

CONSULTATION, INTERPRETATION AND GUIDANCE SERVICES AGREEMENT
(Forms 1094/1095 Reporting Only Agreement)

THIS SERVICES AGREEMENT (“Agreement”) is entered by and between DIETRICH SCHOOL DISTRICT NO. 314 (“**DISTRICT**”) whose address is 406 North Park Street, Dietrich, ID, 83324 and Eligibility Tracking Calculators, LLC (“**ETC**” or “**CONTRACTOR**”), whose address is 14607 San Pedro Ave., Suite 155; San Antonio, Texas 78232.

WHEREAS, **ETC** is a Direct District HR Input System and Consultative Company designed to use District’s direct input of objective payroll data (defined as payroll information used to run employee paychecks) and offer/acceptance/waiver benefit information provided by **DISTRICT** to analyze data and determine appropriate 1095-B/C codes to populate the 1095-B/C Forms and to determine who is not eligible to be provided a 1095-B/C form; and

WHEREAS **ETC** desires to become a consultant of **DISTRICT** so that **ETC** can perform interpretation, guidance identification/tracking services to assist **DISTRICT** in its required reporting to the Internal Revenue Service and provision of information to applicable persons in accordance with the *Forms 1094-B/C* and *1095-B/C* pursuant to healthcare reform laws under the Affordable Care Act (collectively “Forms”).

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **DISTRICT** and **ETC** agree as follows:

1. Relationship and Term

1.01 Term of this contractual relationship is calendar year since the data contained on the *Forms 1094-B/C* and *1095-B/C* must be collected and reported based on a calendar year. The term of this Agreement is January 1, 2017 to December 31, 2019. Effective date of this Agreement is the last date of signature by the Executing Parties. **ETC**’s work shall continue until the filing date with the IRS and beyond if corrections are required by IRS. For corrections, additional charges may apply dependent on the required corrections and the basis for the need for the corrections. District may terminate this Agreement prior to the termination date with 30 days’ written notice. If District terminates this Agreement before December 31, **ETC** is relieved from preparing and providing all *Forms 1094-B/C* and *1095-B/C* for employees and from filing the *Forms 1094-B/C* and *1095-B/C* through the AIR System (electronic system through which *Forms 1094-B/C* and *1095-B/C* are to be filed). **ETC** shall only terminate this Agreement early if District fails to provide the necessary data so that **ETC** can prepare the *Forms 1094-B/C* and *1095-B/C* and fails to provide this data within the deadlines agreed to by the Parties during implementation. Otherwise, Agreement shall be automatically renewed with the same material terms. Should material terms of Agreement be negotiated, amended or changed, **ETC** shall provide **DISTRICT** with the proposed Amended Agreement for consideration.

1.02 It is expressly understood that **ETC** and **DISTRICT** are independent entities and neither is employed by the other. **DISTRICT** in no way controls the manner, method or means of **ETC**’s work and **ETC** provides all the tools necessary for services to be rendered for **DISTRICT**. **ETC** has been retained by **DISTRICT** for a specific term to perform services beyond **District**’s expertise. Both Parties are responsible for their own tax obligations and insurance obligations.

1.3 It is expressly understood that **ETC**’s responsibilities are limited to using District’s direct input of objective payroll data (defined as payroll information used to run employee paychecks) provided by **DISTRICT** and **District**’s benefit information, including, if applicable, **DISTRICT** determinations as to appropriate Indicator Codes for the Forms so that **ETC** can provide interpretation and guidance regarding the completion of these Forms, in accordance with the most current IRS instructions of *Forms*

1094(B/C) and 1095(B/C), final IRS regulations issued in accordance with Code Sections 6055 and/or 6056, and other IRS guidance related to **District's** reporting obligations under Code Sections 6055 and/or 6056. ETC assumes **NO LIABILITY** in **District's** ACA compliance efforts beyond reporting as required for the *Forms 1094-B/C* and *1095-B/C*.

- 1.4 It is expressly understood that it is **District's** sole responsibility to determine if the reporting referenced herein is to be completed using the *Forms 1094-B* and *1095-B* or *Forms 1094-C* and *1095-C*.

2 ETC's Responsibilities

- 2.01 ETC shall prepare **District's** *Forms 1094/1095(B/C)* as well as provide interpretation and guidance regarding the completion of these Forms, in accordance with the most current IRS instructions of *Forms 1094(B/C)* and *1095(B/C)*, final IRS regulations issued in accordance with Code Sections 6055 and/or 6056, and other IRS guidance related to **District's** reporting obligations under Code Sections 6055 and/or 6056. ETC staff will provide in-depth interpretation and strategy sessions specific to any changes in the Affordable Care Act or related regulations that would impact District's obligations as an applicable large employer under Code Section 4980H and/or DISTRICT'S reporting obligations under Code Section 6055 and/or 6056.

- 2.02 **Tax Obligations.** ETC shall be responsible for its own tax obligations and understands that in accordance with this Independent Contractor Relationship with **DISTRICT**, neither party is an employee of the other and that **DISTRICT** assumes no responsibility or obligations in withholding any amounts to be paid to ETC for work performed. Although the Parties do not believe that ETC's services are subject to sales tax, should sales tax be assessed, **DISTRICT** understands that the sales tax is **District's** responsibility.

- 2.3 **Ownership of Proprietary and Confidential Material.** ETC agrees and understands that **District's** payroll data and other internal **DISTRICT** information provided or made available to ETC may be sensitive and confidential. Therefore, ETC agrees to hold this information forever in confidence and only to share this information with **DISTRICT** appointed representatives as instructed by **DISTRICT**.

2.04 DUTY OF DEFENSE AND INDEMNITY.

IF DISTRICT PROVIDES ETC WITH ACCURATE DATA TO COMPLETE DISTRICT'S FORMS 1094-B/C AND 1095-B/C REPORTING OBLIGATIONS AND PROVIDES ALL FINAL ACCURATE DATA NO LATER THAN AGREED UPON DEADLINES, ETC SHALL DEFEND, INDEMNIFY, AND HOLD DISTRICT HARMLESS FROM ANY CLAIMS OR DAMAGES RELATED TO DISTRICT'S FORM 1094-B/C AND 1095-B/C REPORTING OBLIGATIONS, WHICH RESULTED FROM ETC'S NEGLIGENCE IN THE PERFORMANCE OF ITS DUTIES IN ACCORDANCE WITH THIS AGREEMENT. THE SCOPE OF ETC'S DUTY OF DEFENSE AND INDEMNITY IS LIMITED TO DISTRICT'S FORMS 1094-B/C AND 1095-B/C REPORTING OBLIGATIONS ONLY, AND DOES NOT INCLUDE ANY CLAIMS OR DAMAGES THAT MAY SEPARATELY RESULT UNDER ERISA, THE INTERNAL REVENUE CODE, OR OTHER FEDERAL OR STATE LAWS RELATING TO DISTRICT'S ADMINISTRATIVE OF ITS GROUP HEALTH PLAN(S) AND/OR CAFETERIA PLAN(S).

- 2.5 **Beyond the Scope of the Agreement for Services.** ETC has not been retained and shall not provide state and/or tax consultation/advice (beyond that which is specifically identified with respect to the preparation and provision of the *Forms 1094-B/C* and *1095-B/C*), ERISA compliance, wage and hour compliance, human resource compliance, privacy laws or any other regulatory, legal or statutory rules and regulations as it relates to handling **District's** business affairs, including, but not limited to, employee management and operations.

3. District's Obligations

- 3.01 Release of Information.** DISTRICT agrees to provide ETC with accurate information necessary in the format prescribed herein for ETC to prepare District's Forms 1094-C/1095-C. If all the objective payroll data and benefits data cannot be provided or cannot be provided via Excel or CSV, additional charges may be applied but only after agreed to by DISTRICT.
- 3.02 Authoritative Transmittal.** If ETC is to file the Authoritative Transmittal for the Forms 1094-C/1095-C, DISTRICT must provide ETC all Control Group information for all entities. Determination of whether a control group exists is the sole responsibility of the DISTRICT.
- 3.03** Data needed from DISTRICT to provide year end reporting through Forms 1094-C/1095-C, in addition to payroll and benefits elections throughout the year, includes: 1) Employee Required Contribution amount(s) for the calendar year; 2) determination of whether the Medical Health & Welfare Plan meets Minimum Value and/or is Minimum Essential Coverage; and 3) if self-insured, all covered individuals enrolled in the plan with TIN and/or date of birth ("DOB"). It is District's responsibility to follow the TIN Solicitation Process to use the DOB in lieu of the SSN for covered individuals. As of December 1, 2016, the instructions regarding the TIN Solicitation Process can be found in IRS Publication 1586, which is available here: <https://www.irs.gov/pub/irs-pdf/p1586.pdf>.¹ If and when the IRS Proposed Rules regarding the TIN Solicitation Process are finalized, it is District's responsibility to follow those rules. All final information must be submitted to ETC no later than agreed upon dates during implementation. This information shall only be considered provided timely if ETC agrees to accept this data in writing during the implementation of District's account.
- 3.03 Eligibility Determination and Plan Designs.** Regardless of the Measurement Method(s) used by District (Monthly Measurement Method or Look-Back Method or a combination of these methods), DISTRICT understands and acknowledges by his/her signature below that ETC will follow District's instructions with respect to persons eligible to be offered benefits and the proper codes to be reported on the 1095-C Form for each employee. However, ETC has not been retained to assist in determining 4980H full time/part time status for benefits, and has not been retained to assist in ensuring District's compliance with any other aspect related to District's administration of its employee health and welfare plan(s), cafeteria plan(s) and/or Section 125, or any other employee benefit plans in place.
- 3.03 Ownership of Proprietary and Confidential Material.** During the term of this Agreement, ETC may disclose to DISTRICT confidential information and trade secrets proprietary to ETC, including, but not limited to, systems, methods of operation, marketing and advertising procedures, internal procedures, programs and forms. DISTRICT acknowledges and agrees that all such information is confidential and is the exclusive property of ETC. DISTRICT covenants and agrees that it shall not disclose to anyone directly or indirectly during the term of this Agreement or at any time thereafter, any such confidential information, nor shall it use any such confidential information nor cause such confidential information to be used for any purpose other than during District's work with ETC.
- 3.04** DISTRICT shall pay ETC in accordance with the terms agreed to and set forth in the attached Exhibit A. Payments not paid via ACH are due net 20 days.
- 3.05 Payment upon Termination of Relationship.** Upon termination of this Agreement, DISTRICT agrees to pay ETC amounts earned prior to termination of this Agreement.
- 4. Miscellaneous**
- 4.01 Amendments.** This Agreement may only be amended by written agreement by either party and only enforceable after countersigned by other party.

- 4.02 **Severability.** In the event any provision of this Agreement becomes unenforceable or void, such shall not invalidate any other provision of this Agreement.
- 4.03 **Assignability.** No assignment of this Agreement of the rights and obligations hereunder will be valid without the written consent of the non-assigning party.
- 4.04 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties and supersedes any prior understandings or oral or written agreements between **DISTRICT** and **ETC** on the matter contained herein.
- 4.05 **Governing Law.** This Agreement is being executed and delivered and is intended to be performed in the State of Texas, County of Bexar, and the laws of Texas shall govern the validity, construction, enforcement and interpretation of this Agreement.
- 4.06 **Captions.** The captions contained herein are for reference purposes only and do not affect the meaning of this Agreement.

DISTRICT and **ETC** have acknowledged their understanding of and are in agreement to the mutual promise written above by executing this Agreement.

AGREED:

By: Alicia J. Haff, JD
 Eligibility Tracking Calculators, LLC

Executed: 11/17/2017

By: Stefanie Shaw Superintendent Executed: _____
 Printed Name, Title Signature

Date Executed (and Effective Date of Contract): 11/2017

ETC TRACKING, EXHIBIT A

SERVICES PROVIDED AND FEE SCHEDULE for DIETRICH SCHOOL DISTRICT NO. 314

The information contained below is a summary of the description of services for which fees are charged. These Services are described more detail in the Services Agreement to which this Exhibit is an attachment and made part of the Services Agreement. To the extent any terms and conditions in this Exhibit conflict with the Services Agreement, the Services Agreement controls.

1. ONE-TIME SET UP FEE

\$0.00

Company Creation and Shell Set up on ETC server;
Implementation Support in gathering payroll & benefits information;
Creation of *Form 1095-C (or 1095-B if applicable)* Departments & assignments of initial indicator codes;
Set up payroll schedule and customize monthly reporting summary;
Process contracts and set up accounting to terms;
Creation of a Business Associate Agreement between companies;
Discussions and consulting regarding current healthcare strategy if desired;
Measurement Period/Stability Period Set up based on District determinations of appropriate measurement methods and periods;

2. ONE-TIME TECHNOLOGY FEE

\$0.00

ETC will create a computer processor around District's payroll and benefits templates approved by ETC;
Creation of XML Manifest;
Creation of XML Error reports.

3. REPORTING CONSULTING SUPPORT

Collect necessary data to prepare *1095 Series ACA Forms* for filing with the US Department of Treasury;
Consult with District regarding ACA obligations and proper Indicator codes for *1095-C Forms*;
Prepare *Forms 1095-C* for affected employees (method of delivery to be determined by District; any postage/handling charges are additional fees);
Strategy Sessions with ACA consultant to prepare and plan for changes to ACA that impact District's obligations under Code Sections 4980H, 6055, and/or 6056;
In depth newsletters and summaries provided by The Law Offices of Alicia J Haff; and
Marketplace/IRS Appeals Support. All appeals notices must be submitted to appeals@eligibilitytrackingcalculators.com in a timely manner.

\$12.60 PEPY (Paid by Trust)

4. YEAR END DELIVERY – POSTAGE

~~\$1.65 Per Form~~
\$45.00 PDF Option

ETC will deliver via USPS the 1095-C forms to each employee's address provided during the year end process. Tracking will be provided for each piece to the last postal address. ETC will upload to the District portal an electronic version of the 1095-C forms sorted in USPS zip code order.

District Signature: _____

Printed Name: _____

Stefanie Shaw

Date: _____

1/12/17

ETC TRACKING, EXHIBIT B

DIETRICH SCHOOL DISTRICT NO. 314 must provide ETC with data in a specific format as follows:

- Excel or CSV format;
- Organized or able to be organized via payroll period (not via individual employee with totals);
- Cells are not to be merged and must be sortable for proper mapping by ETC (i.e. no subtotals, no totals, no subcategories breaking up the data);
- Current Address information for each employee; and
- Employee Name broken out by First and Last;
- Identification Number (SSN or TIN) for every employee; and
- Benefits information (effective date(s), decision(s), employee required contribution amounts, termination of benefits).

For your convenience, attached are several templates to use (Payroll, Address and Benefits). Either complete these templates in their entirety or you may submit your own template/files for ETC's review. If ETC cannot use the data provided in the template(s) provided, we shall work with you to find a solution to extract this information. However, additional charges may apply if ETC must manipulate such data to extract for reporting purposes. Any additional fees shall be agreed to by the Parties prior to any work performed.

I understand that ETC will work to assist **DISTRICT** in creating the ETC file template for up to 1 hour at no charge. For hours beyond this, **DISTRICT** will be invoiced \$95.00 per hour on the first invoice following **DISTRICT** approval of additional hours of consultation.

District Signature

11/20/17

Date

DIETRICH SCHOOL DISTRICT NO. 314 NAME