

**(Attachment 1) Action on Request for Reinstatement with Extension of a
Contract for Actuarial Consulting Services**

C015789
R169598
V0517739

PROFESSIONAL SERVICES CONTRACT

**MILWAUKEE BOARD OF SCHOOL DIRECTORS
AND
MILLIMAN, INC.**

This Contract is being entered into this 1st day of July, 2011, and between Milliman, Inc. ("Contractor") and Milwaukee Board of School Directors ("MPS").

1. SCOPE OF SERVICES

Contractor shall perform actuarial consulting services associated with the District's self-funded health plans as identified below according to RFP 719, Contractor's proposal dated March 25, 2011, including its letter dated May 9, 2011, and Milliman Consulting Services Agreement Addendum A dated July 1, 2011, all of which are herein expressly incorporated by reference:

- Establish conventional premium rates for the District's self-funded health plans. Contractor shall bill these services separately and MPS shall submit same for payment by the District's third party administrator(s).
- Establish year-end incurred but not reported reserves for self-funded health and dental plans.
- Establish annual trend rates for self-funded health and dental plans.
- Prepare various health and dental benefit expenditure forecasts for District budget purposes.
- Provide actuarial attestation/certification, costing and analysis - Medicare Part D Prescription Drug Benefit.
- Evaluate cost effectiveness and savings associated with the District's Joint Health and Productivity Management Program.
- Provide actuarial consulting services on alternative benefit designs.

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If there is a variance between the Contractor's project scope and MPS' Request for Proposal 719 (scope of services required), the latter shall be controlling unless otherwise agreed to in writing by the designated MPS representative.

Contractor understands and agrees that prior to commencement of services, it shall execute the HIPAA Business Associate Agreement referenced in RFP 719, which shall become part of this contract by amendment thereto, and that Contractor shall perform services in accordance with the terms of that Agreement and any other applicable standards proscribed by the American Academy of Actuaries.

Contractor shall provide, at its own expense, all personnel required in performing the services under this Contract.

2. TERM

This contract shall be in effect from July 1, 2011 through June 30, 2016.

3. COMPENSATION

Contractor shall be compensated for work performed in accordance with the scope of work agreed upon by the parties. Total compensation under this Contract shall not exceed \$535,800. Annual encumbrances shall be as follows: FY12 \$110,200; FY13 \$102,400; FY14 \$104,700; FY15 \$107,700; and FY16 \$110,800. Contractor shall provide MPS with (weekly, biweekly, etc.) billings that shall include, but not be limited to, the following:

- Dates and events worked.
- General tasks performed.

MILLIMAN INC V0517739

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

Chris M. Toth
Director of Benefits and Insurance Services
Office of Human Resources
Milwaukee Public Schools
P.O. Box 2181
Milwaukee, WI 53201-2181

A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this contract.

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

4. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

5. NON-DISCRIMINATION

In the performance of work under this contract, Contractor shall not discriminate in any way against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), or sex. This prohibition includes, but is not be limited to, employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this contract.

If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

6. BACKGROUND CHECKS

A criminal information background check is required for all persons providing services under this contract, including volunteers, that: (1) provide services in MPS facility(ies) on a regular and ongoing basis or more than five hours per week; and (2) come into contact with or have access to MPS students with or without the presence of an MPS teacher or MPS supervisor.

The purpose of this check is to ensure there is nothing that would render the person(s) unfit to perform services under this contract where there is contact and or access to MPS students. MPS will, in its sole discretion, determine whether there is anything in a background check that would render a person unfit to work in an MPS facility with contact or access to MPS students. MPS shall perform background checks in the state(s) in which the individual resided for at least six months in the last five years, and was 18 years old or older at the time.

Contractor may perform its own criminal background checks through the Wisconsin Department of Justice Crime Information Bureau ("CIB"). Contractor shall provide the completed criminal background checks to MPS at least 10 days prior to any services being performed pursuant to this contract.

MPS will perform the necessary background investigation at the rate of \$10.00 per person. In the event Contractor chooses this option, Contractor may contact the Office of Classified Staffing at 475-8157 to obtain the necessary forms. Please note that all forms must be filled out and submitted at least 30 days prior to the commencement of the services.

All background checks must be completed prior to the commencement of services under this contract. MPS will NOT be responsible for the payment of any services rendered by Contractor before the completion of these criminal information background checks.

7. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with the Contractor. Contractor and its subcontractors shall effect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Professional Liability, Automobile Liability, and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence / \$2,000,000 aggregate
Professional Liability	\$2,000,000 per occurrence / \$2,000,000 aggregate
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$4,000,000 per occurrence

MPS shall be named as an additional insured under Contractor's and subcontractors' general liability insurance and umbrella liability insurance. Evidence of all required insurances of Contractor shall be given to MPS. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded thirty (30) days written notice of cancellation, non-renewal, or material change by any of Contractor's insurers providing the coverages required by MPS for the duration of this contract.

8. SHIPPING / TAXES

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids, and invoices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. This means any freight, shipping, processing, handling, or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling, or like charges listed on an invoice will be deleted and NOT PAID.

All textbook purchases shall be governed by the terms and conditions in the Milwaukee Board of School Director Textbook Contract, found on the Milwaukee Public Schools portal (<http://mpsportal.milwaukee.k12.wi.us>) which provides that textbooks shipped to MPS or its schools must be done at no additional charge to MPS or its schools.

MPS reserves the right to reject any items that do not conform to the bid, quote, or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

9. TERMINATION BY CONTRACTOR

Contractor may, at its option, terminate this contract upon the failure of MPS to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

10. TERMINATION BY MPS - BREACH BY CONTRACTOR

If Contractor fails to fulfill its obligations under this contract in a timely or proper manner, or violates any of its provisions, MPS shall thereupon have the right to terminate it by giving five (5) days written notice before the effective date of termination of the contract, specifying the alleged violations and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation within five (5) days. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion or for any materials or services purchased or paid for by Contractor for use in completing the contract.

11. TERMINATION BY MPS

MPS further reserves the right to terminate this Contract at any time for any reason by giving Contractor written notice by Registered or Certified Mail of such termination. MPS will attempt to give Contractor 20 days notice but reserves the right to give immediate notice. If In the event of said termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination, including any retainage. This section also applies should MPS fail to appropriate additional monies required for the completion of the Contract.

12. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor and that no relationship of employer and employee, partnership, or joint venture is created by this contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS' sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely, and satisfactory manner in accordance with the terms of this contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state, or local authorities imposed on or measured by income. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state, or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this contract and that if any such agency or court assumes jurisdiction of any complaint, charge, or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits that may be extended to MPS employees, including any insurance or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans that may be extended to employees of MPS from time-to-time and further agrees to indemnify and hold harmless MPS and all its employees, officers, and agents from any liability for personal injuries, including death, or for damage to or loss of personal property that might occur as a result of the performance of the services provided for under this Contract.

13. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

14. PROHIBITED PRACTICES

- A. Contractor during the period of this contract shall not hire, retain, or use for compensation any member, officer, or employee of MPS to perform services under this contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group, or any firm which does business with or is attempting to do business with MPS."
- C. Contractor shall adhere to the MPS' Livable Wage Policy that requires all contractors to pay their employees a minimum of \$7.70 per hour.
- D. No person may enter into this contract for services that the MPS employee would otherwise perform as an employee.
- E. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the MPS Chief Human Resources Officer or her designee.
- F. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this contract.

15. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this contract or to their designees.

16. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this contract shall not be deemed a waiver of any further right under this contract.

17. INTEGRATION / SEVERABILITY

This contract and its exhibits and addenda, if any, constitute the entire contract among the parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions, and contracts among the parties concerning the subject matter hereof. No amendment or modification of any provision of this contract shall be effective unless the same shall be in writing and signed by both parties.

MPS shall not be bound by any terms and conditions included in of contractor's packaging, service catalog, brochure, technical data sheet, or other document that attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this contract shall be interpreted as if such invalid contracts or covenants were not contained herein.

18. TIMING

Time is of the essence in this contract.

19. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals, its subcontractors or their principals, the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

20. FORCE MAJEURE

MPS will not be liable to pay contractor for any work that the contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease, or other cause beyond MPS' reasonable control, including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence.

21. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. See Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies that MPS may have, MPS shall be entitled to immediately terminate this and every other existing contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods, up to and including permanent debarment.

22. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, which is received by reason of this contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or Contractor under this contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

Within ten (10) business days of the earlier of receipt of MPS' written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this contract.

23. MPS LOGO/PUBLICITY

No Contractor shall use the MPS logo in its literature or issue a press release about the subject of this contract without prior written notice to and written approval of MPS' Director of Communication and Public Affairs.

24. ORDER OF PRIORITY

In the event of a conflict of terms among the documents constituting this contract, the order of priority to resolve that contract shall be as follows: (1) this contract; (2) Milliman Consulting Services Agreement Addendum A dated July 1, 2011; (3) RFP 719; (4) Contractor's Response to RFP 719 including its letter dated May 9, 2011.

25. PUBLIC RECORDS

Both parties understand that MPS is bound by the Wisconsin Public Records Law, and as such, all of the terms of this contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist MPS in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this contract, and that the Contractor must defend and hold MPS harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this contract.

26. HUB REQUIREMENT

The HUB requirement on this contract is eight percent (8%) with the exception for Ad Hoc consulting when it is performed with no support work required. Failure to achieve this requirement may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this contract on the day, month, and year first above written.

**CONTRACTOR:
MILLIMAN, INC.**

By: Clark E. Slipher

CLARK E. SLIPHER

Address: 15800 Bluemound Road, Suite 400
Brookfield, WI 53005-6069

Phone Number: (262) 784-2250

Tax I.D. or SS#: XXXXXXXXXX

**MILWAUKEE BOARD OF
SCHOOL DIRECTORS**

By: Chris M. Toth

CHRIS M. TOTH

Director of Benefits and Insurance Services

By: Gregory E. Thornton

GREGORY E. THORNTON, Ed.D.

Superintendent of Schools

By: Michael Bonds

MICHAEL BONDS, Ph.D.

Board President

Budget Code: DWC-0-0-EMB-DW-EMDI

NOTE: BUDGET CODES THAT ARE NOT LOCAL SCHOOL BUDGET CODES, MUST BE APPROVED BY APPROPRIATE DEPARTMENT OR PROGRAM ADMINISTRATOR.

This contract is not enforceable until signed by the Department of Finance. Payment will not be made on any contract not on file in the Department of Finance. A minimum of 15 business days is required for approval.

Approved as to form and independent contractor status by Department of Finance.

By: K. Allen

Date: 7/7/11

Reviewed by Benefits and Insurance Services

By: Chris M. Toth

Date: 6/14/2011

Addendum A
Milliman Consulting Services Agreement
MPS RFP 719
Milliman Proposal dated March 25, 2011

This Agreement is entered into between Milliman, Inc. (Milliman) and the Milwaukee Public Schools (MPS or Client) as of July 1, 2011. MPS engaged Milliman to perform consulting services. Such services may be modified from time to time and may also include general actuarial consulting services. In consideration for Milliman agreeing to perform these services, MPS agrees as follows:

1. **BILLING TERMS.** Client acknowledges the obligation to pay Milliman for services rendered, whether arising from Client's request or otherwise necessary as a result of this engagement in accordance with the fees and / or billing rates listed in Addendum C. Services beyond those described in Addendum C will be billed at Milliman's standard hourly billing rates for the personnel utilized plus all out-of-pocket expenses incurred. Milliman will bill Client periodically for services rendered and expenses incurred. All invoices are payable upon receipt. Milliman reserves the right to stop all work if any bill goes unpaid for 60 days. In the event of such termination, Milliman shall be entitled to collect the outstanding balance, as well as charges for all services and expenses incurred up to the date of termination.
2. **TOOL DEVELOPMENT.** Milliman shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by Milliman or developed during the course of the provision of the Services provided such generic documents or templates do not contain any Client Confidential Information or proprietary data. Rights and ownership by Milliman of original technical designs, methods, ideas, concepts, know-how, and techniques shall not extend to or include all or any part of Client's proprietary data or Client Confidential Information. To the extent that Milliman may include in the materials any pre-existing Milliman proprietary information or other protected Milliman materials, Milliman agrees that Client shall be deemed to have a fully paid up license to make copies of the Milliman owned materials as part of this engagement for its internal business purposes and provided that such materials cannot be modified or distributed outside the Client without the written permission of Milliman.
3. **LIMITATION OF LIABILITY.** Milliman will perform all services in accordance with applicable professional standards as promulgated by the American Academy of Actuaries. The parties agree that Milliman, its officers, directors, agents and employees, shall not be liable to Client, under any theory of law including negligence, tort, breach of contract or otherwise, for any damages in excess of 3 times the professional fees paid to Milliman with respect to the work in question. In no event shall Milliman be liable for lost profits of Client or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of Milliman, claims related to bodily injury, death or physical property damage or Milliman's responsibilities in Addendum B (HIPAA Business Associate Agreement).

Addendum A
Milliman Consulting Services Agreement
MPS RFP 719
Milliman Proposal dated March 25, 2011

4. **DISPUTES.** In the event of any dispute arising out of or relating to the engagement of Milliman by Client, the parties agree that the dispute will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place before a panel of three arbitrators. Within 30 days of the commencement of the arbitration, each party shall designate in writing a single neutral and independent arbitrator. The two arbitrators designated by the parties shall then select a third arbitrator. The arbitrators shall have a background in either insurance, actuarial science or law. The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing, and such discovery shall be conducted consistent with the Federal Rules of Civil Procedure. The arbitrators shall have no power or authority to award punitive or exemplary damages. The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any award made may be confirmed in any court having jurisdiction. Any arbitration shall be confidential, and except as required by law (including Wisconsin Statutes sections 19.21 to 19.39, Public Records Law), neither party may disclose the content or results of any arbitration hereunder without the prior written consent of the other parties, except that disclosure is permitted to a party's auditors and legal advisors.

5. **CHOICE OF LAW.** The construction, interpretation, and enforcement of this Agreement shall be governed by the substantive contract law of the State of Wisconsin without regard to its conflict of laws provisions. It is the intention of the parties that the Limitation of Liability paragraph above shall be enforceable and the parties believe that the clause is enforceable under Wisconsin law. In the event that the Limitation of Liability clause is not enforceable, then the parties agree that New York law, and not Wisconsin law shall apply. In the event any provision of this agreement is unenforceable as a matter of law, the remaining provisions will stay in full force and effect.

6. **THIRD PARTY DISTRIBUTION.** Milliman's work is prepared solely for the use and benefit of Client in accordance with its statutory and regulatory requirements. Milliman recognizes that materials it delivers to Client may be public records subject to disclosure to third parties, however, Milliman does not intend to benefit and assumes no duty or liability to any third parties who receive Milliman's work in this fashion. To the extent that Milliman's work is not subject to disclosure under applicable public records laws, Client agrees that it shall not disclose Milliman's work product to third parties without Milliman's prior written consent.

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

Addendum A
Milliman Consulting Services Agreement
MPS RFP 719
Milliman Proposal dated March 25, 2011

8. **INDEMNIFICATION OF CLIENT.** Milliman shall defend, indemnify, and hold Client, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees) from third party claims for injury, or damages arising out of performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent acts or omissions of Milliman, its officers, employees, or agents. Milliman will accept the tender of defense of any claim falling within the scope of this indemnification provision.

RFP 719

HIPAA BUSINESS ASSOCIATE AGREEMENT

The Milwaukee Board of School Directors (hereinafter "Client"), in its role as plan sponsor (the "Plan Sponsor") has advised Milliman, Inc. (hereinafter "Company") that certain elements of the data that Company accesses, creates and/or receives for on behalf of Plan Sponsor is Protected Health Information ("PHI") as that term is defined in HIPAA. Therefore, the parties have incorporated this Appendix to the Agreement to provide for the treatment and protection of such PHI as required by HIPAA. Whenever used in this Appendix, other capitalized terms shall have the respective meaning set forth below, unless a different meaning shall be clearly required by the context. In addition, other capitalized terms used in this Appendix, but not defined herein, shall have the same meaning as those terms are defined in the Privacy Rule, the Security Rule or, if applicable, the Agreement.

Definitions.

For purposes of this Appendix:

- "Covered Entity" will have the same meaning as the term "covered entity" is defined in 45 C.F.R. §164.103.
 - "Data Aggregation" will have the same meaning as the term "data aggregation" is defined in 45 C.F.R. §164.501.
 - "Designated Record Set" will have the same meaning given to the term "designated record set" in 45 C.F.R. 164.501.
 - "Electronic PHI" will have the same meaning given the term "electronic protected health information" in 45 C.F.R. 160.103.
 - "HIPAA" will mean the Health Insurance Portability and Accountability Act of 1996, as amended from time to time.
 - "HITECH" will mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub.L.111-5).
 - "Individual" will have the same meaning as the term "individual" in 45 C.F.R. §160.103 and will include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
 - "Privacy Rule" will mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
 - "Protected Health Information" will have the same meaning as the term "protected health information" in 45 C.F.R. §160.103, limited to the information created or received by Company from or on behalf of the Plan Sponsor.
 - "Representative" will include Company's managing members (as applicable), trustees, general partners (as applicable) and financial and legal advisors.
 - "Required by Law" will have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
 - "Secretary" will mean the Secretary of the Department of Health and Human Services or his designee.
 - "Security Rule" will mean the Security Standards at 45 C.F.R., Parts 160 and 164, Subpart C.
1. Company Responsibilities. To fulfill its obligations under the Privacy Rule, Company agrees to do the following:
- (a) Company may use or disclose PHI, provided that such use or disclosure of PHI would not violate the Privacy Rule, as follows: (1) as permitted or required in this Appendix or for the purposes set forth in the Agreement; (2) as Required by Law; (3) for the proper management and administration of Company; (4) to fulfill any present or future legal responsibilities; (5) for Data Aggregation services to Plan Sponsor; or (6) any use and disclosure of PHI that has been de-identified within the meaning of 45 C.F.R. § 164.514;
 - (b) Use all appropriate safeguards to prevent the unauthorized use or disclosure of PHI;
 - (c) Ensure that any agent, including a subcontractor, to whom it provides PHI agrees to the same restrictions and conditions that apply through this Appendix to Company with respect to such information;

- (d) Provide access, at the written request of the Plan Sponsor, and in the time and manner designated by Plan Sponsor, to PHI in a Designated Record Set (as defined in 45 CFR § 164.501), to the Plan Sponsor, or as directed by the Plan Sponsor, to an Individual in order to meet the requirements under 45 CFR § 164.524; At the written request of the Plan Sponsor, make amendments to PHI that it maintains in a Designated Record Set as directed by the Plan Sponsor and to incorporate any amendments to PHI in accordance with 45 CFR § 164.526. Company shall have the right to charge the Individual a reasonable cost-based fee, as permitted by 45 C.F.R. § 164.524. Company assumes no obligation to coordinate the provision of PHI maintained by other agents or subcontractors of the Plan Sponsor or business associates of the Plan Sponsor's Group Health Plan ("GHP");
 - (e) Make its internal practices, books, and records, including without limitation its policies and procedures and PHI, relating to services provided under the Agreement available to Plan Sponsor, or upon its request to the Secretary of Health and Human Services, for purposes of the Secretary determining Plan Sponsor's compliance with Privacy Rule;
 - (f) Document disclosures of PHI and information related to such disclosures as would be required for Plan Sponsor to respond to an Individual's request for an accounting of such disclosures in accordance with the Privacy Rule (with records of disclosures indicating the date of disclosure, the name of the recipient and address if known, a brief description of PHI disclosed, and a brief statement of the purpose and basis of the disclosure), and provide such information in the time and manner requested by Plan Sponsor;
 - (g) Request, use or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.
 - (h) Report to the Plan Sponsor any use or disclosure of Protected Health Information otherwise than as provided by this Agreement within ten days of becoming aware of such use or disclosure and to use reasonable efforts to mitigate any harmful effect.
2. Required Notice to Company. In accordance with 45 C.F.R. §164.520, and to the extent that such a limitation may affect Company's use or disclosure of Protected Health Information, the Plan Sponsor will notify Company in writing of any limitation(s) in its notice of privacy practices, including, without limitation, any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information. Plan Sponsor will also notify the Company in writing of any restriction to the use or disclosure of Protected Health Information that Plan Sponsor has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Company's use or disclosure of Protected Health Information.
3. Disclosure to Employees of the Plan Sponsor.
- (a) Plan Sponsor acknowledges and agrees that Company shall only disclose PHI in its possession to employees who are identified in Plan Sponsor's Group Health Plan documents ("Designated Persons") in accordance with 45 C.F.R. § 164.504(f), and that such disclosures are solely for purposes of carrying out plan administration functions that the Plan Sponsor performs for its Group Health Plan. Plan Sponsor agrees to timely notify Company in writing of any changes to the names or positions of employees listed in subsection 3(a) as Designated Persons. Company shall have no duty to inquire whether the list of Designated Persons is accurate.
 - (b) Plan sponsor further acknowledges and agrees that its Group Health Plan documents have been amended in accordance with 45 C.F.R. §164.314(b) to incorporate the required Security Rule safeguards.
4. Security of Electronic PHI.
- (a) *Security.* Company will establish and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI. Company will follow generally accepted system security principles and the requirements of the Security Rule, as soon as practicable, but no later than April 21, 2005.
 - (b) *Agents and Subcontractors.* Company will ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect that information.

- (c) *Security Incidents.* Company will report any security incident of which it becomes aware to Client. For purposes of this Appendix, a "security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Company.
5. Term/Termination.
- (a) *Term.* This Agreement shall be effective as of the later of (1) April 14, 2003, with respect to the Privacy Rule; (2) the effective date of the Agreement; or (3) April 21, 2005, with respect to the Security Rule and February 17, 2010 with respect to requirements of HITECH set forth in Section 7 of this Appendix, and shall terminate as provided in Section 5(b) or upon thirty (30) days written notice by the Plan Sponsor or Company.
- (b) *Termination for Cause.* Upon Plan Sponsor's knowledge of a material breach of this Appendix by Company, the Plan Sponsor shall either:
- (1) Provide an opportunity for Company to cure the breach or end the violation and terminate this Appendix and the Agreement if Company does not cure the breach or end the violation within the time specified by the Plan Sponsor; or
 - (2) Immediately terminate this Appendix and the Agreement if Company has breached a material term of this Appendix and cure is not possible; or
 - (3) If neither termination nor cure is feasible, Plan Sponsor shall report the violation to the Secretary.
- (c) *Effect of Termination.*
- (1) Upon termination of this Appendix and the Agreement, for any reason, Company shall return or destroy all Protected Health Information received from Plan Sponsor, or created or received by Company on behalf of Plan Sponsor. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Company. Company shall retain no copies of the Protected Health Information.
 - (2) In the event that Company determines, in its sole discretion, that returning or destroying the Protected Health information is infeasible, Company shall provide to Plan Sponsor notification of the conditions that make return or destruction infeasible. In the event that Company determines that return or destruction of the Protected Health Information is infeasible, Company will continue to extend the protections of this Appendix to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Company maintains such Protected Health Information.
6. No Third Party Beneficiaries. Nothing express or implied in this Appendix or the Agreement is intended to confer, nor shall anything herein confer, upon any person other than Plan Sponsor, Company and their respective successors or assigns, any rights, remedies or obligations whatsoever.
7. Requirements of HITECH, Effective February 17, 2010:
- (a) The provisions of sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements) of Title 45, Code of Federal Regulations the Security Rule, shall apply to the Company in the same manner that such sections apply to a Covered Entity.
 - (b) The additional requirements of Title XXXIII of HITECH contained in Public Law 111-005 that relate to security and that are made applicable with respect to Covered Entities shall also apply to the Company and shall be and by this reference hereby are incorporated into this Agreement.

(c) The Company may use and disclose Protected health Information that the Company obtains or creates only if such use or disclosure, respectively, is in compliance with each applicable requirements of Section 164.504(e) of Title 45, Code of Federal Regulations, the Privacy Rule, relating to business associate contracts. The additional requirements of Subtitle D of HITECH contained in Public Law 111-005 that related to privacy and that are made applicable with respect to Covered Entities shall also be applicable to the Company and shall be and by this reference hereby are incorporated into this Appendix.

(d) The Company acknowledges that under HITECH, HIPAA's civil and criminal administrative simplification penalties for data security and privacy also apply to the Company while acting as a Business Associate under this Appendix, to the same extent as those penalties apply to Covered Entities.

8. Indemnification. The Company agrees to indemnify, defend, and hold harmless the Plan Sponsor and each of its employees and officers, (each an "Indemnified Party"), against any and all losses, liabilities, costs, fines, penalties, and expenses (including attorney's fees) the Indemnified Party may incur arising out of or in connection with any violation by the Company of any of the provisions of this Agreement, or breach of any warranty or representation made by the Company herein, or from any negligent or wrongful acts or omissions of the Company. The Company agrees to accept the tender of defense of any claim or action falling within the scope of this indemnity.

The Plan Sponsor agrees to indemnify, defend, and hold harmless the Company against any and all losses, liabilities, costs, fines, penalties, and expenses (including attorney's fees) the Company may incur arising out of or in connection with any action taken at the direction of the Plan Sponsor pursuant to sections 2 and 3 of this Agreement, to the extent that such direction is inconsistent with the determinations and actions of the Company pursuant to its obligations under sections 1 and 4 of this Agreement.

9. Modifications and Amendments. The parties hereto agree to take such action as is necessary to amend this Appendix from time to time as necessary for the GHP to comply with the requirements of the Privacy Rule, the Security Rule and HIPAA. Otherwise, the terms and provisions of this Appendix may be modified or amended only by written agreement, following the procedures provided in the Agreement, executed by the parties hereto and any such amendment will comply with the requirements of the Privacy Rule and HIPAA.

IN WITNESS WHEREOF AS EXECUTED BY THE MILWAUKEE BOARD OF SCHOOL DIRECTORS PROFESSIONAL SERVICES AGREEMENT WITH MILLIMAN, INC. DATED JULY 1, 2011, Plan Sponsor, for and on behalf of GHP, and Company agree that this Addendum is to be effective on July 1, 2011.