

REQUEST FOR PROPOSAL

**ADMINISTRATIVE SERVICES FOR
HEALTH REIMBURSEMENT ARRANGEMENT (HRA)
TOGETHER WITH AN
INDIVIDUAL MARKET MEDICARE EXCHANGE
FOR THE
OFFICE OF GROUP BENEFITS**



File Number: S53135CP

Solicitation Number: 2247327

Proposal Opening Date: January 11, 2012

Proposal Opening Time: 10:00 AM (CST)

**State of Louisiana
Office of State Purchasing**

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**REQUEST FOR PROPOSAL
FOR
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FOR THE
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PART I: ADMINISTRATIVE AND GENERAL INFORMATION

1.1 Background

The Office of Group Benefits (OGB) is a component unit of the State of Louisiana created within the Office of the Governor, Division of Administration, pursuant to R.S. 42:801, et seq., as amended and reenacted by Act 1178 of 2001. OGB is vested with the general administration of all aspects of the employee benefits programs authorized under the provisions of Chapter 12, Title 42, of the Louisiana Revised Statutes, including group health benefits, group life insurance, and an IRS qualified cafeteria plan for employees and retirees (and their dependents) of all governmental and administrative subdivisions, departments, agencies, boards and commissions of the executive, legislative, and judicial branches of the state, all institutions of higher education and the governing boards, and approximately two-thirds of the public elementary and secondary school systems in the State.

In fulfillment of its statutory responsibilities, OGB currently offers the following plan options:

- a self-insured and self-administered health and accident benefits plan (the PPO plan);
- a self-insured HMO plan administered by Blue Cross/Blue Shield of Louisiana;
- a self-insured consumer directed (high deductible) health plan with a health savings account administered by UnitedHealthcare;
- a fully insured medical home HMO plan (Vantage Health Plan) in the northeast area of the state (Monroe);
- a fully insured Louisiana HMO plan (Vantage Health Plan) in the Baton Rouge, Alexandria, Shreveport and Monroe areas of the state; and
- sponsored Medicare Advantage plans (Humana, Peoples Health, UnitedHealthcare, and Vantage Health Plan).

See Attachment A for current enrollment of OGB Medicare Retirees by plan.

In addition, the Louisiana State University (LSU) System, as authorized by interagency agreement with OGB, administers a separate consumer directed health plan with a health reimbursement arrangement that is available to employees and retirees (and their dependents) of LSU and the Legislature of Louisiana.

OGB also administers an IRS qualified cafeteria plan offering optional benefits such as dental, eye care, cancer and catastrophic illness coverage, long term disability, and health care and child care flexible spending accounts.

1.1.1 Purpose

The purpose of this Request for Proposal (RFP) is to obtain competitive proposals as allowed by Louisiana Revised Statute 39:1593C from bona fide, qualified proposers who are interested in providing an Individual Market Medicare Exchange for OGB's Medicare retirees together with administrative services for a Health Reimbursement Arrangement (HRA).

1.1.2 Goals and Objectives

OGB wishes to explore alternative methods by which to fulfill its statutory responsibilities. The concept of an Individual Market Medicare Exchange program is relatively new. OGB proposes to implement the concept as an ADDITIONAL OPTION for its Medicare retirees to determine whether an Individual Market Medicare Exchange can be beneficial to both OGB and the Medicare retirees.

NOTE: While this ADDITIONAL OPTION will be made available to all Medicare eligible retirees, current plan options will be maintained. Enrollment in an Individual Market Medicare Advantage plan will NOT be mandatory for OGB Medicare retirees.

The proposed initial effective date of coverage for the Individual Market Medicare Advantage plans is July 1, 2012.

1.2 Definitions

- A. Shall – The term “shall” denotes mandatory requirements per RS: 39:1556(24).
- B. Must - The term “must” denotes mandatory requirements.
- C. May - The term “may” denotes an advisory or permissible action.
- D. Should – The term “should” denotes a desirable action.
- E. Contractor – Any person having a contract with a governmental body.
- F. Agency – The Office of the Governor, Division of Administration, Office of Group Benefits of the State.
- G. State- The State of Louisiana.
- H. Discussions- For the purposes of this RFP, a formal, structured means of conducting written or oral communications/presentations with responsible Proposers who submit proposals in response to this RFP.
- I. RFP – This Request for Proposal.
- J. OGB – Office of Group Benefits.

K. HRA or Health Reimbursement Arrangement/Account – A tax-advantaged, employer-funded medical reimbursement plan that provide benefits for substantiated medical expenses pursuant to the employer’s plan design in accordance with federal regulations.

L. Individual Market Medicare Exchange – A selection of competing individual and family health plan products authorized by the Centers for Medicare and Medicaid Services (CMS) for Medicare eligible individuals that includes Medicare Advantage (Part C) plans, and may include Medicare supplements, and stand-alone prescription drug coverage (Part D).

M. HMO – Health Maintenance Organization.

1.3 Schedule of Events	Date	Time (CST)
RFP mailed to prospective proposers and posted to LaPac	December 1, 2011	
Deadline to receive written inquiries	December 15, 2011	
Deadline to answer written inquiries	December 22, 2011	
Proposal Opening Date (deadline for submitting proposals)	January 11, 2012	10:00 A.M.
Oral discussions with proposers	To be scheduled	
Notice of Intent to Award to be mailed	To be scheduled	
Contract Initiation	To be scheduled	

NOTE: The State of Louisiana reserves the right to revise this schedule. Any such revision will be formalized by the issuance of an addendum to the RFP.

1.4 Proposal Submittal

This RFP is available in electronic form at the LaPAC website <http://wwwprd.doa.louisiana.gov/osp/lapac/pubmain.asp>. It is available in PDF format or in printed form by submitting a written request to the RFP Contracting Officer with the Office of State Purchasing.

It is the Proposer's responsibility to check the Office of State Purchasing LaPAC website frequently for any possible addenda that may be issued. The Office of State Purchasing is not responsible for a proposer's failure to download any addenda documents required to complete a Request for Proposal.

All proposals shall be received by the Office of State Purchasing **no later than the date and time shown in the Schedule of Events.**

Important - - Clearly mark outside of envelope, box or package with the following information and format:

- **Proposal Name: Administrative Services for Health Reimbursement Arrangement (HRA) together with an Individual Market Medicare Exchange for the Office of Group Benefits**
- **File Number: S53135CP, Solicitation Number: 2247327**
- **Proposal Opening Date: January 11, 2012 at 10:00 A.M. (CST)**

Proposers are hereby advised that the U. S. Postal Service does not make deliveries to our physical location.

Proposals may be mailed through the U. S. Postal Service to our box at:

Office of State Purchasing
P. O. Box 94095
Baton Rouge, LA 70804-9095

Proposals may be delivered by hand or courier service to our physical location at:

Office of State Purchasing
1201 North 3rd St.
Suite 2-160
Baton Rouge, LA 70802

Proposer is solely responsible for ensuring that its courier service provider makes inside deliveries to our physical location. The Office of State Purchasing is not responsible for any delays caused by the proposer's chosen means of proposal delivery.

Proposers should be aware of security requirements for the Claiborne building and allow time to be photographed and presented with a temporary identification badge.

Proposer is solely responsible for the timely delivery of its proposal. Failure to meet the proposal opening date and time shall result in rejection of the proposal.

PROPOSALS SHALL BE OPENED PUBLICLY AND ONLY PROPOSERS SUBMITTING PROPOSALS SHALL BE IDENTIFIED ALOUD. PRICES SHALL NOT BE READ.

1.5 Proposal Response Format

Proposals submitted for consideration should follow the format and order of presentation described below:

- A. **Cover Letter:** The cover letter should exhibit the Proposer's understanding and approach to the project. It should contain a summary of Proposer's ability to perform the services described in the RFP and confirm that Proposer is willing to perform those services and enter into a contract with the State.

ATTENTION: R. S. 39:1594(C)(4) requires evidence of authority to sign and submit proposals to the State of Louisiana. Please indicate in the Cover Letter which of the following applies to the signer of this proposal.

1. The signer of the proposal is either a corporate officer who is listed on the most current annual report on file with the secretary of state or a member of a partnership or partnership in commendam as reflected in the most current partnership records on file with the secretary of state. **A copy of the annual report or partnership record must be submitted to the Office of State Purchasing before contract award.**
2. The signer of the proposal is a representative of the proposer authorized to submit this proposal as evidenced by documents such as, corporate resolution, certification as to corporate principal, etc. **If this applies a copy of the resolution, certification or other supportive documents must be attached to the Cover Letter.**
3. The proposer has filed with the secretary of state an affidavit or resolution or other acknowledged/authentic document indicating that the signer is authorized to submit proposals for public contracts. **A copy of the applicable document must be submitted to the Office of State Purchasing before contract award.**
4. The signer of the proposal has been designated by the proposer as authorized to submit proposals on the proposer's vendor registration on file with the Office of State Purchasing.

The cover letter should also:

- o Identify the submitting Proposer and provide their federal tax identification number;
- o Identify the name, title, address, telephone number, fax number, and email address of each person authorized by the Proposer to contractually obligate the Proposer;

- Identify the name, address, telephone number, fax number, and email address of the contact person for technical and contractual clarifications throughout the evaluation period.
- B. **Table of Contents:** Organized in the order cited in the format contained herein.
- C. **Proposer Qualifications and Experience:** History and background of Proposer, financial strength and stability, related services provided to government entities, existing customer satisfaction, demonstrated volume of merchants, etc.
- A Proposer must:
- be a licensed broker of Medicare plans with experience transitioning large retiree groups from group plan coverage to an Individual Medicare Market Exchange;
 - offer a number of Medicare Plan choices;
 - have experience providing benefit counseling, education, outreach and assistance to large retiree groups to assist retirees in choosing a Medicare Plan best suited to their individual needs; and
 - have experience providing HRA administrative services for large employers. (See Section 2.1 Scope of Work/Services,(III) of this RFP.)
- D. **Proposed Solution/Technical Response:** Illustrating and describing proposed technical solution and compliance with the RFP requirements.
- E. **Innovative Concepts:** Presentation of innovative concepts, if any, for consideration.
- F. **Project Schedule:** Detailed schedule of implementation plan to include implementation actions, timelines, responsible parties, etc.
- G. **Cost Proposal:** Proposer's fees and other costs, if any, shall be submitted in accordance with Attachment C Cost Proposal in this RFP. Cost(s) proposed shall be firm for the duration of the contract. This cost proposal shall include any and all costs the Contractor wishes to have considered in the contractual arrangement with the State.
- H. **Other Compensation:** Explain other compensation that your organization expects to receive as a broker or otherwise in connection with the Individual Market Medicare Exchange and/or Medicare Retiree Navigation Services.

1.5.1 Number of Response Copies

Each Proposer shall submit one (1) signed original response. Nine (9) additional copies of the proposal should be provided, as well as one (1) redacted copy, if applicable (See Section 1.6).

1.5.2 Legibility/Clarity

Responses to the requirements of this RFP in the formats requested are desirable with all questions answered in as much detail as practicable. The Proposer's response is to demonstrate an understanding of the requirements. Proposals prepared simply and economically, providing a straightforward, concise description of the Proposer's ability to meet

the requirements of the RFP is also desired. Each Proposer is solely responsible for the accuracy and completeness of its proposal.

1.6 Confidential Information, Trade Secrets, and Proprietary Information

The designation of certain information as trade secrets and/or privileged or confidential proprietary information shall only apply to the technical portion of the proposal. The cost proposal will not be considered confidential under any circumstance. Any proposal copyrighted or marked as confidential or proprietary in its entirety may be rejected without further consideration or recourse.

For the purposes of this procurement, the provisions of the Louisiana Public Records Act (La. R.S. 44.1 et. seq.) will be in effect. Pursuant to this Act, all proceedings, records, contracts, and other public documents relating to this procurement shall be open to public inspection. Proposers are reminded that while trade secrets and other proprietary information they submit in conjunction with this procurement may not be subject to public disclosure, protections must be claimed by the proposer at the time of submission of its Technical Proposal. Proposers should refer to the Louisiana Public Records Act for further clarification.

The proposer must clearly designate the part of the proposal that contains a trade secret and/or privileged or confidential proprietary information as "confidential" in order to claim protection, if any, from disclosure. The proposer shall mark the cover sheet of the proposal with the following legend, specifying the specific section(s) of his proposal sought to be restricted in accordance with the conditions of the legend:

"The data contained in pages _____ of the proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential information and such data shall only be disclosed for evaluation purposes, provided that if a contract is awarded to this Proposer as a result of or in connection with the submission of this proposal, the State of Louisiana shall have the right to use or disclose the data therein to the extent provided in the contract. This restriction does not limit the State of Louisiana's right to use or disclose data obtained from any source, including the proposer, without restrictions."

Further, to protect such data, each page containing such data shall be specifically identified and marked "CONFIDENTIAL".

Proposers must be prepared to defend the reasons why the material should be held confidential. If a competing proposer or other person seeks review or copies of another proposer's confidential data, the state will notify the owner of the asserted data of the request. If the owner of the asserted data does not want the information disclosed, it must agree to indemnify the state and hold the state harmless against all actions or court proceedings that may ensue (including attorney's fees), which seek to order the state to disclose the information. If the owner of the asserted data refuses to indemnify and hold the state harmless, the state may disclose the information.

The State reserves the right to make any proposal, including proprietary information contained therein, available to OSP personnel, the Office of the Governor, or other state agencies or organizations for the sole purpose of assisting the State in its evaluation of the proposal. The State shall require said individuals to protect the confidentiality of any specifically identified proprietary information or privileged business information obtained as a result of their participation in these evaluations.

If your proposal contains confidential information, you should also submit a redacted copy along with your proposal. If you do not submit the redacted copy, you will be required to submit this copy within 48 hours of notification from the Office of State Purchasing. When submitting your redacted copy, you should clearly mark the cover as such - "REDACTED COPY" - to avoid having this copy reviewed by an evaluation committee member. The redacted copy should also state which sections or information has been removed.

1.7 Proposal Clarifications Prior to Submittal

1.7.1 Pre-proposal Conference – NOT REQUIRED FOR THIS RFP

1.7.2 Proposer Inquiry Periods

The state shall not and cannot permit an open-ended inquiry period, as this creates an unwarranted delay in the procurement cycle and operations of our agency customers. The state reasonably expects and requires *responsible and interested* proposers to conduct their in-depth proposal review and submit inquiries in a timely manner.

An inquiry period is hereby firmly set for all interested proposers to perform a detailed review of the proposal documents and to submit any written inquiries relative thereto. *Without exception*, all inquiries **MUST** be submitted in writing by an authorized representative of the proposer, clearly cross-referenced to the relevant solicitation section. All inquiries must be received by the close of business on the Inquiry Deadline date set forth in Section 1.3 Schedule of Events of this RFP. Only those inquiries received by the established deadline shall be considered by the State. Inquiries received after the established deadline shall not be entertained.

Inquiries concerning this solicitation may be delivered by mail, express courier, e-mail, hand, or fax to:

Office of State Purchasing
Attention: Janelle Brown
P. O. Box 94095
Baton Rouge, LA 70804-9095

1201 North Third St.
Claiborne Bldg., Suite 2-160
Baton Rouge, LA 70802

E-Mail: Janelle.brown@la.gov

Phone: (225)342-8020/ Fax: (225)342-8688

An addendum will be issued and posted at the Office of State Purchasing LaPAC website, to address all inquiries received and any other changes or clarifications to the solicitation. Thereafter, all proposal documents, including but not limited to the specifications, terms, conditions, plans, etc., will stand as written and/or amended by any addendum. No negotiations, decisions, or actions shall be executed by any proposer as a result of any oral discussions with any state employee or state consultant. It is the Proposer's responsibility to check the LaPAC website frequently for any possible addenda that may be issued. The Office of State Purchasing is not responsible for a proposer's failure to download any addenda documents required to complete a Request for Proposal.

Any person aggrieved in connection with the solicitation or the specifications contained therein, has the right to protest in accordance with R.S. 39:1671. Such protest shall be made in writing to the Director of State Purchasing at least two days prior to the deadline for submitting proposals.

Note: LaPAC is the state's online electronic bid posting and notification system resident on State Purchasing's website [www.doa.louisiana.gov/osp]. In that LaPAC provides an immediate e-mail notification to subscribing bidders that a solicitation and any subsequent addenda have been let and posted, notice and receipt thereof is considered formally given as of their respective dates of posting.

Vendor self-enrollment in LaPAC was disabled November 15, 2010. All vendors are to now register in the LaGov portal. Registration is intuitive at the following link: https://lagoverpvendor.doa.louisiana.gov/irj/portal/anonymous?guest_user=self_reg and help scripts are available on OSP website under vendor center at <http://www.doa.louisiana.gov/osp/vendorcenter/regnhelp/index.htm>.

1.8 Errors and Omissions in Proposal

The State will not be liable for any error in the proposal. Proposer will not be allowed to alter proposal documents after the deadline for proposal submission, except under the following condition: The State reserves the right to make corrections or clarifications due to patent errors identified in proposals by the State or the Proposer. The State, at its option, has the right to request clarification or additional information from the Proposer.

1.9 Proposal Guarantee – NOT REQUIRED FOR THIS RFP

1.10 Performance Bond – NOT REQUIRED FOR THIS RFP

1.11 Changes, Addenda, Withdrawals

The State reserves the right to change the Schedule of Events or issue Addenda to the RFP at any time. The State also reserves the right to cancel or reissue the RFP.

If the proposer needs to submit changes or addenda, such shall be submitted in writing, signed by an authorized representative of the proposer, cross-referenced clearly to the relevant proposal section, prior to the proposal opening, and should be submitted in a sealed envelope. Such shall meet all requirements for the proposal.

1.12 Withdrawal of Proposal

A proposer may withdraw a proposal that has been submitted at any time up to the proposal closing date and time. To accomplish this, a written request signed by the authorized representative of the proposer must be submitted to the Office of State Purchasing.

1.13 Material in the RFP

Proposals shall be based only on the material contained in this RFP. The RFP includes official responses to questions, addenda, and other material, which may be provided by the State pursuant to the RFP.

1.14 Waiver of Administrative Informalities

The State reserves the right, at its sole discretion, to waive administrative informalities contained in any proposal.

1.15 Proposal Rejection

Issuance of this RFP in no way constitutes a commitment by the State to award a contract. The State reserves the right to accept or reject any or all proposals submitted or to cancel this RFP if it is in the best interest of the State to do so.

In accordance with the provisions of R.S. 39:2182, in awarding contracts after August 15, 2010, any public entity is authorized to reject a proposal or bid from, or not award the contract to, a business in which any individual with an ownership interest of five percent or more, has been convicted of, or has entered a plea of guilty or nolo contendere to any state felony or equivalent federal felony crime committed in the solicitation or execution of a contract or bid awarded under the laws governing public contracts under the provisions of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, professional, personal, consulting, and social services procurement under the provisions of Chapter 16 of this Title, or the Louisiana Procurement Code under the provisions of Chapter 17 of this Title.

1.16 Ownership of Proposal

All materials (paper content only) submitted in response to this request become the property of the State. Selection or rejection of a response does not affect this right. All proposals submitted will be retained by the State and not returned to proposers. Any copyrighted materials in the response are not transferred to the State.

1.17 Cost of Offer Preparation

The State is not liable for any costs incurred by prospective Proposers or Contractors prior to issuance of or entering into a Contract. Costs associated with developing the proposal, preparing for oral presentations, and any other expenses incurred by the Proposer in responding to the RFP are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by the State of Louisiana.

1.18 Non-negotiable Contract Terms

Non-negotiable contract terms include but are not limited to taxes, assignment of contract, audit of records, EEOC and ADA compliance, record retention, content of contract/order of precedence, contract changes, governing law, claims or controversies, and termination based on contingency of appropriation of funds.

1.19 Taxes

Any taxes, other than state and local sales and use taxes, from which the state is exempt, shall be assumed to be included within the Proposer's cost.

1.20 Proposal Validity

All proposals shall be considered valid for acceptance until such time an award is made, unless the Proposer provides for a different time period within its proposal response. However, the State reserves the right to reject a proposal if the Proposer's acceptance period is unacceptable and the Proposer is unwilling to extend the validity of its proposal.

1.21 Prime Contractor Responsibilities

The selected Proposer shall be required to assume responsibility for all items and services offered in his proposal whether or not he produces or provides them. The State shall consider the selected Proposer to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

1.22 Use of Subcontractors

Each Contractor shall serve as the single prime contractor for all work performed pursuant to its contract. That prime contractor shall be responsible for all deliverables referenced in this RFP. This general requirement notwithstanding, Proposers may enter into subcontractor arrangements. Proposers may submit a proposal in response to this RFP, which identifies subcontract(s) with others, provided that the prime contractor acknowledges total responsibility for the entire contract.

If it becomes necessary for the prime contractor to use subcontractors, the State urges the prime contractor to use Louisiana vendors, including small and emerging businesses, a small entrepreneurship or a veteran or service-connected disabled veteran-owned small entrepreneurship, if practical. In all events, any subcontractor used by the prime should be identified to the State Project Manager.

Information required of the prime contractor under the terms of this RFP, is also required for each subcontractor and the subcontractors must agree to be bound by the terms of the contract. The prime contractor shall assume total responsibility for compliance.

1.23 Written or Oral Discussions/Presentations

Written or oral discussions may be conducted with Proposers who submit proposals determined to be reasonably susceptible of being selected for award; however, the State reserves the right to enter into an Agreement without further discussion of the proposal submitted based on the initial offers received.

Any commitments or representations made during these discussions, if conducted, may become formally recorded in the final contract.

Written or oral discussions/presentations for clarification may be conducted to enhance the State's understanding of any or all of the proposals submitted. Proposals may be accepted without such discussions.

1.24 Acceptance of Proposal Content

The mandatory RFP requirements shall become contractual obligations if a contract ensues. Failure of the successful Proposer to accept these obligations shall result in the rejection of the proposal.

1.25 Evaluation and Selection

All responses received as a result of this RFP are subject to evaluation by the State Evaluation Committee for the purpose of selecting the Proposer with whom the State shall contract.

To evaluate all proposals, a committee whose members have expertise in various areas has been selected. This committee will determine which proposals are reasonably susceptible of being selected for award. If required, written or oral discussions may be conducted with any or all of the Proposers to make this determination.

Written recommendation for award shall be made to the Director of State Purchasing for the Proposer whose proposal, conforming to the RFP, will be the most advantageous to the State of Louisiana, price and other factors considered.

The committee may reject any or all proposals if none is considered in the best interest of the State.

1.26 Contract Negotiations

If for any reason the Proposer whose proposal is most responsive to the State's needs, price and other evaluation factors set forth in the RFP considered, does not agree to a contract, that proposal shall be rejected and the State may negotiate with the next most responsive Proposer. Negotiation may include revision of non-mandatory terms, conditions, and requirements. OSP must approve the final contract form and issue a purchase order, if applicable, to complete the process.

1.27 Contract Award and Execution

The State reserves the right to enter into a contract without further discussion of the proposal submitted based on the initial offers received.

The RFP, including any addenda, and the proposal of the selected Contractor will become part of any contract initiated by the State.

Proposers are discouraged from submitting their own standard terms and conditions with their proposals. Proposers should address the specific language in the sample contract in Attachment D of this RFP and submit any exceptions or deviations the proposer wishes to negotiate. The proposed terms will be negotiated before a final contract is entered. Mandatory terms and conditions are not negotiable. If applicable, a proposer may submit or refer to a Master Agreement entered into by the contractor and the State in accordance with R.S. 39:198(e).

If the contract negotiation period exceeds thirty (30) days or if the selected Proposer fails to sign the contract within **seven calendar** days of delivery of it, the State may elect to cancel the award and award the contract to the next-highest-ranked Proposer.

Award shall be made to the Proposer with the highest points, whose proposal, conforming to the RFP, will be the most advantageous to the State of Louisiana, price and other factors considered.

The State intends to award to a single Proposer.

1.28 Notice of Intent to Award

Upon review and approval of the evaluation committee's and agency's recommendation for award, OSP will issue a "Notice of Intent to Award" letter to the apparent successful Proposer. A contract shall be completed and signed by all parties concerned on or before the date indicated in the "Schedule of Events." If this date is not met, through no fault of the State, the State may elect to cancel the "Notice of Intent to Award" letter and make the award to the next most advantageous Proposer.

OSP will also notify all unsuccessful Proposers as to the outcome of the evaluation process. The evaluation factors, points, evaluation committee member names, and the completed evaluation summary and recommendation report will be made available to all interested parties after the "Notice of Intent to Award" letter has been issued.

Any person aggrieved by the proposed award has the right to submit a protest in writing, in accordance with RS: 39:1671, to the Director of State Purchasing, within fourteen days of the award/intent to award.

1.29 Debriefings

Debriefings may be scheduled by the participating Proposers after the "Notice of Intent to Award" letter has been issued by scheduling an appointment with the Office of State Purchasing. Contact may be made by phone at (225) 342-8020 or E-mail to Janelle.brown@la.gov

1.30 Insurance Requirements

Contractor shall furnish the State with certificates of insurance effecting coverage(s) required by this RFP. (See Attachment B). The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and approved by the State before work commences. The State reserves the right to require complete certified copies of all required policies, at any time.

1.31 Subcontractor Insurance

The Contractor shall include all subcontractors as insured's under its policies or shall insure that all subcontractors satisfy the same insurance requirements stated herein for the contractor.

1.32 Indemnification and Limitation of Liability

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors in the performance of the contract, without limitation; provided, however, that the

Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

Contractor will indemnify, defend and hold the State harmless, ***without limitation***, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: (i) State's unauthorized modification or alteration of a Product, Material, or Service; (ii) State's use of the Product, Material, or Service in combination with other products, materials, or services not furnished by Contractor; (iii) State's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the state's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part(s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability for **direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges for products, materials, or services rendered by the Contractor under the Contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

1.33 Fidelity Bond Requirements-NOT REQUIRED FOR THIS RFP

1.34 Payment

1.34.1 Payment for Services

Agency shall pay Contractor in accordance with the Pricing Schedule set forth in Attachment C, Cost Proposal in this RFP. The Contractor may invoice the agency monthly at the billing address designated by the agency. Payments will be made by the Agency within approximately thirty (30) days after receipt of a properly executed invoice, and approval by the Agency. Invoices shall include the contract and order number, using department and product purchased. Invoices submitted without the referenced documentation will not be approved for payment until the required information is provided.

1.34.2 Late Payments

Interest due by a State Agency for late payments shall be in accordance with R.S. 39:1695 and 13:4202.

1.35 Termination

1.35.1 Termination of the Contract for Cause

The State may terminate the contract for cause based upon the failure of the Contractor to comply with the terms and/or conditions of the contract, or failure to fulfill its performance obligations pursuant to the contract, provided that the State shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and the contract shall terminate on the date specified in such notice.

The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of the contract, provided that the Contractor shall give the State written notice specifying the State's failure and a reasonable opportunity for the State to cure the defect.

1.35.2 Termination of the Contract for Convenience

The State may terminate the contract at any time by giving thirty (30) days written notice to the Contractor of such termination or negotiating with the Contractor an effective date.

The Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

1.35.3 Termination for Non-Appropriation of Funds

The continuance of the contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the

Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

1.36 Assignment

The Contractor shall not assign any interest in the contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

1.37 No Guarantee of Quantities

The quantities referenced in the RFP are estimated to be the amount needed. In the event a greater or lesser quantity is needed, the right is reserved by the State of Louisiana to increase or decrease the amount, at the unit price stated in the proposal.

Neither the State nor Agency obligates itself to contract for or accept more than their actual requirements during the period of the contract, as determined by actual needs and availability of appropriated funds.

1.38 Audit of Records

The State legislative auditor, federal auditors and internal auditors of the Office of Group Benefits, Division of Administration, or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to the resulting contract for a period of five (5) years after project acceptance or as required by applicable State and Federal law. Records shall be made available during normal working hours for this purpose.

1.39 Civil Rights Compliance

The Contractor agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990. Contractor agrees not to discriminate in its employment practices, and will render services under the contract and any contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of the contract.

1.40 Record Retention

The Contractor shall maintain all records in relation to the contract for a period of at least five (5) years after final payment.

1.41 Record Ownership

All records, reports, documents, or other material related to any contract resulting from this RFP and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of the State and shall, upon request, be returned by Contractor to the State, at Contractor's expense, at termination or expiration of the contract.

1.42 Content of Contract/ Order of Precedence

In the event of an inconsistency between the contract, the RFP and/or the Contractor's Proposal, the inconsistency shall be resolved by giving precedence first to the final contract, then to the RFP and subsequent addenda (if any) and finally, the Contractor's Proposal.

1.43 Contract Changes

No additional changes, enhancements, or modifications to any contract resulting from this RFP shall be made without the prior approval of OSP.

Changes to the contract include any change in: compensation; beginning/ ending date of the contract; scope of work; and/or Contractor change through the Assignment of Contract process. Any such changes, once approved, will result in the issuance of an amendment to the contract.

1.44 Substitution of Personnel

The State intends to include in any contract resulting from this RFP the following condition:

Substitution of Personnel: If, during the term of the contract, the Contractor or subcontractor cannot provide the personnel as proposed and requests a substitution, that substitution shall meet or exceed the requirements stated herein. A detailed resume of qualifications and justification is to be submitted to the State for approval prior to any personnel substitution. It shall be acknowledged by the Contractor that every reasonable attempt shall be made to assign the personnel listed in the Contractor's proposal.

1.45 Governing Law

All activities associated with this RFP process shall be interpreted under Louisiana Law. All proposals and contracts submitted are subject to provisions of the laws of the State of Louisiana including but not limited to L.R.S. 39:1551-1736; purchasing rules and regulations; executive orders; standard terms and conditions; special terms and conditions; and specifications listed in this RFP.

1.46 Claims or Controversies

Any claims or controversies shall be resolved in accordance with the Louisiana Procurement Code, RS39:1673.

1.47 Proposer's Certification of OMB A-133 Compliance

Certification of no suspension or debarment: By signing and submitting any proposal for \$25,000 or more, the proposer certifies that their company, any subcontractors, or principals are not suspended or debarred by the General Services Administration (GSA) in accordance with the requirements in OMB Circular A-133.

A list of parties who have been suspended or debarred can be viewed via the internet at <http://www.epls.gov>.

1.48 Anti-Kickback Clause

The Contractor hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each Contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

1.49 Clean Air Act

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities.

1.50 Energy Policy and Conservation Act

The Contractor hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

1.51 Clean Water Act

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

1.52 Anti-Lobbying and Debarment Act

The Contractor will be expected to comply with Federal statutes required in the Anti-Lobbying Act and the Debarment Act.

1.53 Confidentiality

The parties, their agents, staff members and employees agree to maintain as confidential all individually identifiable information regarding Louisiana Office of Group Benefits plan members, including but not limited to patient records, demographic information and claims history. All information obtained by Contractor from the Office of Group Benefits shall be maintained in accordance with state and federal law, specifically including but not limited to the Health Insurance Portability and Accountability Act of 1996, the American Recovery and Reinvestment

Act of 2009, and any regulations promulgated thereunder (collectively, "HIPAA"), including but not limited to all provisions relating to Business Associates, as set forth in the attached Protected Health Information (Business Associate) Addendum (Attachment E).

Further, the parties agree that all financial, statistical, personal, technical and other data and information relating to either party's operations which are designated confidential by such party and made available to the other party in order to carry out this Contract, or which becomes available to the other party in carrying out this Contract, shall be protected by the receiving party from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State and/or Contractor. Neither party shall not be required to keep confidential any data or information which is or becomes publicly available, is already rightfully in the party's possession, is independently developed by the party outside the scope of this Contract, or is rightfully obtained from third parties.

PART II: SCOPE OF WORK/SERVICES

2.1 Scope of Work/Services

I. Individual Market Medicare Exchange to include:

- A. Individual Medicare Advantage plans;
- B. Individual Medigap plans; and
- C. Any other plans Proposer wishes to propose for Agency review and approval.

II. Medicare Retiree Navigation Services – Communications, outreach and enrollment assistance to the Eligible Individuals on behalf of OGB to facilitate such Eligible Individuals' enrollment in the plans provided.

III. HRA Administration, Recordkeeping, Reporting:

- A. Plan Design and Employee Education – Work with the Agency in the preparation, publishing, and distribution of such flyers, poster, video, and other presentations as may be required to accurately explain the advantages and disadvantages of HRA plan participation to all eligible Medicare retirees. A copy of the Summary Plan Document is to be made available to any eligible Medicare retiree at no cost to the retiree.
- B. Account Establishment – Establish a participant account for each HRA participant.
- C. File Maintenance – Maintain physical or electronic files for all participants for whom participant accounts have been established to include enrollment forms and all other written correspondence and documents concerning each participant's account, and if applicable, records of any such actions conducted through the internet or electronic means.
- D. Claims Processing –
 - 1. Review of Claims - Review and substantiate initial claims in accordance with standards set forth under applicable law, including IRS guidelines concerning eligible medical expenses, and Department of Labor claims procedure regulations.
 - 2. Payment of Claims - Claims will be processed and paid in accordance with the terms of HRA plan document (to be developed by OGB in consultation with the Contractor).
- E. Tax Forms - Provide OGB (or other individual(s) at the direction of OGB) with any information pertaining to the HRA necessary to complete prescribed IRS tax forms.
- F. Reports: Provide HRA-level reports utilizing the information maintained on its recordkeeping system to the extent permitted by applicable law. These reports are to be provided monthly and shall summarize all transactions that occurred for each Participant and report new enrollees within the specified reporting time period.

G. Participant Services:

1. Participant Service Representatives - Participant service representatives available to assist Participants on all business days, from 8:00 AM-4:30 PM (Central Time) or such other times as may be agreed upon by OGB and the Contractor.
2. Internet Services – 24 hours, seven (7) days a week, 365 days a year (24/7/365) website available to allow Participants to access account information and to file claims, including, but not limited to:
 - a. Real-time history of claims submission and payment process;
 - b. Reimbursement process management, such as claim reimbursement status;
 - c. Account management with transaction history and account balance;
 - d. Contributions data (current and historical); and
 - e. Education tools.

2.2 Period of Agreement

The term of any contract resulting from this solicitation shall begin date of award and shall be for three (3) years. At the option of the Department and upon acceptance of the Contractor, the contract resulting from this RFP may be extended for two (2) additional twelve (12) month periods at the same price, terms and conditions with the approval of the Office of State Purchasing. This contract is not to exceed sixty (60) months.

2.3 Cost Proposal

Cost(s) proposed by the Proposers should be submitted on the cost proposal furnished herein on Attachment C. Cost(s) submitted shall be firm for the term of the contract. Cost(s) should include delivery of all items F.O.B. destination.

2.4 Deliverables

The deliverables required to provide the services identified in Section 2.1, Scope of Work/Services (above) are the minimum desired from the successful Proposer. Every Proposer should describe what deliverables will be provided per their proposal and how the proposed deliverables will be provided.

2.5 Location

The location(s) the work/delivery/service is to be performed, completed and managed is /are at Contractor's location(s).

2.6 Proposal Elements

2.6.1 Financial

Proposal shall include cost(s) per the schedule furnished in Attachment C, as well as other potential charges (if any) for proposed services associated with this RFP program implementation and administration that Proposer wishes the State to consider.

2.6.2 Technical

Each Proposer should address how the firm will meet all the requirements of this RFP, with particular attention to:

- Plans and schedule for implementation.
- Resumes for account manager and any other key personnel to be assigned to this project, including those of subcontractors, if any, identifying the roles and responsibilities of such other key personnel.
- References for at least three states, government agencies, or private firms for whom similar or larger scope services are currently being provided. Include a contact person, telephone number, email address, company name, name of project and date of project for each reference.
- Information demonstrating the Proposer's financial stability (financial statements, annual reports, or similar data for the last three years).
- Provision for customer service, including personnel assigned, toll-free number, and account inquiry, etc.
- Information demonstrating the Proposer's understanding of the nature and scope of this project.

Any other information deemed pertinent by the Proposer including terms and conditions which the Proposer wishes the State to consider.

PART III: EVALUATION

The following criteria will be evaluated when reviewing the proposals. The proposal will be evaluated in light of the material and the substantiating evidence presented to the State, not on the basis of what may be inferred.

The scores for the Financial and Technical Proposals will be combined to determine the overall score. The Proposer with the highest overall score will be recommended for award.

3.1 Cost Proposal (50 points)

The following financial criteria will be evaluated:

Costs proposed by the Proposers should be submitted on the Cost Proposal furnished in Attachment C. Costs proposed shall be firm.

The information provided in response to this section will be used in the Financial Evaluation to calculate lowest evaluated cost.

A proposer's base cost score will be based on the cost information provided in Attachment C and computed as follows:

$$\text{BCS} = (\text{LPC}/\text{PC} \times 50)$$

Where: BCS = Computed cost score (points) for proposer being evaluated
 LPC = Lowest proposed cost of all proposers
 PC = Total cost of proposer being evaluated

Note: The proposed costs must be inclusive of all costs (including travel), expenses or fees that may be incurred/required to provide the services proposed.

3.2 Technical Proposal (50 points)

The following criteria are of importance and relevance to the evaluation of this RFP and will be used by the Evaluation Committee in the evaluation of the technical proposal. Such factors may include but are not limited to:

- **Company Background and Experience**
 - **Individual Market Medicare Exchange/ Medicare Retiree Navigation (15 points)**
 - **HRA Administration (15 points)**
- **Service Approach and Methodology (20 points)**

PART IV: PERFORMANCE STANDARDS

4.1 Performance Requirements

Because the concept of an Individual Market Medicare Exchange program is relatively new, and because OGB has no prior experience with HRAs, OGB will set appropriate benchmarks to be included in the contract for the performance of the services defined in Section 2.1 Scope of Work/Services of this RFP with the awarded proposer. Proposers should address this issue and suggest specific benchmarks in proposal responses.

4.2 Performance Measurement/Evaluation

The Agency will assign a Contract Supervisor who will be responsible for the Performance Evaluation with regard to the scope of services provided by the Contractor pursuant to the Contract. The performance evaluation will be based on the following: personnel assigned to manage the contract; submission of required data/reporting; attendance at required meetings; and other measurements as determined by the Agency's Contract Supervisor.

Attachment A Current OGB Enrollment, Retirees with Medicare

Health Plan	Claimant Type	0	1	2	3	4	5	6	7	8	9	Totals
BLUE ASO	Retired with Medicare	1,008	1,370	198	1,273	627	180	3,558	979	478	157	9,828
HUMAN HMO65	Retired with Medicare		351	7	272	1		490	17	81		1,209
HUMAN PPO65	Retired with Medicare		19	12	5	7	11	2	7	10	3	82
OGB PPO	Retired with Medicare	2,317	2,136	898	2,166	2,747	1,712	2,987	5,287	1,970	4,164	26,368
PPLSH HMO65	Retired with Medicare		91	4	62			145	2			304
UNIT PPO65	Retired with Medicare		37	7	9	34	3	25	9	2	5	131
VANTA HMO	Retired with Medicare							3	4		5	12
VANTA HMO65	Retired with Medicare		4	70	42	85	331	157	145	589	140	1,899
VANTA MIHIP	Retired with Medicare							1	3	5	66	76
	Retired with Medicare	3,386	4,040	1,164	3,826	3,761	2,064	7,349	6,890	2,682	4,826	39,996

OGB Regions

Region 4 - Zip Codes 70500 through 70599
Lafayette Area
Region 9 - Zip Codes 71200 through 71299
Monroe Area

Region 0
Outside Louisiana
Region 5 - Zip Codes 70600 through 70699
Lake Charles Area

Region 1- Zip Codes 70000 through 70199
New Orleans Area
Region 6 - Zip Codes 70700 through 70899
Baton Rouge Area

Region 2 - Zip Codes 70300 through 70399
Houma-Thibodaux Area
Region 7 - Zip Codes 71300 through 71499
Alexandria Area

Region 3 - Zip Codes 70400 through 70499
Hammond-North Shore Area
Region 8 - Zip Codes 71000 through 71199
Shreveport Area

Attachment B
INSURANCE REQUIREMENTS

Contractor and subcontractors, if any, shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The Agency in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

The policy shall be endorsed to include the following additional insured language:

"The State of Louisiana, Office of Group Benefits shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability

Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation in favor of the State of Louisiana.

- b. This requirement shall not apply when a contractor or subcontractor is exempt under state law **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

3. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Annual Aggregate \$1,000,000

- a. In the event that the that the professional liability insurance required by this Agreement is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years from the time work under this Agreement is completed.

B. Additional Insurance Requirements

The policies shall include, or be endorsed to include, the following provisions:

- a. On insurance policies where the State of Louisiana is named as an additional insured, the State of Louisiana shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.
- b. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. Notice of Cancellation

Each insurance policy required by the Insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Louisiana Office of State Purchasing, 1201 North Third Street, Suite 2-160, Baton Rouge, LA 70802.

D. Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Louisiana and with an "A.M. Best" rating of not less than A-VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. Verification of Coverage

Contractor shall furnish the State with certificates of insurance as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates and any required endorsement shall be sent directly to Louisiana Office of State Purchasing, 1201 North Third Street, Suite 2-160, Baton Rouge, LA 70802. The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATES RISK MANAGEMENT DIVISION.**

F. Approval

Any modification or variation from the insurance requirements in this Agreement shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

**Attachment C
COST PROPOSAL**

1. Individual Market Medicare Exchange and Medicare Retiree Navigation Services

Set forth in detail all costs to be paid by the State/Agency in connection with the Individual Market Medicare Exchange and Medicare Retiree Navigation Services, including access fees, implementation fees, and service fees.

2. HRA Administrative Services

Administrative Services Fee on a Per Participant Per Month (PP/PM) basis \$_____.

Cost Evaluation

The cost evaluation will be based upon the total of all proposed fees, expenses and costs for the initial term of the contract (36 months):

1. All proposed costs and/or fees for the Individual Market Medicare Exchange and Medicare Retiree Navigation Services;

PLUS

2. The HRA Administrative Services Fee

With respect to any and all fees quoted on a per retiree/participant per month:

For purpose of cost evaluation only, with no representation or guarantees regarding participation, OGB will assume 10% participation in 2012, 12% participation in 2013, and 15% participation thereafter. The monthly cost will be determined by multiplying the quoted fee(s) times the applicable percentage of eligible Medicare participants (based upon current enrollment).

For example:

PPPM Fee \$3.00

Current Medicare Eligible Enrollees (Attachment A): 39,996

Year	Percentage	Medicare Eligible Enrollees	PPPM Fee	Monthly Cost
2012	10%	39,996	\$3.00	\$11,999
2013	12%	39,996	\$3.00	\$14,399
2014	15%	39,996	\$3.00	\$17,998

NOTE: All fees are to be inclusive of costs (including travel) associated with the services provided.

The total sum of all proposed costs will be calculated in accordance with Part III Evaluation, 3.1 Cost Proposal in this RFP.

ATTACHMENT D

SAMPLE GENERIC CONTRACT

STATE OF LOUISIANA
PARISH OF _____

File No. _____
(or solicitation #)

CONTRACT

Be it known, that effective upon approval by the Director of State Purchasing, as evidenced by the Director's signature on this document, the (*Agency Name*) (hereinafter sometimes referred to as "State") and (*Contractor's name and legal address including zip code*) (hereinafter sometimes referred to as "Contractor") do hereby enter into contract under the following terms and conditions.

SCOPE OF SERVICE

Contractor hereby agrees to furnish the following services:

(If the Scope of Services is more lengthy than will fit here, it may be attached separately, referenced and incorporated herein.)

CONTRACT MODIFICATIONS

No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

Changes to the contract include any change in a) compensation; b) beginning/ending date of the contract; c) scope of work; and/or d) contractor change through the assignment of contract process. Any such changes, once approved, will result in the issuance of an amendment to the contract.

FUND USE

Contractor agrees not to use contract proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

HEADINGS

Descriptive headings in this contract are for convenience only and shall not affect the construction of this contract or meaning of contractual language.

PAYMENT TERMS

The Contractor shall invoice the State Agency directly and payment shall be made by the State Agency directly to the Contractor in accordance with the payment terms agreed to in this Contract.

LATE PAYMENTS

Interest due by the State Agency for late payments shall be in accordance with R.S. 39:1695 and 13:4202.

DELIVERABLES

Contractor will deliver the item(s) or service(s) as described below (or per the attached) per the following schedule...

TAXES

Contractor agrees that all applicable taxes are included in the schedule pricing. State agencies are exempt from all state and local sales and use taxes.

TERMINATION OF THIS CONTRACT FOR CAUSE

The State may terminate this contract for cause based upon the failure of Contractor to comply with the terms and/or conditions of the contract, or failure to fulfill its performance obligations pursuant to this contract, provided that the State shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and the contract shall terminate on the date specified in such notice.

The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this contract, provided that the Contractor shall give the State written notice specifying the State's failure and a reasonable opportunity for the State to cure the defect.

TERMINATION OF THIS CONTRACT FOR CONVENIENCE

The State may terminate this Contract at any time by giving thirty (30) days written notice to the Contractor of such termination or negotiating with the Contractor an effective date.

The Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

TERMINATION FOR NON-APPROPRIATION OF FUNDS

The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

OWNERSHIP

All records, reports, documents, or other material related to this contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of State, and shall, upon request, be returned by Contractor to State, at Contractor's expense, at termination or expiration of this contract.

USE OF AGENCY'S FACILITIES

Any property of the State furnished to the Contractor shall, unless otherwise provided herein, or approved by the State and/or Agency, be used only for the performance of this contract.

The Contractor shall be responsible for any loss or damage to property of the State and/or State Agency which results from willful misconduct or lack of good faith on the part of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices, to ensure that the property will be returned to the State and/or State Agency in like condition, except for normal wear and tear, to that in which it was furnished to the Contractor. Upon the happening of loss, or destruction of, or damage to property of the State, the Contractor shall notify the State thereof and shall take all reasonable steps to protect that property from further damage.

The Contractor shall surrender to the State and/or State Agency all property of the State and/or State Agency prior to settlement upon completion, termination, or cancellation of this contract. All reference to the Contractor under this section shall include any of its employees, agents, or subcontractors.

WAIVER

Waiver of any breach of any term or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by the written consent of both parties.

WARRANTIES

Contractor warrants that all services shall be performed in a workmanlike manner, and according to its current description (including any completion criteria) contained in the scope of work.

This paragraph may only apply when software is involved.

No Surreptitious Code Warranty. Contractor warrants that Contractor will make all commercially reasonable efforts not to include any Unauthorized Code in the software provided hereunder. "Unauthorized Code" means any virus, Trojan horse, worm or other software routine or component designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data, or to perform any other such actions. Excluded from this prohibition are identified and State-authorized features designed for purposes of maintenance or technical support.

Extent of Warranty: THESE WARRANTIES REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE

INDEMNIFICATION AND LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors in the performance of this contract, without

limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

Contractor will indemnify, defend and hold the State harmless, *without limitation*, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) State's unauthorized modification or alteration of a Product, Material, or Service; ii) State's use of the Product, Material, or Service in combination with other products, materials, or services not furnished by Contractor; iii) State's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the state's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability **for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges for services rendered by the Contractor under the Contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

INSURANCE

Contractor will be required to provide the State of Louisiana with Certificates of adequate insurance indicating coverage required, (*in accordance with Section(s) _____ of the RFP*).

LICENSES AND PERMITS

Contractor shall secure and maintain all licenses and permits, and pay inspection fees required to do the work required to complete this contract, if applicable.

SEVERABILITY

If any term or condition of this contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this contract are declared severable.

SUBCONTRACTORS

The Contractor may enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the State and/or State Agency for any breach in the performance of the Contractor's duties. The Contractor will be the single point of contact for all subcontractor work.

SUBSTITUTION OF PERSONNEL

If, during the term of this contract, the Contractor or subcontractor cannot provide the personnel as proposed and requests a substitution, that substitution shall meet or exceed the requirements stated herein. A detailed resume of qualifications and justification is to be submitted to the State for approval prior to any personnel substitution. It shall be acknowledged by the Contractor that every reasonable attempt shall be made to assign the personnel listed in the Contractor's proposal.

ASSIGNMENT

Contractor shall not assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

CODE OF ETHICS

The contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in this contract. The contractor agrees to immediately notify the state if potential violations of the Code of Governmental Ethics arise at any time during the term of this contract.

CONFIDENTIALITY

The following provision will apply unless the state agency statement of work specifically indicates that all information exchanged will be non-confidential:

All financial, statistical, personal, technical and other data and information relating to the State's operations which are designated confidential by the State and made available to the Contractor in order to carry out this contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements

for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of the paragraph to keep confidential any data or information, which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the contract, or is rightfully obtained from third parties.

CONTRACT CONTROVERSIES

Any claim or controversy arising out of this contract shall be resolved by the provisions of Louisiana Revised Statute 39:1673.

RIGHT TO AUDIT

The State Legislative auditor, federal auditors and internal auditors of the Division of Administration, or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to the contract for a period of five (5) years after project acceptance or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

SECURITY

Contractor's personnel will comply with all security regulations in effect at the State's premises, and externally for materials and property belonging to the State or to the project. Where special security precautions are warranted (e.g., correctional facilities), the State shall provide such procedures to the Contractor, accordingly. Contractor is responsible for promptly reporting to the State any known breach of security.

TERM OF CONTRACT

This Contract is effective upon OSP approval and will end no later than *<length of term specified in the RFP>*, unless otherwise terminated in accordance with the Termination provision of this Contract. The State has the option, upon acceptance by the Contractor, to extend for *<extension language as specified in the RFP>*.

COMMENCEMENT OF WORK

No work shall be performed by Contractor and the State shall not be bound until such time as this Contract is fully executed between the State and the Contractor and all required approvals are obtained.

COMPLIANCE WITH CIVIL RIGHTS LAWS

The Contractor agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990. Contractor agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or

disabilities. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

ANTI-KICKBACK CLAUSE

The Contractor hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each Contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

CLEAN AIR ACT

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities.

ENERGY POLICY AND CONSERVATION ACT

The Contractor hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

CLEAN WATER ACT

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

ANTI-LOBBYING AND DEBARMENT ACT

The Contractor will be expected to comply with Federal statutes required in the Anti-Lobbying Act and the Debarment Act.

GOVERNING LAW

This Contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this Contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

COMPLETE CONTRACT

This is the complete Contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this contract. This contract is entered into with neither party relying on any statement or representation made by the other party not embodied in this contract and there are no other agreements or understanding changing or modifying the terms. This Contract shall become effective upon final statutory approval.

ORDER OF PRECEDENCE

The Request for Proposals (RFP), dated _____, and the Contractor's Proposal dated _____, are attached hereto and, incorporated into this Contract as though fully set forth herein. In the event of an inconsistency between this Contract, the RFP and/or the Contractor's Proposal, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence first to this Contract, then to the RFP and finally, the Contractor's Proposal.

THUS DONE AND SIGNED AT _____ on this ____ day of _____, 20____, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

CONTRACTOR SIGNATURE:

By: _____
Title: _____

THUS DONE AND SIGNED AT Baton Rouge, Louisiana on this ____ day of _____, 20____, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

STATE AGENCY SIGNATURE:

By: _____
Title _____

Phone No.: _____

Approved by:

Director of State Purchasing

Date: _____

**Attachment E State of Louisiana, Division of Administration
Office of Group Benefits
Protected Health Information Addendum**

I. Definitions

- a) "Administrative Safeguards" shall mean administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the covered entity's workforce in relation to the protection of that information., as more particularly set forth in 45 CFR § 164.308.
- b) "Agreement" shall mean the agreement between Business Associate and OGB, dated _____, 20___, pursuant to which Business Associate is to provide certain services to OGB involving the use or disclosure of PHI, as defined below.
- c) "ARRA" shall mean the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- d) "Business Associate" shall mean _____.
- e) "ePHI" shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of OGB.
- f) "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- g) "HIPAA Regulations" shall mean the Privacy Rule, the Security Rule, and the regulations promulgated pursuant to ARRA.
- h) "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- i) "OGB" shall mean the State of Louisiana, Division of Administration, Office of Group Benefits, which is a covered entity under HIPAA, ARRA and the HIPAA Regulations, as defined below.
- j) "PHI" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of OGB.
- k) "Physical Safeguards" shall mean physical measures, policies, and procedures to protect a covered entity's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion as more particularly set forth in 45 CFR § 164.310.
- l) "Privacy Rule" shall mean the regulations promulgated pursuant to HIPAA regarding Privacy of Individually Identifiable Health Information at 45 CFR, Part 160 and Part 164, Subparts A and E.
- m) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- n) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

- o) "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR § 164.304.
- p) "Security Rule" shall mean the regulations promulgated pursuant to HIPAA regarding Security Standards for Electronic Protected Health Information at 45 CFR, Part 160 and Part 164, Subparts A and C.
- q) "Technical Safeguards" shall mean the technology and the policy and procedures for its use that protect electronic protected health information and control access to it, as more particularly set forth in 45 CFR § 164.312.
- r) Any other terms used in this Addendum that are not defined herein but are defined in the HIPAA Regulations or ARRA shall have the same meaning as given in the HIPAA Regulations or ARRA.

II. Obligations and Activities of Business Associate

- a) Business associate agrees to comply with OGB policies and procedures regarding the use and disclosure of PHI.
- b) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Addendum, or as Required by Law.
- c) Business Associate agrees to limit all requests to OGB for PHI to the minimum information necessary for Business Associate to perform functions, activities, or services for or on behalf of OGB as specified in the Agreement.
- d) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Addendum.
- e) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum.
- f) Business Associate agrees to report to OGB any use or disclosure of the PHI not provided for by this Addendum of which it becomes aware. Such report shall be made within two (2) business days of Business Associate learning of such use or disclosure.
- g) 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, OGB agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information. However, Business Associate shall not enter into any subcontractor or other agency relationship with any third party that involves use or disclosure of such PHI without the advance written consent of OGB.
- h) Business Associate agrees to provide access, at the request of OGB, and in the time and manner designated by OGB, to PHI maintained by Business Associate in a Designated Record Set, to OGB or, as directed by OGB, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- i) Business Associate agrees to make any amendment(s) to PHI maintained by Business Associate in a Designated Record Set that OGB directs or agrees to pursuant to 45 CFR § 164.526 at the request of OGB or an Individual, and in the time and manner designated by OGB.

- j) Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, OGB available to OGB, or at the request of OGB to the Secretary, in a time and manner designated by OGB or the Secretary, for purposes of the Secretary determining OGB's compliance with the HIPAA Regulations and ARRA.
- k) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for OGB to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- l) Business Associate agrees to provide to OGB or an Individual, in a time and manner designated by OGB, information collected in accordance with Section II.j of this Addendum, to permit OGB to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- m) At any time(s) requested by OGB, Business Associate agrees to return to OGB or destroy such PHI in its possession as directed by OGB.
- n) Business Associate shall defend and indemnify OGB from and against any and all claims, costs, and/or damages arising from a breach by Business Associate of any of its obligations under this Addendum. Any limitation of liability provision set forth in the Agreement, including but not limited to any cap on direct damage liability and any disclaimer of liability for any consequential, indirect, punitive, or other specified types of damages, shall not apply to the defense and indemnification obligation contained in this Addendum.
- o) Business Associate shall immediately notify OGB when Business Associate receives a subpoena related to PHI and shall cooperate with OGB, at OGB's expense, in any attempt to obtain a protective order. Business Associate shall immediately notify OGB when Business Associate discloses PHI in response to a subpoena. Such notice shall include all information that would be required for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- p) Business Associate shall:
 - 1. Implement and document Administrative Safeguards, Physical Safeguards, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of OGB, specifically including, but not limited to, the following:
 - i) Ensuring the confidentiality, integrity, and availability of all ePHI that it creates, receives, maintains, or transmits on behalf of OGB;
 - ii) Protecting against any reasonably anticipated threats or hazards to the security or integrity of such information;
 - iii) Protecting against any reasonably anticipated uses or disclosures of such information that are not permitted or required by this Addendum or Required by Law; and
 - iv) Ensuring compliance with these requirements by its workforce;
 - 2. Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement reasonable and appropriate safeguards to protect it;

3. Report to OGB any Security Incident of which it becomes aware. If no Security Incidents are reported, Business Associate shall certify to OGB in writing within ten (10) days of each anniversary date of the Agreement that there have been no Security Incidents during the previous twelve months.
- q) Business Associate shall not permit PHI to be disclosed to or used by any individual or entity outside of the territorial and jurisdictional limits of the fifty United States of America.
- r) Business Associate shall report to OGB any unauthorized acquisition, access, use or disclosure of PHI by Business Associate or its workforce or subcontractors immediately, but no later than five (5) business days after discovery or the date the breach should have been known to have occurred, and include with that report the remedial action taken or proposed to be taken with respect to such use or disclosure and account for such disclosure. Business Associate is responsible for any and all costs related to notification of individuals or next of kin (if the individual is deceased) of any security or privacy breach reported by Business Associate to OGB.
- s) In the event of a breach of PHI, Business Associate shall provide a report to OGB including the date the breach was discovered, the plan participant(s) name(s), contact information, nature/cause of the breach, PHI breached and the date or period of time during which the breach occurred. Business Associate understands that such a report must be provided to OGB immediately but no later than five (5) business dates from the date of the breach or the date the breach should have been known to have occurred.

III. Permitted Uses and Disclosures by Business Associate

- a) Except as otherwise limited in this Addendum, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of OGB as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by OGB or the minimum necessary policies and procedures of OGB.
- b) Except as otherwise limited in this Addendum, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c) Except as otherwise limited in this Addendum, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that such disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will remain confidential and be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person promptly notifies the Business Associate of any known instances of breach of the confidentiality of the PHI.
- d) Except as otherwise limited in this Addendum, Business Associate may use PHI to provide Data Aggregation services to OGB as permitted by 45 CFR § 164.504(e)(2)(i)(B), provided that such services are contemplated by the Agreement.

- e) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).
- f) Business Associate may not use PHI to make any communications about a product or service that encourages recipients of the communication to purchase or use the product or service unless the communication is made as described in subparagraph (i), (ii) or (iii) of the definition of "Marketing" in 45 CFR 164.501. Such communication must be permitted under and consistent with the Agreement, including this Addendum.

IV. Obligations and Activities of OGB

- a) With the exception of Data Aggregation services as permitted by 45 CFR § 164.504(e)(2)(i)(B), OGB shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by OGB.
- b) OGB shall notify Business Associate of any limitation(s) in OGB's Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- c) OGB shall notify Business Associate of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent such changes may affect Business Associate's use or disclosure of PHI.
- d) OGB shall notify Business Associate of any restriction to the use or disclosure of PHI that OGB has agreed to in accordance with 45 CFR § 164.522, to the extent such restriction may affect Business Associate's use or disclosure of PHI.

V. Term and Termination

- a) Term. The Term of this Addendum shall commence on the effective date set forth below, and shall terminate when all of the PHI provided by OGB to Business Associate, or created or received by Business Associate on behalf of OGB, is destroyed or returned to OGB, or, if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- b) Termination of Agreement for Cause. In the event that OGB learns of a material breach of this Addendum by Business Associate, OGB shall, in its discretion:
 - 1. Provide a reasonable opportunity for Business Associate to cure the breach to OGB's satisfaction. If Business Associate does not cure the breach within the time specified by OGB, OGB may terminate the Agreement for cause; or
 - 2. Immediately terminate the Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
 - 3. If neither termination nor cure is feasible, OGB may report the violation to the Secretary.
- c) Effect of Termination.
 - 1. Except as provided in paragraph (2) below, upon termination of the Agreement for any reason, Business Associate shall return or destroy all

PHI received from OGB, or created or received by Business Associate on behalf of OGB. Business Associate shall retain no copies of the PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate.

2. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to OGB written notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the parties that return or destruction of PHI is not feasible, Business Associate 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 not feasible, for so long as Business Associate maintains such PHI.

VI. Miscellaneous

- a) A reference in this Addendum to a section in the HIPAA Regulations means the section as in effect or as amended, and for which compliance is required.
- b) The parties agree to amend this Addendum from time to time as necessary for OGB to comply with the requirements of HIPAA, ARRA and the HIPAA Regulations.
- c) If applicable, the obligations of Business Associate under Section V.c.2 of this Addendum shall survive the termination of this Addendum.
- d) Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits OGB to comply with HIPAA, ARRA and the HIPAA Regulations. It is the intent of the parties that neither this Addendum, nor any provision in this Addendum, shall be construed against either party pursuant to the common law rule of construction against the drafter.
- e) Except as expressly stated herein, the parties to this Addendum do not intend to create any rights in any third parties. Nothing in this Addendum shall confer upon any person other than the parties and their respective successors or assigns any rights, remedies, obligations, or liabilities whatsoever.
- f) In the event of any conflict between the terms of the Agreement and the terms of this Addendum, the terms of this Addendum will control, with the exception that if the Agreement contains any provisions relating to the use or disclosure of PHI that are more protective of the confidentiality of PHI than the provisions of this Addendum, then the more protective provisions will control. The provisions of this Addendum are intended to establish the minimum limitations on Business Associate's use and disclosure of PHI.
- g) The terms of this Addendum shall be construed in light of any applicable interpretation or guidance on HIPAA, ARRA and/or the HIPAA Regulations issued from time to time by the Department of Health and Human Services or the Office for Civil Rights.
- h) This Addendum may be modified or amended only by a writing signed by the party against which enforcement is sought.

- i) Neither this Addendum nor any rights or obligations hereunder may be transferred or assigned by one party without the other party's prior written consent, and any attempt to the contrary shall be void. Consent to any proposed transfer or assignment may be withheld by either party for any or no reason.
- j) Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions.
- k) For matters involving the HIPAA, ARRA and the HIPAA Regulations, this Addendum and the Agreement will be governed by the laws of the State of Louisiana, without giving effect to choice of law principles.

In witness whereof, the parties have executed this Addendum through their duly authorized representatives. This Addendum shall be effective as of the _____ day of _____, 20_____.

**State of Louisiana,
Division of Administration
Office of Group Benefits**

CONTRACTOR

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____