



May 25, 2016

Milpitas Unified School District  
Wendy Zhang  
1331 East Calaveras Blvd  
Milpitas CA 95035

RE: Statement of Work for Affordable Care Act (ACA) Employee Tracking and Employer Reporting Service  
Renewal Date: 7/29/2016

Dear Wendy Zhang:

Thank you for entrusting American Fidelity Administrative Services ("AFAS") to be your business partner for compliance with the Affordable Care Act.

Enclosed is this year's newly-combined Statement of Work for Employee Tracking and Employer Reporting Services for your review and execution.

Please know that there are two fee increases taking effect for the upcoming year. For the Reporting Service, AFAS is instituting an annual fee of \$995.00. There will be no change to the per employee fee of \$3.50 per employee return. For the Tracking Service, there will be a small increase (\$0.10) in the per employee per month fee. The fee increase for the Tracking Service will take effective as of the renewal date stated above. These amounts will enable AFAS to provide additional resources to assist you with data processing and answering your questions about how the complex ACA rules affect your organization. This is AFAS's first fee increase since 2013; our goal is to continue providing your organization substantial value in connection with ACA compliance assistance. If you have any questions or concerns regarding this change, please don't hesitate to contact your AFAS consultant.

The enclosed Statement of Work contains the updated pricing structure. If you wish to continue the Employee Tracking and Employer Reporting Services, please sign and date the SOW and return to AFAS at:

American Fidelity Administrative Services  
Attn: Debbie Walker 8<sup>th</sup> Floor  
9000 Cameron Parkway  
Oklahoma City, OK 73114

We appreciate the opportunity to work with you and look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink that reads 'Susan Relland'.

Susan Relland, JD  
Chief Executive Officer

Enclosure

**STATEMENT OF WORK**  
**TO THE MASTER CONSULTING SERVICES AGREEMENT (the “MASTER AGREEMENT”) DATED 7/1/2015 BETWEEN Milpitas Unified School District (“CLIENT” or “you” or “your”) AND AMERICAN FIDELITY ADMINISTRATIVE SERVICES, LLC (“CONSULTANT” or “we” or “us” or “our”)**

**PROJECT:** Patient Protection and Affordable Care Act (“ACA”) Compliance: Time and Eligibility Tracking (“Tracking Service”) and Employer Reporting (“Reporting Service”; the Tracking Service and Reporting Service may be referred to individually as a “Service” or together as the “Services”)

**A. TERMS AND CONDITIONS.** This statement of work (“SOW”) is made and entered into effective as of the latest date signed below (the “Effective Date”). This SOW is subject to the terms and conditions of the Master Agreement.

**B. SERVICE DATES.** This SOW will begin on the Effective Date and will continue for a period of twelve (12) months. The SOW will automatically renew for additional one year periods, unless and until either party terminates the SOW.

**C. SERVICES AND DELIVERABLES.**

1. **TIME AND ELIGIBILITY TRACKING.** Consultant shall provide Client with access to the Tracking Service, which includes access to use certain computer programming (the “Program”), for the purpose of tracking, monitoring and reporting hours worked by Client’s current and former employees. Such tracking shall assist Client in determining which of its employees is eligible for health coverage and when such employee became eligible.
2. **ACA REPORTING.** Consultant shall provide Client with access to the Reporting Service Program to facilitate Client’s creation of the 1094-C and 1095-C Forms (collectively, the “Forms”), which satisfy certain reporting requirements of Client to the Internal Revenue Service (“IRS”) and certain disclosure requirements to Client’s employees as required under Sections 6055 and 6056 of the Internal Revenue Code of 1986, as amended (the “Code”). Services provided early in the subsequent calendar year to assist with generating and filing the Forms for an earlier Applicable Reporting Year will be considered part of the Service for the earlier Applicable Reporting Year. As used herein, an “Applicable Reporting Year” means a single calendar year for which the Client is required to generate the Forms.
3. **CONSULTANT SERVICE.** Consultant shall provide consultation with Client to help Client understand the application and rules of Section 4980H of the Code, which is referred to as the Employer Mandate Penalty, and Sections 6055 and 6056 of the Code, and then gather the information needed to implement the Services.

#### **D. RESTRICTIONS AND RESPONSIBILITIES CONCERNING THE SERVICES.**

1. Client acknowledges and agrees that it retains all responsibility to submit required information to the IRS and to provide disclosure documentation to its employees.
2. Client acknowledges and agrees that Client is solely responsible for timely submission, accuracy, and completeness of all Data required to be input into the applicable Service.
  - a. “Data” for purposes of this SOW is defined as demographic data (for employees, former employees, and covered family members subject to reporting under Code Sections 6055 and 6056), plan data, enrollment data, hours of service (records of hours worked and hours for which payment is made or due) data, and health plan coverage data. Consultant has no responsibility or obligation to determine if Data is accurate or complete.
  - b. “Timely Submission” for purposes of this SOW is defined as follows
    - i. Submitting initial test Data within two weeks of the implementation call;
    - ii. Submitting final test Data within one week of receiving correspondence on the initial Data; and
    - iii. Submitting ongoing Data at least monthly as described in the following section.
  - c. Client shall provide the necessary information required for the Services and shall provide such information to the Program on a monthly basis. Client’s failure to upload Data monthly may jeopardize satisfaction of Client’s reporting obligation to the IRS.
3. Client shall identify in writing the person or persons who will be authorized to access the Services on Client’s behalf (the “Authorized Users”). Client shall ensure that only Authorized Users receive the access codes to the Program; Client shall also provide Authorized Users with procedures for use established by Consultant. Client agrees that Client is solely responsible for access to Client’s Data in violation of such procedures and Consultant shall have no responsibility, obligation or liability for any unauthorized access to the Client’s Data resulting from a failure to follow Consultant’s procedures.
4. As part of the Services, Consultant shall grant Client a limited, personal, non-exclusive, non-transferable and non-assignable license to use the Program defined herein and related documentation (the “Documentation”). The license granted under this SOW is limited to the terms and purpose set forth herein and may be revoked by Consultant for Client’s failure to comply with the provisions of this SOW. Client may not (a) sell, license, reproduce or otherwise transfer or allow the transfer of the Program, or any backup copy, to third parties; (b) use the Program in any manner inconsistent with the rights granted herein; (c) modify or create derivative works of the Program; or (d) decompile, reverse engineer, disassemble, analyze, modify, adapt, convert, or create derivative works from the Program. These restrictions shall survive the termination of this SOW.

**E. FEES AND EXPENSES.**

1. TRACKING FEES. Client agrees to pay the amounts below per month for each employee whose hours are monitored through the Tracking Service. Tracking Fees shall be invoiced on or about the 10th day of each month. "PEPM" refers to "per employee per month".

Group size up to 999 Employees	\$0.85 PEPM
Group size 1000-1999 Employees	\$0.75 PEPM
Group size 2000-3999 Employees	\$0.65 PEPM
Group size 4000+ Employees	\$0.55 PEPM
2. REPORTING FEES. Client shall pay an annual fee of \$995.00 for the Reporting Service, plus \$3.50 per employee for whom a 1095 form is generated. Half of the total expected reporting fees shall be due in August of the Applicable Reporting Year, with the balance billed at the beginning of the next calendar year.
3. FEE INCREASES. Consultant reserves the right to amend the fees described in this SOW by providing the Client at least sixty (60) days' written notice of any fee changes.
4. In the event that Client executes this SOW but terminates the Services prior to the initial upload of Data as described in Section D(2)(b)(i) hereof, Client shall pay Consultant its hourly rate for time spent on Client's behalf prior to Client's termination.

**F. TERMINATION OF SOW.**

1. Upon a breach of a material term or condition of this SOW, the non-breaching party shall provide notice to the other, which notice shall describe the breach in sufficient detail for the breaching party to identify and correct it. If the breaching party fails to take reasonable steps to remedy the breach within thirty (30) days of the written notice, the non-breaching party may terminate the SOW.
2. Either party may terminate this SOW for convenience by providing thirty (30) days' prior written notice of the same to the other party.
3. Termination of this SOW shall not terminate the rights or obligations of either party arising prior to the effective date of such termination.

**G. COPYRIGHT AND PROPRIETARY INFORMATION.**

1. Consultant reserves all intellectual property rights with respect to the Services, Program, and Documentation and any copies of same under all applicable national and international laws and treaties for the protection of intellectual property rights, including, but not limited to, trade secrets, copyrights, trademarks and patents. Any rights not expressly granted to Client in this SOW are retained by Consultant.
2. Immediately upon becoming aware of any unauthorized use, copying, reproduction or disclosure of the Program or Documentation, Client shall notify Consultant in writing.

**H. LIMITED WARRANTY/DISCLAIMERS.**

1. Subject to the limitation of liability provisions contained in the Master Agreement and as set forth in this SOW, Consultant warrants that it has sufficient rights to grant Client the

rights to access the Services pursuant to this SOW. No warranty is made that the Services will be uninterrupted or error-free. Client is solely responsible for all Data input. Consultant expressly disclaims any and all liability resulting from inadequate, incomplete or improper Data input. This warranty is limited to the term of this SOW.

2. THE PRECEDING WARRANTY IS THE ONLY WARRANTY RELATED TO THE SERVICES, DOCUMENTATION AND SUPPORT SERVICES AND IS MADE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.
3. If an implied warranty or condition is created by Client's jurisdiction and federal or state law prohibits disclaimer of it, Client may also have an implied warranty or condition, BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY (90 DAYS). AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY (90) DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND. Some jurisdictions do not allow limitations on how long an implied warranty or condition lasts; so, the above limitation may not apply to you. This limited warranty gives Client specific legal rights. Client may have other rights, which vary from jurisdiction to jurisdiction.
4. Client understands and acknowledges that Client is solely responsible, among other things, for: (a) all uses of the Services using user names or passwords assigned to you; (b) provision of or input of Data into the Services or Program; (c) confirmation of the accuracy of the Data input into and received from the Services; and (d) compliance with all applicable laws associated with the use of the Data.

#### **I. LIMITATION OF LIABILITIES.**

1. SUBJECT TO THE LIMITATION OF LIABILITY AND OTHER TERMS CONTAINED IN THE MASTER AGREEMENT, CONSULTANT'S ENTIRE LIABILITY AND CLIENT'S EXCLUSIVE REMEDY FOR ANY BREACH OF THIS LIMITED WARRANTY OR FOR ANY OTHER BREACH OF THIS AGREEMENT OR FOR ANY OTHER LIABILITY RELATING TO THE PROGRAM SHALL BE LIMITED TO EITHER (A) CORRECTION OF ERRORS IN THE OPERATION OF THE PROGRAM OR (B) REFUND OF FEES. CLIENT WILL RECEIVE ONE OF THE TWO REMEDIES, SELECTED BY CONSULTANT IN ITS SOLE DISCRETION, WITHOUT CHARGE.
2. IN NO EVENT WILL CONSULTANT OR ANY OF ITS AFFILIATES HAVE ANY OBLIGATION OR LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, LOST REVENUE, LOSS OF OR DAMAGE TO DATA, PROFITS OR BUSINESS INTERRUPTION LOSSES, ARISING FROM OR RELATED TO THE PROGRAM, THE SERVICES OR THE DOCUMENTATION, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT CLIENT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. CONSULTANT'S

LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL AT ALL TIMES AND IN THE AGGREGATE AMOUNT BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CLIENT TO CONSULTANT UNDER THIS AGREEMENT.

[EXECUTION PAGE FOLLOWS]

The parties hereby agree and consent to the terms and conditions of this SOW and acknowledge such by executing the SOW below.

AGREED BY:

**Milpitas Unified School District**

\_\_\_\_\_  
Name:

Title:

Date: \_\_\_\_\_

Notice Address:

Milpitas Unified School District  
1331 East Calaveras Blvd  
Milpitas CA 95035

**AMERICAN FIDELITY  
ADMINISTRATIVE SERVICES, LLC**

\_\_\_\_\_  
Name: Mary Nash

Title: Chief Operations Officer

Date: \_\_\_\_\_

Notice Address:

American Fidelity  
Administrative Services, LLC  
Attn: Manager  
9000 Cameron Parkway  
Oklahoma City, OK 73114

AND

American Fidelity LAW Department  
P.O. Box 25523  
Oklahoma City, OK 73125