PRM ANALYTICS SOFTWARE LICENSE AGREEMENT
(Short-Term Evaluation Use Only)

This PRM Analytics Software License Agreement ("Agreement") is entered into and made effective as of March 6, 2018, between Milliman, Inc. ("Milliman") and Payformance Solutions, Inc., a Delaware corporation ("Customer"). In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1   LICENSE

1.1   License Grant. Subject to the terms of this Agreement, Milliman hereby grants to Customer a non-exclusive, non-transferable license to access and use PRM Analytics, including but not limited to, all software, hardware and other technology used or made available by Milliman in connection with PRM Analytics ("Software" or "Product"), solely for the internal use and evaluation of the Software during the term of this Agreement by no more than the number of authorized users specified in the attached Exhibit A. The Software is web-based and will be hosted and managed by Milliman. Access to the Software shall be provided to Customer solely over the internet.

1.2   License Limitations. Except as expressly set forth in this Agreement, Customer shall not directly or indirectly do any of the following: (i) sublicense any rights granted under this Agreement; (ii) use the Software for any purpose other than as expressly set forth in this Agreement; (iii) permit any third party to use or have access to the Software without the prior written approval of Milliman and without adequate intellectual property right notices and agreements which preserve Milliman's rights in such items and all associated intellectual property rights; (iv) modify or prepare derivative works of the Software; (v) reverse engineer, decompile, disassemble, or otherwise create, or attempt to create, or assist others to create, the Software or any product functionality equivalent to the Software; or (vi) remove, obscure, or alter any intellectual property right or confidentiality notices or legends appearing in or on the Software. Notwithstanding the above, Customer may permit access to the Software to third party contractors, Customer's affiliates and parent organizations, provided that: (a) Customer shall ensure that all such parties' use and access to the Software is in compliance with the terms of this Agreement; (b) all such parties shall be under a written confidentiality agreement with Customer similar to the terms of this Agreement; and (c) Customer shall be and remain liable for any breach of the terms of this Agreement by its contractors, affiliates, or parent entities. The Software is and shall remain the sole and exclusive property of Milliman and its third party suppliers, whether the Software is separate or combined with any other products or services.

1.3   Customer Data. Customer hereby authorizes Milliman to use data specifically pertaining to Customer and/or its employees, agents and customers that Milliman may obtain in the course of performing the services under this Agreement (the "Customer Data"). Customer warrants and covenants that, throughout the term of this Agreement, (i) Customer has the right to authorize Milliman's use of the Customer Data as set forth in this Agreement; and (ii) the Customer Data is valid and accurate in all material respects. To the extent that Customer Data includes Protected Health Information as defined under HIPAA, Customer and Milliman agree to execute a Business Associate Agreement as required by applicable regulation.

2   FEES AND PAYMENT TERMS

2.1   Fees. Customer hereby agrees to pay the fees specified in the attached Exhibit A when due as set forth therein. Except as otherwise expressly set forth in this Agreement or any Exhibit hereto, Milliman will invoice Customer for amounts to be paid hereunder, and Customer will pay the amounts described in each invoice upon execution of this Agreement. In addition to the fees and other charges required to be paid by Customer to Milliman hereunder, Customer shall pay (or, at Milliman's election, reimburse Milliman) for all applicable national, state, and local taxes, assessments, and withholding requirements that may be due in connection with the transactions contemplated by this Agreement (excluding taxes based on Milliman's net income or its authority to do business within a given jurisdiction).

3   CONFIDENTIALITY

3.1   Confidential Information. By virtue of this Agreement, each party hereto may disclose to the other party information that is confidential and otherwise proprietary. Subject to the exceptions listed below, a

party's "Confidential Information" shall be defined as information disclosed by the party to the other party under this Agreement and clearly marked or otherwise clearly designated as "confidential" or information disclosed by one party that should be reasonably understood by the other party to be confidential information of the other party. The Software shall be the Confidential Information of Milliman under this Agreement. However, Confidential Information of a party shall not include any information that: (i) is or becomes a part of the public domain through no act or omission of the other party; or (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; or (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party by employees or agents without access to the party's Confidential Information.

3.2 <u>Confidential Treatment</u>. Each party agrees, during the term of this Agreement and after its expiration or termination, to hold the other party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties not authorized by the disclosing party to receive such Confidential Information, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each party agrees to take reasonable steps to protect the other party's Confidential Information and to ensure that such Confidential Information is not disclosed, distributed or used in violation of the provisions of this Agreement. The foregoing prohibition on disclosure of Confidential Information shall not apply to the extent certain Confidential Information is required to be disclosed by the receiving party as a matter of law or by order of a court, provided that the receiving party uses reasonable efforts to provide the disclosing party with prior notice of such obligation to disclose and reasonably assists in obtaining a protective order therefor.

3.3 <u>Period of Protection</u>. The "Period of Protection" during which Confidential Information received pursuant to this Agreement will be subject to an obligation of confidentiality and protection, and subject to restrictions on handling, disclosure and use, will begin on the date of disclosure and end ten (10) years thereafter, provided that any Confidential Information which is a trade secret as defined under applicable law shall be protected indefinitely.

3.4 <u>ID Codes and Password</u>. Customer shall ensure the confidentiality of its corporate identification codes, user identification codes, and user passwords used in connection with the Product ("ID Codes"). Customer shall be responsible for all transactions entered through and under any ID Codes, and any such transactions will be deemed to be made by Customer. In no event will Milliman be liable for the foregoing obligations or the failure by Customer to fulfill such obligations.

3.5 <u>Publicity</u>. Customer shall not refer to the Product in any communications with third parties, with the exception of its affiliates or parent organizations. In particular, without limiting the foregoing, Customer shall not refer to the Product as the basis or source for decisions related to the management of an individual patient, and Customer shall be and remain liable should its affiliates or parents make any such reference. Neither party shall refer to the identity of the other party in any third party disclosures, including without limitation promotional material or press releases relating to the Product, unless the prior written consent of the other party has been obtained, provided, however, Customer may refer to the identity of Milliman or to the use and functionality of the Product to its affiliates and parent organizations.

4   **NO WARRANTIES; LIMITATION OF LIABILITY**

4.1 <u>No Warranties</u>. THE SOFTWARE AND ACCOMPANYING MATERIALS ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND. MILLIMAN (INCLUDING ITS THIRD PARTY SUPPLIERS) SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SOFTWARE, SERVICES OR ANY OTHER ITEM COVERED BY OR FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY (i) OF MERCHANTABILITY, (ii) OF FITNESS FOR A PARTICULAR PURPOSE, OR (iii) ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

4.2 <u>Limitation of Liability</u>. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR LOSS OR DAMAGE CAUSED BY, RELATED TO, OR ARISING FROM ANY ACT OR OMISSION OF MILLIMAN (OR THIRD-PARTY SUPPLIERS) IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OR LEGAL THEORY OF THE ACTION, WHETHER ARISING IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF MILLIMAN HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME AND

REGARDLESS OF FORESEEABILITY, SHALL BE THE RECOVERY OF ACTUAL DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT OF ALL FEES CHARGED HEREUNDER WHICH WERE ACTUALLY PAID TO MILLIMAN BY CUSTOMER. HOWEVER, IN NO EVENT SHALL MILLIMAN (OR THIRD-PARTY SUPPLIERS) BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF USE, DATA, PROFIT, BUSINESS, REVENUE, OR GOODWILL, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, EVEN IF MILLIMAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

4.3   Disclaimer. THE PRODUCT IS NOT A CLINICAL TOOL AND DOES NOT CONSTITUTE GUIDANCE FOR THE PRACTICE OF MEDICINE. WITHOUT LIMITING THE DISCLAIMER OF WARRANTIES AND REPRESENTATIONS SET FORTH ABOVE, MILLIMAN DISCLAIMS ANY WARRANTY THAT THE PRODUCT CONSTITUTES REASONABLE OR ORDINARY CARE IN THE PROVISION OF HEALTH CARE SERVICES TO ANY INDIVIDUAL PATIENT.

5   TERM AND TERMINATION

5.1   Term. Unless earlier terminated as provided herein, the terms of this Agreement and the evaluation of the Software shall terminate One-hundred and twenty (120) days from the date the Customer first obtains access to the data and reports subject to this Agreement.

5.2   Termination for Convenience. Either party may terminate this Agreement, for any reason or no reason whatsoever, by delivering a written notice of termination to the other party at least five (5) business days before the desired effective date of such termination.

5.3   Duties Upon Termination; Survival. Upon the expiration or termination of this Agreement, Customer shall immediately cease use of the Software and Confidential Information of Milliman and shall return to Milliman the original and all copies of the Confidential Information of Milliman, or furnish to Milliman a certified executed document stating that the same has been destroyed. Termination of this Agreement shall not be construed to waive or release any claim which a party is entitled to assert at the time of such termination, and the applicable provisions of this Agreement shall continue to apply to such claim until it is resolved. The terms of Sections 1.2, 3, 4, 5, 6, 7 and 8 shall survive the termination of this Agreement for any reason.

6   NOTICES

All notices hereunder by either party shall be given by personal delivery (including reputable courier service), fees prepaid, or by sending such notice by United States certified mail return receipt requested, postage prepaid, and addressed as set forth on the signature page of this Agreement. Such notices shall be deemed to have been given and delivered upon receipt or attempted delivery (if receipt is refused), as the case may be, and the date of receipt identified by the United States Postal Service on any return receipt card shall be conclusive evidence of receipt. Notices also may be sent by facsimile transmission, which shall be deemed received when transmitted if: (i) a document is electronically generated by the transmitting machine confirming that the transmission was received; and (ii) the party transmitting the notice also sends such notice the same day by any of the other notice methods described above. Any party, by written notice to the other as above described, may alter the address for receipt by it of written notices hereunder.

7   DISPUTES

All disputes arising out of or relating to this agreement shall be resolved in accordance with the provisions of this Section. First, the disputing party shall give the other party written notice of the dispute, and the parties will attempt in good faith to resolve such dispute within thirty (30) days after receipt of such notice by negotiations between senior executives of the parties who have settlement authority. If the dispute has not been resolved within such thirty (30) day period, the parties agree to try in good faith to settle the dispute voluntarily with the aid of an impartial mediator who will attempt to facilitate negotiations. The mediator will be selected by agreement by the parties. If the parties cannot agree on a mediator, a mediator will be designated by the American Arbitration Association at the request of a party. The mediation will be treated as a settlement discussion and therefore will be confidential. Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties. In the event the parties are unable to resolve a dispute

through mediation as set forth above, 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 thirty (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, 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.

8   MISCELLANEOUS

This Agreement: (i) shall be governed by, subject to, and interpreted in accordance with the laws of the state of New York, without regard to conflict of laws principles; (ii) constitutes the entire agreement between Customer and Milliman regarding the subject matter hereof; (iii) may not be assigned or transferred by either party without the prior written permission of the other party; (iv) may be executed and delivered by facsimile transmission or hard copy and in one or more counterparts, each of which taken together shall constitute a single instrument. Failure to enforce any term or condition of this Agreement shall not be a waiver of the right to later enforce such term or condition or any other term or condition of this Agreement. If any provision of this Agreement is found to be void or unenforceable, that provision will be enforced to the maximum extent possible, and the remaining provisions of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, each acting under due and proper authority, have executed this Agreement as of the day, month and year first above written.

MILLIMAN, INC.

By _____

Print Name

Rich Moyer

Principal

Title

Milliman's Address for Notices:
Milliman, Inc.
1301 Fifth Avenue, Sutie 3800

Seattle, Washington 98101-2605
Attention: Rich Moyer, Principal

PAYFORMANCE SOLUTIONS, INC.

By _____

Print Name

Tracy M. Lawyer

Secretary

Title

Customer's Address for Notices:
Payformance Solutions, Inc.
3520 Green Court, Suite 300
Ann Arbor, MI 48105
Attn: Legal Department

Attachments:
Exhibit A – Fees and Payment Terms

EXHIBIT A

FEES AND INCLUDED SERVICES

FEES FOR SOFTWARE

Milliman will invoice Customer $10,000.00 to cover user interface expenses Milliman incurs to provide this trial from a third party vendor. Payment due to Milliman upon execution of this Agreement.

INCLUDED SERVICES

One hands-on user training session of approximately 3-4 hours duration is provided at the time of initial Customer onboarding, to be conducted via Web-Ex.

The population data utilized will be limited to the Medicaid lives (approx.200,000 lives) of Customer's test group(s). To the extent that this population data includes Protected Health Information as defined under HIPAA, Customer and Milliman agree to execute a Business Associate Agreement as required by applicable regulation.

Access (end user licenses) will be provided for up to five (5) end users to the PRM Reports subject to this Agreement.

HIPAA BUSINESS ASSOCIATE ADDENDUM

THIS HIPAA BUSINESS ASSOCIATE ADDENDUM (the "Addendum") is entered into effective March 6, 2018 ("Effective Date") by and between Milliman, Inc., on behalf of itself and its subsidiaries and affiliates, a Washington corporation ("Business Associate"), and Payformance Solutions, Inc., a Delaware corporation ("Covered Entity").

Pursuant to the PRM Analytics Software License Agreement ("Service Agreement") between the parties dated March 6, 2018, Business Associate may perform functions or activities on behalf of Covered Entity involving the use, disclosure, transmission, or maintenance of protected health information created or received by Business Associate on behalf of Covered Entity ("PHI").

In consideration of the mutual covenants and agreements contained in this Addendum and for other good and valuable consideration, the sufficiency of which are acknowledged by the Parties, the Parties hereby agree as follows:

1. **Definitions.**

    1.1   Catch-all definition. The following terms used in this Addendum shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Electronic Protected Health Information (ePHI), Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use; provided that PHI and ePHI shall be limited for the purposes of this Addendum to PHI/ePHI created or received by Business Associate from or on behalf of Covered Entity.

    1.2   Specific Definitions:

        1.2.1   Administrative Safeguards shall have the same meaning as is set forth in 45 CFR 164.304, with the exception that it shall apply to the management of the conduct of Business Associate's workforce, not Covered Entity's workforce, in relation to the protection of that information.

        1.2.2   Business Associate shall have the same meaning as is set forth under 45 CFR § 160.103.

        1.2.3   Covered Entity shall have the same meaning as is set forth under 45 CFR § 160.103.

        1.2.4   HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

        1.2.5   Physical Safeguards shall have the meaning as is set forth under 45 CFR 164.304, with the exception that it shall apply to the management of the conduct of Business Associate's workforce, not Covered Entity's workforce, in relation to the protection of that information.

        1.2.6   Technical Safeguards shall have the meaning as is set forth under 45 CFR 164.304, with the exception that it shall apply to the management of the conduct of Business

Associate's workforce, not Covered Entity's workforce, in relation to the protection of that information.

2. **Obligations and Activities of Business Associate.** Business Associate agrees to:

2.1   Not use or disclose Protected Health Information other than as requested by Covered Entity, as permitted or required by the Service Agreement or as Required by Law. Business Associate may Use or Disclose Protected Health Information only if its Use or Disclosure is in compliance with each applicable requirement of 45 CFR 164.504(e).

2.2   Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to ePHI, to prevent Use or Disclosure of PHI other than as provided for by the Service Agreement.

2.3   Report to Covered Entity any use or disclosure of Protected Health Information not provided for by the Service Agreement of which it becomes aware, including breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware, except as limited in Section 4.3 below.

2.4   In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to restrictions, conditions, and requirements no less stringent than those that apply to the Business Associate with respect to such information, and enter into a Business Associate Agreement with such Subcontractors.

2.5   Make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524. Business Associate shall, within ten (10) days of receiving a written request from Covered Entity, make available to Covered Entity all PHI in a Designated Record Set as necessary for Covered Entity to respond to an Individual's request for access to PHI. In the event that an Individual requests access to PHI directly from Business Associate, Business Associate shall within ten (10) calendar days forward such request to Covered Entity. Any denials of access to requested PHI will be the responsibility of the Covered Entity.

2.6   Make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526. Business Associate shall, within five (5) days of receiving a written request from Covered Entity, make available to Covered Entity PHI contained in a Designated Record Set for amendment and incorporate any amendments to the PHI in accordance with 45 CFR Part 164 Subpart E ("Privacy Rule").

2.7   Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528. Business Associate shall, within five (5) days of receiving a written request from Covered Entity, make available to Covered Entity the information required for Covered Entity to provide an accounting of disclosures of PHI as required by the Privacy Rule. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within five (5) days forward such request to Covered Entity.

2.8   To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

2.9   Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3.   Permitted Uses and Disclosures by Business Associate.

3.1   Business Associate may Use and Disclose such PHI as reasonably required or contemplated in connection with the performance of services under the Service Agreement, excluding the use or further disclosure of such PHI in a manner that would violate the requirements of 45 CFR Part 164, if done by Covered Entity; provided, however, Business Associate may use and disclose such PHI for the proper management and administration of Business Associate as provided in 45 CFR 164.504(e)(4), including, without limitation, use and disclosure as required for Business Associate to comply with applicable professional standards and obligations. Business Associate may de-identify PHI and utilize de-identified PHI for purposes other than research, provided that Business Associate (i) notifies Covered Entity of its intended use of de-identified PHI prior to utilizing or disclosing such information, and (ii) de-identifies PHI pursuant to the HIPAA requirement set out in 45 CFR 164.514(b)(1)(ii).

3.2   Business Associate may Use or Disclose PHI as Required by Law.

3.3   Business Associate agrees to make Uses and Disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.

3.4   Business Associate may not Use or Disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth below. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used for further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached.

3.5   Business Associate may provide data aggregation services relating to the health care operations of Covered Entity.

3.6   Business Associate may create a Limited Data Set for the purpose of performing its obligations and services for Covered Entity, provided that Business Associate otherwise complies with the provisions of this Addendum.

4.   Efforts, Training, and Reporting.

4.1   Business Associate shall use reasonable commercial efforts to mitigate 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 Addendum.

4.2   Business Associate shall implement Administrative Safeguards, Physical Safeguards, and Technical Safeguards ("Safeguards") that reasonably and appropriately protect the confidentiality,

integrity, and availability of ePHI as required by 45 CFR Part 164 Subpart C ("Security Rules"). Business Associate shall ensure that any Subcontractor to whom Business Associate provides ePHI agrees to implement reasonable and appropriate Safeguards to protect ePHI.

4.3 Business Associate shall promptly report to Covered Entity any successful Security Incident of which Business Associate becomes aware; provided, however, that with respect to attempted unauthorized access, use, disclosure, modifications, or destruction of information or interference with system operations in an information system affecting ePHI, such report to Covered Entity will be made available upon written request, no more frequently than twice annually.

4.4 Business Associate shall make its policies, procedures, and documentation required by the Security Rule relating to the Safeguards available to the Secretary for purposes of determining Covered Entity's compliance with the Security Rule.

5. Covered Entity's Obligations to Inform Business Associate of Privacy Practices and Restrictions.

5.1 Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

5.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

5.3 Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

6. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except as otherwise expressly permitted in section 3 of this Addendum.

7. Breach Notification Obligations of Business Associate.

7.1 Business Associate shall report to Covered Entity any incident that involves an unauthorized acquisition, access, use, or disclosure of PHI, including privacy and security breaches of which Business Associate becomes aware of, and report any Use or Disclosure of PHI not provided for by the Service Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any Security Incident (except as limited by Section 4.3) of which it becomes aware without unreasonable delay, but in no event more than five (5) days after discovery; provided however, that Business Associate shall report any incident to the Covered Entity within such time as required by law or regulation where such incident requires reporting by the Covered Entity to a governmental entity. Any incident shall be treated as discovered by Business Associate as of the first day on which such incident is known to Business Associate, or by exercising reasonable diligence, would have been known to Business Associate, including any person, other than the person committing the incident who is an employee, officer, or other agent of Business Associate. Such notification will contain the elements required by 45 CFR 164.410, to the extent that they are available and all other information reasonably required by Covered Entity. Business Associate shall not delay notification on an incident, and shall

provide all information that is known and then provide supplemental information to Covered Entity as soon as such additional information becomes available.

7.2   To the extent possible, Business Associate shall provide Covered Entity with the identification of each Individual affected by the Breach, as well as any information required to be provided by Covered Entity in its notification to affected Individuals.

7.3   In the event of a Breach, Business Associate shall provide Covered Entity with a written description of the cause of the Breach an action plan to prevent reoccurrence.

7.4   In the event of an Incident that is required to be reported to HHS, Covered Entity shall be responsible for conducting an investigation of that Incident and providing any required notices.

8.   **Term and Termination.**

8.1   The Term of this Addendum shall be effective as of Effective Date, and shall terminate simultaneously with the Service Agreement, or on the date Covered Entity terminates for cause as authorized in this Section.

8.2   Covered Entity may terminate this Addendum if Covered Entity reasonably determines that Business Associate has violated a material term of this Addendum, and Business Associate has not cured the breach or ended the violation within a reasonable period of time after notification by the Covered Entity, or the Business Associate's security or privacy processes and safeguards have materially diminished.

8.3   Upon termination of this Addendum for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of Subcontractors of Business Associate. Business Associate shall be responsible for ensuring that its Subcontractors comply with the requirements of this Paragraph 8.3.

8.4   If Business Associate reasonably determines that returning or destroying PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. If return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further Uses and Disclosures of such PHI to those purposes and make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

8.5   The provisions of this Section shall survive the termination or expiration of this Addendum.

9.   **Indemnification; Injunctive Relief.**

9.1   Business Associate will defend, indemnify, and hold Covered Entity and its employees, directors, officers, and agents harmless from any third party liabilities, costs, penalties, fines, and damages arising out of or in any manner connected with any Breach of PHI while under the control of Business Associate.

9.2   Business Associate stipulates that its unauthorized Use or Disclosure of PHI while performing services pursuant to the Service Agreement or this Addendum may cause irreparable harm to Covered Entity, and in such event, Covered Entity shall be entitled to institute proceedings in any court of

competent jurisdiction to obtain injunctive relief.

10.   Miscellaneous.

    10.1   <u>Governing Law.</u> This Addendum shall be governed, construed and interpreted in accordance with the laws of the State of Michigan, except its choice of law rules.

    10.2   <u>Severability.</u> In the event that any provision of this Addendum is adjudged by any court of competent jurisdiction to be void or unenforceable, all remaining provisions hereof shall continue to be binding on the parties hereto with the same force and effect as though such void or unenforceable provision had been deleted.

    10.3   <u>Regulatory References.</u> Any reference made herein to any provision of law or regulation shall be a reference to such section as in effect and as same may be amended from time-to-time.

    10.4   <u>Amendment.</u> This Addendum may not be amended except in a writing signed by both parties hereto. Both parties hereto agree that this Addendum shall be amended to conform to any new or revised legislation, rules and regulations to which Covered Entity or Business Associate is subject now or in the future including, without limitation, HIPAA, HITECH, and the HIPAA Rules.

    10.5   <u>Survival.</u> The rights and obligations of Business Associate and Covered Entity under the termination provisions of this Addendum shall survive the termination of this Addendum.

    10.6   <u>Interpretation.</u> Any ambiguity in this Addendum shall be resolved to permit the parties hereto to comply with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards.

    10.7   <u>Independent Contractors.</u> The parties to this Addendum are independent contractors.

    10.8   <u>No Third Party Beneficiaries.</u> Nothing express or implied in this Addendum is intended or shall be deemed to confer upon any person other than Covered Entity and Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

    10.9   <u>Successors and Assigns.</u> This Addendum and all rights and obligations hereunder shall be binding upon and shall inure to the benefit of the respective successors and assigns of both parties hereto.

    10.10   <u>Notices.</u> All notices which are required to be given hereunder shall be in writing and shall be deemed to have been duly given when delivered; (a) personally, (b) the next business day following the day on which the same has been delivered prepaid to a nationally recognized overnight courier service, or (c) three (3) days after sending by registered or certified mail, postage prepaid, return receipt requested, in each case to the following address, or to such other person at such other address as the party may designate by giving notice:

FOR COVERED ENTITY

Name:	Legal & Compliance Department
Address:	3520 Green Court, Suite 300
	Ann Arbor, MI 48105
Telephone:	734-302-4600
Fax:	734-302-4996

FOR BUSINESS ASSOCIATE

Name:	Milliman, Inc.
Address:	10 W. Market, Suite 1600
	Indianapolis, IN 46204
Telephone:	317-524-3530
Email:	Jason.altieri@milliman.com

10.11   Waiver. No failure or delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other further exercise thereof or the exercise of any other right, power or remedy. The rights provided hereunder are cumulative and not exclusive of any rights provided by law.

10.12   Conflicts. If there is any direct conflict between the Service Agreement and this Addendum, the terms and conditions of this Addendum shall control.

10.13   Counterparts, Facsimile/Electronic Signatures. This Addendum may be signed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. A copy of this Addendum bearing a facsimile or electronic signature shall be deemed to be an original.

10.14   Previous Agreement. This Addendum supersedes and replaces all previous Business Associate Agreements between Covered Entity and Business Associate pertaining to the Service Agreement.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have caused this Addendum to be executed as of the date first written above (Effective Date).

MILLIMAN, INC [Business Associate]

BY _Rich Moyer_

NAME (Printed) _Rich Moyer_

TITLE _Principal_

PAYFORMANCE SOLUTIONS, INC. [Covered Entity]

SIGNATURE

NAME (Printed)   Tracy M. Lawyer

TITLE   Secretary