

**MILLIMAN, INC.  
BUSINESS ASSOCIATE AGREEMENT**

This BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is entered into effective the 20th day of November, 2015 by and between Accountable Care Options, LLC (“Client”) and Milliman, Inc. (“Milliman”).

**RECITALS**

A. Client is a Covered Entity as defined under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and is therefore subject to HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”), enacted as part of the American Recovery and Reinvestment Act of 2009, and the privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164, subparts A and E (“Privacy Rule”), the security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162, and 164, subpart C (“Security Rule”), and the breach notification standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. Subpart D (“Breach Notification Standards”) (collectively, HIPAA, HITECH, the Privacy Rule, Security Rule and Breach Notification Standards shall be referred to herein as the “HIPAA Regulations”).

B. Protected Health Information received from Client or created or received by Milliman on behalf of Client (“PHI”) may be needed for Milliman to perform the services (the “Services”) requested by Client and described in any underlying agreement between the parties (the “Underlying Agreement”).

C. To the extent Milliman needs to access PHI to perform the Services, it will be acting as a Business Associate of Client and will be subject to certain provisions of the HIPAA Regulations.

D. Milliman and Client wish to set forth their understandings with regard to the use and disclosure of PHI by Milliman so as to comply with the HIPAA Regulations.

**AGREEMENTS**

In consideration of the Recitals and the mutual agreements below, the parties agree as follows:

1. Defined Terms. Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations.

2. Milliman's Obligations and Permitted Activities.

(a) Milliman agrees to not use or further disclose PHI other than as required to perform the Services, requested by Client or Required By Law, or as otherwise permitted herein.

(b) Milliman agrees to use reasonable safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, and shall develop, implement, maintain and use appropriate administrative procedures, and physical and technical safeguards, to reasonably preserve and protect the confidentiality, integrity and availability of electronic PHI.

(c) Milliman agrees to report to Client, without unreasonable delay and in no case later than five (5) business days following actual knowledge by Milliman:

(i) Any use or disclosure of PHI not provided for by this Agreement.

(ii) Any Security Incident of which Milliman becomes aware; provided, however, that the parties acknowledge and agree that this section constitutes notice by Milliman to Client of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents of which no additional notice to Client 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 Client's electronic PHI.

(iii) Any Breach of Unsecured PHI, as defined in 45 CFR 164.402.

Following the initial notification of any such Breach, Milliman shall provide a report to Client that includes, to the extent possible: [A] a brief description of what happened, including the date of occurrence and the date of the discovery by Milliman; [B] a description of the PHI affected, including the names of any Individuals whose PHI has been or is reasonably believed to have been accessed, acquired or disclosed and the types of PHI involved (such as full name, social security number, date of birth, home address, account numbers, etc.); and [C] a brief description of what Milliman has done to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches. Milliman also shall provide to Client any other available information Client is required to include in its notification to affected Individual(s).

(d) Milliman agrees to ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Milliman agree to the same or substantially similar restrictions and conditions as those that apply to Milliman with respect to such PHI.

(e) Milliman shall make its internal policies, procedures and records relating to the use and disclosure of PHI reasonably available to the Secretary or to Client if necessary or required to assess Milliman's or the Client's compliance with the HIPAA Regulations.

(f) It is not anticipated that Milliman will maintain a Designated Record Set on behalf of Client; however, if Milliman maintains a Designated Record Set on behalf of Client, Milliman agrees to, at Client's written request: (i) provide access to such PHI in order to assist Client in meeting its obligations under the Privacy Rule, and (ii) make any amendment(s) to such PHI as Client so directs or agrees to pursuant to the Privacy Rule.

(g) So that Client may meet its disclosure accounting obligations under the HIPAA Regulations, Milliman agrees to document disclosures of PHI made by Milliman which are not excepted from disclosure accounting requirements under the HIPAA Regulations and to provide such an accounting to Client at Client's written request.

(h) To the extent that Milliman is engaged to carry out one or more of Client's obligations under the Privacy Rule, Milliman shall comply with such requirements that apply to Client in the performance of such obligations.

(i) Milliman may use PHI for Milliman's proper management and administration or to carry out its legal responsibilities. Milliman may disclose PHI for Milliman's proper management and administration, provided that: (i) Milliman obtains reasonable assurances from the person to whom PHI is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person; and (ii) the person notifies Milliman of any instances of which it is aware in which the confidentiality of PHI has been breached. Milliman also may make disclosures that are required by law.

(j) Milliman may use PHI to provide Data Aggregation services to Client as permitted by the Privacy Rule.

(k) Milliman may deidentify PHI in accordance with the requirements of the Privacy Rule; provided that all identifiers are destroyed or returned in accordance with this Agreement.

(l) Milliman may create a Limited Data Set for the purpose of providing the Services, provided that Milliman:

(i) Does not use or further disclose PHI contained in the Limited Data Set except as necessary to provide the Services or as provided for in this Agreement or otherwise Required By Law;

(ii) Uses appropriate safeguards to prevent the use or disclosure of PHI contained in the Limited Data Set other than as provided for by this Agreement;

(iii) Reports to Client any use or disclosure of PHI contained in the Limited Data Set of which Milliman becomes aware that is not provided for by this Agreement;

(iv) Ensures that any agents or subcontractors to whom it provides access to the Limited Data Set agree to the same restrictions and conditions that apply to Milliman under this Agreement; and

(v) Does not re-identify PHI or contact the individuals whose information is contained within the Limited Data Set.

**3. Client's Obligations.**

(a) Client shall not request Milliman to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Client.

(b) Client shall clearly and conspicuously designate all PHI as such before providing it to Milliman.

(c) Client acknowledges and agrees that neither this Agreement nor the Underlying Agreement requires Milliman to make any disclosure for which an accounting would be required under the HIPAA Regulations. Client further agrees that it shall be solely responsible for tracking and providing Individuals an accounting of any disclosures made by Client to Milliman.

(d) Client acknowledges and agrees that the provisions of section 2(l) of this Agreement shall constitute a Data Use Agreement between the parties.

**4. Term and Termination.**

(a) Term. This Agreement shall be effective as of the date first written above, and shall terminate when all PHI is destroyed or returned to Client. If Milliman determines, in accordance with subsection 4(c) below, that it is infeasible to return or destroy PHI, the protections of this Agreement with respect to such PHI shall remain in effect until such PHI is returned or destroyed.

(b) Termination. Upon Client's knowledge of a material breach by Milliman, Client shall either:

(i) Provide an opportunity for Milliman to cure the breach or end the violation and terminate this Agreement if Milliman does not cure the breach or end the violation within the time specified by Client; or

(ii) Immediately terminate this Agreement if Milliman has breached a material term of this Agreement and cure is not possible.

(c) Obligations of Milliman Upon Termination. Upon termination of this Agreement, for any reason, Milliman shall:

- (i) Retain only that PHI which is necessary for Milliman to continue its proper management and administration or to carry out its legal responsibilities;
- (ii) Return to Client or destroy the remaining PHI that Milliman still maintains in any form ("Remaining PHI");
- (iii) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section 4(c), for as long as Milliman retains the PHI;

- (iv) Not use or disclose the PHI retained by Milliman other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 2(h) above which applied prior to termination; and
- (v) Return to Client or destroy the PHI retained by Milliman when it is no longer needed by Milliman for its proper management and administration or to carry out its legal responsibilities.

(d) Infeasibility of Return or Destruction. If Milliman determines that returning or destroying the Remaining PHI is infeasible, the protections of this Agreement shall continue to apply to such PHI, and Milliman shall limit further uses and disclosures of PHI to those purposes that make the return or destruction infeasible, for so long as Milliman maintains such PHI.

## 5. Miscellaneous.

(a) 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.

(b) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time in order to ensure compliance with the requirements of the HIPAA Regulations and any other applicable law.

(c) Independent Contractors. Milliman and Client are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Milliman and Client. Neither Milliman nor Client 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.

(d) Conflicts. In the event that any terms of this Agreement are inconsistent with the terms of the Underlying Agreement, then the terms of this Agreement shall control.

(e) 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

MILLIMAN, INC.

[CLIENT]

By \_\_\_\_\_

  
ELECTRONIC  
SIGNATURE

By \_\_\_\_\_

Title Principal and Consulting Actuary

Title \_\_\_\_\_