's performance of any Service, an Applicable Regulatory Agency acts or threatens to act to: issue an adverse finding against the Cooperative; revoke the Cooperative's license; or terminate any contract with the Cooperative; or impose any sanction or fine; or

(c) two (2) consecutive CARs fail to result in Developer achieving substantial compliance with the Cooperative's requirements for the Service.

Article 8. Term and Termination

8.1 Term

This Agreement shall become effective on the Effective Date and shall remain in full force and effect ending at 11:59 on December 31, 2012, unless sooner terminated in accordance with this Article 8. This Agreement may be renewed for one three month period ending on March 31, 2013 (the Renewal Term). If the Cooperative will not renew the Agreement for the Renewal Term, the Cooperative shall give the Developer fifteen (15) days prior written notice.

Thereafter, this Agreement may be renewed for specific Services and specific intervals at the request of the Cooperative ("Extended Terms").

8.2 Termination for Material Breach

Either party for a Material Breach by the other party may terminate this Agreement. Material Breach shall be defined as (a) non-payment by the Cooperative of any amounts due under this Agreement; (b) the occurrence of an event causing immediate revocation in accordance with Section 7.2; (c) Developer's failure to comply with Section 2.4; (d) Developer's failure to provide Services in accordance with Applicable Law or this Agreement or to complete a CAP in accordance with Section 7.1; (e) the Cooperative's loss of a license necessary to operate or loss of recognition as a qualified nonprofit health insurance issuer; (f) a party becoming insolvent, making a general assignment for the benefit of creditors, suffering or permitting the appointment of a receiver for its business or its assets, or availing itself of, or becoming subject to, any proceeding under federal bankruptcy laws or any state laws relating to insolvency or the protection of rights of creditors; or (g) this contract is required to be revoked because an Applicable Regulatory Agency with jurisdiction over the matter determines that Developer has not performed satisfactorily.

The non-defaulting party may terminate this Agreement for Material Breach by the other party by giving written notice of the reason for termination and effective date for termination. If the

reason for termination is (a), (c) or (d) the non-defaulting party shall allow the defaulting party a reasonable period to cure the default.

8.3 Termination Obligations

Upon termination of this Agreement, there shall be no further liability on the part of Developer or the Cooperative, except for payments owed by the Cooperative to Developer pursuant to this Agreement including (i) all payments for Services provided during any notice period prior to such termination, and (ii) any costs associated with the termination and resulting transition of the Cooperative's business; and (iii) the obligations that survive termination pursuant to Section 8.4. Developer shall cooperate fully and use its best efforts to support the transition of data and any work-in-process to the Cooperative or its designee.

8.4 Obligations that Survive Termination

The following obligations survive termination or non-renewal of this Agreement for any reason:

- Section 2.2.2;
- Section 3.3;
- Section 3.4;
- Article 4;
- Section 5.1;
- Section 5.2;
- Section 5.3;
- Section 6.3
- Section 8.3;
- Section 8.4;
- Section 10.5; and
- Section 10.6.

Article 9. Notices

9.1 Method and Addresses

Any notices required or permitted to be given pursuant to this Agreement shall be given in writing and forwarded charges prepaid, by registered or certified first-class mail, and addressed as follows:

If to the Cooperative: Chair of the Board of Directors
Louisiana Health Cooperative, Inc.
3445 North Causeway Blvd, Suite 301A, Metairie, LA 70002

If to Developer: Terry Shilling, Member
Beam Partners LLC
2451 Cumberland Parkway, Suite 3170
Atlanta, GA 30339

All notices given hereunder shall be deemed to have been received by the party addressed (a) immediately upon personal delivery, (b) within seven (7) days after notice given by registered or certified U.S. mail.

9.2 Change of Address

Either party may give written notice for a change of address in accordance with this Section and any notice or request to be given hereunder shall be forwarded to the new address so provided.

Article 10. Miscellaneous

10.1 Entire Agreement

This Agreement and Exhibits constitutes the entire agreement between the parties with respect to the services described herein to be provided by Developer to the Cooperative and supersedes all previous negotiations, commitments and writings.

10.2 Binding Nature of Agreement.

This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

10.3 Assignment

This Agreement may not be assigned in whole or in part by either party except with the prior written consent of the other party and the receipt of all approvals required by Applicable Law. Any attempt to assign this Agreement in contravention of this Section shall be void and of no effect. Notwithstanding the foregoing, Developer may assign this Agreement to a wholly owned affiliate providing services to health plans, including a private purchasing council.

10.4 Amendment

Neither this Agreement nor any of its Exhibits may be modified or amended except by a writing duly signed by the authorized representatives of the parties hereto. No amendment shall be effective until it has received any required approvals of Applicable Regulatory Agencies. Notwithstanding the foregoing, this Agreement shall be deemed automatically amended to conform to the requirements of Applicable Law.

10.5 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana.

10.6 Dispute Resolution

The parties agree that any claim or dispute arising under, or relating to this Agreement shall be resolved through this dispute resolution process. Either party may initiate the dispute resolution process by a written notice to the other and both parties shall use reasonable efforts to attempt to resolve the dispute informally and quickly. If Developer and the Cooperative are unable to resolve the dispute through informal means after a period of thirty (30) days, either may submit the dispute to arbitration using the arbitration rules of the American Health Lawyers Dispute Resolution Service [http://www.healthlawyers.org/adr], except to the extent that provisions in this Agreement supersede provisions in those rules, this Agreement shall control. If there is a readily determinable amount in dispute and it is $10,000 or less, a single arbitrator shall be used; if the amount exceeds $10,000 or cannot be readily determined, the parties shall each select an independent reviewer/arbitrator with experience in the subject matter of the dispute. The two reviewers/arbitrators shall select the third reviewer/arbitrator. The parties shall share the costs of the arbitrator(s) and any fee imposed by AHLA to use the service. All other costs and expenses of the dispute resolution process, including actual attorney's fees, shall be paid by the party that incurred them. The parties agree that the decision of the arbitration panel is final, binding and

not appealable. Any arbitration must occur in Lexington, Louisiana. Neither the filing of a dispute nor participation in the dispute resolution process pursuant to this Section 10.6 shall constitute grounds for termination of this Agreement.

10.7 Relationship of the Cooperative to Developer. The parties acknowledge that Developer provided services essential to the formation of the Cooperative and its application for CO-OP program loans. Nevertheless, it is the intent of the parties that the Cooperative and Developer operate as unaffiliated entities. Developer shall provide all Services to the Cooperative pursuant to this Agreement on an arms' length basis. It is the intention of the parties that all services provided under this Agreement shall be priced and paid at their fair market value. The provisions of Exhibit 3 are intended to contribute toward accomplishing this goal.

10.8 Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

11. List of Exhibits

Exhibit 1 – List of Services to be provided under this Agreement

Exhibit 2 – Performance Objectives for Services

Exhibit 3 – Standards for Developer's Interactions and Transactions with the Cooperative

Exhibit 4 - Business Associate Addendum

Exhibit 5 – Initial List of Approved Developer Affiliates and Corresponding Rates

Exhibit 6 – IT Security Addendum

IN WITNESS WHEREOF, the Cooperative and Developer have caused this Agreement to be executed by their respective duly authorized representatives in the manner legally binding upon them as of the date first above written.

Louisiana Health Cooperative, Inc.

By: _____

Name: Warren L Thomas

Title: Chair, Board of Directors

Date: 10/8/2012

Beam Partners LLC

By: _____

Name: Terry S. Shilling

Title: Member

Effective as of: 8/28/12

Exhibit 1

Management and Support Services to be Made Available by Beam

Development Services

- Developer shall provide the following Services to the Cooperative:
- Training and orienting the Board of Directors, as provided in Exhibit 3;
- Developing the application for State licensure, filing and working with the State Insurance Department to obtain approval of the license;
- Obtaining tax-exempt status for the Cooperative;
- Developing a network of providers that meets the network access standards for the State;
- Recruiting, verifying the credentials for and conducting initial interviews for qualified candidates for positions at the Cooperative;
- Creating processes, systems and forms for the operation for the Cooperative.
- Identifying, negotiating and executing administrative services for the operation of the Cooperative.

Management Services

Per the request of the Cooperative, Beam shall arrange Management Services to support the following functions:

Function	Ending date, unless extended
Chief Executive Officer – Overall Plan Management and advice concerning strategic direction	12/31/12
Chief Financial Officer and Head of Finance – Overall financial management, planning, reporting	12/31/12
Head of Member and Group Services – Member enrollment, public education and advice concerning strategic direction	12/31/12
Compliance Support – Guidance concerning the requirements of Applicable Law and Applicable Regulatory Agencies	12/31/12
Head of Clinical Care - Benefit development, Pharmacy Plan Management and advice concerning strategic direction	12/31/12
Head of Operations and Information Technology - Coordinates the internal	12/31/12

operations of the Plan	
Head of Provider Relations/Network Development – Network management services, including strategic direction, network adequacy and provider relations initiatives.	12/31/12
Project Management – specific projects as needed	12/31/12
Other functions, as requested by the Cooperative	12/31/12

Support Services:

- Board orientation and training
- Vendor Oversight – Business Process Organization (BPO), Pharmacy Benefits Manager (PBM) or other delegated services
- HCC Analysis, both prospective and retrospective
- Other functions, as agreed to by the parties

Reporting Requirements

As part of each request for Services, Beam and the Cooperative shall agree on the reporting requirements to accompany such Services. At a minimum, the reporting shall be sufficient to allow the Cooperative to provide oversight to the Cooperative in the performance of any delegated functions.

Exhibit 3

Standards for Arms' Length Transactions Between Developer and the Cooperative

It is the intent of the parties that they conduct their interactions in accordance with the principles and procedures in this document. The purpose of this document is to establish a set of principles, procedures and standards for interactions that will protect the Cooperative from being dominated by Developer and to protect Developer from the appearance of impropriety in its interactions with the Cooperative. The parties fully expect that these principles and procedures will, over time result in an arms' length relationship between the parties. For purposes of this Exhibit 3, references to the "Cooperative" include the Cooperative's governing Board and senior level staff.

1) Developer will perform all tasks assumed under the Agreement and will ensure that it structures its tasks to push progress reports and data to the Cooperative at regularly scheduled intervals and logs all responses and feedback received from the Cooperative.

2) In addition to "push reports", Developer will structure its projects using its web-based tracking system and will allow access to its tracking reports related to the Cooperative to Directors and individuals at the Cooperative responsible for monitoring the Services.

3) Developer will provide the Cooperative with all information requested concerning the performance and activities of the Cooperative, individually and on a comparative basis with other Cooperatives. Examples of such information include information about the fair market value of any component of the Services, accepted industry performance standards for measuring the performance of the Services.

4) Developer will provide the Cooperative with complete, accurate and truthful information about its performance to the best of Developer's knowledge.

5) Developer will maintain complete, accurate and detailed records of its performance of the Services.

6) If Developer is aware of additional information not requested by the Cooperative that is typically requested or required or helpful to assist the Cooperative to analyze its performance, Developer will volunteer that information to the Cooperative.

7) To ensure Directors' active and knowledgeable participation in the oversight of the Cooperative, Developer will make available a detailed orientation for all Directors, including the Directors' duties of care, loyalty and obedience to Applicable Law, the Cooperative's formation documents, the requirements for the CO-OP program, work plan for 1/1/2014, the milestones, how reporting will occur and how to access the tracking system.

8) In addition to the general overview, Developer will begin to train the Directors on the compliance issues the Cooperative will face and its obligations under Applicable Law.

9) Developer acknowledges that Directors, in the exercise of their duty of proper care, will periodically audit Developer's records related to the Services. Developer shall cooperate fully with audits by Directors or Cooperative staff, whether performed directly or conducted by an agent of the Cooperative. Notwithstanding the foregoing, Developer shall be entitled to require any auditor to agree to maintain the confidentiality of records and proprietary information it encounters as a result of the audit.

10) Developer shall and shall require all individuals providing Services through Developer, including subcontractors, to disclose potential conflicts with the Developer, the Cooperative or its executives or Directors. Developer shall document all such disclosed potential conflicts and maintain the documents accessible to the Directors. Individuals with conflicts shall be prohibited from participating in discussions on matters related to the conflict. For example, if Developer's staff member owns an interest in a printing company, this interest shall be disclosed and the staff member shall be prohibited from participating in discussions concerning the selection of the printer – whether the discussion relates to selection of the printer by Developer or by the Cooperative.

11) Developer shall accurately record and clearly report the costs to the Cooperative for providing the Services. Developer will provide the report in such format and with such frequency as the Board shall request.

Exhibit 4

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("Addendum") is effective as of August 28, 2012 and by and between Louisiana Health Cooperative, Inc. ("Cooperative") and Beam Partners LLC ("Developer").

Developer understands that as a result of the services that Developer will provide to Cooperative under the Services Agreement, that Developer is a Business Associate of Cooperative as that term is defined by Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq. ("HIPAA").

Developer hereby agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq. as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH") and the regulations promulgated thereunder including the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164 (the "Privacy Rules"), and the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164 (statute and regulations, as any of these are amended from time to time, hereafter collectively referred to as "HIPAA") as they apply to Protected Health Information and electronic forms of Protected Health Information (collectively, "PHI") (as defined in 45 C.F.R. 164.501) provided or made available to Developer by Cooperative or created by Developer in the course of its services on behalf of Cooperative. These requirements are described below.

1. GENERAL PROVISIONS

1.1 Effect. Any ambiguity in this Addendum or between this Addendum and the contract with Developer, or between this Addendum and the Services Agreement shall be resolved to permit Cooperative to comply with HIPAA.

1.2. Change in Law/Amendment. Developer agrees to take such action as is necessary to amend this Addendum from time to time as is necessary to permit either party to comply with the requirements of HIPAA or other applicable laws or regulations.

1.3 Definitions. All capitalized terms used herein and not otherwise defined in this Addendum shall have the meanings established in HIPAA.

1.4 Responsibility for Developer Staff. Developer agrees to take all reasonable steps to educate its employees and other agents about the obligations of this Business Associate Agreement. In addition, Developer agrees to supervise its employees and other agents who have access to PHI through their work on behalf of Developer or their exposure to Cooperative documents and data to ensure that the obligations of this Business Associate Agreement are fulfilled by each such employee or agent.

2. OBLIGATIONS OF BUSINESS ASSOCIATE ASSUMED BY DEVELOPER

2.1 Prohibition on Unauthorized Use or Disclosure. Developer agrees that it shall not, directly or indirectly, use or disclose or permit its staff to use or disclose PHI provided, obtained from or otherwise made available by Cooperative (including through Developer) for any purpose other than as expressly permitted or required by this Addendum or as required by HIPAA or other applicable law.

2.2 Use and Disclosure of PHI Under Addendum. Except as otherwise limited in this Addendum, Developer is permitted to use and/or disclose PHI it creates or receives from or on behalf of Cooperative for the following purpose(s): management and administrative services as set forth in and consistent with its obligations in the Services Agreement, provided that such use or disclosure would not violate HIPAA if done by Cooperative.

2.3 Use of PHI for Management, Administration and Legal Responsibilities. Developer may use and/or disclose PHI if

2.3.1 the use is for (a) the proper management and administration of the Developer / Business Associate or to carry out the legal responsibilities of Business Associate, or (b) to provide data aggregation services relating to the health care operations of Cooperative if such services are required under the Services Agreement; or

2.3.2 the disclosure is for the proper management and administration of Developer or to carry out the legal responsibilities of Developer, provided (i) the disclosure is Required by Law; or (ii)(A) Developer obtains reasonable assurances from the person or entity to whom PHI is disclosed that PHI will be held confidentially and used or further disclosed by such person or entity only as Required by Law or for the purpose(s) for which it was disclosed to such person or entity; and (B) the person or entity to whom PHI is disclosed will use all appropriate safeguards to prevent the use or disclosure of PHI; and (C) the person or entity to whom PHI is disclosed immediately notifies Cooperative upon learning of any breach of the confidentiality of such PHI.

2.4 Safeguards. Developer shall establish, implement, use and maintain administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of and to prevent non-permitted use or disclosure of the PHI, including, without limitation: red flag compliance policies, encrypting and securing PHI in accordance with the HHS "Guidance Specifying Technologies and Methodologies that Render Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals", establishing appropriate policies and procedures (and informing Cooperative of the same upon request) to ensure the privacy and security of all PHI disclosed to Developer or received, created, maintained or transmitted by Developer on behalf of Cooperative.

2.5 Mitigation. Developer shall have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of PHI in a manner contrary to this Addendum or HIPAA, including notifying persons whose unsecured PHI is inappropriately disclosed, as required by applicable law. Developer shall develop and implement a system of meaningful sanctions for any employee, subcontractor or agent of Developer who violates this Addendum or HIPAA.

2.6 Reports of Improper Use or Disclosure. Developer shall report to Cooperative within five (5) business days of Developer's discovery, any use or disclosure of PHI not provided for or permitted by this Addendum by Developer or any of its officers, directors, employees, contractors or agents, whether or not such disclosure compromises the security or

privacy of any PHI. In addition, Developer shall report to applicable regulatory agencies when and as required by applicable law.

The report shall be in writing, giving notice, of the possible breach, when discovered and shall include a risk assessment of whether or not a breach occurred as a result of the improper acquisition, access, use or disclosure of PHI. If the disclosure compromises the security or privacy of the PHI, in other words, the disclosure imposes a significant risk of financial, reputational or other harm to the individual, a breach has occurred. The disclosure shall include all information necessary to allow the Cooperative to make a legally sufficient disclosure to affected individuals.

Factors the Business Associate should consider in the risk assessment include: (a) who used the PHI; (b) who received the PHI; (c) whether the disclosure was to a covered entity or business associate of a covered entity; (d) whether evidence indicates that the PHI was accessed; (e) the nature of the information disclosed; and (f) whether the business associate was able to take immediate steps to mitigate the harm.

The risk assessment must be fact specific and documented with the factors considered to support the conclusion of whether or not a breach occurred. The report shall also include any other information to allow the covered entity to determine if it will give notice to the individual(s). If Developer or a Developer agent causes or permits the breach, Developer shall be responsible for the cost of the notice to the individual(s). A possible breach is discovered on the first day Developer knows of the possible breach or would have known had it exercised reasonable diligence.

2.7 Records. Developer shall maintain records of PHI received from, or created or received on behalf of, Cooperative and shall document subsequent uses and disclosures, except for (i) uses and disclosures for treatment, payment or healthcare operations; (ii) uses and disclosures pursuant to a valid authorization from an Individual; or (iii) uses and disclosures otherwise excepted from the accounting requirement (see 45 C.F.R. 164.528) under HIPAA, made by Developer. Developer shall upon request provide Cooperative with immediate access to examine and copy such records and documents of Developer during normal business hours.

2.8. Secure Destruction. Developer shall securely destroy all PHI. The valid destruction practice for paper, film or other hard copy media is to shred or destroy in such a way that the PHI cannot be read or otherwise reconstructed. Electronic media must be cleared, purged or destroyed so that PHI cannot be retrieved consistent with NIST Special Publication 800-88 (available at http://www.csrc.nist.gov).

2.9 Agreements with Third Parties. Developer shall enter into and maintain an agreement with each agent and subcontractor that has or will have access to PHI under which agreement the agent or subcontractor is legally bound by the same restrictions with respect to PHI that apply to Developer pursuant to this Addendum. Developer agrees to provide Cooperative with advance notice of any arrangement that involves sharing of PHI with a subcontractor or delegate, and an opportunity to approve the delegation / subcontracting arrangement. Developer agrees to permit Cooperative, upon reasonable request, to review and inspect all such subcontracts with subcontractors and agents in order to confirm Developer's compliance with this Addendum. Developer further agrees that it will disclose to its subcontractors, agents or third parties, and request from Cooperative, only the minimum

necessary PHI to perform or fulfill a specific function required or permitted under such subcontracts. Nothing in this Section 2.7 shall supersede Sections 1 and 5 of the Services Agreement.

2.10 Accounting of Disclosures. Within fifteen (15) calendar days of receipt of notice from Cooperative that it has received a request for an accounting of disclosures of PHI in accordance with HIPAA, Developer shall provide to Cooperative the information in Developer's possession that is required for the accounting required by 45 C.F.R. 164.528(b) and (c). At a minimum, Developer shall provide Cooperative with the following information for each disclosure: (i) the date of the disclosure; (ii) the name of each entity or person who received the PHI and, if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. If an individual's request for an accounting is delivered directly to Developer, Developer shall within two (2) business days of receipt forward such request to Cooperative. Developer agrees to implement an appropriate record-keeping process to enable it to comply with the requirements of this section.

2.11 Amendments. Developer agrees to make any amendment(s) to PHI in a Designated Record Set that Cooperative directs or to which Cooperative agrees pursuant to 45 C.F.R. 164.526, at the request of Cooperative, and within five (5) business days of receipt of such request. In the event an Individual's request for an amendment is delivered directly to Developer, Developer shall within two (2) business days of receipt notify Cooperative of such request and coordinate with Cooperative any amendments to which Cooperative agrees.

2.12 Access to Information. Developer shall make available and provide Cooperative with access to an individual's PHI in a Designated Record Set in accordance with all of the requirements set forth in HIPAA. Within five (5) business days of receipt of a request by Cooperative for access to PHI contained in an individual's Designated Record Set, Developer shall provide to Cooperative such information. If any individual requests access to his or her PHI directly from Developer, Developer shall within two (2) days of receiving such request, forward such request to Cooperative and coordinate any responses or disclosures with Cooperative.

2.13 Availability of Books and Records. Developer hereby agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Developer on behalf of Cooperative available to the Secretary of HHS or his/her designee ("Secretary") in a time and manner designated by the Secretary, for purposes of determining Cooperative's compliance with HIPAA. Developer agrees to cooperate fully and in good faith with and to assist Cooperative in complying with the requirements of HIPAA and any investigation of Cooperative regarding compliance with HIPAA conducted by the HHS Office of Civil Rights, or any other administrative or judicial body with jurisdiction, including, but not limited to, disclosing or providing access to or an accounting of PHI as Cooperative may request. Developer further agrees to make available to Cooperative its practices, books and records relating to the use and disclosure of PHI within five (5) business days of such request, for purposes of enabling Cooperative to determine Developer's compliance with the terms of this Addendum.

3. SECURITY OBLIGATIONS

3.1 Safeguards. Developer agrees to implement appropriate administrative, physical, technical service and technical security measures to protect the integrity, confidentiality and availability of any PHI that it may receive, transmit or maintain as a result of Developer's services on behalf of Cooperative.

3.2 Compliance. Developer agrees that all such security measures will be consistent with 45 CFR 164 subpart C (HIPAA Security Rule) and in compliance with the requirements of HIPAA Security Rule as of the effective date of the regulation and as amended from time to time..

3.3 Agents. Developer agrees to ensure that any agent, including a subcontractor, to whom it provides PHI, agrees to implement reasonable and appropriate safeguards to protect the integrity, confidentiality and availability of such PHI.

3.4 Security Incidents. Developer agrees to report to Cooperative any Security Incident (as defined by 45 CFR 164.304) of which it becomes aware, as required by 45 CFR 164.314(a)(2)(i).

4. OBLIGATIONS OF COOPERATIVE

4.1 Changes. Cooperative shall provide Developer with any of the following, to the extent it may affect Developer's use or disclosure of PHI: (a) any limitation(s) in Cooperative's Notice of Privacy Practices; (b) any changes in, or revocation of, permission by an owner of PHI to use or disclose PHI; and (c) any restriction to the use or disclosure of PHI to which Cooperative has agreed in accordance with 45 C.F.R. 164.522.

4.2 Cooperative shall not request Developer to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Cooperative.

5. TERMINATION

5.1 Termination upon Breach. If either party, in its reasonable discretion, determines that the other has violated a material term of this Addendum, the non offending party may terminate this Addendum and Developer's participation under the Services Agreement. Upon such determination, the non offending party shall at its option (a) require cure of the breach within five (5) days or/this Addendum shall be terminated if the breach is not cured to the reasonable satisfaction of the non-offending party, within that period; or (b) immediately terminate the Addendum if a material term of this Addendum has been breached and cure is not possible, in the non offending party's reasonable discretion. Each party acknowledges that if termination of this Addendum is not feasible in the non offending party's sole discretion, the non offending party has the right to report the breach to the Secretary.

5.2 Effect of Termination.

5.2.1 Except as provided in Section 5.2.2, upon termination for any reason of: i) this Addendum; or ii) the Services Agreement, Developer shall return or destroy all PHI received from Cooperative, or received or created by Developer on behalf of Cooperative in the time period directed by Cooperative. This provision shall apply to PHI that is in the possession of subcontractors or agents of Developer. Developer shall retain no copies

of the PHI, including any electronic medium under Developer's custody or control. All data destruction shall be in accordance with Section 2.8.

5.2.2 If Cooperative determines that returning or destroying the PHI is not feasible, Developer understands and agrees that it shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Developer maintains such PHI.

6. MISCELLANEOUS

6.1 Property Rights. Developer hereby acknowledges that, as between Developer and Cooperative, all PHI shall be and shall remain solely the property of Cooperative, including any and all forms thereof developed by Developer in the course of fulfilling its obligations pursuant to: i) this Addendum; ii) Developer's contract with the Business Associate; or iii) the Services Agreement.

6.2 No Third Party Beneficiaries. Nothing express or implied in this Addendum shall confer upon any person, other than Developer and Cooperative and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities whatsoever.

6.3 Injunctive Relief. Notwithstanding any rights or remedies provided for in the Services Agreement, Cooperative hereby retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI by Developer or by any agent or subcontractor of Developer or by any third party that receives or otherwise obtained PHI from Developer.

6.4 Waiver. Neither the failure nor any delay by Cooperative to exercise a right, remedy or privilege under this Addendum shall operate as a waiver thereof, nor shall any single or partial exercise by Cooperative of a right, remedy or privilege preclude any further exercise of the same.

6.5 Counterparts. This Addendum may be executed in any number of counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Parties have executed this Business Associate Addendum through their duly authorized representatives as of the date first written above.

Louisiana Health Cooperative, Inc.

By _____

Name: Warner Thomas

Title: Chair, Board of Directors

Date: 10/8/2012

Beam Partners LLC

By _____

Terry S. Shilling

Title: Member

Effective as of: 8/28/12

Exhibit 5

Initial List of Approved Developer affiliates and Corresponding Rates

CONFIDENTIAL – EXEMPT FROM LOUISIANA FREEDOM OF INFORMATION ACT DISCLOSURE La. Rev. Stat. Ann. §44:3.2

Beam Level	Representative LAHC Title	Initially assigned individuals	Hourly Rate ($)
Member	Chief Executive Officer	Terry Shilling	$210
Principal	Chief Financial Officer, Head of Finance	Lisa Blume	$185
Associate II	Head of function, Project Manager	Alan Bayham Jim McHaney Jim Krainz Mark Gentry Jim Pittman Jim Starnes Michael Hartnett	$160
Associate I	Recruiter, Selected Staff personnel	Karin Anders Eric LeMarbre	$110

Cooperative acknowledges that it has agreed to a list of milestones incorporated in the Cooperative's agreement with CMS. Beam agrees to monitor achievement of these milestones for the period(s) covered by this Agreement. At the end of a milestone reporting period (generally the close of a calendar quarter), and in addition to the hourly rates billed above, Beam shall be entitled to bill and collect $15.00 per hour from the Cooperative for all hours billed or expended for a milestone due in the reporting period if Beam achieves that milestone within the timeframe noted for each milestone, including any grace period allowed by CMS.

Cooperative further acknowledges Beam may assign individuals to projects or work contemplated under this Agreement, upon reasonable notice to Cooperative.

Exhibit 6

Information Security Addendum

This Information Security Addendum ("ISA") is made pursuant to and attached to the Development Agreement (the "Agreement") executed by and between Beam Partners LLC ("Developer") and the Louisiana Health Cooperative, Inc., a Louisiana nonprofit corporation ("LAHC"). If an express conflict arises between this ISA and the Agreement, the terms of this ISA shall control with respect to the specific subject matter hereof: information security standards and requirements.

WHEREAS, the Parties recognize that information security practices play an important role in their relationship; and

WHEREAS, the Parties wish to memorialize those information technology security practices which they will adhere to;

NOW THEREFORE, LAHC and Developer hereby agree as follows:

1) Overview: Developer has been retained to assist LAHC to become operational, including assisting LAHC to identify and select vendors, setting up LAHC's systems and ensuring that the systems are integrated so that LAHC's interface with providers, employers, the health insurance exchanges and enrollees is successful. The Parties agree that:
   a) Each Party must comply with HIPAA privacy requirements and State of Louisiana rules regarding privacy, and ensure data integrity at their respective organizations;
   b) The Parties will execute a Business Associate if Developer will have access to any Protected Health information in the course of performing the Services for LAHC;
   c) Shared data will be limited to de-identified Protected Health Information unless all Parties determine otherwise for specific initiatives; and
   d) Data stored at LAHC shall be treated in a manner consistent with the HIPAA privacy rule and State of Louisiana rules governing privacy; and
   e) The Parties will comply with this ISA, as amended from time to time to ensure that their data is maintained securely.
2) Definitions: Any term not defined herein shall have the meaning ascribed to it in the Agreement.
   a) "Confidential Information" means:
      i) All past, present and future business activities and all information related to the business of either Party and its members and/or patients, that may be obtained from any source, whether written or oral, as well as trade secrets, all information on any Device or under the ownership or control of either Party or its Personnel or contained in the Software on any Device.
      ii) Confidential Information also includes any information relating to the pricing, software or technical information, hardware, methods, processes, financial data, lists, apparatus, statistics, program, research, development or related information of a

Party, its members and/or enrollees concerning past, present or future business activities, and/or the results of the provision of Services performed pursuant to the Agreement.

iii) Confidential Information does not include information that:

(1) Was previously published or is now or becomes public knowledge through no fault of the other Party; or

(2) Can be established to have been made available to the other Party, without restriction on disclosure, by a third person not under obligation of confidentiality with respect to the disclosed information; or

(3) Can be established to have been independently developed by the other Party; or

(4) Constitutes know-how which in ordinary course becomes indistinguishable from the know-how of the other Party; or

(5) Is in response to a valid order by a court of competent jurisdiction or otherwise required by law.

b) "Device" means any personal computer, laptop, personal digital assistant ("PDA"), mainframe, network, LAN, workstation or MFD.

c) "Information Security" means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification or destruction.

d) "Multi-Function Device" or "MFD" means an office machine which incorporates the functionality of multiple devices in one, including typically: Printing, Scanning, Photocopying, Faxing and / or E-mailing.

e) "Party" shall mean either Developer or LAHC and "Parties" shall mean both.

f) "Personal Computer" or "PC" means any laptop, notebook, desktop, netbook, or other personal computing device that is used to access, process or display information. This definition does not include computing devices operating as servers in a hardened, controlled access, secured datacentre.

g) "Personnel" means a Party's employees or subcontractors.

h) Software includes all software, middleware, firmware, groupware and licensed internal code whether owned or licensed currently or in the future accessed by a Party's personnel by any direct or remote access method.

3) **Best Practices:**

a) Parties shall adhere to industry best practice standards related to information security relating to its Devices and Software.

b) Each Party shall develop and maintain a comprehensive control framework based upon generally accepted best practices using a standard set of controls, including commercially available and widespread use of precautionary measures.

c) Each Party shall secure access to its offices.

d) Each Party shall limit access to Confidential Information to authorized Personnel only.

e) Each Party shall provide periodic and mandatory Information Security training to its Personnel.

f) Each Party shall ensure that commercially reasonable standards are followed to limit Personnel access to view, copy, transfer and edit data to the minimum necessary to allow them to perform their required task, including log ins required to move from one type of file to another (e.g. clinical treatment to payment)

g) Each Party shall limit access to Confidential Information to the minimum necessary dataset required to accomplish the intended purpose or use.

4) Security Policy

a) Each Party shall develop and maintain a comprehensive Information Security Policy ("Policy"), which it shall review annually, or whenever there is a material change in its practices. Each Party shall designate a staff member as its Security Officer to maintain its Policy and shall monitor its Policy to ensure that it is reasonably calculated to prevent unauthorized access. The Policy shall address at a minimum:

i) The role of the Security Officer as the primary security liaison between the Parties and as the individual primarily responsible for ensuring Information Security.

ii) Access controls, including physical and electronic access controls such as passwords

iii) Security monitoring systems that identify users, locations and times and limit access to those who need access to perform their services.

iv) Use of unsecured wireless fidelity ("Wi-Fi") or any other unsecured wireless technology by agents of either Party.

v) Use of encryption.

vi) Software updates and patches and use of anti-virus software and virus / malware / spyware scanning.

vii) Firewalls.

viii) Secure destruction and disposal of devises, storage media following National Institute of Standards and Technology ("NIST") Special Publication 800-88.

ix) Procedures for recovering devices and media from Personnel when their active participation in the Services ends.

x) Processes to detect, mitigate and report security breaches.

xi) Policies to regulate guest use of systems and devices and to establish security protocols for guest access by incoming guests or by Personnel using other facilities.

xii) Transfer or return of all information and coordinating the disconnection of all systems and devices following the termination of this Agreement.

5) Modification of Requirements. This ISA contains minimum standards intended to protect the Parties' Confidential Information. Each Party remains responsible to take any additional precautions necessary to ensure that the Parties' confidential information is protected from unauthorized disclosure and use.

6) The Parties agree that a failure by either Party to make a good faith effort to comply with this ISA shall be grounds for termination of the Agreement.

IN WITNESS HEREOF, the parties hereto, each acting under due and proper authority, have caused this ISA to be signed by their authorized representatives on the respective dates following their signatures below.

For: LAHC:

By: Warner Thomas

Name: Warner Thomas

Title: Chair, Board of Directors

Date: 10/8/12

For: Beam Partners LLC

By:

Name: Terry S. Shilling

Title: Member

Effective Date: August 28, 2012

19TH JUDICIAL COURT FOR THE PARISH OF EASY BATON ROUGE

STATE OF LOUISIANA

NO. 651069 **SECTION 22**

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.

v.

TERRY S. SHILLING, GEORGE G. CROMER, WARNER L. THOMAS, IV, WILLIAM A. OLIVER, CHARLES D. CALVI, PATRICK C. POWERS, CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INC., BEAM PARTNERS, LLC, AND TRAVELERS AND SURETY COMPANY OF AMERICA.

FILED: _____ _____

DEPUTY CLERK

AFFIDAVIT OF TERRY S. SHILLING

STATE OF GEORGIA

COUNTY OF COBB

BEFORE ME, the undersigned authority, personally came and appeared:

TERRY S. SHILLING

who, after being duly sworn, did depose and state:

1. I am a member of Beam Partners, LLC ("Beam") and the statements made herein are based on my own personal knowledge.

2. Beam entered into a Management and Development Agreement ("Agreement") with Louisiana Health Cooperative, Inc. ("LAHC") to perform consulting and other services to the LAHC.

3. The parties also entered into three subsequent amendments to the Agreement titled Amendment 1, Amendment 2, and Amendment 3.

EXH. "B"

4. I signed the Agreement and Amendment 1, Amendment 2, and Amendment 3 of the Agreement on behalf of and as a member of Beam.

5. The Agreement and Amendment 1, Amendment 2, and Amendment 3 attached to this pleading are copies of the Agreement and Amendment 1, Amendment 2, and Amendment 3 entered into between Beam and LAHC that I signed.

6. The Agreement contains an arbitration clause in Article 10.6.

7. Amendment 1, Amendment 2, and Amendment 3 of the Agreement did not eliminate or modify in any way Article 10.6. In fact, the amendments specifically stated that those sections not modified "shall remain in full force and effect."

7. Neither party has instituted arbitration proceedings as required by the Agreement, Article 10.6.

8. This Affidavit is true and correct to the best of my knowledge.

TERRY S. SHILLING

SWORN TO AND SUBSCRIBED
BEFORE ME, THIS
DAY OF JANUARY 2017.

NOTARY

Amendment 1

To the

Management and Development Agreement

By and between Beam Partners, LLC

And the

Louisiana Health Cooperative, Inc.

This First Amendment to the Maungement and Development Agreement is made as of the Effective Date below.

Recitals

WHEREAS, a Management and Development Agreement is in effect between Developer and the Cooperative; and

WHEREAS, the Cooperative has had adequate opportunity to observe the services previously provided by Developer and found them to be satisfactory; and

WHEREAS, the parties desire to amend the Agreement in accordance with the terms of this First Amendment,

NOW, THEREFORE, the Agreement is amended as follows:

1) Section 8.1 is deleted in its entirety and replaced with the following:

8.1 Term. This Agreement shall become effective on the Effective Date and shall remain in full force and effect ending at 11:59 on March 31, 2013, unless sooner terminated in accordance with this Article 8. Thereafter, this Agreement may be renewed for specific Services and specific intervals at the request of the Cooperative ("Extended Terms").

2) Exhibit 1 is deleted in its entirety and replaced with the Exhibit 1 attached hereto.

3) Exhibit 5 is deleted in its entirety and replaced with the Exhibit 5 attached hereto.

4) Except as modified herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Cooperative and Developer have caused this first Amendment to be executed by their respective duly authorized representatives in the manner legally binding upon them as of the date first above written.

Louisiana Health Cooperative, Inc.

By: _____

Name: Warner L. Thomas

Chair, Board of Directors or Chief Executive

Date: 1

Beam Partners, LLC

By: _____

Name: Terry S. Shilling

Member

Effective as of: December 31, 2012

EXH. "C"

Exhibit 1 – as amended by Amendment 1

Management and Support Services to be Made Available by Beam

Development Services

- Developer shall provide the following Services to the Cooperative:
- Training and orienting the Board of Directors, as provided in Exhibit 3;
- Developing the application for State licensure, filing and working with the State Insurance Department to obtain approval of the license;
- Obtaining tax-exempt status for the Cooperative;
- Developing a network of providers that meets the network access standards for the State;
- Recruiting, verifying the credentials for and conducting initial interviews for qualified candidates for positions at the Cooperative;
- Creating processes, systems and forms for the operation for the Cooperative.
- Identifying, negotiating and executing administrative services for the operation of the Cooperative.

Management Services

Per the request of the Cooperative, Beam shall arrange Management Services to support the following functions:

Function	Ending date
Chief Executive Officer – Overall Plan Management and advice concerning strategic direction	3/31/13
Chief Financial Officer and Head of Finance – Overall financial management, planning, reporting	
Head of Member and Group Services – Member enrollment, public education and advice concerning strategic direction	
Compliance Support - Guidance concerning the requirements of Applicable Law and Applicable Regulatory Agencies	
Head of Clinical Care - Benefit development, Pharmacy Plan Management and advice concerning strategic direction	
Head of Operations and Information Technology - Coordinates the internal operations of the Plan.	
Head of Provider Relations/Network Development – Network management services, including strategic direction, network adequacy and provider relations initiatives.	

Project Management – specific projects as needed	
Human Resources – Provide or arrange for support with hiring, benefits management and other human resources processes	
Technology acquisition support – Provide advice and information concerning hardware for IT infrastructure.	
Other functions, as requested by the Cooperative	

Support Services:

- Board orientation and training
- Vendor Oversight – Business Process Organization (BPO), Pharmacy Benefits Manager (PBM) or other delegated services
- HCC Analysis, both prospective and retrospective
- Other functions, as agreed to by the parties

Reporting Requirements

As part of each request for Services, Beam and the Cooperative shall agree on the reporting requirements to accompany such Services. At a minimum, the reporting shall be sufficient to allow the Cooperative to provide oversight to the Cooperative in the performance of any delegated functions.

Exhibit 5 – as amended by Amendment 1

Initial List of Approved Developer affiliates and Corresponding Rates

CONFIDENTIAL – EXEMPT FROM LOUISIANA FREEDOM OF INFORMATION ACT DISCLOSURE, INCLUDING UNDER EXCEPTION La. Rev. Stat. Ann. §44:3.2

Beam Level	Representative LAHC Title	Initially assigned individuals	Hourly Rate ($)
Member	Chief Executive Officer	Terry Shilling	$210
Associate II	Head of function, Project Manager	Debby Sidener Alan Bayham Jim McHaney Jim Krainz Mark Gentry Jim Pittman Jim Starnes Michael Hartnett	$160
Associate I	Recruiter, Selected Staff personnel	Katin Anders Eric LeMarbre	$110

Cooperative acknowledges that it has agreed to a list of milestones incorporated in the Cooperative's agreement with CMS. Beam agrees to monitor achievement of those milestones for the period(s) covered by this Agreement. At the end of a milestone reporting period (generally the close of a calendar quarter), and in addition to the hourly rates billed above, Beam shall be entitled to bill and collect $15.00 per hour from the Cooperative for all hours billed or expended for a milestone due in the reporting period if Beam achieves that milestone within the timeframe noted for each milestone, including any grace period allowed by CMS.

Cooperative further acknowledges Beam may assign individuals to projects or work contemplated under this Agreement, upon reasonable notice to Cooperative.

Amendment 2
To the
Development Agreement
By and between Beam Partners LLC
And the
Louisiana Health Cooperative, Inc.

This Second Amendment to the Management and Development Agreement (the "Agreement") is made as of the Effective Date below.

Recitals

WHEREAS, a Management and Development Agreement is in effect between the Beam and the Cooperative; and

WHEREAS, the Cooperative has had adequate opportunity to observe the services previously provided by Beam and found them to be satisfactory; and

WHEREAS, the parties desire to amend the Agreement in accordance with the terms of this Second Amendment;

NOW, THEREFORE, the Agreement is amended as follows:

1) Section 8.1 is deleted in its entirety and replaced with the following:

8.1 **Term.** This Agreement shall become effective on the Effective Date and shall remain in full force and effect until 11:59 on December 31, 2013, unless sooner terminated in accordance with this Article 8. Thereafter, this Agreement may be renewed for specific Services and specific intervals at the request of the Cooperative ("Extended Terms").

2) Exhibit 4 is deleted in its entirety and is replaced with the Exhibit 4 (updated Business Associate Agreement) attached hereto.

3) Except as modified herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Cooperative and Beam have caused this Amendment to be executed by their respective duly authorized representatives in the manner legally binding upon them as of the date first above written.

Louisiana Health Cooperative, Inc.

By: _____
Name: Warner L. Thomas
Title: Chair, Board of Directors
Date: 4/21/13

Beam Partners LLC

By: _____
Name: Jerry S. Shilling
Title: LLC Member
Effective as of: March 31, 2013

Exhibit 4 – as amended by Amendment 2

Business Associate Addendum

(Effective 01/04/2013)

This Business Associate Agreement ("Agreement") effective on January 1, 2013 ("Effective Date") is entered into by and between Vendor, Inc. ("Business Associate") and CO-OP ("CO-OP").

RECITALS

CO-OP and Business Associate are parties to an agreement ("Underlying Agreement") pursuant to which Business Associate provides certain services to CO-OP and, in connection with those services, CO-OP discloses to Business Associate certain Protected Health Information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Title XIII, The Health Information Technology for Economic and Clinical Health Act ("HITECH"), of the American Recovery and Reinvestment Act ("ARRA").

The parties desire to comply with the requirements set forth in the Privacy and Security Regulations and HITECH concerning the privacy of PHI.

The purpose of this Agreement is to comply with the requirements of the Privacy Rule, the Security Rule, and HITECH, including but not limited to the Business Associate Requirements at 45 C.F.R. Section 164.504(e).

Therefore, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

SECTION I – DEFINITIONS

1.1 Definitions. Unless otherwise provided in this Agreement, capitalized terms shall have the same meaning as set forth in the HIPAA regulations, 45 C.F.R. Sections 160 and 164, and HITECH and its related regulations.

SECTION II – OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Use/Disclosure of PHI. In connection with its use and disclosure of PHI, Business Associate agrees that it shall use and/or disclose PHI only as permitted or required by this Agreement or as otherwise required by law.

2.2 Safeguards for Protection of PHI. Business Associate agrees to use reasonable and appropriate safeguards to prevent the use or disclosure of PHI other than as provided in this Agreement, including compliance with Security Standards of the HIPAA Rules.

2.3 Compliance with HITECH Act and Regulations. Business associate will comply with the requirements of HITECH, codified at 42 U.S.C. §§ 17921-17954, which are applicable to Business Associate, and will comply with all regulations issued by the Department of Health and Human Services to implement these referenced statutes including but not limited to 45 C.F.R. 164.400 – .414, as of the date by which Business Associate is required to comply with such referenced statutes and HHS regulations.

2.4 General Reporting. Business Associate shall report to CO-OP any use or disclosure of PHI which is not provided for by this Agreement of which Business Associate becomes aware, including breaches of unsecured PHI required by 45 C.F.R. 164.410.

2.5 Reporting of Breaches of Unsecured Protected Health Information. Business Associate will report in writing to CO-OP's Privacy Officer any Breach of Unsecured PHI, as defined in the Breach Notification Regulations, within 5 business days of the date Business Associate learns of the incident giving rise to the Breach. Business Associate will provide such information to CO-OP as required in the Breach Notification Regulations. For any Beach caused by Business Associate or Business Associate's subcontractors or agents, Business Associate will reimburse CO-OP for any reasonable expenses CO-OP incurs in the investigation and assessment of the Breach and obligations of notification, providing notice of the Breach to individuals, the media or the Secretary and for reasonable measures taken by CO-OP to mitigate harm to those individuals. Business Associate shall defend, hold harmless and indemnify CO-OP and its employees, agents, officers, directors, members, contractors, and subsidiary and affiliate entities, from and against any claims, losses, damages, liabilities, costs, expenses, penalties or obligations (including in-house and external attorneys' fees) which CO-OP may incur due to a Breach caused by Business Associate or Business Associate's subcontractors or agents.

2.6 Mitigation. Business Associate shall make reasonable efforts to mitigate, to the greatest extent possible, any harmful effects arising from any improper use and/or disclosure of PHI.

2.7 Subcontractors. Business Associate shall ensure that any agents, including any subcontractor, that creates, receives, maintains or transmits PHI on behalf of Business Associate agrees to the same restrictions and conditions that apply to the Business Associate with respect to PHI. If Business Associate learns of Subcontractor's non-compliance with its privacy, security, reporting and other obligations relating to PHI, Business Associate shall take all steps required by the Privacy Rule, the Security Rule, and HITECH Act, including prompt notice to Covered Entity of the non compliance, reporting of an unauthorized use or disclosure of PHI, including breaches of Unsecured PHI, and taking appropriate steps to terminate the agreement with the Subcontractor or otherwise cure the noncompliance to the satisfaction of and within the time determined the Covered Entity and, as may be required under the circumstances, retrieve all PHI within the possession or control of the subcontractor for return to Business Associate or Covered Entity.

2.8 Access by Individuals. Business Associate shall allow individuals who are the subject of the PHI to inspect and copy their PHI maintained in a Designated Record Set in the possession of Business Associate upon instruction by the Covered Entity. If an Individual requests access to PHI contained in a Designated Record Set directly from Business Associate or its agents or subcontractors, Business Associate will notify Covered Entity in writing within 10 days of receiving such request. Business Associate agrees to promptly make any arrangement(s) for access to such PHI that Covered Entity directs.

2.9 Access by Department of Health and Human Services. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from or related or received by the Business Associate on behalf of the CO-OP, available to the Secretary of the Department of Health and Human Services for purposes of determining CO-OP's compliance with the HIPAA privacy regulations.

2.10 Access by CO-OP. Upon reasonable notice, Business Associate shall make its internal practices, book, and records relating to the use and disclosure of PHI available to CO-OP for purposes of determining Business Associate's compliance with the terms of this Agreement and Business Associate's compliance with HIPAA and HITECH.

2.11 Accountings of Disclosures. Business Associate agrees to document each disclosure of PHI that Business Associate creates or receives for or from Covered Entity not excepted from disclosure accounting pursuant to 45 CFR 164.528. Such accounting shall include the information necessary for CO-OP to provide an Accounting of Disclosures to any Individual who requests such an Accounting as more fully set forth in 45 CFR 164.528. If requested by CO-OP, Business Associate shall provide an accounting of disclosures directly to the requesting Individual.

2.12 Amendment of PHI. Business Associate agrees to make any amendment(s) to PHI maintained in a Designated Record Set that CO-OP directs or agrees to pursuant to CO-OP's obligations under the Privacy Rule. If an Individual requests an amendment of PHI maintained in a Designated Record Set directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within ten (10) days of receiving such request.

2.13 Minimum Necessary. In any instance when Business Associate uses, requests or discloses PHI under this Agreement or in accordance with other agreements that exist between Covered Entity and Business Associate, Business Associate may use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose.

2.14 To the extent Business Associate is to carry out one or more of CO-OP's obligation(s) under the Privacy Rule (Subpart E of 45 C.F.R. Part 164), Business Associate shall comply with the requirements of the Privacy Rule Subpart E that apply to CO-OP in the performance of such obligation(s).

2.15 To the extent Business Associate or Business Associate Subcontractor or agent is a Group Health Plan, the Plan Documents shall provide that, except for electronic PHI disclosed to a Plan Sponsor pursuant to 45 USC 164.504(f)(1)(ii) or (iii) or as authorized under 45 C.F.R. 164.508, the Plan Sponsor will reasonably and appropriately safeguard electronic PHI created, received, maintained or transmitted to the Plan Sponsor on behalf of the Group Health Plan, including

a. implementing administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains or transmits on behalf other group health plan;

b. ensure that adequate separation required by 45 USC 164.504(f)(2)(iii) is supported by reasonable and appropriate security measures;

c. ensure that any agent to whom it provides this information agrees to implement reasonable and appropriate security measures to protect the information; and

d. reports to the group health plan any security incident of which it becomes aware.

SECTION III – PERMITTED USES AND DISCLOSURES

3.1 General. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, CO-OP as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by CO-OP.

Business Associate may use PHI it creates or receives for or from Covered Entity as necessary for Business Associate to carry out Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate and may disclose PHI received in its capacity as a Business Associate for such purposes if required by law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or disclosed only as required by law or for the purpose for which it was disclosed to the person and the person notifies the business associate of any instances in which it is aware in which the confidentiality of the information has been breached.

SECTION IV – OBLIGATIONS OF CO-OP

4.1 Notice of Privacy Practices. CO-OP has included and will continue to include, in the CO-OP Notice of Privacy Practices information advising Individuals that CO-OP may disclose their PHI to Business Associates.

4.2 Consents/Authorizations. CO-OP has obtained and will continue to obtain, from Individuals, consents, authorizations and other permissions that may be required by the Privacy Rule or applicable state laws and/or regulations prior to furnishing Business Associate PHI pertaining to Individuals.

4.3 Restrictions. CO-OP will promptly notify Business Associate in writing of any restrictions on the use and disclosure of PHI about Individuals that CO-OP has agreed to that may affect Business Associate's ability to perform its obligations under the Underlying Agreement or this Agreement.

4.4 Revocation of Authorization. CO-OP shall promptly notify Business Associate in writing of any change in, or revocation of, permission by an Individual to use or disclose PHI, if such changes or revocation may affect Business Associate's ability to perform its obligations under the Underlying Agreement or this Agreement.

SECTION V – SECURITY

5.1 Business Associate agrees to implement the Security Rule (security standards as set out in 45 C.F.R. parts 160, 162 and 164), Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the electronic PHI that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity.

5.2 Business Associate agrees to report to Covered Entity any security incident within 5 business days of when Business Associate becomes aware of such incident, including breaches of unsecured PHI as required by 45 CFR 164.410.

5.3 Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by, Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this

Agreement to Business Associate with respect to such PHI.

5.4 Business Associate will ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information agrees to implement the Security Rule, Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the electronic PHI.

5.5 Business Associate agrees to make its policies, procedures, and documentation relating to the safeguards described herein available to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Security Rule.

SECTION VI – TERM & TERMINATION

6.1 Term and Termination. This Agreement shall be effective as of the Effective Date and shall terminate when all of the PHI provided by CO-OP to Business Associate, or created or received by Business Associate on behalf of CO-OP, is destroyed or returned to CO-OP. The parties acknowledge and agree that the terms and conditions stipulated in this Agreement shall apply to any future written or oral agreements between CO-OP and Business Associate which require the disclosure of PHI, whether or not this Agreement is incorporated by reference into future agreements executed between the parties.

6.2 Termination for Cause. CO-OP may terminate this Agreement if CO-OP determines that Business Associate has breached a material term of this Agreement. Alternatively, CO-OP may choose to provide Business Associate with notice of the existence of an alleged material breach and provide Business Associate an opportunity to cure the alleged material breach within the time specified by CO-OP. In the event Business Associate fails to cure the breach to the satisfaction of CO-OP, CO-OP may immediately terminate this Agreement.

6.3 Effect of Termination. Upon termination of this Agreement, for any reason, Business Associate shall, if feasible, return or destroy all of the PHI that Business Associate still maintains in any form and shall not retain any copies of such PHI. If such return or destruction is not feasible, Business Associate shall extend the protections of this Agreement to the PHI and shall limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible, including the following:

- Retain only that which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities or which makes the return or destruction infeasible;
- Return or destroy the remaining PHI that the Business Associate still maintains in any form based upon consultation and instruction by CO-OP;
- Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
- Not use or disclose PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Sections II and III which applied prior to termination; and
- Return or destroy PHI retained by Business Associate when it is no longer needed by

Business Associate for its proper management and administration, to carry out its legal responsibilities or other condition which makes return or destruction infeasible based upon consultation and instruction by CO-OP.

- Return or destroy PHI created, received or maintained by Business Associate subcontractors based on consultation and instruction by CO-OP.

SECTION VII – MISCELLANEOUS

7.1 Amendment. The Parties agree to take such action as is necessary to amend this agreement from time to time as is necessary for compliance with the requirements of the HIPAA rules and any other applicable law. Notwithstanding, this Agreement shall be deemed to amend automatically, by force of law and without further act of the parties, if necessary to bring the Agreement into compliance with any changes in HIPAA, HITECH or any related regulations that are made after the date of execution of this Agreement.

7.2 Interpretation. Any ambiguity in this Agreement shall be resolved in a manner that brings the Agreement into compliance with the then most current version of HIPAA regulations, 45 C.F.R. Sections 160 and 164 and HITECH and its related regulations.

7.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any other person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

7.4 Notice. Any notice required to be provided pursuant to this Agreement shall be made as follows:

To CO-OP:	CO-OP's Privacy Officer 3445 Causeway Boulevard, Suite 800 Metairie, LA 70003
To Business Associate:	Terry S Shilling 2451 Cumberland Parkway, Suite 3170 Atlanta, GA 30339

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below.

Beam Partners LLC

By: _____

Title: LLC Member Date: 3/31/13

Louisiana Health Cooperative, Inc.

By: _____

Title: Chair, Board of Directors Date: 3/31/13

Amendment 3
To the
Development Agreement
By and between Beam Partners LLC
And the
Louisiana Health Cooperative, Inc.

This Third Amendment to the Management and Development Agreement (the "Agreement") is made as of the Effective Date below.

Recitals

WHEREAS, a Management and Development Agreement is in effect between the Beam and the Cooperative which, by its terms terminates as of December 31, 2013; and

WHEREAS, the Cooperative has had adequate opportunity to observe the services previously provided by Beam and found them to be satisfactory; and

WHEREAS, the parties desire to amend the Agreement in accordance with the terms of this Third Amendment;

NOW, THEREFORE, the Agreement is amended as follows:

1) Section 8.1 is deleted in its entirety and replaced with the following:

8.1 **Term.** This Agreement shall become effective on the Effective Date and shall remain in full force and effect until 11:59 on March 31, 2014, unless sooner terminated in accordance with this Article 8. Thereafter, this Agreement may be renewed for specific Services and specific intervals at the request of the Cooperative ("Extended Terms").

2) As of the Effective Date, Exhibit 1 is replaced with the Exhibit 1 attached hereto.

3) Effective with the effective date of this Third Amendment, Paragraphs 7, 8 and 11 of Exhibit 3 are deleted in their entirety. The parties acknowledge that the Cooperative has hired its own personnel who are responsible for evaluating and making purchasing decisions about the services of all vendors and contractors, including Beam and, therefore, these provisions are no longer applicable.

4) As of the effective date of this Third Amendment, Exhibit 5 is deleted in its entirety and replaced with the Exhibit 5 (Beam Associates and Corresponding Rates) attached hereto.

5) Except as modified herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Cooperative and Beam have caused this Amendment to be executed by their respective duly authorized representatives in the manner legally binding upon

them as of the effective date below.

Louisiana Health Cooperative, Inc.

By: _____

Name: Greg Cromer

Title: Chief Executive Officer

Date: 12/27/13

Beam Partners, LLC

By: _____

Name: Terry S. Shilling

Title: Member

Effective as of: January 1, 2014

Exhibit 1 - Management and Support Services to be Made Available by Beam

Beam shall provide the following Support Services upon request from the Cooperative:

- Financial support
- Board orientation and training
- Vendor Oversight – Business Process Organization (BPO), p-Pharmacy Benefits Manager (PBM) or other delegated services
- HCC Analysis, both prospective and retrospective
- Creating processes, systems and forms for the operation for the Cooperative.
- Other functions, as agreed to by the parties

Exhibit 5 – as amended by Amendment 3

Exhibit 5

Beam Associates and Corresponding Rates

CONFIDENTIAL – EXEMPT FROM LOUISIANA PUBLIC RECORDS ACT DISCLOSURE

Beam Level	Hourly Rate ($)
Member	$235
Other Beam Associates	$195

As of the effective date for the Third Amendment (January 1, 2014) the performance bonus is deleted for all future periods.

Cooperative acknowledges Beam may assign individuals to projects or work contemplated under this Agreement, upon reasonable notice to Cooperative.

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NUMBER: 641 928 SECTION: 26

JAMES J. DONELON
COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA

VERSUS

LOUISIANA HEALTH COOPERATIVE, INC.

STATE
SEP 21 2015
BY DEPUTY CLERK OF COURT

FILED: _____ _____
DEPUTY CLERK

PERMANENT ORDER OF REHABILITATION AND INJUNCTIVE RELIEF

NOW INTO COURT,

This matter came for hearing on September 21, 2015 pursuant to the order entered in this matter on September 1, 2015:

PRESENT: Assistant Attorney General Michael Charles Guy, attorney for James J. Donelon, Commissioner of Insurance for the State of Louisiana as Rehabilitator of Louisiana Health Cooperative ("LAHC"), and the Court appointed Receiver, Billy Bostick (the "Receiver")

And the Court, considering the verified petition, the verification and testimony of Caroline Brock, Deputy Commissioner of Financial Solvency for the Louisiana Department of Insurance and Billy Bostick, Receiver, and finding that the requirements for rehabilitation under the provisions of La. R.S. 22:2001, et seq., have been met, and the law and the evidence entitling the plaintiff to the relief sought herein, and the Court being satisfied from the allegations therein and finding that the defendant named herein is an insurer as defined in and under Louisiana law and that the interests of creditors, policyholders, members, subscribers, enrollees, and the public will probably be endangered by delay, and the Court finding that the law and the evidence is in favor of granting the relief prayed for herein,

IT IS ORDERED, ADJUDGED AND DECREED that sufficient cause exists for the Permanent Rehabilitation of Louisiana Health Cooperative, Inc. ("LAHC").

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC shall be and hereby is placed into rehabilitation under the direction and control of the Commissioner of Insurance for the State of Louisiana (the "Commissioner"), his successors and assigns in his office and his agents, designees, and/or employees, subject to the further written orders of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner or

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SEP 21 2015

EXH. "D"

any deputy, be and hereby is confirmed as Rehabilitator.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Billy Bostick be and hereby is confirmed Receiver of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner as Rehabilitator or his appointees and/or the Receiver or Deputy Receiver be allowed and are authorized to employ and authorize the compensation of accountants, clerks, attorneys and such assistants as he deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, to be paid out of the funds or assets of LAHC in the possession of the Receiver and/or Rehabilitator or coming into LAHC's possession.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Rehabilitator be and hereby is permanently vested by operation of law with the title to all property, business, affairs, accounts, bank accounts, safety deposit boxes, statutory deposits, computers, all primary and secondary storage media, social media (including, but not limited to Facebook and Twitter accounts), documents, claims files, records and other assets of LAHC, and is ordered to direct the rehabilitation of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Rehabilitator, the Receiver, their agents and/or employees, shall be and hereby are directed to take possession and control of the property, business, affairs, bank accounts, safety deposit boxes, statutory deposits, computers, all primary and secondary storage media, social media (including, but not limited to Facebook and Twitter accounts), documents, claims files, software, electronic data, e-mail, websites, books, records, accounts, copyrights, trademarks, patents, and all other assets of LAHC, including all real property, whether in the possession of LAHC or its officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, or agents, and of the premises occupied by LAHC for its business, conduct all of the business and affairs of LAHC, or so much thereof as he may deem appropriate, manage the affairs of LAHC, and to rehabilitate same, until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC, its policyholders, subscribers, members, enrollees, officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, creditors, banks, savings and loan associations, and/or

other entity or person acting for or on behalf of LAHC shall be and hereby are permanently enjoined from disposing of the property, business, affairs, bank accounts, safety deposit boxes, statutory deposits, computers, all primary and secondary storage media, social media (including, but not limited to Facebook and Twitter accounts), documents, claims files, software, electronic data, e-mail, websites, books, records, accounts, copyrights, trademarks, patents, and all other assets of LAHC, including all real property, and from the transaction of the business of LAHC, except with the concurrence of the Commissioner, until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to La. R.S. 22:2006, any and all persons and entities shall be and hereby are permanently enjoined from obtaining preferences, judgments, attachments or other like liens or the making of any levy against LAHC, its property and assets while in the Commissioner's possession and control.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in accordance with La. R.S. 22:2036 the Rehabilitator shall be and hereby is permanently vested with and/or shall maintain the authority to enforce, for the benefit of LAHC policyholders, subscribers, members, and enrollees and LAHC, contract performance by any provider or other third party who contracted with LAHC, and for such other relief as the nature of the case and the interest of LAHC, LAHC's policyholders, subscribers, members, enrollees, creditors or the public may require.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Rehabilitator shall be and hereby is entitled to the right to enforce or cancel, for the benefit of the policyholders, subscribers, members, enrollees of LAHC, and LAHC, contract performance by any party who had contracted with LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC providers and contractors are required to abide by the terms of their contracts with LAHC and to provide services to LAHC members under the terms of such contracts in order to ensure continuation of services for LAHC policyholders, subscribers, members, and enrollees until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Rehabilitator shall be and hereby is entitled to permit such further operation of LAHC as he may deem necessary to be in the best interests of the policyholders, subscribers, members, and enrollees, and creditors of LAHC and the orderly rehabilitation of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all authority of all officers, directors, and managers of LAHC shall be and hereby is terminated and all authority of said officers, directors and managers be and hereby is vested in the Rehabilitator.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Rehabilitator and Receiver of LAHC and his assistants shall be and hereby are allowed and authorized to:

a) Employ and authorize the compensation of accountants, clerks, and such assistants as he deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, as approved by the Court, out of the funds or assets of LAHC in the possession of the Rehabilitator and the Receiver or coming into LAHC's possession;

b) Defend or not defend legal actions wherein LAHC or the Rehabilitator or Receiver is a party defendant, commenced prior to or subsequent to the entry of the order herein, without the authorization of the Court, except, however, in actions where LAHC is a nominal party, as in certain foreclosure actions and the action does not affect a claim against or adversely affect the assets of LAHC, the Rehabilitator or Receiver may file appropriate pleadings in his discretion;

c) Commence and maintain all legal actions necessary, wherever necessary, for the proper administration of this rehabilitation proceeding;

d) Collect all debts, which are economically feasible to collect and which are due and owing to LAHC;

e) Take possession of all of LAHC's securities and certificates of deposit on deposit with any financial institution or any other person or entity, if any, and convert to cash so much of the same as may be necessary, in his judgment, to pay the expenses of administration of rehabilitation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any officer, director, manager, trustee, agent, adjustor, contractor, or third party administrator of LAHC and any person who possesses or possessed any executive authority over, or who exercises or exercised any control over any segment of LAHC's affairs shall be and hereby are required to fully cooperate with the Rehabilitator, the Receiver and his assistants, notwithstanding their dismissal pursuant to this order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all attorneys employed by LAHC as of the date of the order entered herein shall, within ten (10) days notice of the order entered herein, report to the Receiver or Rehabilitator on the name, company, claim number and status of each file they are handling on behalf of LAHC. Said report shall also include an account of any funds received from or on behalf of LAHC. All attorneys described herein are hereby discharged as of the date of this order unless the Receiver or Rehabilitator retains their services in writing. All attorneys employed by LAHC who are in possession of litigation files or other material, documents or records belonging to or relating to work

performed by the attorney on behalf of LAHC shall deliver such litigation files, material, documents or records intact and without purging to the Receiver notwithstanding any claim of a retaining lien, which, if otherwise valid, shall not be extinguished by such turn-over of documents.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that reinsurance amounts due to or payable by LAHC shall be remitted to, or disbursed by the Receiver at the Receiver's discretion and with the consent of the court where required by law. The Receiver shall handle reinsurance losses recoverable or payable by LAHC. All correspondence concerning reinsurance shall be between the Receiver and the reinsuring company or intermediary unless otherwise authorized by the Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any bank, savings and loan association, financial institution, and any other person or entity which has on deposit, including statutory deposits, in its possession, custody or control any funds, accounts and any other assets of LAHC, shall be and hereby is ordered to immediately transfer title, custody and control of all such funds, accounts, or assets to the Receiver, and instructed that the Receiver has absolute control over such funds, accounts and other assets. The Receiver may change the name of such accounts and other assets withdraw them from such bank, savings and loan association or other financial institution or take such lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association, or other financial institution, person or entity shall freeze or place a hard hold on, or exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any bank, savings and loan association, financial institution, and any other person or entity which has on deposit, in its possession, custody or control any funds, accounts and any other assets of LAHC, shall not be permitted to freeze or place a hard hold on, or exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the control of the Rehabilitator, the Receiver or his appointees without the permission of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any entity furnishing telephone, water, electric, sewage, garbage or trash removal services to LAHC shall maintain such service and transfer any such accounts to the Receiver as of the date of the order entered

herein, unless instructed to the contrary by the Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon request by the Receiver, any company providing telephone services to LAHC shall provide a reference of calls from the number presently assigned to LAHC to any such number designated by the Receiver or perform any other services or changes necessary to the conduct of the receivership of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any data processing service which has custody or control of any data processing information and records, including, but not limited to, source documents, data processing cards, input tapes, all types of storage information, master tapes or any other recorded information relating to LAHC shall be and hereby are required to transfer custody and control of such records to the Commissioner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the United States Postal Service shall be and hereby is directed to provide any information requested by the Receiver regarding LAHC and to handle future deliveries of LAHC's mail as directed by the Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Rehabilitator and his assistants shall be and hereby are authorized to conduct an investigation of LAHC and its subsidiaries and affiliates to uncover and make fully available to the Court the true state of LAHC's financial affairs. In furtherance of this investigation, LAHC, its subsidiaries, its affiliates, owners, officers, directors, managers, trustees, agents, employees, servants, adjustors, accountants, actuaries, attorneys, contractors, consultants, or third party administrators, LAHC shall make all books, documents, accounts, records and affairs, which either belong to or pertain to LAHC available for full, free and unhindered inspection and examination by the Commissioner during normal business hours, Monday through Friday, from the date of the order entered herein. LAHC and the above-specified entities shall fully cooperate with the Rehabilitator, including, but not limited to, the taking of oral testimony under oath of LAHC and its officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, and subsidiaries and any other person or entity who possesses any executive authority over, or who exercises any control over, any segment of the affairs of LAHC in both their official, representative, and individual capacities and the production of all documents that are calculated to disclose the true state of LAHC's affairs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC shall not engage in any advertising or solicitation whatsoever, other than that approved by the Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC, its members, subscribers, enrollees, and policyholders, officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, and any other partnership, company or entity controlled by same and/or other persons acting for or on behalf of LAHC, or subject to their control, and all other persons or entities who have access to, control or possession of the property, assets, and affairs of LAHC shall be and hereby are permanently enjoined except with the express permission of the Receiver:

a) from disposing of or encumbering any of the property or assets of LAHC;

b) from disposing of any records or other documents belonging of LAHC or relating to the business and affairs of the of LAHC;

c) from the transaction of any business by, for, or on behalf of LAHC, including, but not limited to:

i) writing, issuance or renewal of any certificate of coverage, insurance policy, binder, or endorsement to an existing policy or certificate of coverage;

ii) payment of claims and of any policy or certificate of coverage benefits;

iii) incurring of any claim or loss adjustment expense;

iv) incurring of any debt or liability; and

v) interfering with the acquisition of possession by the exercise of dominion and control over the property of LAHC by the Rehabilitator or the Rehabilitator's conduct of the business and affairs of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any and all individuals and entities shall be and hereby are permanently enjoined from instituting and/or taking further action in any suits, proceedings, and seizures against LAHC, the Commissioner in his capacity as rehabilitator of LAHC, the Receiver, and any affiliates, subsidiaries, insurers, its officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, or representatives of same, to prevent any preference, judgment, seizure, levy, attachment, or lien being rendered against LAHC, its estate and assets, and/or its members, subscribers, enrollees, and policyholders, the Commissioner in his capacity as rehabilitator and/or liquidator, the Receiver, any affiliates, subsidiaries, insurers, its officers, directors, employees, managers,

trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators of same, and the making of any levy against LAHC, its property or assets.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, except with the concurrence of the Rehabilitator or until further written order of this Court, all suits, proceedings, and seizures against LAHC and/or its respective members/enrollees/subscribers shall be and hereby are stayed in order to prevent the obtaining of any preference, judgment, seizure, levy, or lien, and to preserve the property and assets of LAHC, including, but not limited to, suits and proceedings and all litigation where:

a) LAHC is a party;

b) A member, subscriber, enrollee, policyholder or any other person who is named as a party to the litigation claims insurance coverage under any policy of insurance, subscriber agreement or certificate of coverage issued or assumed by LAHC;

c) The litigation involves or may involve the adjudication of liability or determines any possible rights or obligations of any member, subscriber, enrollee, policyholder or person as to any insurance policy, subscriber agreement, or certificate of coverage issued or assumed by LAHC, or determines any possible future liability of LAHC with regard to any insurance policy, subscriber agreement or certificate of coverage issued or assumed by LAHC;

d) LAHC would otherwise be obligated to provide a defense to any party in any court pursuant to any policy of insurance, subscriber agreement, or certificate of coverage issued or assumed by LAHC;

e) The ownership, operations, management and/or control of LAHC is at issue; and

f) Any party is seeking to create, perfect or enforce any preference, judgment, attachment, lien or levy against LAHC or its assets or against any member, subscriber, enrollee and/or policyholder of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any action in any suit or proceeding against the Commissioner in his capacity as Rehabilitator of LAHC, the Receiver, and/or the Attorney General of the State of Louisiana in his capacity as attorney for the Commissioner in his capacity as rehabilitator of LAHC, and their representatives, agents, employees, or attorneys, when acting in accordance with this Order and/or as Rehabilitator, Receiver, or Deputy Receiver of LAHC are barred.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there shall be no liability on the part of, and that no cause of action of any nature shall exist against the Commissioner in his capacity as Commissioner or Rehabilitator and/or regulator of LAHC, the Receiver and/or the Attorney General of the State of Louisiana in his capacity as attorney for the Commissioner as Commissioner and/or regulator of LAHC, and/or their assistants,

representatives, agents, employees, or attorneys, for any action taken by them when acting in accordance with the orders of this Court and/or in the performance of their power and duties as Rehabilitator, Receiver, Commissioner and/or regulator of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all participating and non-participating providers of LAHC shall be and hereby are permanently enjoined from seeking to collect and/or collecting any amounts claimed as payment for services rendered to LAHC, its enrollees, members, subscribers, and policyholders from any said enrollee, member, policyholder and/or subscriber of LAHC, except for amounts that are member obligations as defined in the member agreement, including, but not limited to, co-payments, deductibles, and co-insurance.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any and all individuals and entities shall be and hereby are permanently enjoined from interfering with these proceedings, or with the Rehabilitator's possession and control; from interfering with the conduct of the business of LAHC by the Rehabilitator; from wasting the assets of LAHC, and from obtaining preferences, judgments, attachments or other like liens or the making of any levy against LAHC or its property and assets while in the possession and control of the Rehabilitator.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all premiums and all other debts and payables due to LAHC shall be paid to the Rehabilitator.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Rehabilitatorshall be and hereby is permitted to notify every holder of a certificate of coverage, subscriber agreement, or contract of insurance issued by LAHC and every known provider and other creditor of LAHC of the order of rehabilitation and injunction entered herein within forty-five (45) days of the date of this order, notwithstanding the provisions of La. 22:2011.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all contracts between LAHC and any and all persons or entities providing services to LAHC and its policyholders, members, subscribers and enrollees shall remain in full force and effect unless canceled by the Receiver, until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner be and hereby is granted all legal and equitable relief as may be necessary to fulfill his duties as Rehabilitator and for such other relief as the nature of the case and the interests of LAHC's members, enrollees, subscribers, policyholders, providers and other creditors, or the public, may require, including but not limited to the Receiver's appointment and authorization to prosecute

all action which may exist on behalf of LAHC members, subscribers, enrollees, policyholders, or creditors against any existing or former officer, director or employee of LAHC or any other person.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner be and hereby is granted all legal and equitable relief as may be necessary to fulfill his duties as Commissioner and for such other relief as the nature of the case and the interests of LAHC's members, enrollees, subscribers, policyholders, providers and other creditors, or the public, may require.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Matthew Stewart, Norrie Falgoust, Jimmy Henry, and Rudy Babin be and hereby are appointed as Process Servers for service of all process and further pleadings on LAHC.

Baton Rouge, Louisiana, this 21st day of September, 2015.

DISTRICT COURT JUDGE DONALD JOHNSON

RESPECTFULLY SUBMITTED,

JAMES D. "BUDDY" CALDWELL
LOUISIANA ATTORNEY GENERAL

By: _____
MICHAEL CHARLES GUY, ESQ. (#25406)
Assistant Attorney General
P.O. Box 94005
Baton Rouge, LA 70904
(225) 326-6400
Attorneys for JAMES J. DONELON,
Commissioner of Insurance for the State of Louisiana
as Rehabilitator of Louisiana Health Cooperative, Inc.

FILED
EAST BATON ROUGE PARISH
2015 SEP 21 AM 9:18
DEPUTY CLERK OF COURT

I hereby certify that on this day a notice of the above judgment was mailed by me, with sufficient postage affixed, to: Michael Guy and Sue Buser

Done and signed on September 21, 2015

Deputy Clerk of Court

CERTIFIED TRUE AND CORRECT COPY

SEP 21 2015

East Baton Rouge Parish
Deputy Clerk of Court

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NUMBER: 641 928 SECTION: 26

JAMES J. DONELON
COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA

VERSUS

LOUISIANA HEALTH COOPERATIVE, INC.

FILED:_____ _____
DEPUTY CLERK

VERIFICATION

STATE OF LOUISIANA
COUNTY/PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, duly commissioned and qualified within and for the State and Parish aforesaid personally came and appeared:

CAROLINE BROCK

a person known by me, Notary Public, to be a competent major, who, after first being duly sworn by me, did depose and say:

That she is the Deputy Commissioner of Financial Solvency for the Louisiana Department of Insurance and is familiar with Louisiana Health Cooperative, Inc.

That she has read the foregoing Consent Permanent Order for Rehabilitation and Injunctive Relief, and the allegations contained therein are true and correct to the best of her personal knowledge.

EAST BATON ROUGE PARISH
2015 SEP 21 A 9:
DEPUTY CLERK OF COURT

CAROLINE BROCK
DEPUTY COMMISSIONER OF FINANCIAL SOLVENCY
FOR THE LOUISIANA DEPARTMENT OF INSURANCE

Sworn to and subscribed before me,
Notary, this 21 day of SEPTEMBER, 2015.

NOTARY PUBLIC
Bar Roll Number: 25406
MIKE GUY
COMMISSION EXPIRES AT DEATH

CERTIFIED TRUE AND
CORRECT COPY
SEP 21 2015
East Baton Rouge Parish
Deputy Clerk of Court

EBR3215426

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.	:	SUIT NO.: 651069 DIVISION: SEC. 22
versus	:	19TH JUDICIAL DISTRICT COURT
TERRY S. SHILLING, GEORGE G. CROMER, WARNER L. THOMAS, IV, WILLIAM A. OLIVER, CHARLES D. CALVI, PATRICK C. POWERS, CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INCORPORATED, BEAM PARTNERS, LLC, AND TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA	:	PARISH OF EAST BATON ROUGE
	:	STATE OF LOUISIANA

PETITION FOR DAMAGES
AND JURY DEMAND

NOW INTO COURT, through undersigned counsel, comes James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick, who respectfully represents:

JURISDICTION AND VENUE

1.

This Court has jurisdiction over this dispute involving Louisiana Health Cooperative, Inc., ("LAHC") a Louisiana Nonprofit Corporation that holds a health maintenance organization ("HMO") license from the Louisiana Department of Insurance, is domiciled, organized and doing business in the State of Louisiana, and maintains its home office in Louisiana.

2.

This Court has jurisdiction over all of the named Defendants because each of them has transacted business or provided services in Louisiana, has caused damages in Louisiana, and because each of them is obligated to or holding assets of Louisiana Health Cooperative, Inc.

EXH. "E"

3.

Venue is proper in this Court pursuant to the provision of the Louisiana Insurance Code, including La. R.S. 22:257, which dictates that the Nineteenth Judicial District Court has exclusive jurisdiction over this proceeding and La. R.S. 22:2004, which provides for venue in this Court and Parish, as well as other provisions of Louisiana law.

PARTIES

4.

Plaintiff

The Plaintiff herein is James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick ("Plaintiff").

5.

Louisiana Health Cooperative, Inc. ("LAHC") is a Nonprofit Corporation incorporated in Louisiana on or about September 12, 2011. LAHC was organized in 2011 as a qualified nonprofit health insurer under Section 501(c)(29) of the Internal Revenue Code, Section 1322 of the Patient Protection and Affordable Care Act of 2010, the Louisiana Nonprofit Corporation Law, and Louisiana Insurance Law.

6.

A Petition for Rehabilitation of LAHC was filed in the 19th JDC, Parish of East Baton Rouge, on September 1, 2015; on September 1, 2015, an Order of Rehabilitation was entered, and on September 21, 2015, this Order of Rehabilitation was made permanent and placed LAHC into rehabilitation and under the direction and control of the Commissioner of Insurance for the State of Louisiana as Rehabilitator, and Billy Bostick as the duly appointed Receiver of LAHC.

7.

Plaintiff has the authority and power to take action as deemed necessary to rehabilitate LAHC. Plaintiff may pursue all legal remedies available to LAHC, where tortious conduct or breach of any contractual or fiduciary obligation detrimental to LAHC by any person or entity has been discovered, that caused damages to LAHC, its members, policyholders, claimants, and/or creditors.

8.

Defendants

Named Defendants herein are the following:

9.

D&O Defendants

a. **TERRY S. SHILLING ("Shilling")**, an individual of the full age of majority domiciled in the State of Georgia. Shilling was the Chief Executive Officer, President and Director of LAHC, from 2011 until approximately 2013.

b. **GEORGE G. CROMER ("Cromer")**, an individual of the full age of majority domiciled in the State of Louisiana. Cromer was the Chief Executive Officer of LAHC after Shilling, from 2013 until approximately August 2015.

c. **WARNER L. THOMAS, IV ("Thomas")**, an individual of the full age of majority domiciled in the State of Louisiana. Thomas was a Director of LAHC from 2011 until approximately January 2014.

d. **WILLIAM A. OLIVER ("Oliver")**, an individual of the full age of majority domiciled in the State of Louisiana. Oliver was s Director of LAHC from 2011 through 2015.

e. **CHARLES D. CALVI ("Calvi")**, an individual of the full age of majority domiciled in the State of Louisiana. Calvi was the Executive Vice President and Marketing Officer of LAHC from 2014 until approximately August 2015.

f. **PATRICK C. POWERS ("Powers")**, an individual of the full age of majority domiciled in the State of Louisiana. Powers was the Chief Financial Officer and Treasurer of LAHC from 2014 until approximately April 2015.

10.

TPA Defendants

a. **CGI TECHNOLOGIES AND SOLUTIONS, INC. ("CGI")**, a foreign corporation believed to be domiciled in Delaware with its principal place of business in Virginia. From approximately March 2013 to approximately May 2014, CGI served as the Third Party Administrator of LAHC. CGI contracted with and did work for LAHC in Louisiana.

b. **GROUP RESOURCES INCORPORATED ("GRI")**, a foreign corporation believed to be domiciled in Georgia with its principal place of business in Georgia. From

approximately May 2014 to approximately May 2016, GRI served as the Third Party Administrator of LAHC. GRI contracted with and did work for LAHC in Louisiana.

11.

Beam Partners, LLC

a. **BEAM PARTNERS, LLC ("Beam Partners")**, a foreign corporation believed to be domiciled in Georgia with its principal place of business in Georgia. From prior to LAHC's incorporation in 2011 through approximately mid-2014, Beam Partners developed and managed LAHC. Beam Partners contracted with and did work for LAHC in Louisiana.

12.

Insurer Defendant

a. **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA ("Travelers")**, a foreign insurer, doing business in the State of Louisiana and subject to the regulatory authority of the Louisiana Department of Insurance, who issued an applicable policy or policies to LAHC that provide coverage for claims asserted herein.

DEFINED TERMS

13.

As used herein, the following terms are defined as follows:

1. **"D&O Defendants"** shall refer to and mean those directors and officers of LAHC named as defendants herein, specifically: Terry S. Shilling, George G. Cromer, Warner L. Thomas, IV, William A. Oliver, Charles D. Calvi, and Patrick C. Powers.

2. **"TPA Defendants"** shall refer to and mean those third party administrators hired by LAHC to oversee, manage, and otherwise operate LAHC named as defendants herein, specifically: CGI Technologies and Solutions, Inc. and Group Resources Incorporated.

3. **"Insurer Defendant"** shall refer to and mean those insurance companies named herein which provide insurance coverage for any of the claims asserted herein by LAHC against any of the defendants named herein, including: Travelers Casualty and Surety Company of America ("Travelers").

4. **"LDOI"** shall refer to and mean the Louisiana Department of Insurance.

5. **"CMS"** shall refer to the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services.

FACTUAL BACKGROUND

14.

The Patient Protection and Affordable Care Act ("ACA") established health insurance exchanges (commonly called "marketplaces") to allow individuals and small businesses to shop for health insurance in all states across the nation. To expand the number of available health insurance plans available in the marketplaces, the ACA established the Consumer Operated and Oriented Plan ("CO-OP") program. The ACA further directed the Secretary of Health and Human Services to loan money to the CO-OP's created in each state. Beginning on January 1, 2014, each CO-OP was allowed to offer health insurance through the newly minted marketplaces for its respective state. A total of 23 CO-OP's were created and funded as of January 1, 2014. State regulators, like the Louisiana Department of Insurance ("LDOI"), have the primary oversight of CO-OP's as health insurance issuers.

15.

In Louisiana, the CO-OP created and funded pursuant to the ACA was Louisiana Health Cooperative, Inc. ("LAHC"), a Louisiana Nonprofit Corporation that holds a health maintenance organization ("HMO") license from the LDOI. Incorporated in 2011, LAHC eventually applied for and received loans from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") totaling more than $65 million. Specifically, according to the 2012 Loan Agreement with LAHC, the Louisiana CO-OP was awarded a Start-up Loan of $12,426,560, and a Solvency Loan of $52,614,100. Pursuant to the ACA, these loans were to be awarded only to entities that demonstrated a high probability of becoming financially viable. All CO-OP loans must be repaid with interest. LAHC's Start-up Loan must be repaid no later than five (5) years from disbursement; and LAHC's Solvency Loan must be repaid no later than fifteen (15) years from disbursement.

16.

From the start, because of the gross negligence of the Defendants named herein, LAHC failed miserably. Before ever offering a policy to the public, LAHC lost approximately $8 million in 2013. While projecting a modest loss of about $1.9 million in 2014 in its loan application to CMS, LAHC actually lost about $20 million in its first year in business. And although LAHC projected turning a modest profit of about $1.7 million in 2015, it actually lost more than $54 million by the end of that year.

17.

Not only did LAHC lose a tremendous amount of money, but, from its inception, LAHC was unable to process and manage the eligibility, enrollment, and claims handling aspects of the HMO competently. Almost every aspect of LAHC's eligibility, enrollment, and claims handling process was deficient, resulting in numerous unpaid claims, untimely paid claims, and erroneously paid claims.

18.

By July 2015, only eighteen months after it started issuing policies, LAHC decided to stop doing business. The LDOI placed LAHC in rehabilitation in September 2015, and a Receiver, Billy Bostick, was appointed by this Court to take control of the failed Louisiana CO-OP.

19.

The various parties who created, developed, and managed LAHC (i.e., the Defendants named herein) completely failed to meet their respective obligations to the subscribers, providers, and creditors of this Louisiana HMO. From the beginning of its existence, LAHC was completely ill-equipped to service the needs of its subscribers (i.e., its members / policyholders), the healthcare providers who provided medical services to its members, and the vendors who did business with LAHC. As described in detail herein, the conduct of the Defendants named herein went way beyond simple negligence. For instance, when the LDOI took over the operations of LAHC, the CO-OP had a backlog of approximately 50,000 claims that had not been processed. Because of Defendant's gross negligence, as of December 31, 2015, LAHC had lost more than $82 million.

20.

As set forth herein, Defendants are liable to Plaintiff for all compensatory damages caused by their actionable conduct.

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CAUSES OF ACTION

Count One: Breach of Fiduciary Duty (Against the D&O Defendants and Insurer Defendant)

21.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

22.

The D&O Defendants owed LAHC, its members, and its creditors, fiduciary duties of loyalty, including the exercise of oversight as pleaded herein, due care, and the duty to act in good faith and in the best interest of LAHC. The D&O Defendants stand in a fiduciary relation to LAHC and its members and creditors and must discharge their fiduciary duties in good faith, and with that diligence, care, judgment and skill which the ordinarily prudent person would exercise under similar circumstances in like position.

23.

At all times when LAHC was insolvent and/or in the zone of insolvency, the D&O Defendants owed these fiduciary duties to the creditors of LAHC as well.

24.

The conduct of the D&O Defendants of LAHC, as pled herein, went beyond simple negligence. The conduct of the D&O Defendants constitutes gross negligence, and in some cases, willful misconduct. In other words, the D&O Defendants did not simply act negligently in the management and supervision of and their dealings with LAHC, but the D&O Defendants acted grossly negligently, incompetently in many instances, and deliberately, in other instances, all in a manner that damaged LAHC, its members, providers and creditors.

25.

The D&O Defendants knew or should have known that Beam Partners was unqualified and unsuited to develop and manage LAHC.

26.

The D&O Defendants knew or should have known that GRI was unqualified and unsuited to develop and manage LAHC.

27.

The failure of the D&O Defendants to select a competent TPA, negotiate an acceptable contract with GRI, and manage and oversee Beam Partners, CGI, and GRI's conduct, constitutes

gross negligence on the part of the D&O Defendants that caused LAHC to hire other vendors and/or additional employees, in effect, to either do work and/or fix work that should have been competently done by Beam Partners, CGI, and/or GRI, resulting in tremendous additional and unnecessary expenses and inefficiencies to LAHC which played a significant role in LAHC's failure.

28.

The D&O Defendants breached their fiduciary obligations in the following, non-exclusive, ways:

a. Paying excessive salaries to LAHC executives in relation to the poor, inadequate, or non-existent services rendered by them to LAHC and/or on its behalf;

b. Paying excessive bonuses to LAHC executives in relation to the poor, inadequate, or non-existent services renders by them to LAHC and/or on its behalf;

c. Grossly inadequate oversight of LAHC operations;

d. Grossly inadequate oversight of contracts with outside vendors, including CGI and GRI;

e. Lack of regularly scheduled and meaningful meetings of the Board of Directors and management; the few board meetings that took place (one in 2012; four in 2013; six in 2014; and one in 2015), generally lasted about an hour;

f. Gross negligence in hiring key management and executives with limited or inadequate health insurance experience;

g. Gross failure to protect the personal health information of subscribers; unauthorized disclosure of subscribers' personal health information; for example, in February 2014, an incorrect setting within LAHC's document production system caused 154 member ID cards to be erroneously distributed;

h. Gross failure to issue ID cards to members accurately and timely;

i. Gross failure to pay claims timely (if at all);

j. Gross failure to bill premiums accurately and timely;

k. Gross failure to properly calculate member out-of-pocket responsibilities resulting in members being over-billed for their portion of services rendered by providers;

l. Gross failure to collect premium payments timely (if at all);

m. Gross failure to process and record the effective dates of policies accurately or consistently;

n. Gross failure to process and record the termination dates of policies accurately or consistently;

o. Gross failure to process invoices correctly and timely;

p. Gross failure to determine and report eligibility of members accurately;

q. Gross failure to have in place and/or to implement a financial policy or procedure to verify check register expenditures;

r. Gross failure to have in place and/or to implement a financial policy or procedure to verify credit card expenditures; for example, in or around October to November 2013, a VP of IT Operations at LAHC, Larry Butler, misused his LAHC credit card by incurring more than $35,000 in charges, the vast majority of which were personal expenses, on a corporate account with limits of $5,000;

s. Gross failure to have in place and/or to implement a financial policy or procedure to verify sponsor invoices;

t. Gross failure to have in place and/or to implement policies and procedures regarding operational, financial, and compliance areas (such as background checks, corrective action plans, procurement, contract management, and financial management) before engaging in meaningful work and offering insurance coverage to the public;

u. Gross failure to understand, implement, and enforce the applicable "grace period" pertaining to subscribers as per the ACA and Louisiana Law, La. R.S. 22:1260.31, *et. seq.*;

v. Gross failure to record and report LAHC's claims reserves (IBNR) accurately;

w. Gross failure to report and appoint agents and brokers;

x. Gross failure to record and report the level of care provided to LAHC members, enrollees, and subscribers accurately;

y. As of March 2014, LAHC described its own system to process enrollment, eligibility, and claims handling as a "broken" process;

z. Grossly negligent to choose GRI to replace CGI; went from the frying pan into the fire; GRI was unqualified, ill-equipped, and unable to service the needs of LAHC, its members, providers, and creditors;

aa. Erroneously terminating coverage for fully subsidized subscribers;

bb. Failing to provide notice to providers regarding member terminations and lapses due to non-payment of premiums;

cc. Failing to provide notice (delinquency letters) to subscribers prior to terminating coverage;

dd. Failing to maintain an Information Technology environment with adequate controls and risk mitigation to protect the data, processes, and integrity of LAHC data;

ee. Failing to collect binder payments on-time;

ff. Failing to terminate members when binder payments were not received;

gg. Failing to correct ambiguities in the GRI contract(s);

hh. Failing to select qualified vendors

ii. Failing to select qualified management;

jj. They knew or should have known, prior to the public rollout of LAHC in January 2014, that LAHC would not be a viable HMO, and yet they proceeded to offer policies and services to the public and members knowing that LAHC would fail;

kk. They caused and/or allowed LAHC to misrepresent the financial condition and viability of LAHC to the LDOI, the federal government, its member, its creditors, and the public, thereby allowing LAHC to remain in operation much longer that they

should and would otherwise have, adding additional members and incurring additional claims and debt;

ll. They knowingly paid excessive salaries, professional service fees, and consulting fees, as alleged herein, without receiving appropriate value to LAHC;

mm. They failed to implement internal controls that would have prevented the gross waste and damages sustained by LAHC as a result of their gross negligence;

nn. They concealed LAHC's true financial condition and insolvency and artificially prolonged LAHC's corporate life beyond insolvency all to the detriment of LAHC, its members, and its creditors;

oo. They grossly mismanaged LAHC's affairs;

pp. They grossly failed to exercise oversight or supervise LAHC's financial affairs;

qq. They failed to operate LAHC in a reasonably prudent manner;

rr. They failed in their duty to operate LAHC in compliance with the laws and regulations applicable to them; and

ss. Other acts of gross negligence as may be later discovered.

29.

The D&O Defendants also breached their fiduciary duty of loyalty, due care, and good faith by allowing, if not fostering, individuals with conflicts of interest to influence, if not control, LAHC, all to the detriment of LAHC, its members, providers, and creditors.

30.

Because of the grossly negligent conduct of the D&O Defendants, LAHC was woefully not prepared to for its roll-out to the public on January 1, 2014.

31.

By approximately March 2014, just three (3) months after its ill-advised roll-out, the D&O Defendants compounded an already bad situation by deciding to replace CGI with GRI as TPA. At this point, the D&O Defendants should have either exercised appropriate oversight and management to reform CGI's grossly inadequate performance, or the D&O Defendants should have terminated the Agreement with CGI and found a suitable TPA, or the D&O Defendants should have ceased operations altogether. Instead, the D&O Defendants made matters worse by hiring a TPA that was even less qualified and less prepared than CGI for the job: GRI.

32.

To further damage the struggling LAHC, in approximately mid-2014, the D&O Defendants decided to switch healthcare provider networks from Verity Healthnet, LLC ("Verity") to Primary

Healthcare Systems ("PHCS"). Once again, the D&O Defendants' conduct constitutes gross negligence that further damaged LAHC, its members, providers, and creditors.

33.

The D&O Defendants, in breaching both their duty of loyalty and duty of care, showed a conscious disregard for the best interests of LAHC, its members, providers and creditors.

34.

As a direct and proximate result of the gross negligence and foregoing failures of the D&O Defendants to perform their fiduciary obligations, LAHC, its members, its providers and its creditors have sustained substantial, compensable damages for which the D&O Defendants and the Insurer Defendant are liable, and for which Plaintiff is entitled to recover in this action.

35.

The compensable damages caused by the D&O Defendants' grossly negligent conduct, if not willful conduct, include, but are not limited to:

a. damages in the form of all losses sustained by LAHC from its inception (i.e., they should have never started LAHC in the first place);

b. damages in the form of lost profits (i.e., the amount LAHC would have earned, if any, but for their conduct);

c. damages in the form of excessive losses (i.e., the difference between the amount LAHC would have lost, if any, and the amount LAHC did lose, because of their conduct);

d. damages in the form of deepening insolvency (i.e., the damages caused by their decision to prolong the corporate existence of LAHC beyond insolvency);

e. damages in the form of all legitimate debts owed to creditors of LAHC, including but not limited to those unpaid debts owed to health care providers who delivered services to members of LAHC, any debts owed to members of LAHC that were not paid, and the debt owed to CMS (both principal and interest) as a result of LAHC's gross negligence as pled herein;

f. disgorgement of all excessive salaries, bonuses, profits, benefits, and other compensation inappropriately obtained by them;

g. damages in the form of all excessive administrative, operational, and/or management expenses, including:

   i. Untimely payment of member and provider claims;

   ii. Incorrect payment of member and provider claims;

   iii. Increased interest expense due to incorrect and/or untimely claims payments;

   iv. Increased expenses due to incorrect and/or untimely claims payments;

   v. Incorrect and/or untimely payment of agent/broker commissions;

   vi. Inaccurate and/or untimely collection of premium due for health coverage;

vii. Increased expenses for services from LAHC vendors other than the third party administrator;

viii. Increased expenses for provider networks and medical services;

ix. Loss of money due to LAHC from the Center for Medicare and Medicaid Services ("CMS") for risk adjustments;

x. Fines incurred for failure to have agents/brokers properly appointed; and

xi. Inability to repay the millions of dollars loaned to LAHC by the federal government.

h. all costs and disbursements of this action, including all compensable litigation expenses.

36.

The Insurer Defendant is liable to the Plaintiff jointly, severally and *in solido* with the D&O Defendants to the extent of the limits of its respective policies of insurance, for the following reasons:

a. Travelers Casualty and Surety Company of America issued a Private Company Directors and Officers Liability Insurance Policy to LAHC, with policy limits, upon information and belief, of $3,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff;

b. Travelers Casualty and Surety Company of America issued a Managed Care Errors and Omissions Liability Insurance Policy to LAHC, with policy limits, upon information and belief, of $3,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff.

Count Two: Breach of Contract
(Against the TPA Defendants and Beam Partners)

37.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

CGI

38.

On or about February 15, 2013, LAHC and CGI entered into an Administrative Services Agreement ("Agreement") whereby CGI agreed to perform certain administrative and management services to LAHC in exchange for certain monetary compensation as set forth in the Agreement. A true and correct copy of the Agreement and all exhibits is attached hereto and incorporated herein by reference as "Exhibit 1."

39.

Under the terms of the Agreement, CGI represented and warranted, *inter alia*, that "CGI personnel who perform the services under the Agreement shall have the appropriate training, licensure and or certification to perform each task assigned to them" and that "CGI will make a good faith effort to maintain consistent staff performing the delegated functions" for LAHC.

40.

Under the terms of the Agreement, CGI was, among other things, obligated to:

a. Function as a Third Party Administrator for LAHC;

b. Accurately process and pay claims for covered services provided to LAHC's members by participating providers according to payment terms regarding timeliness and the rates and amounts set forth in LAHC's Participating Provider Agreements.

c. Accurately process and pay claims for covered services provided to LAHC's members by providers;

d. Competently perform all of those tasks set forth in the Agreement, including Exhibit 2 thereto, such as paying claims, adjudicating claims, determining covered services, identifying and processing clean and unclean claims, collecting and processing all encounter data, transmitting denial notifications to members and providers, transmitting all required notices, tracking and reporting its performance, tracking, reporting and reconciling all records regarding deductibles and benefit accumulators, monitoring all claims, submitting all claims, tracking, reporting, and paying all interest on late paid claims, coordinating the payment and processing of all claims and EOBs, and developing and implementing a functional coding system; and

e. Competently perform all of those task expected and required of a Third Party Administration, whether specified in the Agreement or not.

41.

CGI breached its obligations and warranties set forth in the Agreement in a grossly negligent manner, all in the following, non-exclusive ways:

a. Failed to pay claims at the proper contract rates and amounts, thus resulting in an overpayment of claims;

b. Failed to accurately and properly process enrollment segments and failed to timely reconcile enrollment segments;

c. Failed to provide proper notice to providers regarding member terminations and lapses due to non-payment of premiums;

d. Failed to provide proper notice (delinquency letters) so subscribers prior to terminating coverage; and

e. Other acts of gross negligence as may be later discovered.

42.

As of March 2014, just three (3) months after its roll-out, LAHC described the system designed and implemented by CGI to process enrollment, eligibility, and claims handling, as a "broken" process. Indeed, the conduct of CGI, as described herein in detail, goes well beyond simple negligence; almost every facet of the system designed and implemented by CGI as a third party administrator of LAHC was a failure. CGI's conduct, as described herein in detail, constitutes gross negligence.

43.

CGI's breaches of its warranties and obligations in the Agreement have directly caused LAHC to incur substantial, compensatory damages which are recoverable by Plaintiff herein.

GRI

44.

GRI was not qualified to render the services as a third party administrator ("TPA") that LAHC needed to be successful. Rather than decline taking on a job that was outside of its capabilities, GRI wrongly agreed to replace CGI and serve as TPA for LAHC. GRI's decision to serve as LAHC's TPA constitutes gross negligence, if not a conscious disregard for the best interests of LAHC, its members, providers, and creditors. But for GRI's gross negligence, most of LAHC's substantial, compensatory damages would have been avoided.

45.

In or about July 2014, LAHC and GRI entered into an Administrative Services Agreement whereby GRI agreed to perform certain administrative and management services to LAHC in exchange for certain monetary compensation as set forth in the Administrative Services Agreement. The Administrative Services Agreement had an effective date of July 1, 2014. The Administrative Services Agreement was amended both in September 2014 and December 2014. A true and correct copy of the Administrative Services Agreement and all amendments and exhibits are collectively referred to as the "Agreement" and are attached hereto, incorporated herein by reference and designated as "Exhibit 2."

46.

Under the terms of the Agreement, CGI represented and warranted that "GRI personnel who perform or provide the Delegated Services specified services under this Agreement shall

possess the appropriate authorization, license, bond and certificates, and are full and appropriately trained, to properly perform the tasks assigned to them."

47.

Under the terms of the Agreement, GRI was, among other things, obligated to:

a. Accurately process and pay claims for covered services provided to LAHC's members by participating providers according to payment terms regarding timeliness and the rates and amounts set forth in LAHC's Participating Provider Agreements.

b. Accurately process and pay claims for covered services provided to LAHC's members by providers;

c. Competently perform all of those tasks set forth in the Agreement, including Exhibit A-1 thereto, such as paying claims, adjudicating claims, determining covered services, identifying and processing clean and unclean claims, collecting and processing all encounter data, transmitting denial notifications to members and providers, transmitting all required notices, tracking and reporting its performance, tracking, reporting and reconciling all records regarding deductibles and benefit accumulators, monitoring all claims, submitting all claims, tracking, reporting, and paying all interest on late paid claims, coordinating the payment and processing of all claims and EOBs, and developing and implementing a functional coding system; and

d. Competently perform all of those task expected and required of a Third Party Administration, whether specified in the Agreement or not.

48.

GRI breached its obligations and warranties set forth in the Agreement in a grossly negligent manner, all in the following, non-exclusive ways:

a. GRI failed to meet most, if not all, of the performance standards mandated by the Services Agreement of July 1, 2014;

b. GRI was unqualified, ill-equipped, and unable to service the needs of LAHC, its member, providers, and creditors;

c. GRI knew or should have known that it was unqualified to service the needs of LAHC;

d. Pursuant to GRI's Service Agreement, GRI was responsible for critical processes that are typically covered by such a health insurance administrative service provider contracts, including the receipt and processing of member premium payments, the calculation and payment of broker commissions, and the process of managing calls into LAHC;

e. GRI wholly failed to provide sufficient and adequately trained personnel to perform the services GRI agreed to perform under the Agreement;

f. Failed to process and pay claims on a timely basis, resulting in interest payment alone in excess of $600,000.00;

g. Failed to pay claims at the proper contract rates and amounts, thus resulting in an overpayment of claims;

h. Failed to accurately and properly process enrollment segments and failed to timely reconcile enrollment segments;

i. Erroneously terminated coverage for fully subsidized subscribers ($0 Invoices);

j. Failed to provide proper notice to providers regarding member terminations and lapses due to non-payment of premiums;

k. Failed to timely process enrollment interface (ANSI 834) from CMS;

l. Failed to accurately process enrollment interface (ANSI 834) from CMS;

m. Failed to pass CMS data edits for CMS Enrollment Reconciliation Process;

n. Submitted inaccurate data to the CMS Enrollment Reconciliation Process causing erroneous terminations;

o. Failed to pass CMS data edits for Enrollment Terminations & Cancellations Interface (ANSI 834) to CMS;

p. Failed to pass CMS data edits for Edge Server Enrollment Submissions to CMS;

q. Failed to use standard coding for illustrating non-effectuated members (using years 1915 and 1900 as termination year);

r. Failed to provide proper notice (delinquency letters) to subscribers prior to terminating coverage;

s. Failed to invoice subscribers accurately when APTC changed;

t. Failed to invoice subscribers for previously unpaid amounts (no balance forward);

u. Failed to cancel members for non-payment of binder payment;

v. Failed to cancel members after passive enrollment;

w. Failed to administer member benefits (maximum out-of-pockets exceeded);

x. Failed to pay interest on claims to providers;

y. Failed to pay claims within the contractual timeframes;

z. Failed to adjust claims after retroactive disenrollments;

aa. Failure to examine claims for potential subrogation

bb. Failed to maintain adequate customer service staffing and call center technology;

cc. Failed to process APTC changes from CMS within an appropriate timeframe;

dd. Failed to capture all claims diagnoses data from providers;

ee. Failed to pass CMS data edits for Edge Server claims submissions to CMS;

ff. Failed to load the 1,817 claims from the 4/29/16 and 5/2/16 check runs onto the EDGE Server;

gg. Incorrectly calculated claim adjustments, especially as it pertains to a subscriber's maximum out-of-pocket limit;

hh. Paid claims for members that never effectuated;

ii. Failed to protect the personal health information of subscribers;

jj. Failed to issue ID cards to members accurately and timely and without effective dates;

kk. Failed to have in place and/or to implement a financial policy or procedure to verify credit card expenditures;

ll. Failed to understand, implement, and enforce the applicable "grace period" pertaining to subscribers as per the ACA and Louisiana Law, La. R.S. 22:1260.31, *et. seq.*;

mm. Failed to record and report LAHC's claims reserves (IBNR) accurately;

nn. Failed to report and appoint agents and brokers appropriately;

oo. Failed to record and report the level of care provided to LAHC members, enrollees, and subscribers accurately; and

pp. Failed to maintain an Information Technology environment with adequate controls and risk mitigation to protect the data, processes, and integrity of LAHC data.

49.

According to the Agreement, GRI was obligated to pay claims within the time frame required by applicable law; and if claims were paid untimely because of GRI's conduct, GRI "shall be responsible for paying any required interest penalty to Providers." Because of GRI's gross negligence and non-performance of its contractual obligations owed to LAHC, numerous claims were paid late and significant interest penalties were incurred and paid by LAHC. GRI is obligated to pay all such interest penalties.

50.

GRI's gross negligence and breaches of its warranties and obligations in the Agreement have directly caused LAHC to incur substantial, compensatory damages which are recoverable by Plaintiff herein.

Beam Partners

51.

Beam Partners was not qualified to render the services as a manager and developer and/or third party administrator ("TPA") that the start-up, LAHC, needed to be successful. Rather than decline taking on a job that was outside of its capabilities, Beam Partners wrongly orchestrated and agreed to manage, develop, and serve as TPA for LAHC from its inception. Beam Partner's decision to manage, develop, and effectively serve as LAHC's TPA constitutes gross negligence, if not a conscious disregard for the best interests of LAHC, its members, providers, and creditors. But for Beam's gross negligence, all of LAHC's substantial, compensatory damages would have been avoided.

52.

Given that numerous individuals who either owned, managed and/or worked for Beam Partners, including Terry Shilling, Alan Bayham, Mark Gentry, Jim McHaney, Deborah Sidener, Jim Krainz, Jim Pittman, Michael Hartnett, Eric LeMarbre, Etosha McGee, Diana Pitchford, Darla Coates, were also involved with and managed LAHC from the beginning as officers, directors, and employees of LAHC, for all intents and purposes, Beam Partners was closely related to and acted as LAHC.

53.

From approximately September 2012 through May 2014, LAHC paid more than $3.7 million in the form of consulting fees, performance fees, and expenses to Beam Partners.

54.

LAHC and Beam Partners, LLC entered into a Management and Development Agreement whereby Beam Partners agreed to perform certain management, administrative, and developmental services for LAHC in exchange for certain monetary compensation as set forth in the Management and Development Agreement. Warner Thomas, as Chair of the Board of Directors of LAHC, signed this Management and Development Agreement on October 8, 2012; Terry Shilling signed the Management and Development Agreement on behalf of Beam Partners, LLC, with an effective date of August 28, 2012. At this time, Terry Shilling was simultaneously the Interim CEO of LAHC and a member and owner of Beam Partners. This Agreement was amended at least twice. A true and correct of the Management and Development Agreement, all Exhibits thereto (with the exception of Exhibit 2, "Performance Objectives for Services"; which is unavailable, Amendment 1, and Amendment 2), is attached hereto and incorporated by reference as "Exhibit 3."

55.

According to the terms of the Agreement, Beam Partners agreed to provide "services essential to the formation of the Cooperative and its application for CO-OP program loans," including training all directors, securing the requisite licensure from LDOI, developing a network of providers for LAHC, recruiting and vetting candidates for positions at LAHC, creating processes, systems, and forms for the operation of LAHC, and identifying, negotiating and executing administrative services for the operation of LAHC.

56.

In short, Beam Partners agreed to transform the start-up LAHC into a well-organized, well-funded, and well-run HMO prior to January 1, 2014, the roll-out date of LAHC to the public. Beam Partners utterly failed to meet its contractual obligations owed to LAHC, and breached its obligations and warranties set forth in the Agreement in a grossly negligent manner, all in the following, non-exclusive ways:

a. Failing to identify, select, and retain qualified third party contractors for LAHC, including but not limited to CGI and/or GRI;

b. Failing to train all directors of LAHC regarding how to manage such an HMO;

c. Failing to develop a network of providers for LAHC;

d. Failing to recruit and adequately vet appropriate candidates for positions at LAHC;

e. Failing to create adequate and/or functioning processes, systems, and forms for the operation of LAHC;

f. Failing to to identify, negotiate, and execute adequate and/or functioning administrative services for the operation of LAHC;

g. Failing to report and provide LAHC with complete, accurate, and detailed records of its performance of all services provided to LAHC;

h. Failing to adequately disclose conflict of interests regarding Beam Partners and LAHC to any regulatory authority;

i. Failing to provide sufficient and adequately trained personnel to perform the services Beam Partners agreed to perform under the Agreement; and

j. In general, by completely failing to have LAHC ready and able to meet its obligations to the public, members, providers, and creditors on or before the roll-out date of January 1, 2014.

57.

The numerous failures of Bean Partners to perform its obligations owed to LAHC constitute gross negligence, if not a conscious disregard for the best interests of LAHC, its members, providers, and creditors.

58.

To the extent that Beam Partners made the decision to keep using CGI as TPA until it was too late, Beam Partners is grossly negligent in that it knew or should have known that CGI was unqualified to serve as TPA.

59.

To the extent that Beam Partners made the decision to replace CGI with GRI as TPA, Beam Partners is grossly negligent in that it knew or should have known that GRI was unqualified to serve as TPA.

60.

To the extent that Beam Partners made the decision to terminate the Verity contract, Beam Partners is grossly negligent in that it knew or should have known that terminating the Verity contract would be a substantial factor in causing LAHC to incur additional, unnecessary expense and, ultimately, to collapse.

61.

Beam Partners' gross negligence and breaches of its warranties and obligations in the Agreement have directly caused LAHC to incur substantial, compensatory damages which are recoverable by Plaintiff herein.

Count Three: Gross Negligence and Negligence (Against the TPA Defendants and Beam Partners)

62.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

63.

CGI, GRI, and Beam Partners each had a duty to ensure that its personnel who performed services for LAHC were adequately and appropriately trained, licensed, and certified to perform the services and functions delegated by LAHC to each of them.

64.

CGI, GRI, and Beam Partners each had a duty to accurately process and pay claims on LAHC's behalf in a timely manner at the correct rates and amounts.

65.

CGI, GRI, and Beam Partners each had a duty to perform their obligations in a reasonable, competent, and professional manner.

66.

CGI, GRI, and Beam Partners each breached their duties in that it negligently failed to cause LAHC to accurately process and pay health insurance claims in a timely manner at the correct rates and amounts.

67.

CGI, GRI, and Beam Partners each breached their duties in that they negligently and wholly failed to perform their obligations in a reasonable, competent, and professional manner.

CGI, GRI, and Beam Partners each were grossly negligent in that they wantonly failed to provide a sufficient number of adequately trained personnel who had sufficient knowledge of the system program utilized by LAHC to process and pay health insurance claims at the correct rates and amounts in complete and reckless disregard of the rights of LAHC, its members, providers, and creditors.

68.

CGI, GRI, and Beam Partners each were grossly negligent in that they wantonly failed to cause LAHC to accurately process and pay health insurance claims in a timely manner at the correct health insurance rates and amounts in complete and reckless disregard of the rights of LAHC, its members, providers, and creditors.

69.

As a direct and proximate result of CGI's, GRI's, and Beam Partners' negligence or gross negligence, LAHC has incurred substantial, compensatory damages, which are recoverable herein by Plaintiff.

JURY DEMAND

70.

Plaintiff is entitled to and hereby demands a trial by jury on all triable issues.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick, prays and demands that the Defendants named herein, Terry S. Shilling, George G. Cromer, Warner L. Thomas, IV, William A. Oliver, Charles D. Calvi, Patrick C. Powers, CGI Technologies and Solutions, Inc., Group Resources Incorporated, Beam Partners, LLC and Travelers Casualty and Surety Company of America, be cited to appear and answer, and that upon a final hearing of the cause, judgment be entered against Defendants and in favor of Plaintiff for all compensable damages in an amount reasonable in the premises, including:

a. All compensatory damages allowed by applicable law caused by Defendants' actionable conduct;

b. the recovery from Defendants of all administrative costs incurred as a result of the necessary rehabilitation and/or liquidation proceedings;

c. all fees, expenses, and compensation of any kind paid by LAHC to the D&O Defendants, Beam Partners, CGI, and GRI;

d. any and all equitable relief to which Plaintiff may appear properly entitled;

e. all recoverable costs and litigation expenses incurred herein;

f. all judicial interest;

g. any and all equitable relief to which Plaintiff may appear properly entitled; and

h. all further relief to which Plaintiff may appear entitled.

Respectfully submitted,

FILED 8-31 2016
Signed /s/ Karen Pope
Deputy Clerk
Certified True and Correct Copy
11-29 2016
/s/ Cindy M. Morris
Deputy Clerk

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PLEASE WITHHOLD SERVICE AT THIS TIME

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.	:	SUIT NO.: 651,069 SECTION: 22
versus	:	19TH JUDICIAL DISTRICT COURT
TERRY S. SHILLING, GEORGE G. CROMER, WARNER L. THOMAS, IV, WILLIAM A. OLIVER, CHARLES D. CALVI, PATRICK C. POWERS, CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INCORPORATED, BEAM PARTNERS, LLC, MILLIMAN, INC., BUCK CONSULTANTS, LLC. AND TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA	:	PARISH OF EAST BATON ROUGE
	:	STATE OF LOUISIANA

FIRST SUPPLEMENTAL, AMENDING AND RESTATED PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL

NOW INTO COURT, through undersigned counsel, comes James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick, who respectfully requests that this FIRST SUPPLEMENTAL, AMENDING AND RESTATED PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL be filed herein and served upon all named Defendants; and respectfully represents:

1.

That the caption of this matter be amended to read as follows:

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.	:	SUIT NO.: 651,069 SECTION: 22
versus	:	19TH JUDICIAL DISTRICT COURT
TERRY S. SHILLING, GEORGE G. CROMER, WARNER L. THOMAS, IV, WILLIAM A. OLIVER, CHARLES D. CALVI, PATRICK C. POWERS, CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INCORPORATED, BEAM PARTNERS, LLC, MILLIMAN, INC., BUCK CONSULTANTS, LLC. AND TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA	:	PARISH OF EAST BATON ROUGE
	:	STATE OF LOUISIANA

EXH. "F"

JURISDICTION AND VENUE

2.

This Court has jurisdiction over this dispute involving Louisiana Health Cooperative, Inc., ("LAHC") a Louisiana Nonprofit Corporation that holds a health maintenance organization ("HMO") license from the Louisiana Department of Insurance, is domiciled, organized and doing business in the State of Louisiana, and maintains its home office in Louisiana.

3.

This Court has jurisdiction over all of the named Defendants because each of them has transacted business or provided services in Louisiana, has caused damages in Louisiana, and because each of them is obligated to or holding assets of Louisiana Health Cooperative, Inc.

4.

Venue is proper in this Court pursuant to the provision of the Louisiana Insurance Code, including La. R.S. 22:257, which dictates that the Nineteenth Judicial District Court has exclusive jurisdiction over this proceeding and La. R.S. 22:2004, which provides for venue in this Court and Parish, as well as other provisions of Louisiana law.

PARTIES

5.

Plaintiff

The Plaintiff herein is James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick ("Plaintiff").

6.

Louisiana Health Cooperative, Inc. ("LAHC") is a Nonprofit Corporation incorporated in Louisiana on or about September 12, 2011. LAHC was organized in 2011 as a qualified nonprofit health insurer under Section 501(c)(29) of the Internal Revenue Code, Section 1322 of the Patient Protection and Affordable Care Act of 2010, the Louisiana Nonprofit Corporation Law, and Louisiana Insurance Law.

7.

A Petition for Rehabilitation of LAHC was filed in the 19th JDC, Parish of East Baton Rouge, on September 1, 2015; on September 1, 2015, an Order of Rehabilitation was entered, and on September 21, 2015, this Order of Rehabilitation was made permanent and placed LAHC into

rehabilitation and under the direction and control of the Commissioner of Insurance for the State of Louisiana as Rehabilitator, and Billy Bostick as the duly appointed Receiver of LAHC.

8.

Plaintiff has the authority and power to take action as deemed necessary to rehabilitate LAHC. Plaintiff may pursue all legal remedies available to LAHC, where tortious conduct or breach of any contractual or fiduciary obligation detrimental to LAHC by any person or entity has been discovered, that caused damages to LAHC, its members, policyholders, claimants, and/or creditors.

9.

Defendants

Named Defendants herein are the following:

10.

D&O Defendants

a. **TERRY S. SHILLING ("Shilling")**, an individual of the full age of majority domiciled in the State of Georgia. Shilling was the Chief Executive Officer, President and Director of LAHC, from 2011 until approximately 2013.

b. **GEORGE G. CROMER ("Cromer")**, an individual of the full age of majority domiciled in the State of Louisiana. Cromer was the Chief Executive Officer of LAHC after Shilling, from 2013 until approximately August 2015.

c. **WARNER L. THOMAS, IV ("Thomas")**, an individual of the full age of majority domiciled in the State of Louisiana. Thomas was a Director of LAHC from 2011 until approximately January 2014.

d. **WILLIAM A. OLIVER ("Oliver")**, an individual of the full age of majority domiciled in the State of Louisiana. Oliver was a Director of LAHC from 2011 through 2015.

e. **CHARLES D. CALVI ("Calvi")**, an individual of the full age of majority domiciled in the State of Louisiana. Calvi was the Executive Vice President and Marketing Officer of LAHC from 2014 until approximately August 2015.

f. **PATRICK C. POWERS ("Powers")**, an individual of the full age of majority who is currently, upon information and belief, domiciled in the State of Tennessee. Powers was the Chief Financial Officer and Treasurer of LAHC from 2014 until approximately April 2015.

11.

TPA Defendants

a. **CGI TECHNOLOGIES AND SOLUTIONS, INC. ("CGI")**, a foreign corporation believed to be domiciled in Delaware with its principal place of business in Virginia. From approximately March 2013 to approximately May 2014, CGI served as the Third Party Administrator of LAHC. CGI contracted with and did work for LAHC in Louisiana.

b. **GROUP RESOURCES INCORPORATED ("GRI")**, a foreign corporation believed to be domiciled in Georgia with its principal place of business in Georgia. From approximately May 2014 to approximately May 2016, GRI served as the Third Party Administrator of LAHC. GRI contracted with and did work for LAHC in Louisiana.

12.

Beam Partners, LLC

a. **BEAM PARTNERS, LLC ("Beam Partners")**, a foreign corporation believed to be domiciled in Georgia with its principal place of business in Georgia. From prior to LAHC's incorporation in 2011 through approximately mid-2014, Beam Partners developed and managed LAHC. Beam Partners contracted with and did work for LAHC in Louisiana.

13.

Actuary Defendants

a. **MILLIMAN, INC. ("Milliman")**, a foreign corporation believed to be domiciled in Washington with its principal place of business in Washington. From approximately August 2011 to March 2014, Milliman provided professional actuarial services to LAHC.

b. **BUCK CONSULTANTS, LLC ("Buck")**, a foreign corporation believed to be domiciled in Delaware with its principal place of business in New York. From approximately March 2014 through July 2015, Buck provided professional actuarial services to LAHC.

14.

Insurer Defendant

a. **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA ("Travelers")**, a foreign insurer, doing business in the State of Louisiana and subject to the regulatory authority of the Louisiana Department of Insurance, who issued an applicable policy or policies to LAHC that provide coverage for claims asserted herein.

DEFINED TERMS

15.

As used herein, the following terms are defined as follows:

1. **"D&O Defendants"** shall refer to and mean those directors and officers of LAHC named as Defendants herein, specifically: Terry S. Shilling, George G. Cromer, Warner L. Thomas, IV, William A. Oliver, Charles D. Calvi, and Patrick C. Powers.

2. **"TPA Defendants"** shall refer to and mean those third party administrators hired by LAHC to oversee, manage, and otherwise operate LAHC named as Defendants herein, specifically: CGI Technologies and Solutions, Inc. and Group Resources Incorporated.

3. **"Insurer Defendant"** shall refer to and mean those insurance companies named herein which provide insurance coverage for any of the claims asserted herein by LAHC against any of the Defendants named herein, including: Travelers Casualty and Surety Company of America ("Travelers").

4. **"Actuary Defendants"** shall refer to and mean those actuaries hired by LAHC to perform actuarial services for LAHC and named as Defendants herein, specifically: Milliman, Inc. ("Milliman") and Buck Consulting, Inc. ("Buck").

5. **"LDI"** shall refer to and mean the Louisiana Department of Insurance.

6. **"CMS"** shall refer to the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services.

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FACTUAL BACKGROUND

16.

The Patient Protection and Affordable Care Act ("ACA") established health insurance exchanges (commonly called "marketplaces") to allow individuals and small businesses to shop for health insurance in all states across the nation. To expand the number of available health insurance plans available in the marketplaces, the ACA established the Consumer Operated and Oriented Plan ("CO-OP") program. The ACA further directed the Secretary of Health and Human Services to loan money to the CO-OP's created in each state. Beginning on January 1, 2014, each CO-OP was allowed to offer health insurance through the newly minted marketplaces for its respective state. A total of 23 CO-OP's were created and funded as of January 1, 2014. State regulators, like the Louisiana Department of Insurance ("LDI"), have the primary oversight of CO-OP's as health insurance issuers.

17.

In Louisiana, the CO-OP created and funded pursuant to the ACA was Louisiana Health Cooperative, Inc. ("LAHC"), a Louisiana Nonprofit Corporation that holds a health maintenance organization ("HMO") license from the LDI. Incorporated in 2011, LAHC eventually applied for and received loans from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") totaling more than $65 million. Specifically, according to the 2012 Loan Agreement with LAHC, the Louisiana CO-OP was awarded a Start-up Loan of $12,426,560, and a Solvency Loan of $52,614,100. Pursuant to the ACA, these loans were to be awarded only to entities that demonstrated a high probability of becoming financially viable. All CO-OP loans must be repaid with interest. LAHC's Start-up Loan must be repaid no later than five (5) years from disbursement; and LAHC's Solvency Loan must be repaid no later than fifteen (15) years from disbursement.

18.

From the start, because of the gross negligence of the Defendants named herein, LAHC failed miserably. Before ever offering a policy to the public, LAHC lost approximately $8 million in 2013. While projecting a modest loss of about $1.9 million in 2014 in its loan application to CMS, LAHC actually lost about $20 million in its first year in business. And although LAHC projected turning a modest profit of about $1.7 million in 2015, it actually lost more than $54 million by the end of that year.

19.

The actuaries hired by LAHC to determine the CO-OP's feasibility, assess its funding needs, and set the premium rates to be charged by LAHC in both 2014 and 2015, breached their respective duties owed to LAHC. The actuaries hired by LAHC grossly underestimated the level of expenses that LAHC would incur, made erroneous assumptions regarding LAHC's relative position in the marketplace, and grossly misunderstood or miscalculated how the risk adjustment component of the ACA would impact LAHC. Rather than LAHC either receiving a risk adjustment payment or LAHC not being assessed any such risk adjustment payment at all, as the actuaries erroneously predicted, in actuality, LAHC incurred significant risk adjustment payments in both 2014 and 2015. These failures of the actuaries who served LAHC were a significant factor in causing LAHC's ultimate collapse.

20.

Not only did LAHC lose a tremendous amount of money, but, from its inception, LAHC was unable to process and manage the eligibility, enrollment, and claims handling aspects of the HMO competently. Almost every aspect of LAHC's eligibility, enrollment, and claims handling process was deficient, resulting in numerous unpaid claims, untimely paid claims, and erroneously paid claims.

21.

By July 2015, only eighteen months after it started issuing policies, LAHC decided to stop doing business. The LDI placed LAHC in rehabilitation in September 2015, and a Receiver, Billy Bostick, was appointed by this Court to take control of the failed Louisiana CO-OP.

22.

The various parties who created, developed, managed, and worked for LAHC (i.e., the Defendants named herein) completely failed to meet their respective obligations to the subscribers, providers, and creditors of this Louisiana HMO. From the beginning of its existence, LAHC was completely ill-equipped to service the needs of its subscribers (i.e., its members / policyholders), the healthcare providers who provided medical services to its members, and the vendors who did business with LAHC. As described in detail herein, the conduct of the Defendants named herein went way beyond simple negligence. For instance, when the LDI took over the operations of LAHC, the CO-OP had a backlog of approximately 50,000 claims that had not been processed.

Because of Defendant's gross negligence, as of December 31, 2015, LAHC had lost more than $82 million.

23.

As set forth herein, Defendants are liable to Plaintiff for all compensatory damages caused by their actionable conduct.

CAUSES OF ACTION

Count One: Breach of Fiduciary Duty (Against the D&O Defendants and Insurer Defendant)

24.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

25.

The D&O Defendants owed LAHC, its members, and its creditors, fiduciary duties of loyalty, including the exercise of oversight as pleaded herein, due care, and the duty to act in good faith and in the best interest of LAHC. The D&O Defendants stand in a fiduciary relation to LAHC and its members and creditors and must discharge their fiduciary duties in good faith, and with that diligence, care, judgment and skill which the ordinarily prudent person would exercise under similar circumstances in like position.

26.

At all times when LAHC was insolvent and/or in the zone of insolvency, the D&O Defendants owed these fiduciary duties to the creditors of LAHC as well.

27.

The conduct of the D&O Defendants of LAHC, as pled herein, went beyond simple negligence. The conduct of the D&O Defendants constitutes gross negligence, and in some cases, willful misconduct. In other words, the D&O Defendants did not simply act negligently in the management and supervision of and their dealings with LAHC, but the D&O Defendants acted grossly negligently, incompetently in many instances, and deliberately, in other instances, all in a manner that damaged LAHC, its members, providers and creditors.

28.

The D&O Defendants knew or should have known that Beam Partners was unqualified and unsuited to develop and manage LAHC.

29.

The D&O Defendants knew or should have known that GRI was unqualified and unsuited to develop and manage LAHC.

30.

The failure of the D&O Defendants to select a competent TPA, negotiate an acceptable contract with GRI, and manage and oversee Beam Partners, CGI, and GRI's conduct, constitutes gross negligence on the part of the D&O Defendants that caused LAHC to hire other vendors and/or additional employees, in effect, to either do work and/or fix work that should have been competently done by Beam Partners, CGI, and/or GRI, resulting in tremendous additional and unnecessary expenses and inefficiencies to LAHC which played a significant role in LAHC's failure.

31.

The D&O Defendants breached their fiduciary obligations in the following, non-exclusive, ways:

a. Paying excessive salaries to LAHC executives in relation to the poor, inadequate, or non-existent services rendered by them to LAHC and/or on its behalf;

b. Paying excessive bonuses to LAHC executives in relation to the poor, inadequate, or non-existent services renders by them to LAHC and/or on its behalf;

c. Grossly inadequate oversight of LAHC operations;

d. Grossly inadequate oversight of contracts with outside vendors, including CGI and GRI;

e. Lack of regularly scheduled and meaningful meetings of the Board of Directors and management; the few board meetings that took place (one in 2012; four in 2013; six in 2014; and one in 2015), generally lasted about an hour;

f. Gross negligence in hiring key management and executives with limited or inadequate health insurance experience;

g. Gross failure to protect the personal health information of subscribers; unauthorized disclosure of subscribers' personal health information; for example, in February 2014, an incorrect setting within LAHC's document production system caused 154 member ID cards to be erroneously distributed;

h. Gross failure to issue ID cards to members accurately and timely;

i. Gross failure to pay claims timely (if at all);

j. Gross failure to bill premiums accurately and timely;

k. Gross failure to properly calculate member out-of-pocket responsibilities resulting in members being over-billed for their portion of services rendered by providers;

l. Gross failure to collect premium payments timely (if at all);

m. Gross failure to process and record the effective dates of policies accurately or consistently;

n. Gross failure to process and record the termination dates of policies accurately or consistently;

o. Gross failure to process invoices correctly and timely;

p. Gross failure to determine and report eligibility of members accurately;

q. Gross failure to have in place and/or to implement a financial policy or procedure to verify check register expenditures;

r. Gross failure to have in place and/or to implement a financial policy or procedure to verify credit card expenditures; for example, in or around October to November 2013, a VP of IT Operations at LAHC, Larry Butler, misused his LAHC credit card by incurring more than $35,000 in charges, the vast majority of which were personal expenses, on a corporate account with limits of $5,000;

s. Gross failure to have in place and/or to implement a financial policy or procedure to verify sponsor invoices;

t. Gross failure to have in place and/or to implement policies and procedures regarding operational, financial, and compliance areas (such as background checks, corrective action plans, procurement, contract management, and financial management) before engaging in meaningful work and offering insurance coverage to the public;

u. Gross failure to understand, implement, and enforce the applicable "grace period" pertaining to subscribers as per the ACA and Louisiana Law, La. R.S. 22:1260.31, *et. seq.*;

v. Gross failure to record and report LAHC's claims reserves (IBNR) accurately;

w. Gross failure to report and appoint agents and brokers;

x. Gross failure to record and report the level of care provided to LAHC members, enrollees, and subscribers accurately;

y. As of March 2014, LAHC described its own system to process enrollment, eligibility, and claims handling as a "broken" process;

z. Grossly negligent to choose GRI to replace CGI; went from the frying pan into the fire; GRI was unqualified, ill-equipped, and unable to service the needs of LAHC, its members, providers, and creditors;

aa. Erroneously terminating coverage for fully subsidized subscribers;

bb. Failing to provide notice to providers regarding member terminations and lapses due to non-payment of premiums;

cc. Failing to provide notice (delinquency letters) to subscribers prior to terminating coverage;

dd. Failing to maintain an Information Technology environment with adequate controls and risk mitigation to protect the data, processes, and integrity of LAHC data;

ee. Failing to collect binder payments on-time;

ff. Failing to terminate members when binder payments were not received;

gg. Failing to correct ambiguities in the GRI contract(s);

hh. Failing to select qualified vendors

ii. Failing to select qualified management;

jj. They knew or should have known, prior to the public rollout of LAHC in January 2014, that LAHC would not be a viable HMO, and yet they proceeded to offer policies and services to the public and members knowing that LAHC would fail;

kk. They caused and/or allowed LAHC to misrepresent the financial condition and viability of LAHC to the LDI, the federal government, its member, its creditors, and the public, thereby allowing LAHC to remain in operation much longer that they should and would otherwise have, adding additional members and incurring additional claims and debt;

ll. They knowingly paid excessive salaries, professional service fees, and consulting fees, as alleged herein, without receiving appropriate value to LAHC;

mm. They failed to implement internal controls that would have prevented the gross waste and damages sustained by LAHC as a result of their gross negligence;

nn. They concealed LAHC's true financial condition and insolvency and artificially prolonged LAHC's corporate life beyond insolvency all to the detriment of LAHC, its members, and its creditors;

oo. They grossly mismanaged LAHC's affairs;

pp. They grossly failed to exercise oversight or supervise LAHC's financial affairs;

qq. They failed to operate LAHC in a reasonably prudent manner;

rr. They failed in their duty to operate LAHC in compliance with the laws and regulations applicable to them; and

ss. Other acts of gross negligence as may be later discovered.

32.

The D&O Defendants also breached their fiduciary duty of loyalty, due care, and good faith by allowing, if not fostering, individuals with conflicts of interest to influence, if not control, LAHC, all to the detriment of LAHC, its members, providers, and creditors.

33.

Because of the grossly negligent conduct of the D&O Defendants, LAHC was woefully not prepared for its roll-out to the public on January 1, 2014.

34.

By approximately March 2014, just three (3) months after its ill-advised roll-out, the D&O Defendants compounded an already bad situation by deciding to replace CGI with GRI as TPA. At this point, the D&O Defendants should have either exercised appropriate oversight and management to reform CGI's grossly inadequate performance, or the D&O Defendants should have terminated the Agreement with CGI and found a suitable TPA, or the D&O Defendants

should have ceased operations altogether. Instead, the D&O Defendants made matters worse by hiring a TPA that was even less qualified and less prepared than CGI for the job: GRI.

35.

To further damage the struggling LAHC, in approximately mid-2014, the D&O Defendants decided to switch healthcare provider networks from Verity Healthnet, LLC ("Verity") to Primary Healthcare Systems ("PHCS"). Once again, the D&O Defendants' conduct constitutes gross negligence that further damaged LAHC, its members, providers, and creditors.

36.

The D&O Defendants, in breaching both their duty of loyalty and duty of care, showed a conscious disregard for the best interests of LAHC, its members, providers and creditors.

37.

As a direct and proximate result of the gross negligence and foregoing failures of the D&O Defendants to perform their fiduciary obligations, LAHC, its members, its providers and its creditors have sustained substantial, compensable damages for which the D&O Defendants and the Insurer Defendant are liable, and for which Plaintiff is entitled to recover in this action.

38.

The compensable damages caused by the D&O Defendants' grossly negligent conduct, if not willful conduct, include, but are not limited to:

a. damages in the form of all losses sustained by LAHC from its inception (i.e., they should have never started LAHC in the first place);

b. damages in the form of lost profits (i.e., the amount LAHC would have earned, if any, but for their conduct);

c. damages in the form of excessive losses (i.e., the difference between the amount LAHC would have lost, if any, and the amount LAHC did lose, because of their conduct);

d. damages in the form of deepening insolvency (i.e., the damages caused by their decision to prolong the corporate existence of LAHC beyond insolvency);

e. damages in the form of all legitimate debts owed to creditors of LAHC, including but not limited to those unpaid debts owed to health care providers who delivered services to members of LAHC, any debts owed to members of LAHC that were not paid, and the debt owed to CMS (both principal and interest) as a result of LAHC's gross negligence as pled herein;

f. disgorgement of all excessive salaries, bonuses, profits, benefits, and other compensation inappropriately obtained by them;

g. damages in the form of all excessive administrative, operational, and/or management expenses, including:

    i. Untimely payment of member and provider claims;

ii. Incorrect payment of member and provider claims;

iii. Increased interest expense due to incorrect and/or untimely claims payments;

iv. Increased expenses due to incorrect and/or untimely claims payments;

v. Incorrect and/or untimely payment of agent/broker commissions;

vi. Inaccurate and/or untimely collection of premium due for health coverage;

vii. Increased expenses for services from LAHC vendors other than the third party administrator;

viii. Increased expenses for provider networks and medical services;

ix. Loss of money due to LAHC from the Center for Medicare and Medicaid Services ("CMS") for risk adjustments;

x. Fines incurred for failure to have agents/brokers properly appointed; and

xi. Inability to repay the millions of dollars loaned to LAHC by the federal government.

h. all costs and disbursements of this action, including all compensable litigation expenses.

39.

The Insurer Defendant is liable to the Plaintiff jointly, severally and *in solido* with the D&O Defendants to the extent of the limits of its respective policies of insurance, for the following reasons:

a. Travelers Casualty and Surety Company of America issued a Private Company Directors and Officers Liability Insurance Policy to LAHC, with policy limits, upon information and belief, of $3,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff;

b. Travelers Casualty and Surety Company of America issued a Managed Care Errors and Omissions Liability Insurance Policy to LAHC, with policy limits, upon information and belief, of $3,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff.

Count Two: Breach of Contract
(Against the TPA Defendants and Beam Partners)

40.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

CGI

41.

On or about February 15, 2013, LAHC and CGI entered into an Administrative Services Agreement ("Agreement") whereby CGI agreed to perform certain administrative and management services to LAHC in exchange for certain monetary compensation as set forth in the Agreement. A true and correct copy of the Agreement and all exhibits was attached and incorporated by reference in the original Petition for Damages as "Exhibit 1."

42.

Under the terms of the Agreement, CGI represented and warranted, *inter alia*, that "CGI personnel who perform the services under the Agreement shall have the appropriate training, licensure and or certification to perform each task assigned to them" and that "CGI will make a good faith effort to maintain consistent staff performing the delegated functions" for LAHC.

43.

Under the terms of the Agreement, CGI was, among other things, obligated to:

a. Function as a Third Party Administrator for LAHC;

b. Accurately process and pay claims for covered services provided to LAHC's members by participating providers according to payment terms regarding timeliness and the rates and amounts set forth in LAHC's Participating Provider Agreements.

c. Accurately process and pay claims for covered services provided to LAHC's members by providers;

d. Competently perform all of those tasks set forth in the Agreement, including Exhibit 2 thereto, such as paying claims, adjudicating claims, determining covered services, identifying and processing clean and unclean claims, collecting and processing all encounter data, transmitting denial notifications to members and providers, transmitting all required notices, tracking and reporting its performance, tracking, reporting and reconciling all records regarding deductibles and benefit accumulators, monitoring all claims, submitting all claims, tracking, reporting, and paying all interest on late paid claims, coordinating the payment and processing of all claims and EOBs, and developing and implementing a functional coding system; and

e. Competently perform all of those task expected and required of a Third Party Administration, whether specified in the Agreement or not.

44.

CGI breached its obligations and warranties set forth in the Agreement in a grossly negligent manner, all in the following, non-exclusive ways:

a. Failed to pay claims at the proper contract rates and amounts, thus resulting in an overpayment of claims;

b. Failed to accurately and properly process enrollment segments and failed to timely reconcile enrollment segments;

c. Failed to provide proper notice to providers regarding member terminations and lapses due to non-payment of premiums;

d. Failed to issue appropriate identification cards to subscribers;

e. Failed to provide proper notice (delinquency letters) so subscribers prior to terminating coverage;

f. Failed to process claims properly;

g. Failed to enter, record, and process paper claims properly;

h. Failed to establish, manage, and run the call center for LAHC properly;

i. Failed to implement a billing system that would accurately calculate balance due;

j. Failed to appropriately establish an EDGE server and/or failed to appropriately or timely provide the Department of Health and Human Services with access to required data on the EDGE server; and

k. Other acts of gross negligence as may be later discovered.

45.

As of March 2014, just three (3) months after its roll-out, LAHC described the system designed and implemented by CGI to process enrollment, eligibility, and claims handling, as a "broken" process. Indeed, the conduct of CGI, as described herein in detail, goes well beyond simple negligence; almost every facet of the system designed and implemented by CGI as a third party administrator of LAHC was a failure. CGI's conduct, as described herein in detail, constitutes gross negligence.

46.

CGI's breaches of its warranties and obligations in the Agreement have directly caused LAHC to incur substantial, compensatory damages which are recoverable by Plaintiff herein.

GRI

47.

GRI was not qualified to render the services as a third party administrator ("TPA") that LAHC needed to be successful. Rather than decline taking on a job that was outside of its capabilities, GRI wrongly agreed to replace CGI and serve as TPA for LAHC. GRI's decision to serve as LAHC's TPA constitutes gross negligence, if not a conscious disregard for the best

interests of LAHC, its members, providers, and creditors. But for GRI's gross negligence, most of LAHC's substantial, compensatory damages would have been avoided

48.

In or about July 2014, LAHC and GRI entered into an Administrative Services Agreement whereby GRI agreed to perform certain administrative and management services to LAHC in exchange for certain monetary compensation as set forth in the Administrative Services Agreement. The Administrative Services Agreement had an effective date of July 1, 2014. The Administrative Services Agreement was amended both in September 2014 and December 2014. A true and correct copy of the Administrative Services Agreement and all amendments and exhibits are collectively referred to as the "Agreement" and were attached and incorporated by reference in the original Petition for Damages as "Exhibit 2." Attached hereto as "Exhibit 2A" is a true and correct copy of the Delegation Agreement between LAHC and GRI effective August 20, 2014.

49.

Under the terms of the Agreement, CGI represented and warranted that "GRI personnel who perform or provide the Delegated Services specified services under this Agreement shall possess the appropriate authorization, license, bond and certificates, and are full and appropriately trained, to properly perform the tasks assigned to them."

50.

Under the terms of the Agreement, GRI was, among other things, obligated to:

a. Accurately process and pay claims for covered services provided to LAHC's members by participating providers according to payment terms regarding timeliness and the rates and amounts set forth in LAHC's Participating Provider Agreements.

b. Accurately process and pay claims for covered services provided to LAHC's members by providers;

c. Competently perform all of those tasks set forth in the Agreement, including Exhibit A-1 to the agreement, such as paying claims, adjudicating claims, determining covered services, identifying and processing clean and unclean claims, collecting and processing all encounter data, transmitting denial notifications to members and providers, transmitting all required notices, tracking and reporting its performance, tracking, reporting and reconciling all records regarding deductibles and benefit accumulators, monitoring all claims, submitting all claims, tracking, reporting, and paying all interest on late paid claims, coordinating the payment and processing of all claims and EOBs, and developing and implementing a functional coding system; and

d. Competently perform all of those task expected and required of a Third Party Administration, whether specified in the Agreement or not.

51.

GRI breached its obligations and warranties set forth in the Agreement in a grossly negligent manner, all in the following, non-exclusive ways:

a. GRI failed to meet most, if not all, of the performance standards mandated by the Services Agreement of July 1, 2014;

b. GRI was unqualified, ill-equipped, and unable to service the needs of LAHC, its member, providers, and creditors;

c. GRI knew or should have known that it was unqualified to service the needs of LAHC;

d. Pursuant to GRI's Service Agreement, GRI was responsible for critical processes that are typically covered by such a health insurance administrative service provider contracts, including the receipt and processing of member premium payments, the calculation and payment of broker commissions, and the process of managing calls into LAHC;

e. GRI wholly failed to provide sufficient and adequately trained personnel to perform the services GRI agreed to perform under the Agreement;

f. Failed to process and pay claims on a timely basis, resulting in interest payment alone in excess of $600,000.00;

g. Failed to pay claims at the proper contract rates and amounts, thus resulting in an overpayment of claims;

h. Failed to accurately and properly process enrollment segments and failed to timely reconcile enrollment segments;

i. Erroneously terminated coverage for fully subsidized subscribers ($0 Invoices);

j. Failed to provide proper notice to providers regarding member terminations and lapses due to non-payment of premiums;

k. Failed to timely process enrollment interface (ANSI 834) from CMS;

l. Failed to accurately process enrollment interface (ANSI 834) from CMS;

m. Failed to pass CMS data edits for CMS Enrollment Reconciliation Process;

n. Submitted inaccurate data to the CMS Enrollment Reconciliation Process causing erroneous terminations;

o. Failed to pass CMS data edits for Enrollment Terminations & Cancellations Interface (ANSI 834) to CMS;

p. Failed to pass CMS data edits for Edge Server Enrollment Submissions to CMS;

q. Failed to use standard coding for illustrating non-effectuated members (using years 1915 and 1900 as termination year);

r. Failed to provide proper notice (delinquency letters) to subscribers prior to terminating coverage;

s. Failed to invoice subscribers accurately when APTC changed;

t. Failed to invoice subscribers for previously unpaid amounts (no balance forward);

u. Failed to cancel members for non-payment of binder payment;

v. Failed to cancel members after passive enrollment;

w. Failed to administer member benefits (maximum out-of-pockets exceeded);

x. Failed to pay interest on claims to providers;

y. Failed to pay claims within the contractual timeframes;

z. Failed to adjust claims after retroactive disenrollments;

aa. Failure to examine claims for potential subrogation

bb. Failed to maintain adequate customer service staffing and call center technology;

cc. Failed to process APTC changes from CMS within an appropriate timeframe;

dd. Failed to capture all claims diagnoses data from providers;

ee. Failed to pass CMS data edits for Edge Server claims submissions to CMS;

ff. Failed to load the 1,817 claims from the 4/29/16 and 5/2/16 check runs onto the EDGE Server;

gg. Incorrectly calculated claim adjustments, especially as it pertains to a subscriber's maximum out-of-pocket limit;

hh. Paid claims for members that never effectuated;

ii. Failed to protect the personal health information of subscribers;

jj. Failed to issue ID cards to members accurately and timely and without effective dates;

kk. Failed to have in place and/or to implement a financial policy or procedure to verify credit card expenditures;

ll. Failed to understand, implement, and enforce the applicable "grace period" pertaining to subscribers as per the ACA and Louisiana Law, La. R.S. 22:1260.31, *et. seq.*;

mm. Failed to record and report LAHC's claims reserves (IBNR) accurately;

nn. Failed to report and appoint agents and brokers appropriately;

oo. Failed to record and report the level of care provided to LAHC members, enrollees, and subscribers accurately; and

pp. Failed to maintain an Information Technology environment with adequate controls and risk mitigation to protect the data, processes, and integrity of LAHC data.

52.

According to the Agreement, GRI was obligated to pay claims within the time frame required by applicable law; and if claims were paid untimely because of GRI's conduct, GRI "shall be responsible for paying any required interest penalty to Providers." Because of GRI's gross negligence and non-performance of its contractual obligations owed to LAHC, numerous

claims were paid late and significant interest penalties were incurred and paid by LAHC. GRI is obligated to pay all such interest penalties.

53.

GRI's gross negligence and breaches of its warranties and obligations in the Agreement have directly caused LAHC to incur substantial, compensatory damages which are recoverable by Plaintiff herein.

Beam Partners

54.

Beam Partners was not qualified to render the services as a manager and developer and/or third party administrator ("TPA") that the start-up, LAHC, needed to be successful. Rather than decline taking on a job that was outside of its capabilities, Beam Partners wrongly orchestrated and agreed to manage, develop, and serve as TPA for LAHC from its inception. Beam Partner's decision to manage, develop, and effectively serve as LAHC's TPA constitutes gross negligence, if not a conscious disregard for the best interests of LAHC, its members, providers, and creditors. But for Beam's gross negligence, all of LAHC's substantial, compensatory damages would have been avoided.

55.

Given that numerous individuals who either owned, managed and/or worked for Beam Partners, including Terry Shilling, Alan Bayham, Mark Gentry, Jim McHaney, Deborah Sidener, Jim Krainz, Jim Pittman, Michael Hartnett, Eric LeMarbre, Etosha McGee, Diana Pitchford, Darla Coates, were also involved with and managed LAHC from the beginning as officers, directors, and employees of LAHC, for all intents and purposes, Beam Partners was closely related to and acted as LAHC.

56.

From approximately September 2012 through May 2014, LAHC paid more than $3.7 million in the form of consulting fees, performance fees, and expenses to Beam Partners.

57.

LAHC and Beam Partners, LLC entered into a Management and Development Agreement whereby Beam Partners agreed to perform certain management, administrative, and developmental services for LAHC in exchange for certain monetary compensation as set forth in the Management and Development Agreement. Warner Thomas, as Chair of the Board of Directors of LAHC,

signed this Management and Development Agreement on October 8, 2012; Terry Shilling signed the Management and Development Agreement on behalf of Beam Partners, LLC, with an effective date of August 28, 2012. At this time, Terry Shilling was simultaneously the Interim CEO of LAHC and a member and owner of Beam Partners. This Agreement was amended at least twice. A true and correct of the Management and Development Agreement, all Exhibits thereto (with the exception of Exhibit 2, "Performance Objectives for Services"; which is unavailable, Amendment 1, and Amendment 2), was attached and incorporated by reference om the original Petition for Damages as "Exhibit 3."

58.

According to the terms of the Agreement, Beam Partners agreed to provide "services essential to the formation of the Cooperative and its application for CO-OP program loans," including training all directors, securing the requisite licensure from LDI, developing a network of providers for LAHC, recruiting and vetting candidates for positions at LAHC, creating processes, systems, and forms for the operation of LAHC, and identifying, negotiating and executing administrative services for the operation of LAHC.

59.

In short, Beam Partners agreed to transform the start-up LAHC into a well-organized, well-funded, and well-run HMO prior to January 1, 2014, the roll-out date of LAHC to the public. Beam Partners utterly failed to meet its contractual obligations owed to LAHC, and breached its obligations and warranties set forth in the Agreement in a grossly negligent manner, all in the following, non-exclusive ways:

a. Failing to identify, select, and retain qualified third party contractors for LAHC, including but not limited to CGI and/or GRI;

b. Failing to train all directors of LAHC regarding how to manage such an HMO;

c. Failing to develop a network of providers for LAHC;

d. Failing to recruit and adequately vet appropriate candidates for positions at LAHC;

e. Failing to create adequate and/or functioning processes, systems, and forms for the operation of LAHC;

f. Failing to to identify, negotiate, and execute adequate and/or functioning administrative services for the operation of LAHC;

g. Failing to report and provide LAHC with complete, accurate, and detailed records of its performance of all services provided to LAHC;

h. Failing to adequately disclose conflict of interests regarding Beam Partners and LAHC to any regulatory authority;

i. Failing to provide sufficient and adequately trained personnel to perform the services Beam Partners agreed to perform under the Agreement; and

j. In general, by completely failing to have LAHC ready and able to meet its obligations to the public, members, providers, and creditors on or before the roll-out date of January 1, 2014.

60.

The numerous failures of Beam Partners to perform its obligations owed to LAHC constitute gross negligence, if not a conscious disregard for the best interests of LAHC, its members, providers, and creditors.

61.

To the extent that Beam Partners made the decision to keep using CGI as TPA until it was too late, Beam Partners is grossly negligent in that it knew or should have known that CGI was unqualified to serve as TPA.

62.

To the extent that Beam Partners made the decision to replace CGI with GRI as TPA, Beam Partners is grossly negligent in that it knew or should have known that GRI was unqualified to serve as TPA.

63.

To the extent that Beam Partners made the decision to terminate the Verity contract, Beam Partners is grossly negligent in that it knew or should have known that terminating the Verity contract would be a substantial factor in causing LAHC to incur additional, unnecessary expense and, ultimately, to collapse.

64.

Beam Partners' gross negligence and breaches of its warranties and obligations in the Agreement have directly caused LAHC to incur substantial, compensatory damages which are recoverable by Plaintiff herein.

Count Three: Gross Negligence and Negligence
(Against the TPA Defendants and Beam Partners)

65.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

66.

CGI, GRI, and Beam Partners each had a duty to ensure that its personnel who performed services for LAHC were adequately and appropriately trained, licensed, and certified to perform the services and functions delegated by LAHC to each of them.

67.

CGI, GRI, and Beam Partners each had a duty to accurately process and pay claims on LAHC's behalf in a timely manner at the correct rates and amounts.

68.

CGI, GRI, and Beam Partners each had a duty to perform their obligations in a reasonable, competent, and professional manner.

69.

CGI, GRI, and Beam Partners each breached their duties in that it negligently failed to cause LAHC to accurately process and pay health insurance claims in a timely manner at the correct rates and amounts.

70.

CGI, GRI, and Beam Partners each breached their duties in that they negligently and wholly failed to perform their obligations in a reasonable, competent, and professional manner.

71.

CGI, GRI, and Beam Partners each were grossly negligent in that they wantonly failed to provide a sufficient number of adequately trained personnel who had sufficient knowledge of the system program utilized by LAHC to process and pay health insurance claims at the correct rates and amounts in complete and reckless disregard of the rights of LAHC, its members, providers, and creditors.

72.

CGI, GRI, and Beam Partners each were grossly negligent in that they wantonly failed to cause LAHC to accurately process and pay health insurance claims in a timely manner at the correct health insurance rates and amounts in complete and reckless disregard of the rights of LAHC, its members, providers, and creditors.

73.

As a direct and proximate result of CGI's, GRI's, and Beam Partners' negligence or gross negligence, LAHC has incurred substantial, compensatory damages, which are recoverable herein by Plaintiff.

Count Four: Professional Negligence And Breach of Contract (Against the Actuary Defendants)

74.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

Milliman

75.

At all relevant times, Milliman held itself out as having expertise to provide actuarial services and advice to health insurers like LAHC.

76.

In or around August 2011, Milliman was engaged by Shilling on behalf of Beam Partners and/or LAHC to provide "actuarial support" for LAHC, including the production of a "feasibility study and loan application as directed by the Funding Opportunity Announcement (Funding Opportunity Number: 00-COO-11-001, CFDA 93.545) released from the U.S. Department of Health Services ("HHS") on July 28, 2011." This engagement letter pre-dated LAHC's formal contract with Beam Partners by a year; the engagement letter dated August 4, 2011, was addressed to Shilling as "Owner/Partner" of "Beam Partners," and was signed by Shilling on August 15, 2011, on behalf of LAHC. Indeed, this engagement letter pre-dated the incorporation of LAHC by about a month or so (LAHC was first registered with the Louisiana Secretary of State's Office on or about September 12, 2011).

77.

In the feasibility study dated March 30, 2012, prepared by Milliman for LAHC to use in support of its loan application to CMS, Milliman concluded that, in general, LAHC "will be economically viable based upon our [Milliman's] base case and moderately adverse scenarios." According to Milliman's actuarial analysis, "the projections for the scenarios are conservative, and in each of the scenarios modeled, LAHC remains financially solvent and is able to pay back federal

loans within the required time periods." Furthermore, Milliman estimated that "LAHC will be able to meet Louisiana's solvency and reserve requirements."

78.

The Milliman feasibility study was prepared using unrealistic assumption sets. None of the enrollment scenarios considered the possibility that LAHC would have trouble attracting an adequate level of enrollment (which is what actually happened in 2014 and 2015) and every economic scenario assumed that the loss ratio in nearly every modeled year would be 85% (an outlier loss ratio was never higher than 91%). These assumptions completely disregarded the very real possibility that there would be significant volatility in enrollment and/or the medical loss ratio. With all of the uncertainty within the ACA, a competent actuary would have understood that it was a very realistic possibility that LAHC would fail to be viable. Some of the modeled scenarios should have reflected this possibility. The Milliman feasibility study would imply that two "black swan" events occurred in 2014 and 2015 with low enrollment and very high medical costs. In actuality, these possibilities should have been anticipated by Milliman when they prepared the LAHC feasibility study.

79.

If CMS is considered to be a regulatory body, the actuary who prepared the feasibility study would be guided by Actuarial Standard of Practice (ASOP) No. 8 – Regulatory Filings for Health Benefits, Accident & Health Insurance, and Entities Providing Health Benefits. The following paragraphs are applicable:

- Paragraph 3.4.2 of ASOP No. 8 states that the actuary "should consider the impact of future changes in the underlying covered population on the projected claims. These changes may include, but are not limited to, changes in demographics, risk profile, or family composition". In the context of this feasibility study, Milliman should have considered the possibility that LAHC would not be able to successfully attract the level of enrollment necessary for LAHC to remain viable as an entity.

- Paragraphs 3.4.3 and 3.4.6 of ASOP No. 8 deal with claim morbidity and health cost trends. Given the enormous level of uncertainty with respect to the claim morbidity of the population that would be covered under the ACA (including many individuals who were previously uninsurable due to known medical conditions), Milliman should have generated economic scenarios that considered the possibility that the loss ratio of LAHC would have exceed 91%. Established insurance entities with statistically credible claim experience will occasionally misprice their insurance products with resulting loss ratios exceeding 100%. Milliman should have recognized that high loss ratios were a very real possibility (given the known uncertainty of the covered population) for LAHC and illustrated such scenarios in the feasibility study.

80.

Milliman's failure to consider the possibility of these adverse enrollment and/or medical loss ratio scenarios resulted in a feasibility study where every single scenario illustrated that LAHC would be generating significant cash earnings over the mid to long term time period. The only question to the reader of the feasibility study was how much money would be earned by LAHC.

81.

Upon information and belief, Milliman conditioned payment for its preparation of LAHC's feasibility study upon LAHC being awarded a loan by CMS. That is, Milliman would only receive payment for its services if LAHC's efforts to secure a loan from CMS were successful. By conditioning payment upon a successful result, Milliman may have compromised its independence as an actuary and thereby breached its duty to LAHC.

82.

Based in large part on the work performed by Milliman and relied upon by LAHC, in September 2012, LAHC was awarded a loan to become a qualified nonprofit health insurance issuer under the Consumer-Operated and Oriented Plan (CO-OP) Program established by Section 1322 of the ACA and applicable regulations. In other words, based in large part on the work performed by Milliman and relied upon by LAHC, the federal government authorized a Start-up Loan of $12,426,560 to LAHC, and a Solvency Loan of $54,614,100 to LAHC.

83.

In or around November 2012, Milliman was engaged by Shilling on behalf of LAHC to "develop 2014 premium rates in Louisiana" for LAHC. This engagement letter dated November 13, 2012, was addressed to Shilling as "Chief Executive" of LAHC and was signed by Shilling on behalf of LAHC on November 14, 2012.

84.

In the "Three Year Pro Forma Reports" dated August 15, 2013, prepared by Milliman and relied upon by LAHC, Milliman concluded and projected that, in general, LAHC would be economically viable, able to remain financially solvent, able to pay back federal loans within the required time periods, and would be able to meet Louisiana's solvency and reserve requirements. In reliance upon Milliman's professional services and actuarial estimates and projections, LAHC set its premium rate for 2014.

85.

The actuarial work performed by Milliman for LAHC, including the feasibility study and pro forma reports, were unreliable, inaccurate, and not the result of careful, professional analysis.

86.

For instance, according to the actuarial work performed by Milliman and relied upon by LAHC and the federal government as part of the ACA process, Milliman estimated that LAHC would lose $1,892,000 in 2014 (i.e., that LAHC's net income in 2014 would be negative $1,892,000). In actuality, LAHC reported a statutory loss of more than $20 million in 2014 (i.e., LAHC's statutory net income in 2014 was actually negative $20 million+). Milliman and LAHC's projections for 2014 were off by a factor of more than 10. For 2015, Milliman's projections were even more inaccurate: although Milliman projected that LAHC would earn $1,662,000 in 2015 (i.e., LAHC's net income in 2015 would be positive $1,662,000), in actuality, LAHC reported a statutory loss of more than $54 million in 2015 (i.e., LAHC's statutory net income in 2015 was actually negative $54 million+). Milliman and LAHC's projections for 2015 were off by a factor of more than 32.

87.

Milliman owed a duty to LAHC to exercise reasonable care, and to act in accordance with the professional standards applicable to actuaries in providing its services to LAHC.

88.

Milliman's actuarial memorandums prepared as part of the 2014 rate filings for the individual and small group lines of business indicate that they assumed that LAHC would achieve provider discounts on their statewide PPO product that were equal to Blue Cross Blue Shield of Louisiana ("BCBSLA"). No support was provided for the basis of this assumption.

89.

Provider discounts are a key driver of the unit costs of medical (non-pharmacy) expenses that are incurred by LAHC members. Since providers (hospitals and physicians) typically provide the largest insurance carriers with the highest (compared to smaller carriers) discounts off billed charges, it was not reasonable for Milliman to assume that a start-up insurance entity with zero enrollment would be in a position to negotiate provider discounts as large as BCBSLA. Since LAHC was utilizing a rental network in 2014 (rather than building their own network), Milliman should have analyzed the level of discounts that would be present in the selected network (Verity

Healthnet, LLC) and quantify the difference between these discounts and the BCBSLA discounts since a primary basis of the 2014 rate manual was the level of 2013 BCBSLA rates for their most popular individual and small group products.

90.

When developing estimates of the level of insured claims expense loads for 2014, Milliman would be guided by Actuarial Standard of Practice (ASOP) No. 5 – Incurred Health and Disability Claims. Paragraph 3.2.2 of ASOP No. 5 states that the actuary should consider economic influences that affect the level of incurred claims. ASOP No. 5 specifically says that should consider changes in managed care contracts and provider fee schedule changes when developing estimates of incurred claims.

91.

Based on a review of the LAHC actuarial memorandums for individual and small group, upon currently available information and belief, no support has been provided for the assumption that LAHC would achieve provider discounts equal to BCBSLA. This assumption was not reasonable; if Milliman assumed a lower level of provider discounts, the calculated premium rates would have been higher. As a result, LAHC's statutory losses in 2014 would have been lower.

92.

Milliman grossly underestimated the level of non-claim expenses in 2014. In Milliman's 2014 rate development, they assumed that the "per member per month" (PMPM) level of administrative expenses, taxes, and fees (non-claim expenses) would be $70.85 PMPM for the individual line of business. For the small group line of business, the level of non-claim expenses built into the rate development was $87.00 PMPM. Milliman projected total 2014 member months of 240,000 and 96,000 for the individual and small group lines of business respectively.

93.

The actual level of expenses in 2014 was significantly higher. On a composite basis, the PMPM level of non-claim expenses was $145.70. Total member months were 111,689 of which 98.9% were from the individual line of business. At least part of the pricing error was due to Milliman significantly over-estimating the level of 2014 enrollment. For the component of LAHC expenses that were fixed, the impact of this incorrect enrollment estimate would be that they would need to be spread over a fewer number of members. This would result in the significantly higher level of expenses on a per member basis.

94.

When developing expense loads for 2014, Milliman would be guided by Actuarial Standard of Practice (ASOP) No. 8 – Regulatory Filings for Health Benefits, Accident & Health Insurance, and Entities Providing Health Benefits. The following sections of ASOP No. 8 are relevant for LAHC:

- Paragraph 3.4.2 of ASOP No. 8 states that the actuary "should consider the impact of future changes in the underlying covered population on the projected claims. These changes may include, but are not limited to, changes in demographics, risk profile, or family composition."

- Paragraph 3.4.4 of ASOP No. 8 instructs the actuary to "use appropriate methods and assumptions for calculating the non-benefit expenses component of premium rates. Possible methods include, but are not limited to, the use of a target loss ratio or the estimation of expenses appropriately attributed to the health benefit on a percentage of premium or fixed-dollar basis. When estimating the latter amounts, the actuary should consider the health plan entity's own experience, reasonably anticipated internal or external future events, inflation, and business plans. The actuary may also consider relevant external studies. The actuary should consider the reasonableness of the non-benefit expense component of premium rates relative to projected expenses."

95.

While there clearly was uncertainty about the overall size of the overall ACA Marketplace, it was unreasonable for Milliman to assume that LAHC, as an unknown entity in the Louisiana health insurance market, would be able to enroll 28,000 members (20,000 individual and 8,000 small group) in the first year of operation. While assuming a lower level of enrollment would have resulted in higher premiums, Milliman was aware that a significant percentage of the individual enrollment would be receiving government subsidies and thus would have limited sensitivity to pricing differences between the various plans offered on the ACA exchange.

96.

Assuming 100% individual members, the impact of this expense miscalculation is 111,689 times ($145.70 - $70.85), or about $8.4 million.

97.

When developing their estimate of the level of Risk Adjustment ("RA") transfer payments to build into the 2014 premium rates, Milliman assumed that there would be no difference in coding intensity between LAHC and the other insurance carriers in the State of Louisiana. This assumption was not reasonable as Milliman should have known that a small start-up health insurance carrier would be in no position to code claims as efficiently as Blue Cross Blue Shield of Louisiana ("BCBSLA") and other established insurance carriers.

98.

Whatever difference that Milliman assumed as the true morbidity difference between the members that LAHC would enroll and the average state enrollment, it was not reasonable to assume that there would be no difference in claim coding intensity. If Milliman had assumed a lower level of coding intensity for LAHC, this would have resulted in a lower assumed average risk score for LAHC for 2014. As a result, the calculated premiums would have been higher.

99.

When developing estimates of average LAHC risk scores for 2014, Milliman would have been guided by Actuarial Standard of Practice (ASOP) No. 45 – The Use of Health Status Based Risk Adjustment Methodologies. The following sections of ASOP No. 45 are relevant for LAHC with respect to the estimation of relative coding intensity:

- Paragraph 3.2.3 states that "Because risk adjustment model results are affected by the accuracy and completeness of diagnosis codes or services coded, the actuary should consider the impact of differences in the accuracy and completeness of coding across organizations and time periods."

100.

There is no indication that any meaningful assessment of LAHC claim coding capabilities took place by Milliman which resulted in the unreasonable assumption that LAHC's coding efficacy would be the same as larger established health insurance carriers which have years of experience paying claims optimizing the RA coding for some of those claims under other RA programs such as the long established RA program in the Medicare Advantage product.

101.

In their 2014 rating, Milliman assumed that LAHC would actually receive $3.20 PMPM for the individual line of business and $0.00 for the small group line of business. In actuality, the company was assessed a 2014 RA liability of $7,456,986 and $36,622 for the individual and small group lines of business respectively in June 2015 by the Center for Medicare and Medicaid Services (CMS). If Milliman had used a more reasonable assumption with respect to claim coding intensity, some of this liability would have been built into the 2014 premium rates.

102.

Milliman breached its duty by failing to discharge its duties to LAHC with reasonable care, and to act in accordance with the professional standards applicable to actuaries, by failing to produce a feasibility study that was accurate and reliable, by failing to set premium rates for LAHC

that were accurate and reliable, and, in general, by failing to exercise the reasonable judgment expected of professional actuaries under like circumstances.

103.

Milliman's failure to exercise reasonable care, and its failure to act in accordance with the professional standards applicable to actuaries, and its breach of contract, was the legal cause of all of, or substantially all of, LAHC's damages as set forth herein.

Buck

104.

At all relevant times, Buck held itself out as having expertise to provide actuarial services and advice to health insurers like LAHC.

105.

In or around March 2014, Buck was engaged by LAHC to perform "certain actuarial and consulting services" for LAHC, including but not limited to: a review of the actuarial work previously performed by Milliman, "develop cost models to prepare 2015 rates for Public Exchange," "present target rates for review and revision," "review and price new plan designs," and "prepare and submit rate filings and assist" LAHC with "state rate filing" with LDI. Buck's engagement letter was signed by Powers on behalf of LAHC on April 4, 2014, and had an effective date of April 1, 2014. On or about December 1, 2014, this contract was amended, inter alia, to extend the term of Buck's engagement through November 30, 2015, and provided for an additional fee of $380,000 to be paid to Buck for its actuarial services provided to LAHC.

106.

On or about April 2, 2015, Buck issued its "Statement of Actuarial Opinion" to LAHC which was relied upon by LAHC and used to support its periodic ACA reporting requirements to the federal government. In Buck's actuarial opinion, "the March 2015 pro forma financial report is a reasonable projection of LAHC's financial position, subject to the qualifications noted below." In effect, Buck vouched for LAHC's economic health and continuing viability. Buck's professional opinion was clearly inaccurate and unreliable. LAHC would close its doors about three (3) months after Buck issued its April report, and LAHC would ultimately lose more than approximately $54 million in 2015 alone.

107.

The actuarial work performed by Buck was unreliable, inaccurate, and not the result of careful, professional analysis. Furthermore, upon information and belief, Buck may have been unqualified, given its limited experience with insurers like LAHC, to provide actuarial services to LAHC.

108.

Buck owed a duty to LAHC to exercise reasonable care, and to act in accordance with the professional standards applicable to actuaries in providing its services to LAHC.

109.

When Buck developed individual and small group premium rates for 2015, they essentially disregarded the claim experience that had emerged from the start of LAHC operations on January 1, 2014 until the filing was finalized in August 2014. Buck's explanation for not utilizing the claim experience was that it was not statistically credible. Although the claim data was not fully credible, it was unreasonable for Buck to completely disregard LAHC's claim data and incurred claim estimates that were made for statutory financial reporting.

110.

When analyzing credibility of claim data, the actuary would be guided by Actuarial Standard of Practice (ASOP) No. 25 – Credibility Procedures. ASOP No. 25 discusses the concept of two types of experience:

- Subject experience - A specific set of data drawn from the experience under consideration for the purpose of predicting the parameter under study.
- Relevant Experience - Sets of data, that include data other than the subject experience, that, in the actuary's judgment, are predictive of the parameter under study (including but not limited to loss ratios, claims, mortality, payment patterns, persistency, or expenses). Relevant experience may include subject experience as a subset.

111.

For the 2015 pricing exercise, the Subject Experience would be the LAHC claims data and the Relevant Experience was the manual claim data (obtained from Optum) that Buck used to develop rates for 2015. Buck judgmentally applied, through a credibility procedure, 100% weight to the manual claim data (Relevant Experience) and 0% weight to the actual claim experience of LAHC.

112.

By the time the 2015 rate filing was submitted, LAHC would have already prepared their June 30, 2014 statutory financial statements that reported a level of incurred claims of $23.3 million gross of Cost Sharing Reductions (CSR). This level on claims, on a per capita level, implies that LAHC would need a rate increase in the range of at least 40%. The incurred claim estimate prepared for statutory reporting effectively amounts to a data set of "Subject Experience" that was ignored by Buck.

113.

ASOP No 25 provides the following guidance to actuaries:

- Paragraph 3.2 states that "The actuary should use an appropriate credibility procedure when determining if the subject experience has full credibility or when blending the subject experience with the relevant experience."
- Paragraph 3.4 states that "The actuary should use professional judgment when selecting, developing, or using a credibility procedure."

114.

Buck's professional judgement in this case was to completely disregard the LAHC data that was available because they concluded that it had no predictive value in their credibility procedure. They arrived at this conclusion even though the filed rate increase for 2015 was inconsistent with the necessary rate increase that was implied by the incurred claim estimates reported on the LAHC statutory financial statements.

115.

At the time the 2015 rate filing was submitted in August 2014, there were already claims incurred and paid in the period from 1/1/2014 to 6/30/2014 of $220 PMPM (paid through July 2014) gross of Cost Sharing Reduction subsidies ("CSR"). It was readily apparent that there were very significant claim adjudication issues with LAHC's TPA and that the actual ultimate level of incurred claims would be significantly higher than $220 PMPM and much higher than Buck's estimate of the manual level of LAHC claims.

116.

Buck underestimated the level of non-claim expenses in 2015. In Buck's 2015 rate development, they assumed that the "per member per month" (PMPM) level of administrative expenses, taxes, and fees (non-claim expenses) would be $96.24 PMPM for the individual line of business. For the small group line of business, the level of non-claim expenses built into the rate

development was $96.70 PMPM. Per Buck, the expense load was based on a May 2014 expense budget that was prepared by LAHC.

117.

When developing expense loads for 2015, Buck would be guided by Actuarial Standard of Practice (ASOP) No. 8 – Regulatory Filings for Health Benefits, Accident & Health Insurance, and Entities Providing Health Benefits. The following sections of ASOP No. 8 are relevant for LAHC:

- Paragraph 3.4.2 of ASOP No. 8 states that the actuary "should consider the impact of future changes in the underlying covered population on the projected claims. These changes may include, but are not limited to, changes in demographics, risk profile, or family composition".

- Paragraph 3.4.4 of ASOP No. 8 instructs the actuary to "use appropriate methods and assumptions for calculating the non-benefit expenses component of premium rates. Possible methods include, but are not limited to, the use of a target loss ratio or the estimation of expenses appropriately attributed to the health benefit on a percentage of premium or fixed-dollar basis. When estimating the latter amounts, the actuary should consider the health plan entity's own experience, reasonably anticipated internal or external future events, inflation, and business plans. The actuary may also consider relevant external studies. The actuary should consider the reasonableness of the non-benefit expense component of premium rates relative to projected expenses."

118.

The actual level of expenses in 2015 was moderately higher. On a composite basis, the PMPM level of non-claim expenses was $111.05. Total member months were 165,682 of which 99.4% were from the individual line of business.

119.

When developing their estimate of the level of Risk Adjustment ("RA") transfer payments to build into the 2015 premium rates, Buck assumed that there would be no difference in coding intensity between LAHC and the other insurance carriers in the State of Louisiana. This assumption was not reasonable as Buck should have known that a small start-up health insurance carrier would be in no position to code claims as efficiently as BCBSLA and other established insurance carriers.

120.

Whatever difference that Buck assumed as the true morbidity difference between the members that LAHC would enroll and the average state enrollment, it was not reasonable to assume that there would be no difference in claim coding intensity. If Buck had assumed a lower level of coding intensity for LAHC, this would have resulted in lower assumed average risk score for LAHC for 2015. As a result, the calculated premiums would have been higher.

121.

In their rate filing, Buck also noted that the average age of the LAHC enrollees was lower than the State of Louisiana average. Since age is component of the risk score calculation, the younger than average population provided some evidence that the average risk score for the LAHC would be lower than the state average. It was not reasonable for Buck to ignore this known difference in member ages between LAHC and the state average.

122.

When developing estimates of average LAHC risk scores for 2014, Buck would be guided by Actuarial Standard of Practice (ASOP) No. 45 – The Use of Health Status Based Risk Adjustment Methodologies. The following sections of ASOP No. 45 is relevant for LAHC with respect to the estimation of relative coding intensity:

- Paragraph 3.2.3 states that "Because risk adjustment model results are affected by the accuracy and completeness of diagnosis codes or services coded, the actuary should consider the impact of differences in the accuracy and completeness of coding across organizations and time periods."

123.

There is no indication that any meaningful assessment of LAHC claim coding capabilities took place by Buck which resulted in the unreasonable assumption that LAHC's coding efficacy would be the same as larger established health insurance carriers which have years of experience paying claims optimizing the RA coding for some of those claims under other RA programs such as the long established RA program in the Medicare Advantage product.

124.

Data Quality is also relevant with respect to Buck ignoring the known demographic data when developing an estimate of the RA transfer payment that should be built into the 2015 rates. Paragraph 3.2 of ASOP No. 23 states "In undertaking an analysis, the actuary should consider what data to use. The actuary should consider the scope of the assignment and the intended use of the analysis being performed in order to determine the nature of the data needed and the number of Alternative data sets or data sources, if any, to be considered." Because demographic data was available, Buck should have used it to build in some level of RA transfer payment just on that basis alone (without regard for the coding intensity issue).

125.

In their 2015 rating, Buck assumed that LAHC would have a $0 RA transfer payment. In actuality, the company was assessed a 2015 RA liability of $8,658,833 and $177,963 for the

individual and small group lines of business respectively in June 2016 by the Center for Medicare and Medicaid Services (CMS). If Buck had incorporated the known demographic information and used a more reasonable assumption with respect to claim coding intensity, some of this liability would have been built into the 2015 premium rates.

126.

Buck breached its duty by failing to discharge its duties to LAHC with reasonable care, and to act in accordance with the professional standards applicable to actuaries, by failing to produce a feasibility study that was accurate and reliable, by failing to set premium rates for LAHC that were accurate and reliable, and, in general, by failing to exercise the reasonable judgment expected of professional actuaries under like circumstances.

127.

Buck's failure to exercise reasonable care, and its failure to act in accordance with the professional standards applicable to actuaries was the legal cause of all of, or substantially all of, LAHC's damages as set forth herein.

Count Five: Negligent Misrepresentation
(Against the Actuary Defendants)

128.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

Milliman

129.

At all relevant times, Milliman held itself out as having expertise to provide actuarial services and advice to health insurers like LAHC.

130.

At all relevant times, Milliman held a special position of confidence and trust with respect to LAHC.

131.

LAHC justifiably expected Milliman to communicate with care when advising LAHC concerning its funding needs and the appropriate premium for LAHC.

132.

Milliman's advice and/or reports to LAHC and/or LDI and/or CMS concerning LAHC's funding needs negligently misrepresented the actual funding needs and premium rates of LAHC.

133.

Milliman had a duty to provide accurate and up-to-date information to LAHC that Milliman knew or should have known LAHC would rely on in making its decision concerning the amount of premium to charge policyholders.

Buck

134.

At all relevant times, Buck held itself out as having expertise to provide actuarial services and advice to insurers such as LAHC.

135.

At all relevant times, Buck held a special position of confidence and trust with respect to LAHC.

136.

LAHC justifiably expected Buck to communicate with care when advising LAHC concerning its funding needs and the appropriate premium rates for LAHC.

137.

Buck's advice and/or reports to the LAHC and/or LDI and/or CMS concerning LAHC's funding needs negligently misrepresented the actual funding needs and premium rates of LAHC.

138.

Buck had a duty to provide accurate and up-to-date information to LAHC that Buck knew or should have known LAHC would rely on in making its decision concerning the amount of premium to charge policyholders.

PRESCRIPTION AND DISCOVERY OF TORTIOUS CONDUCT

139.

Plaintiff shows that LAHC was adversely dominated by the Defendants named herein, who effectively concealed the bases for the causes of action stated herein. Plaintiff did not discover the causes of action stated herein until well after the Receiver was appointed and these matters were investigated as part of the pending Receivership proceeding. Furthermore, Plaintiff had no ability to bring these actions prior to receiving authority as a result of the Receivership orders entered regarding LAHC. Further, none of the creditors, claimants, policyholders or members of LAHC knew or had any reason to know of any cause of action for the acts and omissions described in this Petition until after LAHC was placed into Receivership.

140.

Plaintiff further shows that the activities of the Defendants named herein constituted continuing torts which began in 2011 and continued unabated until shortly before LAHC was placed into Receivership, or at least in the case of GRI, continued until its services were terminated by LAHC in May 2016.

141.

Applicable statutes of limitations and prescriptive/peremptive periods did not commence as to Plaintiff until shortly before LAHC was placed into Receivership, at the earliest.

142.

Further, according to applicable Louisiana law, once the Commissioner of Insurance filed suit seeking an order of rehabilitation regarding LAHC on September 1, 2015, the running of prescription and preemption as to all claims in favor of LAHC was immediately suspended and tolled during the pendency of the LAHC Receivership proceeding; La.R.S. 22:2008(B).

JURY DEMAND

143.

Plaintiff is entitled to and hereby demands a trial by jury on all triable issues.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick, prays and demands that the Defendants named herein, Terry S. Shilling, George G. Cromer, Warner L. Thomas, IV, William A. Oliver, Charles D. Calvi, Patrick C. Powers, CGI Technologies and Solutions, Inc., Group Resources Incorporated, Beam Partners, LLC, Milliman, Inc., Buck Consultants, LLC, and Travelers Casualty and Surety Company of America, be cited to appear and answer, and that upon a final hearing of the cause, judgment be entered against Defendants and in favor of Plaintiff for all compensable damages in an amount reasonable in the premises, including:

a. All compensatory damages allowed by applicable law caused by Defendants' actionable conduct;

b. the recovery from Defendants of all administrative costs incurred as a result of the necessary rehabilitation and/or liquidation proceedings;

c. all fees, expenses, and compensation of any kind paid by LAHC to the D&O Defendants, Beam Partners, CGI, GRI, Milliman, and Buck;

d. all recoverable costs and litigation expenses incurred herein;

e. all judicial interest;

f. any and all attorneys' fees recoverable pursuant to statute and/or contract;

g. any and all equitable relief to which Plaintiff may appear properly entitled; and

h. all further relief to which Plaintiff may appear entitled.

Respectfully submitted,

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Edward J. Walters, Jr., La. Bar #13214
Darrel J. Papillion, La. Bar #23243
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[SERVICE INFORMATION ON FOLLOWING PAGES]

PLEASE SERVE THE FOLLOWING DEFENDANTS WITH THE PETITION FOR DAMAGES AND JURY DEMAND *AND* FIRST SUPPLEMENTAL, AMENDING AND RESTATED PETITION AS FOLLOWS:

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4271 Brookview Drive SE
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PATRICK C. POWERS
9572 Wesson Street
Baton Rouge, LA 70809

CGI TECHNOLOGIES AND SOLUTIONS, INC.
VIA LONG ARM SERVICE
Through its agent for service of process:
Corporation Service Company
2711 Centerville Road
Suite 400
Wilmington, DE 19808

GROUP RESOURCES INCORPORATED
VIA LONG ARM SERVICE
Through its agent for service of process:
Philip H. Weener
5887 Glendridge Drive
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BEAM PARTNERS, LLC
VIA LONG ARM SERVICE
Through its agent for service of process:
Terry Shilling
2451 Cumberland Parkway, #3170
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TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
Through its agent for service of process:
LA Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809

MILLIMAN, INC.
VIA LONG ARM SERVICE
Through its agent for service of process:
CT Corporation System
505 Union Avenue SE
Suite 120
Olympia, WA 98501

BUCK CONSULTANTS, LLC
VIA LONG ARM SERVICE
Through its agent for service of process:
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