

MILLIMAN – ACTUARIAL AUDIT SERVICES
Contract No. MPERB-2023-02

THIS CONTRACT is entered into by and between the Public Employees' Retirement Board (MPERB), whose address and phone number are 100 North Park Avenue, Suite 200, Helena, MT 59620-0131, 406-444-3154 and Milliman, (Contractor), whose address and phone number are 12790 Merit Drive Suite 800, Dallas, TX 75251, 214 863-5635.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The Contract's initial term is, upon contract execution, through June 30, 2024, unless terminated earlier as provided in this Contract. In no event is this Contract binding on the MPERB unless MPERB's authorized representative has signed it.

2. SERVICES AND/OR SUPPLIES

Contractor shall provide MPERB actuarial audit services as defined in this Section 2 to review the work of the MPERB's Consulting Actuary (Cavanaugh Macdonald Consulting, LLC) to provide independent assurance the Consulting Actuary's work is being performed in accordance with actuarial standards of practice; that the procedures used are appropriate and reliable to properly determine the system's actuarial accrued liability; to help plan fiduciaries assess whether the plan is meeting its funding objectives; to increase public trust in how the plan is being governed; to discover errors; and provide recommendations for improving the actuarial valuation process.

2.1 Scope Summary. The audit will include consideration of the PERS and SRS plans and all of its members (active and inactive), retirees and beneficiaries. The Contractor will not replicate the Consulting Actuary's full valuation process and results for each plan. Rather, the Contractor should review the primary FY 2023 actuarial valuation completed by the Consulting Actuary and any other documentation and information the Contractor believes necessary, review the actuarial methodology employed by the Consulting Actuary, and compare and confirm the Consulting Actuary's valuation results.

2.2 Scope Specifications. The Contractor will audit the services of the Consulting Actuary based on the actuarial valuations produced by the Consulting Actuary as of June 30, 2023, for the PERS and SRS plans. MPERB will provide the FY2023 actuarial valuation to the Contractor as soon as reasonably possible following the Consulting Actuary's report of the Actuarial Valuation to the MPERB, which should occur between October 1st and 14th, 2023. Along with the Consulting Actuary's report, MPERB will provide Contractor with the MPERB extract file provided to the Consulting Actuary for the PERS and SRS plans, along with copies of MPERB statutes, administrative rules, funding and benefits policy, and any other information/documentation necessary for Contractor to complete its audit services.

The Contractor will conduct and complete its audit services, including providing its draft written analysis and/or reports, within 90 days following receipt of the Consulting Actuary's 2023 valuation report and related information and documentation. The Contractor will provide all consultation and follow-up requested by MPERB staff to clarify the draft analysis and/or reports prior to presentation of a final report to the MPERB. The Contractor will present its final report to the MPERB, in person, at the Board's regularly scheduled board meeting in April 2024.

Following the Contractor's review and sampling or employment of other verification methods as appropriate, the Contractor will provide a written opinion and present its findings for the PERS and SRS plans on the following points:

- a. Determine if the Consulting Actuary's valuation procedures are technically sound and based on generally accepted actuarial standards.
- b. Determine if the methodology used by the Consulting Actuary to validate and "normalize" census data is technically sound and based on generally accepted actuarial standards.
- c. Determine if the Consulting Actuary's determinations of demographic and economic actuarial assumptions are reasonable and are based on generally accepted actuarial standards.
- d. Determine if the actuarial cost method and actuarial asset valuation method used by the Consulting Actuary are reasonable, including whether different methods may be more appropriate.
- e. Determine if the Consulting Actuary's valuations results can be verified, including:
 - i. verification that appropriate mathematical calculations are being made accurately; and
 - ii. verification that plan liabilities and assets are being appropriately valued.
- f. Evaluate the adequacy of the Consulting Actuary's methodology used to establish the actuarial factors provided to MPERB for the PERS and SRS plans to calculate the following: service and disability retirement, service purchases, early retirement, and survivorships. This evaluation shall include a review of the variables or assumptions used by the Consulting Actuary to establish these factors.

2.3 Report Requirements. The Contractor shall write a formal report which specifically addresses each item in (a) through (f) above for the PERS and SRS plans. The report must summarize the scope, results, and conclusions of the Contractor and the Contractor will present the report during one of the MPERB's regularly scheduled board meetings, which will be scheduled at the MPERB's discretion and communicated to the Contractor at least 60 days in advance. Presentation of the final report will be provided in person. The Contractor must print and submit 15 copies and one electronic copy of the final report to MPERB.

2.4 Report/Presentation Timing. The draft written report will be due March 15, 2024. Contractor must print and submit 15 copies and one electronic copy of the final report to the MPERB by April 1, 2024. Contractor will present the final report to the MPERB at the regular April 11, 2024, meeting, the time and place of which will be communicated to Contractor at least 60 days in advance.

2.5 Access to Information. The Contractor will have commercially reasonable access to records and staff in order to perform audit work.

2.6 Standards. The services shall be performed in accordance with the code of professional conduct for actuaries adopted by the five U.S. based actuarial organizations, including the Casualty Actuary Society, the Conference of Consulting Actuaries, the Society of Actuaries, the American Academy of Actuaries, and the American Society of Pension Professionals and Actuaries.

2.7 Confidentiality. Contractor acknowledges the records, information, and documentation that will be provided by MPERB and/or its Consulting Actuary and will be received by the Contractor for purposes of performing services under this contract or will be accessible to the Contractor by virtue of the Contractor's necessary access to MPERB's data systems will include highly confidential information pertaining to PERS and SRS plan members and retirees. In conformity with Montana law related to confidential information and access to state data systems, MPERB must require and Contractor will execute and will comply with the *Third Party Agent Agreement for Protection of Confidential Information*, which is attached as Attachment A.

3. WARRANTIES

3.1 Warranty of Services. Contractor warrants that the services provided conform to the Contract requirements, including all descriptions, specifications and attachments made a part of this Contract. MPERB's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, MPERB may require Contractor to promptly correct, at Contractor's expense, any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

4. CONSIDERATION/PAYMENT

4.1 Payment Schedule. In consideration of the actuarial services to be provided, MPERB shall pay Contractor a total service fee of no more than \$90,000.00. This service fee shall be inclusive of all costs and expenses incurred by Contractor in providing services under this Contract, including for travel, lodging, car rental, per diem, or other costs related to Contractor's attendance at a MPERB meeting in Helena, MT, to present the final report. No additional fees, costs, or expenses will be invoiced by Contractor or paid by MPERB. Incremental payments will be made upon receipt of Contractor's invoices, as follows:

- 4.1.1.** 70% of the fixed cost following submission of the draft report on or before March 31, 2024, and acceptance thereof by MPERB; and
- 4.1.2.** 30% of the fixed cost following presentation of the Contractor's final report to the MPERB Board.

4.2 Withholding of Payment. In addition to its other remedies under this Contract, at law, or in equity, MPERB may withhold payments to Contractor if Contractor has breached this Contract. Such withholding may not be greater than, in the aggregate, 20% of the total value of the subject statement of work or applicable contract.

4.3 Payment Terms. The State of Montana has thirty (30) days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of Contract execution in order to facilitate MPERB's electronic funds transfer payments.

4.4 Reference to Contract. The Contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, MPERB is not obligated to pay the invoice.

5. ACCESS AND RETENTION OF RECORDS

5.1 Access to Records. Contractor shall provide MPERB or their authorized agents access to any records necessary to determine Contract compliance. MPERB may terminate this Contract under section 13, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

5.2 Retention Period. Contractor shall create and retain all records supporting the actuarial services for a period of eight years after either the completion date of this Contract or termination of the Contract.

6. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this Contract without MPERB's prior written consent. (18-4-141, MCA) Contractor is responsible to MPERB for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and

omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and MPERB under this Contract.

7. DEFENSE, INDEMNIFICATION / HOLD HARMLESS

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the MPERB, its elected and appointed officials, officers, agents, directors, and employees from and against all claims, damages, losses and expenses, including the cost of defense thereof, to the extent caused by or arising out of Contractor's negligent acts, errors, or omissions in work or services performed under this Contract.

8. REQUIRED INSURANCE

8.1 Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to the MPERB, its officers, officials, and employees, and shall apply separately to each project or location. Any insurance or self-insurance maintained by MPERB, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

8.2 Specific Requirements for Professional Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: If "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

8.3 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by MPERB. At the request of MPERB either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects MPERB, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

8.4 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by MPERB. Contractor must notify MPERB immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. MPERB reserves the right to require complete copies of insurance policies at all times.

9. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for MPERB in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

10. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the

purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

11. DISABILITY ACCOMMODATIONS

MPERB does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

12. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §§ 35-14-1505, 35-8-1001, and 35-12-1309 MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sosmt.gov>.

13. CONTRACT TERMINATION

13.1 Termination for Cause. MPERB may terminate this Contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this Contract.

13.2 Termination for Cause with Notice to Cure Requirement. Contractor may terminate this Contract for MPERB's failure to perform any of its duties under this Contract after giving MPERB written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

13.3 Reduction of Funding. MPERB must, by law, terminate this Contract if funds are not appropriated or otherwise made available to support MPERB's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, MPERB shall terminate this Contract as required by law. MPERB shall provide Contractor the date MPERB's termination shall take effect. MPERB shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, MPERB shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date MPERB's termination takes effect. This is Contractor's sole remedy. MPERB shall

not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

14. EVENT OF BREACH – REMEDIES

14.1 Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this Contract;
- Failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without prior State approval or breaching section 19.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

14.2 Event of Breach by State. MPERB's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

14.3 Actions in Event of Breach. Upon Contractor's material breach, MPERB may:

- Terminate this Contract under Section 26.1, Termination for Cause and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon MPERB's material breach, Contractor may:

- Terminate this Contract after giving MPERB written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period; or
- Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

15. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

16. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

17. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without MPERB's prior written consent. Product or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

18. LIAISONS AND SERVICE OF NOTICES

18.1 Contract Liaisons. All project management and coordination on MPERB's behalf must be through a single point of contact designated as MPERB's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this Contract must be coordinated between MPERB's liaison and Contractor's liaison.

Hollie Resler is MPERB's liaison
110 N Park Avenue
Helena, MT 59601
Telephone: (406) 444-0177
E-mail: hollie.resler@mt.gov

R. Ryan Falls is Contractor's liaison
12790 Merit Drive Suite 800
Dallas, TX 75251
Telephone: (214) 863-5635
E-mail: ryan.falls@milliman.com

18.2 Notifications. MPERB's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing.

18.3 Identification/Substitution of Personnel. The personnel identified or described in Contractor's proposal shall perform the services provided for MPERB under this Contract. Contractor agrees that any personnel substituted during the term of this Contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. MPERB reserves the right to approve Contractor personnel assigned to work under this Contract and any changes or substitutions to such personnel. MPERB's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this Contract. MPERB reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

19. MEETINGS

19.1 Technical or Contractual Problems. Contractor shall meet with MPERB's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and MPERB in the performance of their respective obligations, at no additional cost to the MPERB. MPERB may request the meetings as problems arise and will be coordinated by MPERB. MPERB shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

19.3 Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by MPERB, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

19.4 State's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of MPERB's failure or delay in discharging any MPERB obligation, MPERB shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If MPERB agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby and provide for any additional charges by Contractor. This is Contractor's sole remedy. If MPERB does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

20. TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to MPERB or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. MPERB shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If MPERB terminates a project or this Contract for cause, then MPERB may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages MPERB may have sustained as a result of Contractor's breach.

21. CHOICE OF LAW AND VENUE

Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees, except as provided in Section 7, Defense, Indemnification/Hold Harmless.

22. TAX EXEMPTION

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

23. PERSONAL PROPERTY TAX

All personal property taxes will be paid by Contractor.

24. SEVERABILITY

A declaration by any court or any other binding legal source that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

25. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

25.1 Contract. This Contract consists of 9 numbered pages and any Attachments as required. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

25.2 Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

26. WAIVER

MPERB's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

27. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

**Montana Public Employees' Retirement Board
110 North Park Avenue
Helena, MT 59601**

**Milliman
12790 Merit Drive, Suite 800
Dallas, TX 75251**

BY: _____
Maggie Peterson, President

BY: _____
(Name/Title)

DATE: _____

DATE: _____

Approved as to Legal Content:

Legal Counsel (Date)

Attachment A

THIRD PARTY AGENT AGREEMENT - ADDENDUM FOR PROTECTION OF CONFIDENTIAL INFORMATION

This Third Party Agent Agreement ("TPA") is entered into by and between the Public Employees' Retirement Board of the State of Montana ("MPERB"), 100 North Park Avenue, Suite 200, Helena, MT 59620-0131, and third party agent Milliman, (Contractor), ("Agent"), (each a "Party" and collectively the "Parties").

THE PARTIES AGREE AS FOLLOWS:

1. **PURPOSE:** The Parties have entered into an underlying agreement ("Agreement") for Agent's provision of services in furtherance of MPERB's business objectives, the performance of which services necessitate that Agent have access to, receive, acquire, generate, process, maintain, use, disclose, transfer, and/or store confidential information of MPERB (hereinafter referred to generally as "use and disclosure" of confidential information). This TPA provides requirements for proper use and disclosure of confidential information by Agent. It supplements and/or amends the Agreement, including any future amendment or renewal of the Agreement, as required (and only as required) to give effect to the terms of this TPA. To the extent there is any inconsistency between the Agreement and this TPA with respect to the subject matter of this TPA, this TPA shall govern. Except as supplemented or amended by this TPA, the Agreement will remain in full force and effect, and will govern the matters addressed in this TPA.
2. **DEFINITIONS:** As used in this TPA, the following terms are defined as provided:
 - a. "Breach" means any occurrence arising with respect to confidential information in the possession of Agent or Agent's access to MPERB /state of Montana data systems that results in or may reasonably be expected to result in the unauthorized acquisition of or access to confidential information, including, but not limited to: improper access to state/ MPERB data systems, improper access to Agent's data systems or files, loss of portable electronic devices or portable electronic media containing unencrypted confidential information, loss of documents containing confidential information, or other use or disclosure of confidential information other than as provided for by this TPA.
 - b. "Confidential information" means data held confidentially by MPERB pertaining to any individual, that, if compromised, may cause harm to the individual or create liability for MPERB. Information is confidential information regardless of the format in which the information exists, i.e., hard copy, electronic data, etc. Confidential information includes:
 - i. any of the following data elements combined with a first name or first initial and a last name, when the information is unencrypted or unredacted:
 1. a social security number or tax identification number;
 2. a driver's license number;
 3. a tribal identification number or enrollment number;
 4. an identification number issued by any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa; or
 5. an account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to a person's financial account.
 6. confidential employee information;
 7. trade secret or confidential business information; or

8. other information specifically identified by MPERB as confidential.

c. "Redact" means to alter personal information contained within data to make all or a significant part of the data unreadable.

d. "Truncate" means to redact an identification number so that no more than the last four digits of the identification number are accessible as part of the data.

3. **TERM:** This TPA will be effective as of the last date of signing and will continue in effect for as long as the Agent has access to or maintains any confidential information, including that this TPA will survive termination or expiration of the Agreement.

4. **JOINT OBLIGATIONS OF THE PARTIES:** With respect to Agent's access to MPERB's electronic data systems, and with respect to all transfers and communications of confidential information between the Parties:

a. The Parties will work together to determine what confidential information is necessary for appropriate provision of service by Agent and to determine whether redaction or truncation of confidential information is appropriate, and will provide redacted or truncated confidential information when appropriate.

b. If confidential information will be communicated through physical transfer of a portable data storage device or media or through email or other web-based transfer, the transferred data must be encrypted.

c. If MPERB provides Agent access to a MPERB data system, MPERB will provide access in conformity with state policies for secure access to state data systems and will provide Agent with any necessary instructions regarding required security parameters for access to the data system. Agent will access state MPERB data systems only in conformity with all requirements as communicated to Agent.

5. **OBLIGATIONS OF AGENT:** With respect to its use and disclosure of confidential information:

a. Agent may use confidential information only as necessary to perform services under the Agreement and for the proper administration of its business entity. Agent may disclose confidential information to a third party only as necessary to perform services under the Agreement, or as required by law.

b. Agent will implement and employ reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of MPERB's data and/or data systems and to prevent use or disclosure of confidential information other than as provided for by this TPA, including that:

i. Confidential information will be maintained in secured data storage environments and will not be copied or removed from secured data storage environments unless there is a business reason to do so.

ii. Access to confidential information by Agent's employees, subcontractors and other agents will be limited to those individuals needing access for the performance of job

functions specifically related to services to be performed under the Agreement.

- iii. Confidential information will be taken off of Agent's business premises only if there is a business requirement to do so.
 - iv. Confidential information may be placed/stored on a portable electronic device or on portable storage media only if encrypted.
- c. Agent will implement and maintain an information security policy designed to safeguard confidential information, and will make such policy available to MPERB upon request.
 - d. Upon discovery of a breach, Agent will immediately notify law enforcement authorities, in appropriate circumstances, and will work with law enforcement as necessary to recover compromised confidential information. Agent will immediately notify MPERB of any breach and will work diligently with MPERB to remediate any deleterious effects of the breach, including notification of individuals whose confidential information may have been compromised. Agent will be responsible for all costs of notification and remediation.
 - e. If Agent must disclose confidential information to subcontractors or other agents in order to provide services under the Agreement, Agent will enter into a written agreement with any such subcontractor or agent binding the subcontractor or agent to the same terms, conditions and limitations on the use and disclosure of confidential information as imposed on Agent through this TPA. If redacted or truncated confidential information is sufficient for the purpose of any disclosure to an agent or subcontractor, the confidential information must be redacted or truncated to the greatest extent possible. Any electronic transfer of confidential information to an agent or subcontractor may be made only with encrypted data.
 - f. Within 30 days of termination of the Agreement, if feasible, Agent will securely destroy all data containing confidential information or will return all data to MPERB.
 - g. Agent agrees to comply with any additional requirements regarding the security of state/MPERB data systems and the appropriate use and disclosure of confidential information as required by applicable law or policy pertaining to MPERB as may be communicated to Agent from time to time.

6. VIOLATION OF TPAA/ RIGHT TO CURE / TERMINATION:

- a. If Agent or any agent or subcontractor of Agent materially violates this TPA, MPERB will give Agent written notice of the violation. Agent will have 30 days to affect a full cure of the violation.
- b. If, in MPERB's sole judgment, the violation is not amenable to cure, or if Agent fails to affect a full cure within 30 days, MPERB may, in its sole discretion, terminate the Agreement for cause.

7. EXECUTION:

The parties through their authorized agents have executed this Contract on the dates set out below.

Montana Public Employees' Retirement Board
110 North Park Avenue
Helena, MT 59601

Milliman
12790 Merit Drive, Suite 800
Dallas, TX 75251

BY: _____
Maggie Peterson, President

BY: _____
(Name/Title)

DATE: _____

DATE: _____

Approved as to Legal Content:

Legal Counsel (Date)