State of Wisconsin
Department of Employee Trust Funds
DOA-3049 (R01/2000))
S. 51.01(5) Wis. Stats.; s. 111.32(13m) Wis. Stats.

Department of Employee Trust Funds
801 W. Badger Road
P. O. Box 7931
Madison, WI 53707-7931

Contract

Commodity or Service: Consulting Actuary for Wisconsin Group Insurance and Disability Programs

Contract No./Request for Proposal No: ETD0013

Contract Period: October 1, 2014 through December 31, 2015

1. This contract is entered into by the State of Wisconsin, Department of Employee Trust Funds hereinafter referred to as the "Department", and between the Milliman, Inc., hereinafter referred to as the "Contractor", whose address and principal officer appears on page 2. The Department is the sole point of contact for this contract.

2. Whereby the Department of Employee Trust Funds agrees to direct the purchase and the Contractor agrees to supply the contract requirements cited in accordance with the State of Wisconsin standard terms and conditions and in accordance with the Contractor's proposal date February 17, 2014 hereby made a part of this contract by reference.

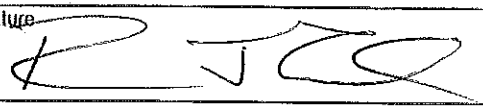
3. In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employees or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), Wis. Stats., sexual orientation as defined in s.111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor further agrees to take affirmative action to ensure equal employment opportunities. The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

4. Contracts estimated to be over fifty thousand dollars ($50,000) require the submission of a written affirmative action plan. Contractors with an annual work force of less than fifty (50) employees are exempted from this requirement. Within fifteen (15) business days after the award of the contract, the plan shall be submitted for approval to the Department. Technical assistance regarding this clause is provided by the Purchasing Agent, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931, 608.266.8989, or via e-mail at ETFProcurement@etf.wi.gov.

5. This initial contract period is for fifteen (15) months. Each contract period annually will be for twelve (12) months and extend unless and until either party gives the other 180 days' notice of their intent to cancel the contract.

6. For purposes of administering this Contract, the Order of Precedence is:
   A). This Contract with Milliman, Inc.;
   B). Questions from vendors and ETF Answers dated January 28, 2014;
   C). Exhibit A, Changes Agreed to by the Parties from the Request for Proposal (RFP) ETD0013;
   D). Exhibit B, Business Associates Agreement dated June 3, 2014;
   E). The RFP dated January 6, 2014, and;
   F). Contractor's proposal dated February 17, 2014.

Contract Number & Service: ETD0013-Consulting Actuary for Wisconsin Group Insurance and Disability Programs

State of Wisconsin
Department of Employee Trust Funds
By *(Name)* Robert J. Conlin
Signature 
Title **Secretary** Department of Employee Trust Funds
Phone 608.266.0301
Date *(MM/DD/CCYY)* 7/31/14

Contractor to Complete
Legal Company Name Milliman, Inc.
Trade Name Milliman
Taxpayer Identification Number 91-0675641
Company Address *(City, State, Zip)* 121 Middle St. Suite 401 Portland, ME 04101
By *(Name)* Daniel D. Skwire
Signature
Title Principal
Phone 207-771-1203
Date *(MM/DD/CCYY)* 7/30/2014

Exhibit A

Milliman Contract: Changes Agreed to by the Parties from the Request for Proposal (RFP) ETD0013 For Services to be provided as the Consulting Actuary to the State of Wisconsin Employee Trust Funds Board for the Group Insurance and Disability Programs Offered by the State of Wisconsin Group Insurance Board and the Wisconsin Retirement Board dated January 6, 2014.

1) Delete the following from the RFP

1.1.9. Due Diligence and Errors/Omissions Coverage

The selected vendor shall exercise due diligence in providing services under any contract awarded. In order to protect the Department's governing boards and any Department employee against liability, cost, or expenses (including reasonable attorney fees) which may be insured or sustained as a result of vendor errors or other failure to comply with the terms of the awarded contract, the selected vendor shall maintain errors and omissions insurance in an amount acceptable to the Department in force during the contract period and shall furnish the Department with a certificate of insurance for such amount. Further, this certificate shall designate the State of Wisconsin Employee Trust Funds Board and its affiliated boards as additional insured parties.

2) Substitute the following to the RFP

1.1.9 Due Diligence and Errors/Omissions Coverage

The selected vendor shall exercise due diligence in providing services under any contract awarded. In order to protect the Department's governing boards and any Department employee against liability, cost, or expenses (including reasonable attorney fees) which may be insured or sustained as a result of vendor errors or other failure to comply with the terms of the awarded contract, the selected vendor shall maintain errors and omissions insurance in an amount acceptable to the Department in force during the contract period and shall furnish the Department with a certificate of insurance for such amount. Vendor has informed ETF that its Errors and Omissions Policy is not drafted in a manner that allows for additional insureds to be named. However, vendor warrants that such errors and omissions insurance coverage shall be applicable to the services provided hereunder.

3) Delete the following from the RFP

1.1.10 Criminal Background Verification

The Department follows the provisions in the *Wisconsin Human Resources Handbook Chapter 246, Securing Applicant Background Checks* (see http://oser.state.wi.us/docview.asp?docid=6658). The vendor is expected to perform background checks that, at a minimum, adhere to those standards. This includes the criminal history record from the Wisconsin Department of Justice (DOJ), Wisconsin Circuit Court Automation Programs (CCAP), and other state justice departments for persons who have lived in a state(s) other than Wisconsin. More stringent background checks are permitted. Details regarding the vendor's background check procedures should be provided to ETF regarding the measures used by the vendor to protect the security and privacy of program data and participant information. A copy of the result of the criminal background check the vendor

conducted must be made available to ETF upon request. ETF reserves the right to conduct its own criminal background checks on any or all employees or contractors of and referred by the vendor for the delivery or provision of services.

4) Substitute the following to the RFP

1.1.10 Criminal Background Verification

The Department follows the provisions in the *Wisconsin Human Resources Handbook Chapter 246, Securing Applicant Background Checks* (see http://oser.state.wi.us/docview.asp?docid=6658). The vendor is expected to perform background checks that, at a minimum, adhere to those standards. This includes the criminal history record from the Wisconsin Department of Justice (DOJ), Wisconsin Circuit Court Automation Programs (CCAP), and other state justice departments for persons who have lived in a state(s) other than Wisconsin. More stringent background checks are permitted. Details regarding the vendor's background check procedures should be provided to ETF regarding the measures used by the vendor to protect the security and privacy of program data and participant information. ETF has reviewed documents describing the background check process used by Vendor. That process is consistent with the standards noted in this section. In addition, Vendor will provide ETF with a document that identifies by name each person for whom a background check was performed and a statement that no record was found for that person based on the background check criteria used by Vendor. ETF will need confirmation from Milliman's HR Director regarding each person for whom a background check was conducted and confirmation that the person cleared the background check process based on the Milliman criteria shared with ETF. If any red flags are raised, ETF's HR Director will work with Milliman's HR Director to investigate any issues that ETF becomes aware of. ETF reserves the right to conduct its own criminal background checks on any or all employees or contractors of and referred by the vendor for the delivery or provision of services.

5) Delete the following from the RFP

5.1 Legal Relations

- The vendor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct.
- In carrying out any provisions of this RFP or in exercising any power or authority granted to the vendor thereby, there shall be no liability upon the Department, it being understood that in such matters that the Department acts as an agent of the state.
- The vendor accepts full liability and agrees to hold harmless the Department, its employees, agents and vendors for any act or omission of the vendor, or any of its employees, in connection with this contract.
- No employee of the vendor may represent himself or herself as an employee of the Department.

6) Substitute the following to the RFP

5.1 Legal Relations

- The vendor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct.
- In carrying out any provisions of this RFP or in exercising any power or authority granted to the vendor thereby, there shall be no liability upon the Department, it being understood that in such matters that the Department acts as an agent of the state.
- The Vendor accepts liability and agrees to hold harmless the Department, its employees, agents and vendors for any act or omission of the Vendor, or any of its employees, in connection with Vendor's performance of services under this contract, except to the extent that the liability results primarily from the acts or omissions of the Department.
- The parties agree that Vendor, it officers, directors, agents and employees, shall not be liable to Department, under any theory of law including negligence, tort, breach of contract or otherwise, for any damages in excess of three (3) times the professional fees paid to Vendor with respect to the work in question or $3,000,000, whichever is less. In no event shall Vendor be liable for lost profits of the Department or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of Vendor.
- No employee of the vendor may represent himself or herself as an employee of the Department.

7) Delete the following from the RFP

5.3 Ownership of Materials

- Except for medical records as defined by Wis. Admin. Code § ETF 10.01 (3m), all information, data, reports and other materials as are existing and available from the Department and which the Department determines to be necessary to carry out the scope of services under this contract shall be furnished to the vendor and shall be returned to the Department upon completion of the contract. The vendor shall not use it for any purpose other than carrying out the work described in the contract. The Department shall not disclose medical records.
- It is agreed that the Department will be furnished without additional charge all data, models, information, reports and other materials associated with and generated under this contract by the vendor.
- The Department shall solely own all customized software, documents, and other materials developed under this RFP. Use of software, documents, and materials by the vendor shall only be with the prior written approval of the Department.
- If used in conjunction with program revenue generating activities with third parties, the Department, vendor, and such third party shall negotiate fee arrangements, which shall include recovery by the Department of development costs associated with the software, documents, or other materials.

- Additional costs to modify software, documents, or other materials developed under this RFP to meet specific requirements of third parties shall be the responsibility of such third parties.

8) Substitute the following to the RFP

5.3 Ownership of Materials

- Except for medical records as defined by Wis. Admin. Code § 10.01 (3m), all information, data, reports and other materials as are existing and available from the Department and which the Department determines to be necessary to carry out the scope of services under this contract shall be furnished to the Vendor and shall be returned to the Department upon completion of the contract. However, vendor may retain one copy as necessary to comply with professional documentation requirements. The vendor shall not use it for any purpose other than carrying out the work described in the contract. The Department shall not disclose medical records.
- It is agreed that the Department will be furnished without additional charge all data, models, information, reports and other materials associated with and generated under this contract by the vendor.
- Subject to vendor's reservation of right in and to the Vendor Tools and the prohibition on distribution of vendor work product to third parties contained in this section 5.3, the Department shall solely own all customized software, documents, and other materials developed under this RFP. Use of software, documents, and materials by the vendor shall only be with the prior written approval of the Department.
- If used in conjunction with program revenue generating activities with third parties, the Department, vendor, and such third party shall negotiate fee arrangements, which shall include recovery by the Department of development costs associated with the software, documents, or other materials.
- Additional costs to modify software, documents, or other materials developed under this RFP to meet specific requirements of third parties shall be the responsibility of such third parties.
- Vendor shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, method, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by vendor or generated under this contract provided such generic documents or templates do not contain any Department confidential information or proprietary data ("Vendor Tools"). Rights and ownership by vendor of Vendor Tools shall not extend to or include all or any part of the Department's proprietary data or confidential information. To the extent that vendor may include in the materials any Vendor Tools, vendor agrees that the Department shall be deemed to have a fully paid up license to make copies of the Vendor Tools as part of this engagement for its internal business purposes and provided that such materials cannot be modified or distributed outside the Department without the written permission of vendor.
- Vendor's work is prepared solely for the use and benefit of the Department in accordance with its statutory and regulatory requirements. Vendor recognizes that materials it delivers to the Department may be public records subject to disclosure to third parties. However, vendor does not intend to benefit and assumes no duty or liability

to any third parties who receive vendor's work and may include disclaimer language on its work product so stating. The Department agrees not to remove any such disclaimer language from vendor's work. To the extent that Milliman's work is not subject to disclosure under applicable public records laws, the Department agrees that it shall not disclose Milliman's work product to third parties without Milliman's prior written consent; provided, however, that the Department may distribute Milliman's work to (i) its professional service providers who are subject to a duty of confidentiality and who agree to not use Milliman's work product for any purpose other than to provide services to the Department, or (ii) any applicable regulatory or governmental agency, as required by law.

9) Delete the following from the RFP

5.5 CONFIDENTIALITY OF PARTICIPANT RECORDS

In addition to the requirements of this section, please refer to the Business Associate Agreement in Appendix H for additional privacy and security requirements.

- (As provided by Wis. Stat. § 40.07 and Wis. Admin. Code § 10.70 (1) and by HIPAA, individual personal information in the Department's records (including but not limited to address, social security number, birth date, marital status, earnings, Wisconsin Retirement System (WRS) contributions, WRS interest crediting, beneficiary designations, WRS creditable service and medical information), is not a public record and must be kept confidential. Confidential information may be disclosed to the vendor under this contract as the Department determines is necessary for the proper administration of this contract, as provided by Wis. Stat. § 40.07 (1) (d) and (3).
- The vendor agrees to maintain the strict confidentiality of individual records supplied to the vendor or its employees under this RFP. In addition, the vendor will only share confidential information with its employees and subcontractors on a need to know basis.
- The vendor agrees not to disclose any information furnished to the vendor or its employees, by the Department including any information derived directly or indirectly from information furnished by the Department to any person or entity of any description who is not a party to this RFP without express, written approval of the Secretary of the Department in advance.
- Under no circumstances are participant names, addresses, or other data to be used or made available for any purpose other than specifically provided for in this contract.
- All media in the possession of the vendor including, but not limited to diskettes, CD's, files and written documents containing confidential participant information shall be destroyed or turned over to the Department within 60 calendar days of the completion of this contract. The vendor shall furnish to the Department a written certification that all such media have been destroyed or returned to the Department, unless the Department makes any exceptions to this requirement in writing.

10) Substitute the following to the RFP

5.5 Confidentiality of Participant Records

In addition to the requirements of this section, please refer to the Business Associate Agreement in Appendix H for additional privacy and security requirements.

- (As provided by Wis. Stat. § 40.07 and Wis. Admin. Code § 10.70 (1) and by HIPAA, individual personal information in the Department's records (including but not limited to address, social security number, birth date, marital status, earnings, Wisconsin Retirement System (WRS) contributions, WRS interest crediting, beneficiary designations, WRS creditable service and medical information), is not a public record and must be kept confidential. Confidential information may be disclosed to the vendor under this contract as the Department determines is necessary for the proper administration of this contract, as provided by Wis. Stat. § 40.07 (1) (d) and (3).
- The vendor agrees to maintain the strict confidentiality of individual records supplied to the vendor or its employees under this RFP. In addition, the vendor will only share confidential information with its employees and subcontractors on a need to know basis.
- The vendor agrees not to disclose any information furnished to the vendor or its employees, by the Department including any information derived directly or indirectly from information furnished by the Department to any person or entity of any description who is not a party to this RFP without express, written approval of the Secretary of the Department in advance or unless specifically required by federal law.
- Under no circumstances are participant names, addresses, or other data to be used or made available for any purpose other than specifically provided for in this contract.
- All media in the possession of the vendor including, but not limited to diskettes, CDs, files and written documents containing confidential participant information shall be destroyed or turned over to the Department within 60 calendar days of the completion of this contract provided, however, vendor may retain one copy as necessary to comply with professional documentation requirements. The vendor shall furnish to the Department a written certification that all such media have been destroyed or returned to the Department, unless the Department makes any exceptions to this requirement in writing.

11) Substitute the following to the RFP (this is a new section)

5.7 CONFLICT RESOLUTION

In the event a conflict arises between Vendor and ETF which cannot be resolved in the normal course:

a. The parties acknowledge and agree that time is of the essence in the resolution of conflicts. Accordingly, the parties shall act expeditiously to resolve any such conflict.
b. Vendor shall continue without delay to carry out all its responsibilities under this Agreement which are not affected by the conflict. Should Vendor fail to perform its responsibilities under this Agreement that are not affected by the conflict without delay, any and all additional costs incurred by Vendor and ETF as a result of such failure to proceed shall be borne by Vendor and Vendor shall not make any claim against ETF for such costs. ETF's non-payment of fees in breach of this Agreement that are overdue by sixty (60) days is a conflict that will always be considered to affect Vendor's responsibilities.
c. The party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiation by delivering written notice to the other party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement. After such notice, the parties shall use all reasonable efforts to arrange personal meetings and/or telephone

conferences as needed, at mutually convenient times and places, between authorized negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

LEVEL	VENDOR	ETF	ALLOTED TIME
First	Principal	Bureau Director	10 business days
Second	Director, Health Practice	Insurance Administrator	20 business days
Third	CEO	Secretary	30 business days

The allotted time for the First Level negotiations shall begin on the date the Invoking Party's notice is received by the other party. Subsequent allotted time is days from the date that the Invoking Party's notice was originally received by the other party. If the Third Level parties cannot resolve the issue within thirty (30) business days of the Invoking Party's original notice, then the issue shall be designated as a "dispute" at the discretion of the Invoking Party and, if so, shall be resolved in accordance with Section 5.8. The time periods herein are in addition to those periods for a party to cure provided elsewhere in this Agreement, and do not apply to claims for equitable relief (i.e., injunction to prevent disclosure of confidential information). ETF may withhold payments on disputed items pending resolution of the dispute.

12) Substitute the following to the RFP (this is a new section)

5.8 DISPUTES AND RESOLUTION

As provided in section 15.0 of the Standard Terms and Conditions, this contract shall be governed under the laws of the State of Wisconsin. Both parties agree that any court proceeding arising or related to this contract shall be exclusively brought in the State of Wisconsin, Dane County Circuit Court, or upon appeal to the appellate courts in Wisconsin. Both parties agree to waive the right to trial by jury.

13) Delete the following from the RFP

Appendix D STANDARD TERMS AND CONDITIONS

18.0 WORK CENTER CRITERIA: A work center must be certified under s. 16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped individuals.

14) Substitute the following to the RFP

Appendix D STANDARD TERMS AND CONDITIONS

18.0 WORK CENTER CRITERIA: If applicable to contractor's provision of services, a work center must be certified under s. 16.752, Wis. Stats., and must ensure that when engaged in the

production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped individuals.

15) Delete the following from the RFP

23.2 Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars ($1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars ($1,000,000) per occurrence combined single limit for automobile liability and property damage.

16) Substitute the following to the RFP

23.2 Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars ($1,000,000) per occurrence relating to liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars ($1,000,000) per occurrence combined single limit for automobile liability and property damage.

17) Delete the following from the RFP

27.1 Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of the State of Wisconsin.

18) Substitute the following to the RFP

27.1 Data contained in a bid/proposal and all documentation provided therein cannot be copyrighted or patented. All data and documentation contained in a bid/proposal shall become the property of the State of Wisconsin.

19) Delete the following from the RFP

31.0 PROMOTIONAL ADVERTISING / NEWS RELEASES: Reference to or use of the State of Wisconsin, any of its departments, agencies or other subunits, or any state official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the State of Wisconsin. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.

20) Substitute the following to the RFP

31.0 PROMOTIONAL ADVERTISING / NEWS RELEASES: Reference to or use of the name, trademarks or services marks of either party for commercial promotion in any third party communication is prohibited without the other party's prior written consent. News releases pertaining to this procurement shall not be made without prior approval of both parties. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.

21) Delete the following from the RFP

34.0 WORK CENTER PROGRAM: The successful Proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, s.16.752, Wis. Stat. This shall result in requiring the successful Proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.

22) Substitute the following to the RFP

34.0 WORK CENTER PROGRAM: To the extend required under Wisconsin state law, the successful Proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, s. 16.752, Wis. Stat. This shall result in requiring the successful Proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.

23) Delete the following from the RFP

APPENDIX D SUPPLEMENTAL STANDARD TERMS AND CONDITIONS FOR PROCUREMENT FOR SERVICES

3.0 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP

3.2 Contractors shall agree as part of the contract for services that during performance of the contract, the contractor will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the contracting agency or has interests that are adverse to the contracting agency. The Department of Administration may waive this provision, in writing, if those activities of the contractor will not be adverse to the interests of the state.

24) Substitute the following to the RFP

3.0 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP

3.2 Contractor agrees that personnel assigned to perform services hereunder do not have a potential conflict of interest. Contractor agrees to inform Agency in the event a potential conflict arises. In the event Agency determines that a conflict exists, Contractor will use subcontractors identified in its proposal or otherwise approved in writing by the Agency to avoid any such conflict. Contractor shall agree as part of the contract for services that during performance of the contract, the contractor will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the contracting agency or has interests that are adverse to the contracting agency. The Department of Administration may waive this provision, in writing, if those activities of the contractor will not be adverse to the interests of the state.

25) Delete the following from the RFP

APPENDIX G INFORMATION CONFIDENTIALITY AND SECURITY REQUIREMENTS

Item 4 The Contractor and its employees, agents, or subcontractors shall promptly transmit to the ETF Program Contract Manager all requests for disclosure of any PPI not emanating from the person who is the subject of PPI.

26) Substitute the following to the RFP

Item 4 The Contractor and its employees, agents, or subcontractors shall promptly transmit to the ETF Program Contract Manager all requests for disclosure of any PPI not emanating from the person who is the subject of PPI, unless prohibited by federal law.

27) Delete the following from the RFP

Item 6. A. 1) General Security Controls

a. ***Confidentiality Statement.*** All persons that will be working with ETF PPI must sign a confidentiality statement. The statement must include at a minimum, General Use, Security and Privacy safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to ETF PPI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for ETF inspection for a period of three (3) years following contract termination.

In addition, when access is required to the Department of Revenue (DOR) building, another site housing ETF resources, a building confidentiality agreement must be signed, following similar requirements as the confidentiality statement.

28) Substitute the following to the RFP

Item 6. A. 1) General Security Controls

a. ***Confidentiality Statement.*** Contractor represents that all personnel engaged in the provision of services shall adhere to the General use, Security and Privacy

safeguards, Unacceptable Use, and Enforcement Policies of ETF in their provision of services.

29) Delete the following from the RFP

Item 6. A. 1) Background Check

b. ***Background check.*** Before a member of the Contractor's workforce may access ETF PPI, Contractor must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk for theft of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

ETF follows the provisions found in the *Wisconsin Human Resources Handbook Chapter 246, Securing Applicant Background Checks* (see http://oser.state.wi.us/docview.asp?docid=6658). The vendor is expected to perform background checks that, at a minimum, adhere to those standards. This includes the criminal history record from the Wisconsin Department of Justice (DOJ), Wisconsin Circuit Court Automation Programs (CCAP), and other state justice departments for persons who have lived in a state(s) other than Wisconsin. More stringent background checks are permitted. Details regarding the vendor's background check procedures should be provided to ETF regarding the measures used by the vendor to protect the security and privacy of program data and participant information. A copy of the result of the criminal background check the vendor conducted must be made available to ETF upon its request. ETF reserves the right to conduct its own criminal background checks on any or all employees or contractors of and referred by the vendor for the delivery or provision of services.

30) Substitute the following to the RFP

Item 6. A. 1) Background Check

b. ***Background check.*** Before a member of the Contractor's workforce may access ETF PPI, Contractor must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk for theft of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

ETF follows the provisions found in the *Wisconsin Human Resources Handbook Chapter 246, Securing Applicant Background Checks* (see http://oser.state.wi.us/docview.asp?docid=6658). The vendor is expected to perform background checks that, at a minimum, adhere to those standards. This includes the criminal history record from the Wisconsin Department of Justice (DOJ), Wisconsin Circuit Court Automation Programs (CCAP), and other state justice departments for persons who have lived in a state(s) other than Wisconsin. More stringent background checks are permitted. Details regarding the vendor's background check procedures should be provided to ETF regarding the measures used by the vendor to protect the security and privacy of program data and participant information. ETF has reviewed

documents describing the background check process used by Vendor. That process is consistent with the standards noted in this section. In addition, Vendor will provide ETF with a document that identifies by name each person for whom a background check was performed and a statement that no record was found for that person based on the background check criteria used by Vendor. ETF will need confirmation from Milliman's HR Director regarding each person for whom a background check was conducted and confirmation that the person cleared the background check process based on the Milliman criteria shared with ETF. If any red flags are raised, ETF's HR Director will work with Milliman's HR Director to investigate any issues that ETF becomes aware of. ETF reserves the right to conduct its own criminal background checks on any or all employees or contractors of and referred by the vendor for the delivery or provision of services.

31) Delete the following from the RFP

Item 6, A. 1) Removable media devices

e. ***Removable media devices.*** All electronic files that contain PPI data must be encrypted when stored on any removable media type device (i.e. USB thumb drives, floppies, CD/DVD, etc.) with an ETF approved solution.

32). Substitute the following to the RFP

Item 6, A. 1) Removable media devices

e. ***Removable media devices.*** All electronic files that contain PPI data must be encrypted when stored on any removable media type device (i.e. USB thumb drives, floppies, CD/DVD, etc.) with an industry standard encryption solution.

33). Delete the following from the RFP

Item 6. A. 1) Email security

f. ***Email security.*** All emails that include ETF PPI must be sent in an encrypted method using an ETF approved solution.

34). Substitute the following to the RFP

Item 6. A. 1) Email security.

f. ***Email security.*** All emails that include ETF PPI must be sent in an encrypted method using an industry standard encryption solution.

35) Delete the following from the RFP

Item 6. A. 1) Data Destruction

j. ***Data Destruction.*** All ETF PPI must be wiped from systems when the data is no longer necessary. The wipe method must conform to Department of Defense standards for data destruction. All ETF PPI on removable media must be returned to ETF when the data is no longer necessary. Once data has been destroyed, the ETF contract

manager must be notified. ETF can review computers or other media storage at any time to ensure the data has been wiped.

36) Substitute the following to the RFP

Item 6. A. 1) Data Destruction

j. ***Data Destruction.*** Except as otherwise agreed in an applicable contract, all ETF PPI must be wiped from systems when the data is no longer necessary. The wipe method must conform to Department of Defense standards for data destruction. Except as otherwise agreed in an applicable contract, all ETF PPI on removable media must be returned to ETF when the data is no longer necessary. Once data has been destroyed, the ETF contract manager must be notified.

37) Delete the following from the RFP

Item 6. D. Discovery and Notification of Breach

D. Discovery and Notification of Breach. The Contractor shall notify ETF **immediately by telephone call plus email** upon the discovery of breach of security of PPI in computerized form if the PPI was, or is reasonably believed to have been, acquired by an unauthorized person, **or within twenty-four (24) hours by email** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PPI in violation of this Agreement, this provision, the law, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the ETF Program Contract Manager, the ETF Privacy Officer and the ETF Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PPI, notification shall be provided by calling the ETF Bureau of Information Technology Services (BITS) Help Desk. Contractor shall take:

1) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
2) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

38) Substitute the following to the RFP

Item 6. D. Discovery and Notification of Breach

D. *Discovery and Notification of Breach*. The Contractor shall notify ETF **promptly by telephone call plus email** upon the discovery of breach of security of PPI in computerized form if the PPI was, or is reasonably believed to have been, acquired by an unauthorized person, **or within twenty-four (24) hours by email** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PPI in violation of this Agreement, this provision, the law, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the ETF Program Contract Manager, the ETF Privacy Officer and the ETF Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PPI, notification shall be provided by calling the ETF Bureau of Information Technology Services (BITS) Help Desk. Contractor shall take:

1) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
2) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

39) Delete the following from the RFP

Item 6. E. Investigation of Breach

E. ***Investigation of Breach***. The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PPI and within seventy-two (72) hours of the discovery, shall notify the ETF Program Contract Manager, the ETF Privacy Officer, and the ETF Information Security Officer of:

1) What data elements were involved and the extent of the data involved in the breach,
2) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PPI,
3) A description of where the PPI is believed to have been improperly transmitted, sent, or utilized, and
4) A description of the probable causes of the improper use or disclosure.

40) Substitute the following to the RFP

Item 6. E. Investigation of Breach

E. ***Investigation of Breach***. The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PPI and within five (5) calendar days of the discovery, shall notify the ETF Program Contract Manager, the ETF Privacy Officer, and the ETF Information Security Officer of:

1) What data elements were involved and the extent of the data involved in the breach,
2) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PPI,
3) A description of where the PPI is believed to have been improperly transmitted, sent, or utilized, and
4) A description of the probable causes of the improper use or disclosure.

41) Delete the following from the RFP

Item 6. G. Notification of **Individuals**

G. ***Notification of Individuals***. The Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The ETF Program Contract Manager, the ETF Privacy Officer, and the ETF

Information Security Officer shall approve the time, manner and content of any such notifications.

42) Substitute the following to the RFP

Item 6. G. Notification of Individuals

G. ***Notification of Individuals***. The contractor shall assist ETF and the State with efforts to notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The ETF Program Contract Manager, the ETF Privacy Officer, and the ETF Information Security Officer shall approve the time, manner and content of any such notifications.

43) Delete the following from the RFP

Item 8 Audits and Inspections

8. Audits and Inspections. From time to time, ETF may inspect the facilities, systems, books and records of the Contractor to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) document. Contractor shall promptly remedy any violation of any provision of this ICSR document. The fact that ETF inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this ICSR document.

44) Substitute the following to the RFP

Item 8 Audits and Inspections

8. Audits and Inspections. From time to time, ETF may upon reasonable advance notice inspect the facilities, systems, books, and records of the Contractor to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) document. Contractor shall promptly remedy any violation of any provision of this ICSR document. The fact that ETF inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this ISCR document.

Exhibit B

BUSINESS ASSOCIATE AGREEMENT

June 3, 2014

This Business Associate Agreement ("Agreement") is by and between Millliman, Inc. ("MILLIMAN") and the Wisconsin Department of Employee Trust Funds ("ETF"), and acting on behalf of the State of Wisconsin.

RECITALS:

WHEREAS, ETF and MILLIMAN have executed a contract, pursuant to which MILLIMAN provides actuarial services ("Underlying Contract"), and in connection with those services ETF discloses or allows the disclosure to MILLIMAN of certain information that is subject to protection by the Health Insurance Portability and Accountability Act of 1996, ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 as passed as part of ARRA ("HITECH") and their implementing regulations, Title 45, Parts 160 through 164 of the Code of Federal Regulations, as well as by laws and administrative rules of the State of Wisconsin; and

WHEREAS, with respect to its activities pursuant to the Underlying Contract, MILLIMAN is ETF's Business Associate as that term is defined by HIPAA; and

WHEREAS, it is the intent of this Agreement to comply with state law and with the federal regulations implementing HIPAA and HITECH concerning the privacy, security and transaction standards in 45 C.F.R. Parts 160 to 164, inclusive,

WHEREAS, ETF and MILLIMAN agree to incorporate the terms of this Agreement into the Underlying Contract and agree to incorporate this Agreement into any associated addenda and contract extensions, in order to comply with HIPAA, HITECH and state law.

NOW, THEREFORE, in consideration of these premises and the mutual promises and **agreements hereinafter set forth, ETF and MILLIMAN hereby agree as follows:**

DEFINITIONS:

It is the intent of this Agreement to comply with the federal regulations implementing HIPAA and HITECH concerning the privacy, security and transaction standards, including the definitions in 45 C.F.R. Parts 160 to 164, inclusive, as applicable. This Agreement also addresses compliance with Wisconsin laws on confidentiality of personal information. In particular, the following words and phrases in this Agreement have the meanings set forth below, unless the context clearly requires otherwise:

"ARRA" means the American Recovery and Reinvestment Act of 2009.

"Individual Personal Information" has the meaning set forth in Wis. Admin. Code § ETF 10.70 (1).

"Medical Record" has the meaning set forth in Wis. Admin. Code § ETF 10.01 (3m).

"Personal Information" is information that can be used to identify a person and includes, without limitation, **Individually Identifiable Health Information, Individual Personal Information, Medical Records and Protected Health Information, each as defined under HIPAA or Wisconsin law.**

"Third Party" means a party other than a subcontractor or agent that ETF has approved.

PART I – OBLIGATIONS OF MILLIMAN

A. **Uses and Disclosures.** MILLIMAN may use or disclose Personal Information it creates for or receives

from ETF or any other Business Associate of ETF for only the following, limited purposes:

1. Permitted Uses and Disclosures of Personal Information. MILLIMAN is permitted to use and disclose Personal Information:

   (a) To perform actuarial consulting services services in accordance with the Underlying Contract.

   (b) Subject to the limitations on Uses and Disclosures outlined in this MILLIMAN Agreement, specifically including the State Law Restrictions in Part I, Section B, MILLIMAN is authorized to use and disclose Personal Information as necessary for MILLIMAN's proper management and administration, to carry out MILLIMAN's legal responsibilities, and as otherwise Required by Law.

   (c) To provide Data Aggregation services to ETF as permitted by HIPAA regulations.

   (d) To create a Limited Data Set for the purpose of performing its obligations and services for ETF, provided that MILLIMAN otherwise complies with the provisions of this Agreement.

   (e) To Deidentify Personal Information in accordance with the requirements of the HIPAA regulations and maintain such deidentified health information indefinitely; provided that all identifiers are destroyed or returned in accordance with this Agreement.

2. Prohibition on Unauthorized Use or Disclosure. MILLIMAN will not use or disclose Personal Information it creates for or receives from ETF or from another Business Associate of ETF, except as authorized or required by this Agreement or as Required by Law or as otherwise authorized in writing by ETF, including, without limitation, marketing and solicitation of business outside the Underlying Contract and disclosure of such information to third-parties.

3. Compliance with Regulations. MILLIMAN will comply with:

   (a) 45 C.F.R. Parts 160 to 164, inclusive, as applicable to a "MILLIMAN" of a "Covered Entity" and any other regulations adopted pursuant to HIPAA and HITECH; and

   (b) Applicable State Law not preempted by 45 C.F.R §§ 160.201 to 160.203, inclusive, or any other federal law.

4. State Law Restrictions. MILLIMAN shall comply with Wis. Stat. §§ 40.07 and 134.98 with respect to information MILLIMAN creates for or receives from ETF or from any other Business Associate of ETF. In particular:

   (a) Any Third Party request, including a subpoena, for disclosure of Personal Information, including, without limitation, Medical Records or Individually Identifiable Health Information, shall, if legally permissible, be referred to ETF in a timely manner; and

   (b) MILLIMAN shall not disclose to any Third Party Individual Personal Information which ETF itself may not disclose pursuant to Wis. Stat. § 40.07(1), or of Medical Records that ETF itself may not disclose pursuant to Wis. Stat § 40.07(2).

B. Compliance with Standard Transactions.

1. Standard Transactions Conducted By MILLIMAN. If MILLIMAN conducts, in whole or in part, transactions, for or on behalf of ETF that are covered by 45 C.F.R Part 162, MILLIMAN will comply with the applicable HIPAA transactions standards, and will require any subcontractor or agent involved with the conduct of such transactions to provide reasonable assurances, evidenced by written contract, that it will comply with each applicable requirement of 45 CFR Part 162. Further, MILLIMAN will require that each of its subcontractors or agents provide assurances, by written contract, that it will not enter into a Trading Partner Agreement, in connection with its conduct of Standard Transactions for and on behalf of ETF that:

   (a) Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;

   (b) Adds any data element or segment to the maximum data set;

(c) Uses any code or data element that either is not in the Standard Transaction's implementation specification or is marked "not used" by the Standard Transaction's implementation specifications;

(d) Changes the meaning or intent of the Standard Transaction's implementation specifications; or

(e) Otherwise violates 45 CFR §162.915.

2. Communications Between the Parties. Communications between ETF and MILLIMAN that are required to meet HIPAA transactions standards will meet the standards set by 45 CFR Part 162. For all other communications, the forms, tape formats or electronic formats used shall be those mutually agreed upon by ETF and MILLIMAN.

C. **Information Safeguards**. MILLIMAN will develop, implement, maintain and use reasonable and appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of Personal Information under the control of MILLIMAN, and to prevent intentional or unintentional non-permitted or violating use or disclosure of Protected Health Information. MILLIMAN will document and keep these safeguards current and furnish documentation of the safeguards to ETF upon request. These safeguards will comply with HIPAA, HITECH and their implementing regulations.

D. **Reporting of Breach, Improper Use or Disclosure and Security Incidents.**

Reporting of Breach, Improper Use or Disclosure. MILLIMAN will report to ETF the discovery of any breach, use or disclosure of Personal Information, not allowed by this Agreement or in violation of 45 C.F.R. Part 164 or HITECH. An occurrence of a breach, improper use or disclosure or successful Security Incident (as defined in applicable HIPAA regulations) is considered to be discovered as of the first day on which such occurrence is known to MILLIMAN, or, by exercising reasonable diligence, would have been known to MILLIMAN. The parties acknowledge and agree that this section constitutes notice by MILLIMAN to ETF of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents of which no additional notice to ETF shall be required. Unsuccessful Security Incidents shall include, but not be limited to, pings and other broadcast attacks on MILLIMAN's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as such incidents do not result in unauthorized access, use or disclosure of ETF's Personal Information.

1. MILLIMAN shall provide notice to ETF of the occurrence. The notice shall include the identification of each individual whose unsecured Personal Information has been, or is reasonably believed by MILLIMAN to have been accessed, acquired, or disclosed during such occurrence.

2. Within one business day of the discovery, MILLIMAN shall notify ETF's Privacy Officer. MILLIMAN shall immediately conduct an investigation and report in writing within four business days the following information:

(a) The name and contact information of each individual whose Personal Information has been or is reasonably believed to have been accessed, acquired or disclosed during the occurrence.

(b) A brief description of what happened, including the date of the occurrence and the date of the discovery of the occurrence, if known.

(c) A description of the types of Personal Information that were involved in the occurrence (e.g., full name, date of birth, Social Security number, account number).

(d) A brief description of what MILLIMAN is doing to investigate the occurrence, to mitigate losses and to protect against further occurrences.

(e) The actions MILLIMAN has undertaken or will undertake to mitigate any harmful effect of the occurrence.

(f) A corrective action plan that includes the steps MILLIMAN has taken or will take to prevent similar occurrences.

3. At ETF's option, MILLIMAN will cooperate with ETF to enable ETF to notify individuals of the occurrence when ETF requires notification and to pay any out-of-pocket cost of such notifications,

as well as any out-of-pocket costs associated with the breach, improper use or disclosure, including, without limitation, credit monitoring services.

E. **Duty to Mitigate Effect of Misuse or Unauthorized Disclosure and Notify Members of Unauthorized Acquisition:**

1. MILLIMAN will mitigate, as required by HIPAA, HITECH, state law and this agreement, to the extent practicable, any harmful effect that is known to MILLIMAN of a breach, improper use or unauthorized disclosure reported pursuant to subsection D of this section.

2. MILLIMAN will comply with the provisions of Wis. Stat. §134.98 and any subsequently adopted state law regarding mitigation of privacy breaches, and shall ensure by written contract that any subcontractor or agent with whom it contracts to carry out the provisions of the Underlying Contract also complies with the provisions of Wis. Stat. §134.98 and any subsequently adopted law regarding mitigation of privacy breaches.

F. **Minimum Necessary.** MILLIMAN will make reasonable efforts to use, disclose, or request only the minimum amount of Personal Information necessary to accomplish the intended purpose and shall comply with regulations issued pursuant to HIPAA and HITECH. Internal disclosure of such information to employees of MILLIMAN shall be limited only to those employees who need the information and only to the extent necessary to perform their responsibilities according to the Underlying Contract and this Agreement.

G. **Disclosure to MILLIMAN's Subcontractors and Agents.** MILLIMAN shall require any of its agents or subcontractors to provide reasonable assurance, evidenced by written contract, that the agent or subcontractor will comply with the same privacy and security obligations as MILLIMAN with respect to such Personal Information. Before entering into such a contract with an agent or subcontractor, MILLIMAN shall obtain from ETF approval of the contract.

H. **Access, Amendment and Disclosure Accounting.**

1. Access. At the direction of ETF, MILLIMAN agrees to provide ETF access to any Protected Health Information held by MILLIMAN which ETF has determined to be part of ETF's Designated Record Set, in the time and manner designated by ETF, so that ETF may meet its access obligations under HIPAA and HITECH. All fees related to this access, as determined by MILLIMAN, are the responsibility of the individual requesting the access.

2. Amendment. At the direction of ETF, MILLIMAN agrees to amend or correct Protected Health Information held by MILLIMAN and which ETF has determined to be part of ETF's Designated Record Set, in the time and manner designated by ETF, so that ETF may meet its amendment obligations pursuant to HIPAA and HITECH. All fees related to this amendment, as determined by MILLIMAN, are the responsibility of the individual requesting the access.

3. Documentation of Disclosures. MILLIMAN agrees to document such disclosures of Protected Health Information and information related to such disclosures so that ETF may meet its obligations under HIPAA and HITECH.

4. Accounting of Disclosures.

   (a) MILLIMAN shall maintain a process to provide ETF an accounting of disclosures of Protected Health Information for as long as MILLIMAN maintains Protected Health Information received from or on behalf of ETF. MILLIMAN agrees to provide to ETF, in a time and manner designated by ETF, information collected in accordance with Subsection 3 above, to permit ETF to properly respond to a request by an individual for an accounting of disclosures pursuant to HIPAA and HITECH.

   (b) Each accounting will provide:

      (i) The date of each disclosure;

      (ii) The name and address of the organization or person who received the Protected Health Information;

(iii) A brief description of the Protected Health Information disclosed; and

(iv) For disclosures other than those made at the request of the subject, the purpose for which the Protected Health Information was disclosed and a copy of the request or authorization for disclosure.

(c) For repetitive disclosures which MILLIMAN makes to the same person or entity, including ETF, for a single purpose, MILLIMAN may provide:

(i) The disclosure information for the first of these repetitive disclosures;

(ii) The frequency or number of these repetitive disclosures; and

(iii) The date of the last of these repetitive disclosures,

(iv) MILLIMAN will make a log of this disclosure information available to ETF within five (5) business days of ETF's request.

(d) MILLIMAN need not record disclosure information or otherwise account for disclosures of Protected Health Information if:

(i) The disclosures are allowed under this Agreement or are expressly authorized by ETF in another written document; and

(ii) The disclosures are for one of the following purposes:

i. Treatment, Payment or Health Care Operations that are not made through an Electronic Health Record;

ii. In response to a request from the Individual who is the subject of the disclosed Protected Health Information, or to that Individual's Personal Representative;

iii. Made to persons involved in the health care or payment for the health care of the Individual who is the subject of the disclosed Protected Health Information;

iv. For notification for disaster relief purposes;

v. For national security or intelligence purposes;

vi. As part of a Limited Data Set; or

vii. To law enforcement officials or correctional institutions regarding inmates.

5. Disclosure Tracking Time Periods. Except as otherwise provided in this paragraph, MILLIMAN must have available to ETF the disclosure information required by this section, but in no case will MILLIMAN be required to have available information from:

(a) More than six (6) years before ETF's request for the disclosure information; or

(b) Any period during which MILLIMAN did not provide services to ETF.

6. Disclosure Tracking for Disclosures made through Electronic Health Records: MILLIMAN only needs to provide disclosures for Treatment, Payment or Health Care Operations made through an Electronic Health Record for three years prior to the date on which the accounting is requested. MILLIMAN shall provide all information necessary for ETF to provide an accounting that includes all information required by regulations issued pursuant to HIPAA and HITECH.

7. Effective Date: The effective date for accounting required under subsection 6 depends on the date ETF acquires an Electronic Health Record. If ETF had an electronic Health Record as of January 1, 2009, subsection 6 will apply to Protected Health Information disclosures made by ETF on or after January 1, 2014. If ETF does not have an Electronic Health Record as of January 1, 2009, subsection 6 will apply to Protected Health Information disclosures made by ETF after the later of January 1, 2011 or the date ETF acquires an Electronic Health Record.

l. **Accounting to ETF and Government Agencies.** MILLIMAN will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information available to ETF to

provide to the U.S. Department of Health and Human Services (HHS) in a time and manner designated by HHS for the purpose of determining ETF's compliance with HIPAA and HITECH. MILLIMAN shall promptly notify ETF of any inquiries made to it by HHS concerning ETF's compliance with HIPAA.

J. **Red Flag Rules.** If applicable to MILLIMAN, MILLIMAN shall be responsible for implementation of an Identity Theft Monitoring Policy and procedure to protect Personal Information under the Federal Trade Commission regulations known as the "Red Flag Rules."

PART II –ETF OBLIGATIONS

A. **Changes in Permissions to Use and Disclose Protected Health Information.** ETF shall promptly notify MILLIMAN of any change in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such change may affect MILLIMAN's use or disclosure of such Protected Health Information.

B. **Changes in ETF's Notice of Privacy Practices.** ETF shall provide MILLIMAN with a copy of ETF's Notice of Privacy Practices and shall notify MILLIMAN of any change made to the Notice of Privacy Practices, to the extent that such change may affect MILLIMAN's efforts to comply with this Agreement.

C. **Changes in State Law.** ETF shall notify MILLIMAN of any relevant change in Wisconsin law, to the extent that such change may affect MILLIMAN's efforts to comply with this Agreement.

D. **Permissible Requests.** ETF shall not request MILLIMAN to use or disclose Personal Information in any manner that would not be permissible under the HIPAA regulations if done by ETF, unless otherwise expressly permitted herein.

E. **Minimum Necessary/Limited Data Set.** ETF shall not provide MILLIMAN with more Personal Information than that which is minimally necessary for MILLIMAN to provide the services and, where possible, ETF shall provide any Personal Information needed by MILLIMAN to perform the services in the form of a Limited Data Set, in accordance with the HIPAA regulations.

PART III - TERM, TERMINATION AND AMENDMENT

A. **Term.** This Agreement becomes effective on the effective date of the Underlying Contract. The Agreement is co-extensive with the term of the Underlying Contract, including any extensions made to the original Underlying Contract.

B. **Termination for Breach.** ETF shall have the right to terminate the Underlying Contract and this Agreement if MILLIMAN, by pattern or practice, materially breaches any provision of this Agreement.

C. **Reasonable Steps to Cure Breach.** In addition to the right to terminate this Agreement and Underlying Contract pursuant to section B, above, ETF may provide MILLIMAN with an opportunity to cure the material breach. If these efforts to cure the material breach are unsuccessful, as determined by ETF in its sole discretion, ETF may terminate the Underlying Contract and this Agreement, as soon as administratively feasible.

D. **Effect of Termination: Return or Destruction of Protected Health Information.**

Upon termination, cancellation, expiration, or other conclusion of the Agreement, MILLIMAN shall:

1. Return to ETF or, if return is not feasible, destroy all Personal Information in whatever form or medium that MILLIMAN received from or created on behalf of ETF. This provision shall also apply to all Personal Information that is in the possession of subcontractors or agents of MILLIMAN. In such case, MILLIMAN shall retain no copies of such information, including any compilations derived from and allowing identification of Personal Information. MILLIMAN shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, MILLIMAN shall certify on oath in writing to ETF that such return or destruction has been completed.

2. If MILLIMAN destroys Personal Information, it shall be done with the use of technology or methodology that renders the Personal Information unusable, unreadable, or undecipherable to unauthorized individuals as specified by HHS in HHS guidance for the destruction of Protected Health Information. Acceptable methods for destroying Personal Information include: (i) paper, film, or other hard copy media shredded or destroyed in order that Personal Information cannot be read or reconstructed; and (ii) electronic media cleared, purged or destroyed consistent with the standards of the National Institute of Standards and Technology (NIST). HHS specifically excluded redaction as a method of destruction of Protected Health Information, unless the information is properly redacted so as to be fully de-identified.

3. If MILLIMAN believes that the return or destruction of Personal Information is not feasible, MILLIMAN shall provide written notification of the conditions that make return or destruction infeasible. ETF hereby acknowledges and agrees that infeasibility includes MILLIMAN's need to retain Personal Information for purposes of complying with its work product documentation standards, and that for such a retention, no further notification or approval of ETF is required. Upon mutual agreement of the Parties that return or destruction is not feasible, MILLIMAN shall extend the protections of this Agreement to Personal Information received from or created on behalf of ETF, and limit further uses and disclosures of such Personal Information, for so long as MILLIMAN maintains the Personal Information.

E. **Agreement to Amend Agreement.** The parties to this contract acknowledge that federal laws relating to transactions, security and privacy are rapidly evolving and that amendment to this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, HITECH and their implementing regulations. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, HITECH and applicable federal regulations. If this Agreement is not amended by the effective date of any final regulation or amendment to final regulations with respect to HIPAA and HITECH, this Agreement will automatically be amended on such effective date such that the obligations they impose on the parties remain in compliance with the regulations then in effect.

PART IV – GENERAL PROVISIONS

A. **Conflict.** The provisions of this Agreement override and control any conflicting provision of the Underlying Contract. All non-conflicting provisions of the Underlying Contract remain in full force and effect.

B. **Election to Not Treat As Representative.** Nothing in this Agreement shall be construed to limit the discretion of ETF, under 45 C.F.R. § 164.502 (g) (5), to elect not to treat a person as the representative of an individual.

C. **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any entity other than ETF and MILLIMAN, any rights, remedies, obligations or liabilities whatsoever.

D. **Documentation.** All documentation that is required by this Agreement or by 45 C.F.R. Part 164 will be retained by MILLIMAN for six (6) years from the date of creation or when it was last in effect, whichever is longer.

E. **Survival.** The parties' obligations and rights, with respect to MILLIMAN's engagement to provide services, will be unaffected by the termination of the Underlying Contract and this Agreement. In particular, the provisions of Part III, Sections D and E, and this section, shall survive termination of the Underlying Contract and this Agreement.

F. **Regulatory References.** A reference in this Agreement to a section in the HIPAA regulations means the section as in effect or as amended, and for which compliance is required.

G. **Independent Contractors.** MILLIMAN and ETF are independent contractors and this Agreement will

not establish any relationship of partnership, joint venture, employment, franchise, or agency between MILLIMAN and ETF. Neither MILLIMAN nor ETF will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent, except as otherwise expressly provided in this Agreement.

H. **Entire Agreement.** This Agreement shall constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties hereto relating to such subject matter.

Company Name: Milliman, Inc. Date: 7/30/2014

Authorized Person: Daniel D. Skwire Phone: 207-771-1203
(Print or type)

(Signature of authorized person)