

1 It is acknowledged that in its oversight role the Legislative Commission on Pensions and
2 Retirement (LCPR) is contracting for actuarial services on behalf of several “Interested Parties.”
3 For purposes of the following three sections, Interested Parties shall include all members of the
4 Minnesota Legislature, the Minnesota Director of Finance, the Minnesota State Auditor, the
5 LCPR staff, the Trustees of each of the retirement funds for which actuarial services are
6 performed under this contract, as well as any other State Agency or organization that contracts
7 with Milliman for actuarial services under this contract.

8 1. **Limitation of Liability.** Milliman will perform all services in accordance with Chapter 356
9 of Minnesota Statutes as well as with all applicable professional standards. The parties
10 agree that Milliman’s total aggregate liability to the Interested Parties, whether in tort,
11 contract or otherwise, shall not exceed ten million dollars (\$10,000,000). In no event shall
12 Milliman be liable for any type of incidental or consequential damages. The foregoing
13 limitations shall not apply in the event of the intentional fraud, willful misconduct, or gross
14 negligence of Milliman. The provisions of this section will survive the expiration or
15 termination of this Agreement.

16 The construction, interpretation, and enforcement of this provision shall be governed by the
17 substantive contract law of the State of Minnesota without regard to its conflict of laws
18 provisions. It is the intention of the parties that the Limitation of Liability paragraph above
19 shall be enforceable and the parties believe that the clause is enforceable under Minnesota
20 law. In the event that the Limitation of Liability clause is not enforceable, then the parties
21 agree that New York law, and not Minnesota law, shall apply. In the event any provision of
22 this agreement is unenforceable as a matter of law, the remaining provisions will stay in full
23 force and effect.

24 2. **Disputes.** Dispute Resolution

25 **Mediation.** In the event of any dispute arising out of or relating to the engagement of
26 Milliman by the LCPR or any other Interested Party, the parties agree first to try in good
27 faith to settle the dispute voluntarily with the aid of an impartial mediator who will attempt
28 to facilitate negotiations. A dispute will be submitted to mediation by written notice to the
29 other party or parties. The mediator will be selected by agreement by the parties. If the
30 parties cannot agree on a mediator, a mediator will be designated by the American
31 Arbitration Association at the request of a party.

1 The mediation will be treated as a settlement discussion and therefore will be confidential.
2 Any applicable statute of limitations will be tolled during the pendency of the mediation.
3 Each party will bear its own costs in the mediation. The fees and expenses of the mediator
4 will be shared equally by the parties.

5 **Arbitration.** If the dispute involves a potential claim against Milliman and has not been
6 resolved within 60 days after the written notice beginning the mediation process (or a longer
7 period, if the parties agrees to extend the mediation), the mediation will terminate, and the
8 dispute will be resolved by final and binding arbitration under the Commercial Arbitration
9 Rules of the American Arbitration Association. Within 30 days of the commencement of
10 the arbitration, if the parties cannot agree on a single arbitrator, each party will designate in
11 writing a single neutral and independent arbitrator. The two arbitrators designated by the
12 parties will then select a third arbitrator. The arbitrator(s) will have a sufficient background
13 in employee benefits, actuarial science, or law to reasonably prepare them to decide a
14 dispute. The arbitrator(s) will have the authority to permit limited discovery, including
15 depositions, prior to the arbitration hearing, and such discovery will be conducted consistent
16 with the Federal Rules of Civil Procedure. The arbitrator(s) will have no power or authority
17 to award punitive or exemplary damages. The arbitrator(s) may, in their discretion, award
18 the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any
19 award made may be confirmed in any court having jurisdiction. Any arbitration shall be
20 confidential, and except as required by law, neither party may disclose the content or results
21 of any arbitration hereunder without the prior written consent of the other parties, except
22 that disclosure is permitted to a party's auditors and legal advisors.

- 23 3. ***Restricted Third Party Reliance.*** Milliman's work is prepared solely for the legislative
24 and/or the operational use of the Interested Parties. While we understand that Milliman's
25 work may be provided to third parties under the requirements of the Minnesota open
26 meetings laws, it is not the intent of Milliman, nor of any of the Interested Parties, to create
27 any legal duty from Milliman to any party not included under this agreement as an Interest
28 Party. All parties agree that Milliman reports may contain clear language to restrict any
29 reliance on the work product by parties other than Interested Parties. Any additional release
30 of any Milliman work product by the LCPR or any Interest Party requires prior written
31 consent by Milliman.