

American Health Network, Inc.

Business Associate Contract

THIS CONTRACT ("Contract") is entered into this 1st day of May, 2014 by and between Milliman, Inc. ("Business Associate" with said term also including any of its directors, officers and employees) and American Health Network, Inc. and all/or any its members, parents, subsidiaries and affiliates (all referred hereinafter as "AHN"). (Both parties may be referred to as "the Parties.") Business Associate agrees to provide services to AHN in the nature of: (REQUIRED INFORMATION):

a) Describe "Services" are to be provided in detail, including what PHI will be used/disclosed/accessed,

Perform analytics on the EMR data in the NextGen system for AHN's internal use.

[Or, Check if applicable] _____ Exhibit A – Contract(s) entitled: _____

b) Name, Title and Location of your AHN Contact: Ben Park, Jeff Yancey

c) Department /area/location services will be provided to: AHN CSO related to NextGen data _____

d) Describe what safeguards will be taken to prevent unauthorized use/disclosure (i.e., training of personnel, secure transportation, etc.) See Sections 2(a) and 4 below.

e) Commencing (date) _____, which will continue until terminated in accordance with Section 19 below.

1. Definitions. For purposes of this Contract, the following terms shall have the designated meanings.

- (a) *Breach* means, generally, the unauthorized acquisition, access, use or disclosure of Protected Health Information which compromises the security or privacy of such information.
- (b) *Designated Record Set* shall mean a group of records maintained by or for AHN that includes (i) the medical records and billing records about Individuals maintained by or for AHN; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for AHN to make decisions about Individuals. As used herein, the term "Record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for AHN.
- (c) *Electronic Media* shall mean:
 - (1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
 - (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dialup lines, private networks, and the physical movement of removable/transportable electronic storage media. (45 C.F.R. §160.103)
- (d) *Electronic protected health information* means information that comes within paragraphs (1)(j)(i) or (1)(j)(ii) of the definition of PHI as specified in this section.
- (e) *HIPAA* shall mean the Health Insurance Portability and Accountability Act of 1996 including any amendments thereof.
- (f) *HIPAA Transaction* shall mean Transactions as defined in 45 C.F.R. §160.103 of the Transaction Standards including any amendments thereof.
- (g) *Individual* shall mean the person who is the subject of the PHI, and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- (h) *Individually Identifiable Health Information* shall mean information that is a subset of health information, including demographic information collected from an Individual, and
 - (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - (2) relates to the past, present, or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (a) identifies the Individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.
- (i) *Privacy Rule* shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

- (j) *Protected Health Information (or "PHI")*, including electronic PHI, shall mean Individually Identifiable Health Information received from AHN or created or received by Business Associate on behalf of AHN that is (i) transmitted by Electronic Media; (ii) maintained in any medium constituting Electronic Media; or (iii) transmitted or maintained in any other form or medium.
- (k) *Secretary* shall mean the Secretary of the Department of Health and Human Services or designee.
- (l) *Security Incident* means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- (m) *Security Rule* shall mean the regulations with regard to security standards for health information to be promulgated by the Secretary pursuant to the authority granted by Title II, Subtitle F, Sec 263 of HIPAA.
- (n) *Unsecured Protected Health Information* is protected health information that is not secured through the use of a technology or methodology as specified by the Secretary in guidance that may be issued which may specify the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals.
- (o) (o) **Other Terms.** Other capitalized terms shall have the meaning ascribed to them elsewhere in this Contract, or, if no such definition is specified herein, shall have the same meaning as those terms in 45 CFR §§ 160.103, 164.304 and 164.501. Any reference to any Part, Subpart or section in the Code of Federal Regulations ("CFR") shall include any regulation issued thereunder regardless of the date of issue.

2. **Use & Disclosure of PHI.** AHN will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by AHN. AHN shall not provide Business Associate with more PHI than that which is minimally necessary for Business Associate to provide the services and, where possible, AHN shall provide any PHI needed by Business Associate to perform the Services in the form of a Limited Data Set, in accordance with the HIPAA Regulations. Business Associate shall not use or disclose PHI received from AHN in any manner that would constitute a violation of the Privacy and Security Rules, except that Business Associate may use or disclose PHI (i) for Business Associate's proper management and administrative services, or (ii) to carry out the legal responsibilities of Business Associate. Business Associate may also: use PHI to provide Data Aggregation services to AHN as permitted by the Privacy Rule; deidentify PHI for the purpose of providing the services to AHN in accordance with the requirements of the Privacy Rule, provided that all identifiers are destroyed or returned in accordance with this Contract; and create a Limited Data Set for the purpose of providing the Services to AHN, provided that Business Associate complies with its obligations under this Contract. Business Associate agrees to comply with applicable federal and state laws, including but not limited to the Privacy Rules. Business Associate shall in all cases:
- (a) Provide training to members of its workforce regarding the confidentiality requirements in the Privacy Rules and this Contract;
 - (b) Promptly notify AHN of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Contract or for a purpose not expressly permitted by the Privacy Rules;
 - (c) Promptly notify AHN of any Security Incident of which it becomes aware; provided, however, that the parties acknowledge and agree that this section constitutes notice by Business Associate to AHN of the ongoing existence and occurrence of attempted but Unsuccessful Security incidents of which no additional notice to AHN shall be required. Unsuccessful Security Incidents shall include, but not be limited to, pings and other broadcast attacks on Business Associate'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 AHN's electronic PHI; and
 - (d) Ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request may be disclosed.

Business Associate acknowledges that it shall be directly liable under HIPAA for making uses and disclosures of PHI that are not authorized by this Contract or required by law.

3. **Duty for Business Associate's Agents, Subcontractors and Other Third Parties (all "Third Party")** Business Associate agrees to ensure that any Third Party to whom it provides PHI received from AHN, or is created and received by Business Associate on behalf of AHN, agrees, prior to providing the PHI, to substantially the same restrictions and conditions that apply throughout this Contract to Business Associate with respect to such information to include, without limitation, the implementation of reasonable and appropriate safeguards to protect PHI. Such assurances shall be in writing and obtained prior to any disclosure of PHI to a Third Party. Such assurances shall include but not be limited to: (i) reasonable assurances that such PHI will be held confidential as provided pursuant to this Contract, and only disclosed as required by law or for the purposes for which it was disclosed to such Third Party; (ii) that such Third Party must promptly notify Business Associate of any breaches of the confidentiality of the PHI, to the extent it has knowledge of such breach; and (iii) that any use or disclosure of PHI by a Third Party that is inconsistent with the terms of this

Contract, and the business associate agreement entered into between Business Associate and the Third Party is a violation of law and shall result in liability to the Third Party.

In the event Business Associate knows of a pattern of activity or practice of a Third Party that constitutes a material breach or violation of the Third Party's obligation under the business associate agreement between Business Associate and the Third Party, Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful, terminate the business associate agreement.

4. **Safeguards Against Misuse of Information.** Business Associate agrees that it will implement appropriate Administrative, Physical and Technological safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Contract.
5. **Reporting of Disclosures of PHI.** Business Associate shall, within five (5) business days of becoming aware of an unauthorized disclosure of PHI, report any such disclosure to AHN.
6. **Duty of Business Associate to Provide Notification of Breach to AHN.** In the case of a Breach of Unsecured Protected Health Information Business Associate must notify AHN within five (5) business days of when the Business Associate learned of the Breach. Such notification shall include:
 1. A brief description of what happened, including the date of the Breach (if known) and the date of the discovery of the Breach.
 2. A description of the types of Unsecured PHI that was involved (i.e. names, social security numbers, date of birth, home address, account numbers, etc)
 3. Recommendations on steps affected individuals should take to protect themselves from potential harm resulting from the Breach.
 4. Description of what Business Associate is doing to mitigate the harm, protect against future Breaches, including imposition of appropriate sanctions on employees and or vendors.
 5. Contact information for AHN to ask questions and gain additional information, which will include a toll-free number, email address, website or postal address.
7. **Mitigation of Harm.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Contract or the Privacy Rule.
8. **Access to Information.** Where applicable, within five (5) business days of a request by AHN for access to PHI about an Individual contained in a Designated Record Set, Business Associate shall make available to AHN such PHI for so long as such information is maintained in the Designated Record Set. In the event any Individual requests access to PHI directly from Business Associate, Business Associate shall within five (5) days forward such request to AHN. Following receipt of such notice, AHN shall handle the request. The requested PHI shall be made available to AHN in electronic format, if so requested by AHN. Any decisions regarding the denial of access to the PHI requested shall be made by AHN.
9. **Amendments to PHI.** Where applicable, within five (5) business days of receipt of a request from AHN for amendment of an Individual's PHI or a record regarding an Individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526. In the event any Individual requests an amendment of an Individual's PHI directly from Business Associate, Business Associate shall within five (5) business days forward such request to AHN. Following receipt of such notice, AHN shall handle the request.
10. **Accounting of Disclosures.** Where applicable, within five (5) business days of receipt of a request from AHN for an accounting of disclosures of an Individual's PHI made by Business Associate that are not excepted from disclosure accounting requirements, Business Associate shall make available the information required to provide an accounting of disclosures to AHN as required by 45 C.F.R. §164.528. In the event any Individual requests an accounting of disclosures directly from Business Associate, Business Associate shall within five (5) days forward such request to AHN. Following receipt of such notice, AHN shall handle the request.
11. **Confidential Communications Requirements.** Where applicable, AHN must permit Individuals to request and must accommodate reasonable requests by Individuals to receive communications of PHI by alternative means or at alternative locations. Business Associate hereby agrees to communicate changes from the Individual to AHN and AHN will communicate to the Business Associate any reasonable requests.

12. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of AHN, available in a time and manner designated by AHN to the Secretary for purposes of determining AHN's and Business Associate's compliance with the Privacy Rules.
13. **Direct Liability.** To the extent Business Associate is to carry out one or more of AHN's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to AHN in the performance of such obligation(s).
14. **Electronic Transactions.** Where applicable, Business Associate hereby represents and warrants that to the extent it is transmitting any of the HIPAA Transactions for AHN, the format and structure of such transmissions shall be in compliance with the Transaction Standards, provided, it is AHN's responsibility to ensure that appropriate Code Sets are used in the coding of services and supplies. Business Associate shall indemnify and hold AHN harmless from any monetary penalties assessed against AHN arising from a breach of the representation and warranty contained in this Section, including reimbursing AHN for any out of pocket cost incurred by AHN as a result of an audit or investigation by the Secretary resulting from such Breach, which may include the reasonable costs of consultants and lawyers.
15. **Standards for Electronic Transactions**
Where applicable, in connection with the Services to be provided AHN pursuant to this Contract, Business Associate agrees that if it (or an agent or subcontractor) conducts an electronic transmission for which the Secretary has established a "standard transaction" under the Electronic Transactions Standards, Business Associate (or its agent or subcontractor) shall comply with the requirements of the Electronic Transactions Standards. Business Associate agrees that, in connection with the transmission of standard transactions, it will not (and will not permit any agent or subcontractor with which it might contract to):
- (a) change the definition, data condition, or use of a data element or segment in a standard;
 - (b) add any data elements or segments to the maximum defined data set;
 - (c) use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification; or
 - (d) change the meaning or intent of the standard's implementation specification(s).
- Business Associate understands and agrees that from time to time, HHS might modify the standard transactions now identified in 45 CFR §§ 162.1101 through 162.1802. Business Associate (and any agent or subcontractor) agrees to abide by any changes to such standard transactions that might be applicable to the Services to be supplied in connection with this Contract.
16. **Data Security.** Business Associate hereby represents and warrants that it shall implement technical, administrative, and physical safeguards and policies and procedures to comply with the Security Rule, which policies and procedures shall include the requirement that Business Associate conduct risk analyses that are accurate and thorough assessments of potential risks and vulnerabilities to the confidentiality, integrity, and availability of the electronic protected health information that Business Associate creates, receives, maintains or transmits. Business Associate acknowledges that it shall be directly liable under HIPAA for failing to safeguard electronic protected health information in accordance with the Security Rule.
17. **Indemnification.** The Parties agree to indemnify, defend and hold harmless each other (hereinafter referred to as "indemnified party,") against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of this Contract or of any warranty hereunder or from any negligence or wrongful acts or omissions related to its obligations under this Contract, including failure to perform its obligations under the Privacy Rule, by the indemnifying party. Accordingly, the indemnifying party shall reimburse any indemnified party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any indemnified party by reason of any suit, claim, action, proceeding or demand by any third party which results from the indemnifying party's breach hereunder. The Parties' obligation to indemnify any indemnified party shall survive the expiration or termination of this Contract for any reason.
18. **Term.** The term of this Contract shall be effective as stated above and shall terminate when all of the PHI provided by AHN to Business Associate, or created by the Business Associate on behalf of AHN, is destroyed or returned to AHN, or if it is infeasible to return or destroy PHI protections are extended to such information in accordance with the termination provisions of this Contract.
19. **Termination of Contract.** In addition to any other rights AHN may have in this Contract or by operation of law, AHN may terminate this Contract immediately if AHN determines that Business Associate has violated a material term of this Contract.

20. **Effect of Termination.**

- (a) Except as provided in paragraph (b) of this section, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from AHN, or created or received by Business Associate on behalf of AHN including information contained in any form, recorded on any medium or stored in any storage system, unless said information has been de-identified and is no longer PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- (b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to AHN notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Contract to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. AHN hereby acknowledges and agrees that infeasibility includes Business Associate's need to retain PHI for compliance with its work product documentation standards and that for such a retention no further notice or approval of AHN is required.

21. **Confidentiality of Business Information.**

Neither Party will publish or otherwise disclose to any other person or entity information related to this Contract, information related to the business operations of the other Party, or proprietary information belonging to the other Party ("Confidential Business Information") without the prior written consent of the other Party, except as may be necessary by reason of legal, accounting or regulatory requirements beyond the Parties' reasonable control; provided that the Party so required to disclose any such Confidential Business Information shall inform the other Party in order that the other Party may contest such requirement. Each Party hereby agrees that all Confidential Business Information communicated to it by the other Party, whether oral or written and whether before or after execution of this Contract, was and will be received in strict confidence, and will be used only for purposes set forth in this Contract or as necessary in the performance of responsibilities in the normal course of business or other agreement or arrangement documented in writing between the Parties. Upon termination of this Contract, each Party shall promptly return all such Confidential Business Information to the providing Party, or shall, upon the request of the providing Party, destroy such Confidential Business Information and certify as to such destruction; provided that Business Associate may retain one copy of the Confidential Business Information to comply with work product documentation standards. This obligation of confidentiality shall not apply to information:

- (a) which was known by the recipient without the obligation of confidentiality prior to its receipt of such information;
- (b) is or becomes publicly available without breach of this Contract;
- (c) is independently developed by the receiving Party without reference to the providing Party's Confidential Business Information; or
- (d) is received from a third party without an obligation of confidentiality and without breach of this Contract. Not Applicable to PHI. This Article shall not be applicable to PHI. Uses, disclosures, and disposition of PHI shall be governed by the remaining Articles of this Contract.

22. **Miscellaneous**

- (a) Compliance with Changes in the Laws, Modifications. Business Associate agrees to comply with any changes that are made in the HIPAA Privacy Rule, the Security Rule or the Electronic Transactions Standards, as applicable to Business Associate, including but not limited to, any provision requiring Business Associate to become directly subject to said Rules and/or Standards. In the event of passage of a law or promulgation of a regulation or an action or investigation by any regulatory body which would prohibit the relationship between the Parties, or the operations of either Party with regard to the subject of this Contract, the Parties shall attempt in good faith to renegotiate the Contract to delete the unlawful provision(s) so that the Contract can remain effective. If the Parties are unable to renegotiate the Contract within thirty (30) days, the Contract shall terminate immediately upon written notice of either Party. Any modifications to this Contract shall be valid only if such modifications are in accordance with the Rules or Standards, are made in writing, and are signed by a duly authorized agent of both Parties
- (b) Survival. The respective rights and obligations of Business Associate under Section 20 of this Contract shall survive the termination of this Contract.
- (c) Interpretation. Any ambiguity in this Contract shall be resolved in favor of a meaning that permits the Parties to comply with the Privacy and Security Rules.
- (d) Assignment. This Contract shall be binding upon and inure to the benefit of the respective legal successors of the Parties. Neither this Contract nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of the other Party.

- (e) Property Rights. As between the Parties, all PHI shall be and remain the exclusive property of AHN. Business Associate agrees that it acquires no title or rights to PHI as a result of this Contract.
- (f) Right to Cure. Business Associate agrees that AHN has the right, but not the obligation, to cure any and all breaches of Business Associate's privacy, security and confidentiality obligations under this Contract. Any out-of-pocket expenses or costs or fines associated with AHN's cure of Business Associate's breach(es) shall be borne solely by Business Associate.
- (g) Injunctive Relief. Business Associate agrees that breach of the terms and conditions of this Contract may cause irreparable harm for which there exists no adequate remedy at law. AHN retains all rights to seek injunctive relief to prevent or stop any breach of the terms of this Contract, including but not limited to the unauthorized use or disclosure of PHI by Business Associate or any agent, contractor or third party that received PHI from Business Associate.
- (h) Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Indiana to the extent that the provisions of HIPAA or the Privacy Rule do not preempt the laws of the State of Indiana.
- (i) Notice. Any notice required or permitted to be given by either Party under this Contract shall be sufficient if in writing and hand delivered (including delivery by courier) or sent by postage prepaid certified mail return receipt requested, as follows:

American Health Network:	Business Associate:
Privacy Officer	HIPAA Compliance Officer
American Health Network, Inc.	Milliman, Inc.
10689 N. Pennsylvania Street	111 Monument Circle
Suite 200	Suite 601
Indianapolis, Indiana 46200	Indianapolis, Indiana 46204
(317) 580-6306	(317) 639-1000

- (j) Severability. The Parties agree that if a court determines, contrary to the intent of the Parties, that any of the provisions or terms of this Contract are unreasonable or contrary to public policy, or invalid or unenforceable for any reason in fact, law, or equity, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining provisions and terms of this Contract. Should any particular provision of this Contract be held unreasonable or unenforceable for any reason, then such provision shall be given effect and enforced to the fullest extent that would be reasonable and enforceable.
- (k) Waiver of Breach of Contract Term. No failure or delay by either Party in exercising its rights under this Contract shall operate as a waiver of such rights, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach.
- (l) Titles. Titles or headings are used in this Contract for reference only and shall not have any effect on the construction or legal effect of this Contract.
- (m) Independent Contractors. For purposes of this Contract, AHN and Business Associate are and will act at all times as independent contractors. None of the provisions of this Contract shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the Parties.
- (n) No Third Party Beneficiaries. It is expressly not the intent of the Parties to create any independent rights in any third party or to make any third party beneficiary of this Contract and no privity of contract shall exist between third parties and each Party.
- (o) Entire Contract. This document, together with any exhibits, amendments and/or addenda that may be mutually agreed-upon and executed by both parties, constitutes the entire agreement of the Parties and supersedes all prior oral and written agreements or understandings between them with respect to the matters provided for herein.

IN WITNESS WHEREOF, the signatories below acknowledge they have the authority to execute this Contract on behalf of the parties on the day and year first above written.

Business Associate:
Milliman, Inc.

Art Wilmes
Signed

Arthur L. Wilmes
Printed

Date: May 30, 2014

American Health Network Inc.:

Susan B May
Signature of Privacy Officer

Susan B May
Printed

Date: May 13, 2014