Department of Employee Trust Funds

P.O. Box 7931

Madison, WI 53707-7931

**FORM H**

**NON-DISCLOSURE AGREEMENT (NDA)**

**ETJ0043 Third Party Administration of the State of Wisconsin Income Continuation Insurance Program**

The Department of Employee Trust Funds (Department) and Milliman, Inc. (Actuary) acknowledge that they shall receive information from the Proposer named below, and that some of that information may be designated by the Proposer as Confidential Information. Subject to the exceptions listed herein, Proposer’s “Confidential Information” shall be defined as information disclosed by the Proposer to the Department and/or Actuary under this NDA that is either: (i) clearly marked or otherwise clearly designated as confidential or proprietary.

The Department and Actuary agree to the following four limitations on the use of the Confidential Information:

1. Actuary may not use the Confidential Information for any work other than for the Department.
2. Actuary may not add the Confidential Information to its own database or other databases used by Actuary for comparisons or analyses outside of the work for the Department.
3. Actuary and the Department may not publish the Confidential Information in any report to be made public for the Department or any other employer.
4. Actuary and the Department may not sell the Confidential Information or otherwise provide the Confidential Information to a third party, except for the exceptions allowed to the Department below.

The confidentiality obligations set forth herein shall not apply to any information which: (i) was in the public domain at the time of communication thereof to the Department and Actuary; (ii) enters the public domain through no breach of this provision subsequent to the time of communication thereof to the Department and Actuary; (iii) was in the Department’s or Actuary’s possession free of any obligation of confidentiality at the time of communication thereof to the Department and/or Actuary; (iv) is developed by the Department or Actuary with no reliance on or reference to the information of the Proposer; or (v) is required by law or regulation to be disclosed.

The construction, interpretation, and enforcement of this NDA shall be governed by the laws of the State of Wisconsin without regard to its conflict of laws provisions. If any provision of this NDA is found to be illegal or otherwise unenforceable in any respect, that provision will be deemed to be restated to reflect as nearly as possible the original intent of the Parties in accordance with applicable law and the remainder of this NDA will remain in full force and effect.

All parties agree that the Department is subject to the provisions of the Wisconsin Public Records Law (Wis. Stat. §19.31 et seq.), which provides generally that all records relating to a public agency’s business are open to public inspection, disclosure and copying in the manner provided in the Public Records Law. Accordingly, the Department cannot represent or guarantee that any information submitted by the Proposer will be considered confidential under the Public Records Law. In the event the Department receives a request under the Public Records Law, the Department’s sole responsibility will be to notify the Proposer of the request and allow the Proposer to seek protection from disclosure in a court of competent jurisdiction. With the exception of the information designated as Confidential Information by the Proposer, the Department shall be able to comply with such request without any liability under this NDA.

In the event the designation of Confidential Information is challenged as a request under the Public Records Law, the Department will notify the Proposer within three (3) days of the Department’s receipt of such challenge. The Proposer will need to obtain legal counsel or provide other necessary assistance to defend the designation of Confidential Information and hold the Department and the State of Wisconsin harmless for any costs or damages arising out of the Department’s agreeing to withhold the Confidential Information. If the Department is required to disclose Confidential Information pursuant to any order or directive of a court or governmental agency of competent jurisdiction, the Department will inform the Proposer of such order or directive prior to disclosure, where legally permitted.

Proposer

Company Actuary **Milliman, Inc.**

Name Type or Print

Authorized Authorized

Representative Type or Print Representative Type or Print

Authorized Authorized

Representative Signature / Date Representative Signature / Date

**Department of Employee Trust Funds**

Robert J. Conlin