

**CONTRACT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made this 7<sup>th</sup> day of December, 2016 in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the Lieutenant Governor's Office (hereinafter referred to as "Government") and Milliman, Inc. (hereinafter referred to as "Contractor").

**WITNESSETH:**

WHEREAS, the Government is in need of the services of a Contractor to assist in analyzing the history or health insurance premium rates and the review process, which duties and responsibilities are more particularly described in Addendum I (Scope of Work) attached hereto; and

WHEREAS, the Contractor represents that it is willing and capable of providing such services;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

**1. SERVICES**

The Contractor will provide the services described in Addendum I (Scope of Services) attached hereto and made a part of this contract.

**2. TERM**

This Contract shall commence upon the execution of this Contract by the Governor of the Virgin Islands and shall terminate 365 days thereafter.

**3. COMPENSATION**

The Government in consideration of the satisfactory performance of the services described in Addendum I (Scope of Work) agrees to pay Contractor a sum not to exceed one hundred and fifty thousand dollars (\$150,000.00), inclusive of ten thousand dollars (\$10,000.00) for travel.

**4. RECORDS**

The Contractor, when applicable, will present documented, precise records of time and/or money expended under this Contract.

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

**5. DOCUMENTS, PRINTOUTS, SOFTWARE, ETC.**

Subject to Contractor's reservation of rights in the following paragraph and the prohibitions on distribution of Contractor work product contained in Section 26,

Contract Number:

P023LTGT17

all documents, books, records, instructional materials, programs, printouts, and memoranda of every description derived there from and pertaining to this Contract shall become the property of the Government and shall be turned over to the Government at the termination of this Contract. The above-described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

Contractor makes no express or implied warranty and shall have no liability of any form whatsoever with respect to any draft or unfinished work product that is clearly marked as or otherwise clearly indicated to be a draft and delivered to the Government pursuant to this clause. Notwithstanding anything herein to the contrary and continued on Contractor's continued compliance with its confidentiality obligations herein, Contractor shall be permitted to retain one (1) copy of any and all documents, books, records, instructional materials, programs, printouts, and memoranda and every description derived there from and pertaining to this Contract including, without limitation, all information received from the Government, allowing Contractor to meet its work product documentation requirements.

The software, work products, and derivative works produced under this Contract including software customizations and modifications shall remain the property of Contractor including all patent, copyright and all other intellectual property rights. Contractor shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by Contractor or developed during the course of the provision of the Services provided such generic documents or templates do not contain any Government confidential Information ("Contractor Tools"). Rights and ownership by Contractor of Contractor Tools shall not extend to or include all or any part of Government's proprietary data or Government Confidential Information. To the extent that Contractor may include in the materials any Contractor Tools, Contractor agrees that Government shall be deemed to have a fully paid up license to make copies of the Contractor Tools as part of this engagement for its internal business purposes and provided that such materials cannot be modified or distributed outside the Government without the written permission of Contractor.

The ideas, methodologies, processes, inventions and tools (including computer hardware and software where applicable) that Contractor develops and brings to the Government in furtherance of performance of the Contract shall remain the property of Contractor.

## **6. LIABILITY OF OTHERS**

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature,

including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

**7. PROFESSIONAL STANDARDS**

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands. This is a services engagement.

**8. ASSIGNMENT**

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government.

**9. LIMITATION ON DAMAGES AND INDEMNIFICATION**

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

Contractor agrees to indemnify investigate, defend and hold harmless the Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character which the Government may incur, sustain or be subjected to, arising out of Contractor's gross negligence, willful misconduct or fraud.

Contractor will perform all services in accordance with applicable professional standards. The parties agree that Contractor, its officers, directors, agents and employees, shall not be liable to Government, under any theory of law including negligence, tort, breach of contract or otherwise, for any damages in excess of \$150,000. In no event shall Contractor be liable for lost profits of Government or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the gross negligence, intentional fraud or willful misconduct of Contractor.

**10. GOVERNMENT RESPONSIBILITIES**

The Government shall cooperate with Contractor hereunder, including, without limitation, providing Contractor with reasonable facilities and timely access to data, information and personnel of the Government as described in Addendum I (Scope of Work). The Government shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of data and information provided to Contractor for purposes of the performance of the Services. The Government acknowledges and agrees that Contractor's performance is dependent upon the timely and effective satisfaction of the Government's responsibilities hereunder and timely decisions and approvals of the Government in connection with the Services. Contractor shall be entitled to rely on all decisions and approvals of the Government. The Government shall

be solely responsible for, among other things: (i) making all management decisions and performing all management functions; (ii) designating a competent management member to oversee the Services; (iii) evaluating the adequacy and results of the Services; and (iv) establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities.

**11. INDEPENDENT CONTRACTOR**

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

**12. GOVERNING LAW AND DISPUTE RESOLUTION**

This Contract shall be governed by the laws of the United States Virgin Islands without regard to conflict of laws principles. Any and all suits for the enforcement of this agreement or arising from any breach of this agreement shall be filed and maintained in a court of competent jurisdiction in the United States Virgin Islands. If any dispute occurs between the parties, they shall attempt in good faith to resolve the dispute by mediation. In such mediation, the parties thereto will choose a mutually acceptable mediator with a background in insurance, actuarial science or law in the United States Virgin Islands.

**13. WAIVERS AND AMENDMENTS**

No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

**14. ENTIRE AGREEMENT**

This Contract constitutes the entire agreement between the parties hereto, and all prior understanding or communications, written or oral, with respect to the Project, which is the subject matter of this Contract, are merged herein.

**15. RIGHT TO WITHHOLD**

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall, be made by the Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

**16. CONDITION PRECEDENT**

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

**17. TERMINATION**

Unless terminated sooner in accordance with its terms, this engagement shall terminate on the completion of the Services. This engagement may be terminated by either party at any time, with or without cause, by giving written notice to the other party not less than thirty (30) days before the effective date of termination; provided that, in the event of a termination for cause, the breaching party shall have the right to cure the breach within the notice period.

The performance of work under this Contract may, be terminated by the Government in part, whenever the Government shall deem such termination advisable. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the terms and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall receive payment for the services provided to the date of termination, including payment for the period of the thirty (30) day notice.

**18. NON-DISCRIMINATION**

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

**19. CONFLICT OF INTEREST**

(a) Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

(b) Contractor further covenants that it is:

(1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or

(2) a territorial officer or employee and, as such, has:

(i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to

- conflicts of interest, including the penalties provision set forth in section 1108 thereof;
- (ii) not made, negotiated or influenced this Contract, in its official capacity;
  - (iii) no financial interest in the Contract as that term is defined in section 1101 (1) of said Code chapter.

**20. EFFECTIVE DATE**

The effective date of this Contract shall be the day of execution of the Contract by the Governor.

**21. NOTICE**

Any notice required to be given, by the Terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

**GOVERNMENT**

Randolph N. Bennett  
Commissioner Designee  
Department of Property and Procurement  
Sub Base, Building #1, Third Floor  
St. Thomas, Virgin Islands 00802

Osbert E. Potter  
Lieutenant Governor/Insurance  
Commissioner  
5049 Kongens Gade  
St. Thomas, USVI 00802

**CONTRACTOR**

Stuart D. Rachlin  
Milliman, Inc.  
Principal and Consulting Actuary  
3000 Bayport Drive, Suite 1050  
Tampa, FL 33607

**22. LICENSURE**

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

**23. FALSE CLAIMS**

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false,

Contract Number:

P023LTGT17

Page 6 of 11

fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

**24. DEBARMENT CERTIFICATION**

By execution of this contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

**25. TRAVEL EXPENSES**

Inclusive in the compensation for services as specified in Paragraph 3 (Compensation) ~~above~~, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed ten thousand dollars (\$ 10,000.00), inclusive in the compensation for services.

**26. OTHER PROVISIONS**

Addendum I and Addendum II attached hereto are a part of this Contract and are incorporated herein by reference.

**a) NO THIRD PARTY DISTRIBUTION**

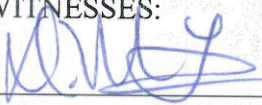
Contractor's work is prepared solely for the use and benefit of the Government in accordance with its statutory and regulatory requirements. Contractor recognizes that materials it delivers to the Government may be public records subject to disclosure to third parties, however, Contractor does not intend to benefit and assumes no duty or liability to any third parties who receive Contractor's work and may include disclaimer language on its work product so stating. Government agrees not to remove any such disclaimer language from Contractor's work. To the extent that Contractor's work is not subject to disclosure under applicable public records laws, Government agrees that it shall not disclose Contractor's work product to third parties without Contractor's prior written consent; provided, however, that Government may distribute Contractor's work to (i) its professional service providers who are subject to a duty of confidentiality and who agree to not use Contractor's work product for any purpose other than to provide services to Government, or (ii) any applicable regulatory or governmental agency, as required.


**b) USE OF NAME**

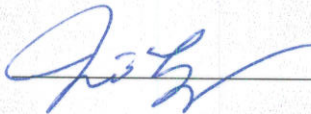
Government agrees that it shall not use Contractor's name, trademarks or service marks, or refer to Contractor directly or indirectly in any media release, public announcement or public disclosure, including in any promotional or marketing materials, customer lists, referral lists, websites or business presentations without Contractor's prior written consent for each such use or release, which consent shall be given in Contractor's sole discretion.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

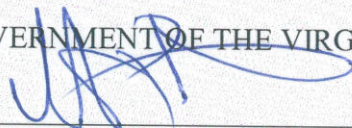
WITNESSES:

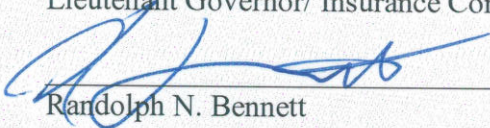
  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

GOVERNMENT OF THE VIRGIN ISLANDS

  
\_\_\_\_\_  
Osbert E. Potter  
Lieutenant Governor/ Insurance Commissioner

  
\_\_\_\_\_  
Randolph N. Bennett  
Commissioner Designee  
Department of Property and Procurement

**CONTRACTOR**

  
\_\_\_\_\_  
Stuart Rachlin  
Milliman, Inc.  
3000 Bayport Drive, Suite 1050  
Tampa, FL 33607

10/17/16  
Date

11/15/16  
Date

10/6/16  
Date



APPROVED:

*K. Mapp*  
Kenneth E. Mapp  
GOVERNOR OF THE VIRGIN ISLANDS

Date: 12-07-16

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY: *Amarie Parrott Esq.* <sup>Dep. Sol. Gen.</sup>

Date: 11/30/2016

\_\_\_\_\_  
MED NO.

\_\_\_\_\_  
ACCOUNT CODE NO.

CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of  
Contract No. [CONTRACT NO] entered into  
between the Department of Property and  
Procurement and  
MicroPact Global, Inc.

\_\_\_\_\_  
**Randolph N. Bennett, Commissioner**  
Department of Property and Procurement

Contract Number:

**P023LTGT17**