

**CONSULTING AGREEMENT BETWEEN
THE DELAWARE INSURANCE COMMISSIONER, ON BEHALF OF THE
DEPARTMENT OF INSURANCE OF THE STATE OF DELAWARE AND MILLIMAN,
INC.**

THIS AGREEMENT, by and between the Delaware Insurance Commissioner (the “Commissioner”), on behalf of the Department of Insurance (the “DOI”) of the State of Delaware (“Delaware”) and Milliman, Inc. (“Milliman”) to provide actuarial services regarding the Delaware Compensation Rating Bureau (the “DCRB”) Residual Market Rate and Voluntary Market Loss Cost filing is effective as of September 24, 2014;

WHEREAS, the Commissioner is authorized and empowered, pursuant to 18 *Del. C.* §307(b), to contract for and procure independent consulting services; and

WHEREAS, Milliman is engaged in the business of providing consulting services regarding actuarial analysis; and

WHEREAS, Milliman submitted a proposal on August 8, 2014 (the “Proposal”), a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference;

WHEREAS, as detailed in the Proposal, Milliman is among the world’s largest independent actuarial and consulting firms and is a leading provider of workers’ compensation consulting services to public and private agencies nationwide. Accordingly, Milliman has the necessary depth, experience and expertise to provide the services requested herein;

WHEREAS, the DOI desires to retain Milliman to render services to the DOI on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the promises, mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby

acknowledged, Delaware, on behalf of the DOI, and Milliman (collectively, the “Parties”) agree as follows:

1. Statement of Work

Milliman shall provide the following services (the “Services”) to the DOI:

- 1.1 Milliman will analyze and present written findings regarding the reasonableness of the Delaware Workers Compensation’s overall state-wide residual market rate change and overall state-wide voluntary market loss cost change filed by the DCRB.
- 1.2 With respect to its written findings, Milliman will:
 - (a) Independently calculate the indicated changes in residual market rates and voluntary market loss costs;
 - (b) Explain the derivation of its indicated rate and the differences between rate changes and those filed by the DCRB or by any other actuary reviewing the DCRB filing;
 - (c) If needed, assist in creating a request for supplemental information related to the DCRB filing;
 - (d) Independently review the medical and indemnity cost data underlying the DCRB filing;
 - (e) Participate in three, two hour public information sessions; and
 - (f) Provide supplemental reports or analyses as required by the DOI in consideration of additional charges approved in advance by the DOI.
- 1.3 Milliman will present its written findings within 10 days following receipt of the DCRB filing.
- 1.4 Milliman will testify at the DCRB hearing if requested by the DOI.

2. Payment for Services and Expenses

- 2.1 The term of this Agreement shall be from October 1, 2014 through October 1, 2015 unless earlier terminated. Extensions of this Agreement may be made by mutual written agreement of the parties.

- 2.2 Delaware will pay Milliman for the performance of the Services described in the Statement of Work above.
- 2.3 Delaware shall be obligated to pay Milliman at rates of \$600 per hour or less, plus reimbursement of reasonable expenses, not to exceed in the aggregate \$36,000.00 (the "Contract Amount"). Amounts over and above the Contract Amount may exceed \$36,000, but only upon further written agreement of the Parties and in no event shall equal or exceed \$50,000.00.
- 2.4 Milliman shall submit monthly invoices to the DOI in sufficient detail to support the Services provided during the previous month during the term of this Agreement. The DOI agrees to pay those invoices within thirty (30) days of receipt. If Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Milliman a detailed statement of Delaware's position regarding the disputed portion of the invoice within thirty (30) days of receipt. Milliman may charge the DOI a fee of up to twelve percent (12%) per annum for any undisputed invoice unpaid for 60 days.
- 2.5 Delaware is a sovereign entity and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency which may become due and payable as a consequence of this Agreement.
- 2.6 Invoices shall be submitted to:

DOI-Accounting@state.de.us.

With a copy to:

Alice Cabana, Administrative Officer
Delaware Department of Insurance
841 Silverlake Boulevard
Dover, DE 19904

3.0 Responsibilities of Milliman

- 3.1 Milliman shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all Services furnished by Milliman, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified Services, Milliman shall follow practices consistent with generally accepted professional and technical standards, standards promulgated by Delaware or as modified from time to time upon the mutual agreement of the parties during the term of this Agreement. If any Service or deliverable furnished pursuant to this Agreement does not materially conform to the standards set forth herein, Milliman shall, at its expense and at the option of the DOI either: (1) replace it with a conforming equivalent; or (2) modify it to materially conform to the standards set forth in this Agreement. Milliman shall be and remain liable to the DOI in accordance with the terms of this Agreement, including but not limited to the limitations set forth in Section 9.3, and applicable law for all direct damages to the DOI cause by Milliman's failure to ensure compliance with applicable professional actuary standards.
- 3.2 It shall be the duty of Milliman to assure that all deliverables are technically sound and its performance of the Services complies with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Milliman will not produce deliverables that violate or infringe on any intellectual

property rights of any third party. Milliman shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by Delaware of any deliverables or Services furnished by Milliman shall not in any way relieve Milliman of responsibility for the professional and technical accuracy and adequacy of its work. The DOI's review, approval, acceptance or payment for any of Milliman's Services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement or of any cause of action arising out of the performance of Services under this Agreement and Milliman shall be and remain liable in accordance with the terms of this Agreement, including but not limited to the limitations set forth in Section 9.3 of this Agreement, and applicable law for all direct damages to the DOI caused by Milliman's performance or failure to perform under this Agreement.

3.4 Milliman shall furnish to the DOI's designated representative copies of all deliverables relating to the DCRB rate filing.

3.5 Milliman shall not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.6 The rights and remedies of the DOI provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 Any delay of Services or change in sequence of tasks must be approved in writing by Delaware after discussion between the parties.

5. DOI's Responsibilities.

- 5.1 In connection with Milliman's provision of the Services, the DOI shall perform those tasks and fulfill those responsibilities as needed for Milliman to complete the Services.
- 5.2 The DOI agrees that its officers and employees will cooperate with Milliman in the performance of the Services under this Agreement and will be available for consultation with Milliman at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 5.3 The Services performed by Milliman under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members and shall so inform Milliman by written notice before the effective date of each such delegation.
- 5.4 The review comments of the DOI's designated representatives may be reported in writing as needed to Milliman. It is understood that the DOI's representative's review comments do not relieve Milliman from responsibility for professional and technical accuracy of all work delivered under this Agreement.
- 5.5 The DOI shall furnish to or make available for examination or use by Milliman as it may request, any data which the DOI has available needed to complete the actuarial review.
- 5.6 The DOI shall assist Milliman in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such

material is necessary for the completion of the Services specified by this Agreement.

5.7 Milliman will be responsible for accuracy of information or data supplied by the DOI or other sources to the extent such information or data would be relied upon by a reasonably prudent person subject to applicable professional actuary standards.

6. Work Product.

6.1 Except as otherwise set forth herein, all deliverables developed, prepared, completed or acquired by Milliman for the DOI relating to the Services shall become the property of the DOI and shall be delivered to the DOI's designated representative from time to time as requested by the DOI, but in any event no later than either the completion or termination of this Agreement.

6.2 Consultant 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 Consultant or developed during the course of the provision of the Services provided such generic documents or templates do not contain any DOI Confidential Information or proprietary data ("Consultant Tools"). Rights and ownership by Consultant of Consultant Tools shall not extend to or include all or any part of the DOI's proprietary data or DOI Confidential Information. To the extent that Consultant may include in the deliverables any Consultant Tools, Consultant agrees that the DOI shall be deemed to have a fully

paid up license to make copies of the Consultant Tools as part of its use of the deliverables for its internal business purposes and provided that such Consultant Tools cannot be modified or distributed outside the DOI without the written permission of Consultant, except as otherwise permitted herein. For the sake of clarity, this clause shall not apply to deliverables designed specifically for DOI.

6.3 The deliverables are prepared solely for the use and benefit of the DOI in accordance with its statutory and regulatory requirements. Milliman recognizes that deliverables it delivers to the DOI 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 deliverables and may include disclaimer language on its deliverables so stating. Milliman shall not be liable for damages, claims and losses arising out of any reuse of any deliverables on any other project conducted by the DOI. The DOI shall have the right to reproduce all documentation supplied pursuant to this Agreement without the express written permission of Consultant if (i) required by applicable law, including but not limited to the Delaware Freedom of Information Act); or (ii) requested by parties in this matter, DOI's professional service vendors or authorized representatives of other Delaware state agencies.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* §10001, et seq., (the "Delaware Freedom of Information Act"), Milliman shall preserve in confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of the Services under this Agreement. The confidentiality obligations of Milliman set forth above shall not apply to any

information of the DOI which: (i) was in the public domain at the time of the DOI's communication thereof to Milliman; (ii) enters the public domain through no breach of this provision subsequent to the time of the DOI's communication thereof to Milliman; (iii) was in Milliman's possession free of any obligation of confidentiality at the time of the DOI's communication thereof to Milliman; (iv) is developed by Milliman without reference to the information of the DOI; or (v) is required by law or regulation to be disclosed.

8. Warranty.

- 8.1 Milliman warrants that its Services will be performed in accordance with applicable professional standards.
- 8.2 Milliman agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

9. Indemnification; Limitation of Liability.

- 9.1 Milliman shall indemnify and hold harmless the DOI, its agents and employees from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the grossly negligence or intentionally wrongful conduct of Milliman, its agents or employees during the performance of Services hereunder, or (B) Milliman's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that Milliman shall have been notified promptly in writing by Delaware of any notice of such claim.
- 9.2 If the DOI promptly notifies Milliman in writing of a third party claim against the DOI and/or Delaware that any Services or deliverable infringes a copyright or a trade secret of any third party, Milliman will defend such claim at its expense and

will pay any costs or damages that may be finally awarded against the DOI and/or Delaware. Milliman will not indemnify Delaware, however, if the claim of infringement is caused by the DOI and/or Delaware's misuse or modification of the Services or deliverable.

- 9.3 Delaware agrees that Milliman's total liability to the DOI for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including, but not limited to contract liability or Milliman's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate exceed the amount of Milliman's professional liability insurance.
- 9.4 Milliman's obligations to indemnify Delaware as set forth in this Section shall survive the completion or termination of this Agreement.

10.1 Employees.

- 10.1 Milliman shall not have the right to subcontract without the prior written consent of the DOI which can be withheld in its sole discretion.
- 10.2 Except as the other party expressly authorizes in writing in advance, neither Milliman's Philadelphia Casualty practice nor the DOI shall solicit, offer work to, employ or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the Services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, member, employee or independent contractor and with which a party comes into direct contact in the course of the Services. The provisions of this section 10.2 do not restrict the right of either party to solicit or

recruit generally in the media and do not prohibit either party from hiring Personnel of the other who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by the hiring party.

11. Independent Contractor.

11.1 It is understood that in the performance of the Services, Milliman shall be, and is, an independent contractor, and is not an agent or employee of the DOI and shall furnish such Services in its own manner and method except as required by this Agreement. Milliman shall be solely responsible for, and shall indemnify, defend and hold the DOI harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions and regulations of any nature whatsoever.

11.2 Milliman acknowledges that Milliman and any subcontractors, agents or employees employed by Milliman shall not, under any circumstances be considered employees of the DOI and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. The DOI will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of the DOI or any of its officers, employees or other agents.

11.3 As an independent contractor, Milliman has no authority to bind or commit the DOI. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the Parties for any purpose.

12. Termination.

12.1 This Agreement may be terminated in whole or in part by either party if there is substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the termination party; but only after the other party is given:

- (a) Not less than 30 calendar days written notice of intent to terminate; and
- (b) An opportunity for consultation with the termination party prior to termination.

12.2 This Agreement may be terminated in whole or in part by the DOI for its convenience, but only after Milliman is given:

- (a) Not less than 30 calendar days written notice of intent to terminate; and
- (b) An opportunity for consultation with Delaware prior to termination.

12.3 Upon termination of the Agreement by the DOI, whether for fault or convenience, the DOI will pay Milliman that portion of the compensation which has been earned for Services performed as of the effective date of termination but:

- (a) No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- (b) Any payment due to Milliman at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Milliman's default.
- (c) Upon termination for default, the DOI may take over the work and prosecute the same to completion by agreement with another party or otherwise. If Milliman shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Milliman assigned to the

performance of the Agreement, notwithstanding the provisions of Section 10.2.

12.4 If after termination for failure of Milliman to fulfill contractual obligations it is determined that Milliman has not so failed, the termination shall be deemed to have been effected for the convenience of the DOI.

12.5 The rights and remedies of the DOI and Milliman provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

12.6 Gratuities.

- a. The DOI may, by written notice to Milliman, terminate this Agreement if it is found after notice and hearing by the DOI that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by Milliman or any agent or representative of Milliman to any officer or employee of the DOI with a view towards securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determination with respect to the performance of this Agreement.
- b. If this Agreement is terminated, the DOI shall be entitled to pursue the same remedies against Milliman it could pursue in the event of a breach of this Agreement by Milliman.
- c. The rights and remedies of the DOI provided in Section 12.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

13. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest extent the intent and agreements of the parties herein set forth.

14. Assignment; Subcontracts.

- 14.1 Any attempt by a party to assign or otherwise transfer its rights in this Agreement without the prior written consent of the other party shall be void. Such consent shall not be unreasonably withheld.
- 14.2 Services specified by this Agreement shall not be subcontracted by Milliman without prior written approval of the DOI. Delaware shall have the exclusive authority to approve or disapprove subcontractors and sub-subcontractors in its sole discretion.
- 14.3 Approval by the DOI of Milliman's request to subcontract or acceptance of or payment for subcontracted work by the DOI shall not in any way relieve Milliman of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.
- 14.4 Milliman shall be and remain liable for all damage to Delaware caused by negligent performance or non-performance of work under this Agreement by Milliman or any sub-subcontractor in accordance with this terms of this Agreement.
- 14.5 The compensation due shall not be affected by Delaware's approval of Milliman's request to subcontract.

15. Force Majeure.

Occurrence of force majeure does not fully remove liability of Parties for obligations under this Agreement. It merely suspends the Parties' or Party's obligation to perform for the duration of the delay.

16. Non-Appropriation of Funds.

16.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated, the DOI may immediately terminate this Agreement and absent such action this Agreement shall be terminated as to any obligation of the DOI requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds, effective upon receipt by Milliman of written notice of termination.

16.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and the DOI's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due, provided that the DOI has provided written notice to Milliman of such termination.

17. State of Delaware Business License

Milliman and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

18. Complete Agreement.

18.1 This Agreement shall constitute the entire agreement between the DOI and Milliman with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this Agreement supersede all prior oral and written quotations,

communications, agreements and understandings of the parties with respect to the subject matter of this Agreement as described in the Proposal.

- 18.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the Parties consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19. Miscellaneous Provisions.

- 19.1 In performance of this Agreement, Milliman shall comply with all applicable federal, state and local laws, ordinance, codes and regulations. Milliman shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.
- 19.2 This Agreement may not be modified or amended except by the mutual written agreement of the Parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party against which it is sought to be enforced.
- 19.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

- 19.4 Milliman covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services required to be performed under this Agreement. Milliman further covenants, to its knowledge and ability, that in the performance of the Services no person having any such interest shall be employed.
- 19.5 Milliman acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Milliman recognizes that if it refuses to hire or do business with an individual or company due to reasons or race, color, gender, ethnicity, disability, national origin, age, or any other protected status, the DOI may declare Milliman in breach of the Agreement, terminate the Agreement and designate Milliman as non-responsible.
- 19.6 Milliman warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the DOI shall have the right to annul this Agreement without liability or at its discretion deduce from the contract or price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 19.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.
- 19.8 Milliman shall maintain all public records, as defined by 29 Del. C. § 502(7), relating to this Agreement and the Services for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public

Records Law, 29 Del. C. Ch. 5. During the term of this Agreement, authorized representatives of the DOI may inspect or audit Milliman's performance and records pertaining to this Agreement at Milliman's office at a mutually agreeable time during normal business hours.

20. Insurance.

20.1 Milliman shall maintain the following insurance during the term of this Agreement and provide certificates of insurance within ten (10) days of execution of this Agreement:

- a. Worker's Compensation and Employer's Liability insurance in accordance with applicable law; and
- b. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, and
- c. Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
- d. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000.00 per occurrence; or
- e. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

20.2 Milliman shall provide forty-five (45) days written notice of cancellation or material change of any policies after they have been submitted to the DOI pursuant to this Agreement.

20.3 In no event shall Delaware be named as an additional insured on any policy required under this Agreement.

21. Assignment of Antitrust Claims.

As consideration for the award and execution of this Agreement by Delaware, Milliman hereby grants, conveys, sells, assigns and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under

the antitrust laws of the United States and the State of Delaware, relating to the particular deliverables or Services purchased or acquired by the DOI pursuant to this Agreement.

22. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal law has precedence. Milliman consents to jurisdiction and venue in the State of Delaware.

23. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO DELAWARE:

The Honorable Karen Weldin Stewart, CIR-ML
Delaware Department of Insurance
841 Silverlake Boulevard
Dover, DE 19904

With a copy to:

Jenifer Vaughn, Controller
Delaware Department of Insurance
841 Silverlake Boulevard
Dover, DE 19904

TO MILLIMAN:

Christopher Tait, FCAS, MAAA
Milliman
1550 Liberty Ridge Drive, Suite 200
Wayne, PA 19087

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE
DEPARTMENT OF INSURANCE**

Witness

Karen Weldin Stewart, CIR-ML
Delaware Insurance Commissioner

Date:

Date:

MILLIMAN, INC.

Witness

Christopher Tait, FCAS, MAAA

Date:

Date: