JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.	**SUITE NO.: 651,069 SECTION: 22**
versus	**19TH JUDICIAL 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**

DECLINATORY EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION

NOW INTO COURT, through undersigned counsel, comes Defendant, Milliman, Inc. ("Milliman"), who files the instant *Declinatory Exception of Lack of Subject Matter Jurisdiction* in response to the *First Supplemental, Amending and Reinstated Petition for Damages with Request for Jury Trial* filed against it by 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 ("Plaintiff").

As discussed more thoroughly in the *Supporting Memorandum* filed herewith, Plaintiff's allegations against Milliman involve disputes arising out of a Consulting Services Agreement (the "Agreement") executed between the parties. The Agreement includes an arbitration clause requiring any disputes arising out of or relating to the Agreement to be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Accordingly, this Court does not have subject matter jurisdiction over Plaintiff's claims against Milliman. Therefore, this Court should grant Plaintiff's *Declinatory Exception of Lack of Subject Matter Jurisdiction* and dismiss Plaintiff's claims against Milliman with prejudice at Plaintiff's cost.

WHEREFORE, Defendant, Milliman, Inc., respectfully requests that the Court set its *Declinatory Exception of Lack of Subject Matter Jurisdiction* for a contradictory hearing and thereafter sustain Defendant's *Exception* and dismiss Plaintiff's claims against Milliman with prejudice at Plaintiff's cost.

Respectfully submitted:

ADAMS AND REESE LLP

V. THOMAS CLARK, JR. (#20519)
J. ROBERT WOOLEY (#13679)
KELLEN J. MATHEWS (#31860)
GRANT J. GUILLOT (#32484)
450 Laurel Street, Suite 1900
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Counsel for Milliman, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record via facsimile, e-mail and/or by placing same in the U.S. Mail, postage pre-paid and properly addressed.

Baton Rouge, Louisiana, this 17th day of February, 2017.

V. THOMAS CLARK, JR.

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.	**SUITE NO.: 651,069 SECTION: 22**
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	STATE OF LOUISIANA

ORDER

Considering the foregoing *Declinatory Exception of Lack of Subject Matter Jurisdiction* filed by Defendant, Milliman, Inc.,

IT IS HEREBY ORDERED that 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, appear and show cause on the ___ day of _____, 2017, at __:__ __.M. why Defendant's *Declinatory Exception of Lack of Subject Matter Jurisdiction* should not be maintained and why Plaintiff's claims against Defendant, Milliman, Inc., should not be dismissed with prejudice at Plaintiff's cost.

Baton Rouge, Louisiana this ___ day of _____, 2017.

_____
HONORABLE JUDGE TIMOTHY E. KELLEY
Nineteenth Judicial District Court

PLEASE SERVE:
James J. Donelon, Commissioner of Insurance for the State of Louisiana
Through his counsel of record:
J. E. Cullens, Jr.
Walters, Papillion, Thomas, Cullens, LLC
12345 Perkins Road, Building One
Baton Rouge, LA 70810

Please notify all counsel of record and unrepresented parties upon signing.

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.	**SUITE NO.: 651,069 SECTION: 22**
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MEMORANDUM IN SUPPORT OF DECLINATORY EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION

MAY IT PLEASE THE COURT:

Defendant, Milliman, Inc. ("Milliman"), submits the instant *Memorandum* in support of its *Declinatory Exception of Lack of Subject Matter Jurisdiction* filed in response to the *First Supplemental, Amending and Reinstated Petition for Damages with Request for Jury Trial* filed against Milliman by 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 ("Plaintiff"). As more thoroughly discussed below, this Court lacks subject matter jurisdiction over Plaintiff's claims against Milliman because, pursuant to the arbitration clause contained in the Consulting Services Agreement (the "Agreement") executed by both parties, any disputes arising out of or relating to the Agreement are required to be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Therefore, this Court should grant Plaintiff's *Declinatory Exception of Lack of Subject Matter Jurisdiction* and dismiss Plaintiff's claims against Milliman with prejudice at Plaintiff's cost.

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter arises out of the failure of Louisiana Health Cooperative, Inc. ("LAHC"), a Consumer Operated and Oriented Plan ("CO-OP") program created and funded pursuant to the Patient Protect and Affordable Care Act (the "ACA"). By way of background, the ACA established health insurance exchanges, commonly called "marketplaces," whereby individuals and small businesses across the nation could shop for health insurance. The CO-OP program was established to expand the number of health insurance plans available in the marketplaces. The ACA also required the Secretary of Health and Human Services to loan money to the CO-OP's created in each state, and each CO-OP was allowed to offer health insurance beginning January 1, 2014. LAHC, a Louisiana Nonprofit Corporation that holds a health maintenance organization ("HMO") license from the Louisiana Department of Insurance ("LDOI"), was the CO-OP program created in Louisiana. State regulators, such as the LDOI, are tasked with overseeing the CO-OP's as issuers of health insurance.

On August 4, 2011, Milliman and LAHC executed a document titled "Consulting Services Agreement," which contains the arbitration clause that is the basis for Milliman's *Exception*. A copy of the Consulting Services Agreement is incorporated herein and attached hereto as **Exhibit "A"**. Courtney R. White, as "Consulting Actuary" of Milliman, signed the Agreement on August 4, 2011, while Terry Shilling, as "Chief Executive Officer" of LAHC, signed the Agreement on August 15, 2011. An engagement letter between the two parties, which Terry Shilling also signed on August 15, 2011, was attached to the Agreement. A copy of the engagement letter is incorporated herein and attached hereto as **Exhibit "B"**. Pursuant to the Agreement, Milliman provided professional actuarial services to LAHC from August 2011 to March 2014. Specifically, Milliman was engaged by Terry 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." Subsequently, on September 12, 2011, LAHC became registered with the Louisiana Secretary of State's Office.

In 2012, LAHC applied for and received loans from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") in an amount exceeding $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 to the CO-OP's that demonstrated a high probability of becoming financially viable. All CO-OP loans were required to be repaid with interest. While LAHC's Start-up Loan was required to be paid no later than five (5) years from disbursement, LAHC's Solvency Loan was required to be repaid no later than fifteen (15) years from disbursement. In addition, on December 17, 2013, LAHC was awarded additional start-up funding in the amount of $750,000.00.

By July 2015, eighteen (18) months after it first began issuing policies, LAHC stopped doing business. On September 1, 2015, Plaintiff, James J. Donelon, Commission of Insurance for the State of Louisiana, filed a pleading titled *Petition for Rehabilitation, Injunctive Relief and Rule to Show Cause of Louisiana Healthcare Cooperative, Inc.* That same day, Judge Donald Johnson signed a [preliminary] *Order of Rehabilitation and Injunctive Relief* and a *Rule to Show Cause* ordering LAHC to appear on September 21, 2015 to show cause why the preliminary order of rehabilitation and injunctive relief should not continue in effect and why a permanent order of rehabilitation in the form of the preliminary order of rehabilitation should not be entered. On September 21, 2015, Judge Johnson signed a *Permanent Order of Rehabilitation and Injunctive Relief.*

On August 31, 2016, Plaintiff filed a *Petition for Damages and Jury Demand* seeking compensatory damages against numerous individuals and entities in connection with the failure of LAHC. In the *Petition*, Plaintiff alleges that the named Defendants, being the parties who created, developed, and managed LAHC, completely failed to meet their respective obligations to the subscribers, producers, and creditors of LAHC. Plaintiff also asserts that from the beginning of its existence, LAHC was ill-equipped to service the needs of its subscribers (its members and policyholders), the healthcare providers who provided medical services to its members, and the vendors who did business with LAHC.

On November 29, 2016, the Commissioner filed a *First Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial*, in which he named Milliman and Buck Consultants, LLC as additional Defendants. In the *Supplemental, Amending, and Restated Petition*, Plaintiff accuses Milliman of breaching its duty to LAHC by (1) failing to produce a feasibility study that was accurate and reliable; (2) failing to discharge its duties to LAHC with reasonable care, and to act in accordance with the professional standards applicable to actuaries; (3) failing to set premium rates for LAHC that were accurate and reliable; and (4) in general, by failing to exercise the reasonable judgment expected of professional actuaries under like circumstances. *Supplemental, Amending, and Restated Petition*, pp. 29-30, ¶ 102. Plaintiff contends that Milliman's failure to exercise reasonable care, its failure to act in accordance with the professional standards applicable to actuaries, and its breach of contract, were the legal cause of all of, or substantially all of, LAHC's damages. *Supplemental, Amending, and Restated Petition*, p. 30, ¶ 103. Finally, Plaintiff accuses Milliman of engaging in negligent misrepresentation by providing LAHC, LDI, and CMS erroneous advice and reports regarding the actual funding needs and premium rates of LAHC. *Supplemental, Amending, and Restated Petition*, p. 35, ¶ 132. Accordingly, each of the claims made against Milliman fall within the scope of the arbitration clause contained in the Consulting Services Agreement.

In response to Plaintiff's *Supplemental, Amending, and Restated Petition*, Milliman herein respectfully submits that this Court does not have subject matter jurisdiction over any of Plaintiff's claims against it because the arbitration clause contained in the Consulting Services Agreement as agreed and executed by the parties mandates that "any dispute arising out of or relating to the engagement of Milliman by [LAHC]... will be resolved by final and binding arbitration."

II. LAW AND ARGUMENT

Subject matter jurisdiction is the legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the right asserted. La. Code Civ. Proc. art. 2. Moreover, Louisiana Const. art. V, § 16(A) provides, "[e]xcept as otherwise authorized by this constitution ... a district court shall have original jurisdiction of all civil and criminal matters." In addition,

the Louisiana Supreme Court has held that the validity and enforcement of contracts, as well as damage suits, are generally civil matters over which the district courts have original jurisdiction. *Opelousas Trust Auth. v. Cleco Corp.*, 2012-0622 (La. 12/4/12), 105 So. 3d 26, 35, citing *Cent. Louisiana Elec. Co. v. Louisiana Pub. Serv. Comm'n*, 601 So. 2d 1383, 1387 (La. 1992); *Magnolia Coal Terminal v. Phillips Oil Co.*, 576 So. 2d 475, 487 (La.1991). Furthermore, several courts in this state have opined that an exception of lack of subject matter jurisdiction is an appropriate vehicle through which a party may seek to enforce a binding arbitration clause. *Aeneas Williams Imports, L.L.C. v. Carter*, 47,989 (La. App. 2 Cir. 12/13/12), 131 So. 3d 894; *Obey Financial Group, Inc. v. Blue*, 2013-554 (La. App. 3 Cir. 11/6/13), 125 So. 3d 573; *Ackel v. Ackel*, 97-10 (La. App. 5 Cir. 5/28/97), 696 So. 2d 140, *writ denied*, 97-2139 (La. 11/21/97), 703 So. 2d 1310.

The Louisiana Supreme Court has explained that "[a]rbitration is a mode of resolving differences through the investigation and determination by one or more individuals appointed for that purpose." *Crescent Prop. Partners, LLC v. Am. Mfrs. Mut. Ins. Co.*, 2014-0969 (La. 1/28/15), 158 So. 3d 798, 803, *reh'g denied* (Mar. 13, 2015), citing *Firmin v. Garber,* 353 So. 2d 975, 977 (La.1977). The object of arbitration is the speedy disposition of differences through informal procedures without resort to court action. *Id.* Because of the strong public policy favoring arbitration, arbitration awards are presumed to be valid. *Crescent Prop. Partners, LLC*, 158 So. 3d at 803, citing *National Tea Co. v. Richmond,* 548 So. 2d 930, 932–33 (La.1989). Judges are not entitled to substitute their judgment for that of the arbitrators chosen by the parties. *Crescent Prop. Partners, LLC*, 158 So. 3d at 803, citing *National Tea Co. v. Richmond,* 548 So. 2d 930, 932–33 (La.1989). As stated by the Supreme Court,

> Arbitration is a substitute for litigation. The purpose of arbitration is settlement of differences in a fast, inexpensive manner before a tribunal chosen by the parties. That purpose is thwarted when parties seek judicial review of an arbitration award.

Crescent Prop. Partners, LLC, 158 So. 3d at 804, quoting *National Tea Co.,* 548 So. 2d at 933.

Additionally, in *Aguillard v. Auction Mgmt. Corp.*, the Louisiana Supreme Court opined:

> At the outset, we note **the positive law of Louisiana favors arbitration**. *See* La. Rev. Stat. § 9:4201. La. Rev. Stat. § 9:4201 specifically 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.**

2004-2804 (La. 6/29/05), 908 So. 2d 1, 7 (emphases added).

In the instant matter, Milliman, through its Consulting Actuary, Courtney R. White, and LAHC, through its Chief Executive Officer, Terry Shilling, executed a Consulting Services Agreement containing the following language:

> 4. **DISPUTES.** In the event of any dispute arising out of or relating to the engagement of Milliman by [LAHC], the parties agree that the dispute will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association…

See Exhibit "A" (emphasis in original). The language set forth in Section 4 of the Agreement is clear and unambiguous. Given that the allegations Plaintiff has raised against Milliman arise out of the services Milliman agreed to render to LAHC pursuant to the terms of the Consulting Services Agreement, any and all disputes Plaintiff may have with Milliman are required to be resolved by final and binding arbitration. In accordance with La. Rev. Stat. § 9:4201, the written agreement between Milliman and LAHC to submit to arbitration any dispute arising between them is "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of [the Agreement]."

Nevertheless, although arbitration clauses are presumed to be enforceable, courts will determine such a clause to be invalid if the agreement to submit to arbitration amounts to a contract of adhesion. See, *Aguillard, supra.* "Broadly defined, a contract of adhesion is a standard contract, usually in printed form, prepared by a party of superior bargaining power for adherence or rejection of the weaker party. Often in small print, these contracts sometimes raise a question as to whether or not the weaker party actually consented to the terms." *Aguillard*, 908 So. 2d at 8, citing *Golz v. Children's Bureau of New Orleans,* 326 So. 2d 865, 869 (La. 1976), appeal dismissed, 426 U.S. 901, 96 S.Ct. 2220, 48 L.Ed.2d 827 (1976)(internal citations omitted). Nevertheless, the Supreme Court in *Aguillard* opined, "[A]ddressing the determination

of the enforceability of arbitration agreements under a contract of adhesion analysis, we hold that a presumption of arbitrability does exist." 908 So. 2d at 18.

Additionally, in a recently decided case, the Louisiana Supreme Court explained,

> While not declaring a definitive test, this court effectively established a framework for examining the validity of an arbitration clause within a standard form contract by generally describing the characteristics of an unenforceable adhesionary agreement. Finding our analysis in *Aguillard* instructive, we consider the following factors to determine the enforceability of the arbitration clause in the...Agreement: **(1) the physical characteristics of the arbitration clause**, **(2) the distinguishing features of the arbitration clause**, **(3) the mutuality of the arbitration clause**, and **(4) the relative bargaining strength of the parties**."

Duhon v. Activeleaf, LLC, 2016-0818 (La. 10/19/16), 2016 WL 6123820 (emphases added).

In *Duhon*, an injured trampoline park patron sued the park for negligence. *Id.* The park filed an exception seeking to enforce a mandatory arbitration clause contained in the electronic Participant Agreement, Release and Assumption of Risk Agreement, which all patrons were required to electronically sign upon entering the facility. *Id.* The trial court overruled the park's exception, refusing to enforce the arbitration clause on the grounds that there was a lack of mutuality in the Agreement relative to the arbitration clause because only the patron was bound to arbitrate claims. *Id.* The Louisiana Court of Appeal for the First Circuit reversed the trial court's ruling, noting the strong presumption favoring the enforceability of arbitration clauses. *Id.* The Supreme Court reversed the court of appeal and reinstated the trial court's ruling, opining:

> Examining the physical characteristics of the arbitration clause, we observe the arbitration language is consistent in size and font with the other provisions in the Agreement. However, the lack of distinguishing features and the specific placement of the arbitration clause serve to conceal the arbitration language from Sky Zone patrons... Thus, looking at the Agreement as a whole, the arbitration language appears to be the only specific provision not relegated to a separate paragraph or set apart in some explicit way...The effect of the placement of the arbitration language is to cloak it within a blanket of boilerplate language regarding rules and risks of participating in the Sky Zone activities. Thus, although it is undisputed that Mr. Duhon electronically signed the Agreement, purportedly demonstrating an acceptance of its terms, under Louisiana contract law, we find Mr. Duhon did not truly consent to the arbitration provision.
>
> Additionally, the lack of mutuality in the arbitration clause fortifies our finding that it is adhesionary. The arbitration provision requires only Sky Zone patrons to submit their claims to arbitration. The entire contract, including the arbitration clause, repeatedly includes "I acknowledge" and

> "I agree" language, with the "I" referencing the "applicant"—here, Mr. Duhon. Specifically, the Agreement provides if there are any disputes regarding this agreement "I ... hereby waive any right ... to a trial and agree that such dispute shall be ... determined by binding arbitration ...." Although Sky Zone does not expressly reserve itself the right to pursue litigation, nowhere in the Agreement are "the parties" or Sky Zone particularly bound to arbitration.
>
> This is in stark contrast to the arbitration clause in *Aguillard* which clearly applied to both parties by providing: "Any controversy or claim arising from or relating to this agreement or any breach of such agreement shall be settled by arbitration administered by the American Arbitration Association under is [sic] rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof." 908 So. 2d at 4. Thus, in *Aguillard*, we found the arbitration clause did not lack sufficient mutuality to invalidate the clause as adhesionary because the arbitration clause severely limited both the defendants' and the plaintiff's right to litigate, and the defendants did not reserve their right to litigate in the document. *Id.* at 16...

Duhon, 2016 WL 6123820, at *5.

Applying the four-factor test to the arbitration clause included within the Consulting Services Agreement in the instant matter, it is clear that the Agreement between Milliman and LAHC is enforceable. First, the arbitration clause in the Agreement is printed in the same font utilized in the rest of the document. See Exhibit "A". Thus, the physical characteristics of the arbitration clause are the same as the characteristics displayed throughout the rest of the document. In addition, the arbitration clause is essentially set apart in its own section of the Consulting Services Agreement. See Exhibit "A", Section 4, "**DISPUTES.**" The word "**DISPUTES**" is even featured in all capitalized letters and in bold font. Therefore, the arbitration clause undeniably includes distinguishing features, unlike the arbitration clause in *Duhon*, wherein the Supreme Court determined that the lack of distinguishing features and the specific placement of the arbitration clause served to conceal the arbitration language. *Duhon*, 2016 WL 6123820, at *5. Furthermore, unlike the arbitration clause in *Duhon*, mutuality is present in the arbitration clause in the instant matter as *both* parties are required to forego litigation in favor of arbitration. Finally, both Milliman and LAHC are sophisticated parties with similar levels of bargaining strength, a factor that weighs in favor of the arbitration clause's enforceability. Accordingly, when one examines the arbitration clause in the Agreement in light of the four criteria set forth by the Supreme Court in *Duhon*, it is evident that the arbitration clause is not adhesionary. Because the arbitration clause contained within the Consulting

Services Agreement between Milliman and LAHC is enforceable, this Court lacks subject matter jurisdiction over Plaintiff's claims against Milliman. Accordingly, Milliman respectfully submits that this Court should grant Milliman's *Declinatory Exception of Lack of Subject Matter Jurisdiction*, thereby dismissing Plaintiff's claims against Milliman with prejudice at Plaintiff's cost.

III. CONCLUSION

For the reasons set forth hereinabove, this Court does not have subject matter jurisdiction over Plaintiff's claims against Milliman. Accordingly, this Court should grant Milliman's *Declinatory Exception of Lack of Subject Matter Jurisdiction* and order that Plaintiff's claims against Milliman be dismissed with prejudice at Plaintiff's cost.

Respectfully submitted:

ADAMS AND REESE LLP

/s/
V. THOMAS CLARK, JR. (#20519)
J. ROBERT WOOLEY (#13679)
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Counsel for Milliman, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record via facsimile, e-mail and/or by placing same in the U.S. Mail, postage pre-paid and properly addressed.

Baton Rouge, Louisiana, this 17th day of February, 2017.

V. THOMAS CLARK, JR.

CONSULTING SERVICES AGREEMENT

This Agreement is entered into between Milliman, Inc. (Milliman) and Louisiana Health Cooperative, Inc. (Company) as of August 4, 2011. Company has engaged Milliman to perform consulting services as described in the letter dated August 4, 2011 and attached hereto. The parties agree that these terms and conditions will apply to all current and subsequent engagements of Milliman by Company unless specifically disclaimed in writing by both parties prior to the beginning of the engagement. In consideration for Milliman agreeing to perform these services, Company agrees as follows.

1. **BILLING TERMS.** Company acknowledges the obligation to pay Milliman for services rendered, whether arising from Company's request or otherwise necessary as a result of this engagement, at Milliman's standard hourly billing rates for the personnel utilized plus all out-of-pocket expenses incurred. Milliman will bill Company periodically for services rendered and expenses incurred. All invoices are payable upon receipt. Milliman reserves the right to stop all work if any bill goes unpaid for 60 days. In the event of such termination, Milliman shall be entitled to collect the outstanding balance, as well as charges for all services and expenses incurred up to the date of termination.

2. **TOOL DEVELOPMENT.** Milliman shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by Milliman or developed during the course of the provision of the Services provided such generic documents or templates do not contain any Company Confidential Information or proprietary data. Rights and ownership by Milliman of original technical designs, methods, ideas, concepts, know-how, and techniques shall not extend to or include all or any part of Company's proprietary data or Company Confidential Information. To the extent that Milliman may include in the materials any pre-existing Milliman proprietary information or other protected Milliman materials, Milliman agrees that Company shall be deemed to have a fully paid up license to make copies of the Milliman owned materials as part of this engagement for its internal business purposes and provided that such materials cannot be modified or distributed outside the Company without the written permission of Milliman.

3. **LIMITATION OF LIABILITY.** Milliman will perform all services in accordance with applicable professional standards. The parties agree that Milliman, its officers, directors, agents and employees, shall not be liable to Company, under any theory of law including negligence, tort, breach of contract or otherwise, for any damages in excess of three times the professional fees paid to Milliman with respect to the work in question or $3,000,000, whichever is less. In no event shall Milliman be liable for lost profits of Company or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of Milliman.

4. **DISPUTES.** In the event of any dispute arising out of or relating to the engagement of Milliman by Company, the parties agree that the dispute will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place before a panel of three arbitrators. Within 30 days of the commencement of the arbitration, each party shall designate in writing a single neutral and independent arbitrator. The two arbitrators designated by the parties shall then select a third arbitrator. The arbitrators shall have a background in either insurance, actuarial science or law. The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing, and such discovery shall be conducted consistent with the Federal Rules of Civil Procedure. The arbitrators shall have no power or authority to award punitive or exemplary damages. The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any award made may be confirmed in any court having jurisdiction. Any arbitration shall be confidential, and except as required by law, neither party may

disclose the content or results of any arbitration hereunder without the prior written consent of the other parties, except that disclosure is permitted to a party's auditors and legal advisors.

5. **CHOICE OF LAW.** The construction, interpretation, and enforcement of this Agreement shall be governed by the substantive contract law of the State of New York without regard to its conflict of laws provisions. In the event any provision of this agreement is unenforceable as a matter of law, the remaining provisions will stay in full force and effect.

6. **NO THIRD PARTY DISTRIBUTION.** Milliman's work is prepared solely for the internal business use of Company. Milliman's work may not be provided to third parties without Milliman's prior written consent. Milliman does not intend to benefit any third party recipient of its work product, even if Milliman consents to the release of its work product to such third party.

7. **CONFIDENTIALITY.** Any information received from Company will be considered "Confidential Information." However, information received from Company will not be considered Confidential Information if (a) the information is or comes to be generally available to the public during the course of Milliman's work, (b) the information was independently developed by Milliman without resort to information from the Company, or (c) Milliman appropriately receives the information from another source who is not under an obligation of confidentiality to Company. Milliman agrees that Confidential Information shall not be disclosed to any third party.

MILLIMAN, INC.

By: _____

Name: Courtney R. White

Title: Consulting Actuary

Date: August 4, 2011

LOUISIANA HEALTH COOPERATIVE, INC.

By: _____

Name: Terry S Shilling

Title: Chief Executive Officer

Date: August 15, 2011

Milliman

3424 Peachtree Road NE
Suite 1900
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USA

Tel +1 404 237 7060
Fax +1 404 237 6984

milliman.com

August 4, 2011

Via Email

Mr. Terry Shilling
Owner/Partner
Beam Partners
2451 Cumberland Parkway, Suite 3170
Atlanta, GA 30339

RE: Proposal for Actuarial Services

Dear Terry:

It has been good talking to you over the last couple of months about Consumer Operated and Oriented Plans ("CO-OP"). Beam Partners is working with the Louisiana Health Cooperative, Inc. ("LHC"), which is sponsored by Ochsner Health System ("OHS"), to investigate the creation of a CO-OP in Louisiana. Beam, on behalf of LHC, asked Milliman to provide a proposal for actuarial support of the proposed CO-OP. The initial support would include assistance with the feasibility study and load application as directed by the Funding Opportunity Announcement (Funding Opportunity Number: OO-COO-11-001, CFDA 93.545) released from the U.S. Department of Health and Human Services ("HHS") on July 28, 2011. This letter provides a brief work plan and timing, staffing, and professional fees.

Background

The Federal government pledged $3.8 billion loans in the Patient Protection and Affordable Care Act ("PPACA") to assist in the establishment of private, nonprofit, member-run health insurance issuers or CO-OPs. PPACA created CO-OPs to improve consumer choice and plan accountability, promote integrated models of care, and enhance competition. The CO-OPs must be licensed in the States that they intend to offer coverage.

The loans provisions in PPACA are intended to assist the CO-OPs with start-up costs and meeting State solvency requirements. The start-up and solvency loans are to be repaid in five and fifteen years, respectively. The first round of loans is to be awarded in January 2012. PPACA restricts the grants and loans from influencing legislation or intervening in political campaigns (IRS 501c29) while net earnings must be used to improve the quality, reduce premiums, or improve benefits to members.

The CO-OPs will compete directly with insurers selling products inside the exchanges. They must offer individual coverage with at least the silver and gold benefit levels in all geographic regions. If they choose to offer small group coverage outside the exchange, then they must offer

at least the silver and gold benefits levels in each Small Business Health Options Program ("SHOP") in each geographic region in which a small group product is offered outside the exchange. The CO-OP can offer large group coverage; however, two-thirds of contracts issued must be in qualified health plans in the individual and/or small group markets.

Scope

OHS wants to perform a financial feasibility study for the CO-OP. We would work with Beam to create a feasibility study with insight into the following:

- Target per capita utilization levels,
- Competitive provider reimbursement terms,
- Competitive benefit offerings and premium rates (outside and as anticipated inside the exchange),
- Operational costs,
- Underwriting risks,
- Loan repayment, and
- Capital and surplus requirements.

Ultimately, the feasibility study would help support the HHS loan application process and provide the basis for rate filings and pro formas required by the Louisiana Department of Insurance in order to acquire an insurance license.

The CO-OPs will be effective in 2014 and be subject to the rating and underwriting restrictions under PPACA. We recommend performing the competitive analysis on both current benefits and current premium rates since we need to gauge the competitiveness in the current market prior to looking at 2014

As you know, there are significant operational and regulatory issues to deal with when starting an insurance company. Our proposal assumes that Beam will serve as this management consultant and coordinate the HHS application and DOI insurance license process.

Work Plan

The feasibility study would require the tasks outlined below:

Task 1 – Insurance Laws – Research Louisiana laws for information such as:

- Current loss ratio requirements,
- Current rating restrictions (individual and small employer),
- Underwriting restrictions, and
- Minimum capital and surplus requirements.

Task 2a – Provider Reimbursement Terms – Gather and discuss competitive provider reimbursement. This information would come from a combination of work performed by Beam, Milliman, and OHS. We would compare desired reimbursement rates with competitive levels and demonstrate the impact on the pricing for both facility and professional services

Task 2b – Per Capita Utilization Patterns – Discuss and review current utilization patterns, including practice and prescribing patterns. This information would come from OHS. This would also include discussions about potential areas for savings.

Task 3 – Competitive Benefit and Premium Rates – Research information currently available in the Louisiana individual and small group markets by geographic region such as:

- Benefit plan offerings,
- Premium rate levels, and
- Underwriting practices.

The attached file includes the demographics of sample small groups. Ideally, we would like to see competitor (i.e., market leader) premium rates quoted for each group for each geographic region (i.e., Alexandria, Lafayette, Baton Rouge, New Orleans, etc.) that OHS is interested in offering the CO-OP.

Premium rates by age and gender by geographic region would also be required for the individual market. Carriers may publish table rates for individual products rather than using a formalized quoting process.

Task 4 – Financial Models - Develop actuarial cost models. We would develop separate actuarial cost models for both the individual and small group markets that reflect the proposed benefit plans as well as the projected per capita utilization and reimbursement levels in each geographic region. The actuarial cost models would reflect the following:

- Projected standard labor demographics by age and gender - This would be based on the Milliman Health Cost Guidelines™.
- Projected claim costs by service area - This would be based on the Milliman Health Cost Guidelines™ as well as information provided regarding provider reimbursement and network efficiency.
- Proposed benefit plans – This would be based on the competitive information, which would reflect the recommended package of essential health benefits.

We can then use the actuarial cost models along with target administrative ratios and profits to create CO-OP premium rates by geographic region to be compared with the competitor premium rate for similar benefit plans. Once competitiveness is assessed, we can adjust the benefits to achieve the silver and gold benefit plan levels.

Task 5 – Financial Projections - Develop financial projections for the individual and small group markets as well as overall. The projections would incorporate the following:

- Information from actuarial cost models in Task 4
- Realistic provider reimbursement targets from Task 2a
- Realistic per capita utilization targets from Task 2b
- Plan designs from Task 3 eventually adjusted to PPACA benefit levels
- Projected membership levels from Beam/OHS
- Projected administrative expenses and target margins from Beam/OHS
- Loan repayment from Beam/OHS
- Other necessary items such as start-up costs and minimum capital and surplus requirements from Beam/OHS
- Sensitivity tests

The final deliverable will be a report addressing the following items:

- Current market assessment
  - Size of uninsured market
  - Competitive analysis – members and premiums by type of membership for top insurers
- Assumed per capita utilization levels,
- Assumed provider reimbursement terms and arrangements,
- Benefit offerings and premium rates,
- Aggregate and per member operational costs,
- Types of embedded underwriting risks,
- Loan repayment, and
- Capital and surplus requirements.

OHS will need to submit rate filings and pro formas to the Louisiana Department of Insurance for review prior to licensing. We can provide estimates for these actuarial services and others once the feasibility study and loan application have been completed.

Timing and Professional Fees

I will lead the project. Rachel Killian, FSA, and Brandon Odell, ASA, will perform the detailed modeling. We will use others in our office and around the country depending on the task and level of expertise needed. We are available to begin the project immediately and would have projected claim costs by geographic region within four to six weeks. The more time consuming element would be finding a "friendly" broker or agent to gather the competitor premium rates.

We bill on a time and expense basis, only billing for the actual time spent on this project. Based on the work plan outlined above, we estimate the professional fees for the feasibility study to range from $70,000 to $100,000. The large range of fees reflects the uncertainty in the delegation of tasks between Beam, OHS, and Milliman as well as the amount of support necessary to respond to CMS questions during the application review process. Indirect expenses such as Federal Express, telephone calls, copying, etc. are included in the above range of fees. Out-of-pocket expenses such as travel will be additional and billed as incurred in accordance with the travel policies of LHC or OHS.

We recognize that payment may be delayed beyond the normal terms written in the Consulting Service Agreement but expect payment to be made promptly once funds are available. In the event that the CO-OP is dissolved and does not receive funds to become a going concern, Milliman will not pursue payment or negotiate a reduced payment from individuals associated with the dissolved health cooperative for the work done for feasibility studies and business plans.

Please return a signed copy of this letter so we can proceed with this engagement.

Terry, we look forward to working with you. Please call if you have any questions about the proposal.

Sincerely,

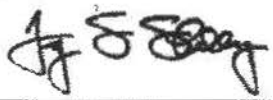
CR White

Courtney R. White, FSA, MAAA
Principal and Consulting Actuary

Signature Block Follows on Next Page

If you agree to the terms of this engagement, please sign below and return to my attention.

Accepted on behalf of Louisiana Health Cooperative, Inc.:



August 15, 2011

Signature: Date

Terry S Shilling

Name: