

**(ATTACHMENT 1) ACTION ON REQUEST TO WAIVE ADMINISTRATIVE POLICY 3.09(9)(E) AND
EXTEND A CONTRACT FOR GYM MEMBERSHIP ADMINISTRATION**

Purchase Requisition Number: CR010073
Contract Number: C022086
Vendor Number: V026016

**MILWAUKEE BOARD OF SCHOOL DIRECTORS
PROFESSIONAL SERVICES CONTRACT**

This Contract is being entered into this 11th day of August, 2014, by and between **Healthy Contributions LLC** ("Contractor"), a limited liability company organized in Minnesota, and Milwaukee Board of School Directors ("MPS").

1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks:

Contractor shall partner with MPS in launching a MPS gym membership subsidy employee wellness program, (the "Program"), to fitness centers or health clubs which shall be designated by Contractor from time to time during the pendency of this Contract, that agree to participate in the Program, ("Fitness Center"). Contractor shall have two (2) main functions under this program:

- a) Recruit, train, and communicate Program terms and conditions to all participating Fitness Centers; and
- b) Oversee participant registration and manage the subsidy reimbursement process for employees that earn the subsidy each month as set forth pursuant to the registration and reimbursement processes set forth hereto on Exhibit A, which is attached hereto and incorporated by reference.

Within these responsibilities, the Contractor must also exhibit great attention to detail, promptness on time sensitive documents, high quality customer service, and the flexibility to make changes as needed, subject to the terms of this Contract. Contractor will offer to provide services described herein to all local YMCAs and other such fitness centers as are agreed to by the parties, and the Contractor must also be responsible for maintaining the reasonable level of security required by MPS in the transfer of files with personal information in them. As described herein, MPS will provide Contractor with funds to disperse the \$20.00 subsidy per Participating Employee, ("Monthly Payment"), to participating MPS employees that meet mutually agreed to Program requirements, ("Participating Employees"), each month via a mutually agreed upon transaction process.

The parties shall agree upon the data requirements and mechanics of all reports required hereunder, including without limitation, the manner of identifying Participating Employees in such reports, and procedures for dealing with customer service inquiries and issues related to eligibility for the Program and Fitness Center eligibility. The parties hereto agree to follow the agreed upon format for monthly return reports set forth in the exhibits hereto, and all such reports submitted in this format shall satisfy the monthly report requirements provided for herein.

Contractor was chosen pursuant to RFP 866 and shall be held to the terms and conditions listed therein.

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

2. TERM

This Contract shall be in effect from September 8, 2014 through June 30, 2015 with the option for two (2) additional one-year extensions.

No work shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed contract with approval to proceed shall not be compensated pursuant to this Contract. Any continuation of the Contract beyond this term must be set forth in writing and signed by the original signatories to the Contract.

3. COMPENSATION

Under this Contract there shall be a one-time technology startup fee in the amount of \$2,500.00.

Compensation under this Contract shall be in the form of total administrative costs per employee per month ("PEPM"). The PEPM rate is \$1.50. 1,660 employees are estimated to meet the Program requirements monthly and earn the Monthly Payment, so the total estimated administrative costs are \$2,490.00 per month (or \$29,880.00 annually).

MPS shall pay Contractor at the rates set forth herein if actual participation exceeds the estimates.

Total compensation under this Contract is estimated as no more than \$32,380.00 in year one of the Contract. Total compensation amount in years one and two of the Contract shall be based off of program usage data if the options for renewal are exercised.

MPS reserves the right to determine in its reasonable discretion whether Contractor's services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered ; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

Milwaukee Public Schools
Attn: Daniel Chanen, Director
Compensation and Benefits
PO Box 2181
Milwaukee, WI 53201-2181

If requested by MPS to substantiate the services provided herein, Contractor will provide a detailed description of the dates and times worked, and the tasks performed to substantiate the services hereunder. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this contract.

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

4. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and, upon payment from MPS for services actually performed and subject to any provisions that survive the termination of this Contract, relieve MPS of any further obligations under the Contract.

5. NON-DISCRIMINATION

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. This prohibition includes but is not limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this Contract.

If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

6. INDEMNITY

Notwithstanding any references to the contrary, Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this Contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys' fees or other expenses resulting therefrom.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS' negligence for acts, policies, or directives that affect the activities covered by this Contract.

Notwithstanding the foregoing, MPS understands and acknowledges that each Fitness Center is independently owned and operated, and solely responsible for its employees, members and any participation of the Fitness Center provided pursuant to the Program, including without limitation, employment practices, member liability and club operations. Fitness Centers are not subcontractors of Contractor under this Contract. MPS acknowledges that Contractor shall not be responsible for failure of any Fitness Center to abide by the terms and obligations of the Program, and any such failure shall not be deemed a breach of this Contract by Contractor.

Notwithstanding any other provision of this Contract, in no event will Contractor be liable to any Participating Employee or Fitness Center for any Monthly Payment that Contractor has not received from MPS. To the extent permitted by the laws of the State of Wisconsin, including, but not limited to Wis. Stat. § 893.80, MPS shall indemnify and hold Contractor, its affiliated companies and their respective officers, directors, employees and agents, (for the purposes of this paragraph, referred to as the "Contractor Indemnified Parties"), harmless from and against any and all claims, lawsuits, judgments, damages, liabilities, attorneys' fees, and costs incurred by any of the Contractor Indemnified Parties arising out of MPS's failure to pay any amounts due to Fitness Clubs or Participating Employees in connection with the Program.

7. BACKGROUND CHECKS

No background checks are required under this Contract as no contact with MPS students is contemplated by the services performed hereunder.

8. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with the Contractor. Contractor and its subcontractors shall effect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Professional Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Professional Liability	\$1,000,000 per occurrence
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

MPS shall be named as an additional insured under Contractor's and subcontractors' general liability insurance and umbrella liability insurance. Evidence of all required insurances of Contractor shall be given to MPS. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of Contractor's insurers providing the coverages required by MPS for the duration of this Contract.

9. SHIPPING /TAXES

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids and invoices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. This means any freight, shipping, processing, handling or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID.

All textbook purchases shall be governed by the terms and conditions in the Milwaukee Board of School Director Textbook Contract, found on the Milwaukee Public Schools portal (<http://mpsportal.milwaukee.k12.wi.us>) which provides that textbooks shipped to MPS or its schools must be done at no additional charge to MPS or its schools.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

10. IRREPARABLE HARM

It is mutually agreed the breach of this Contract on Contractor's part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

11. TERMINATION BY CONTRACTOR

Contractor may, at its option, terminate this Contract upon the failure of MPS to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

12. TERMINATION BY MPS - BREACH BY CONTRACTOR

If Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its material provisions, MPS shall thereupon have the right to terminate it by giving thirty (30) days written notice before the effective date of termination of the Contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation as soon as reasonably possible, but no later than the effective date of termination. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

13. TERMINATION BY MPS

MPS further reserves the right to terminate this Contract at any time for any reason by giving Contractor 180 days written notice by Registered or Certified Mail of such termination. In the event of said termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination, including any retainage. In the event of a termination of this Contract pursuant to section 4 for a non-appropriation of funds, MPS will give as much written notice as reasonably possible under the circumstances.

14. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS's sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income to Contractor. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time and further agrees to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

MPS acknowledges that Contractor is a data information processor which works with fitness centers that may desire to participate in the Program pursuant to the terms and conditions of this Contract. MPS understands that these fitness centers are independently owned and operated, and therefore each may have their own timelines, policies and procedures and Contractor cannot guarantee or be responsible for mandating service requirements outside the scope of this Contract.

15. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

16. PROHIBITED PRACTICES

- A. Contractor during the period of this Contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.

- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. Contractor shall adhere to the MPS' Livable Wage Policy that requires all contractors to pay their employees a minimum of \$7.70 per hour.
- D. No person may enter into this Contract for services that the MPS employee would otherwise perform as an employee.
- E. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the Director of Human Relations or her designee.
- F. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this Contract.

17. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this Contract, or to their designees.

18. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

19. INTEGRATION / SEVERABILITY

This Contract and its exhibits and addenda, if any, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of Contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

20. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this Contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

21. TIMING

Time is of the essence in this Contract.

22. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

23. FORCE MAJEURE

Each party will not be liable to the other for any work or services that such party is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond such party's reasonable control (including

any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

24. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

25. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or Contractor under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

Within ten business days of the earlier of receipt of MPS' written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

26. MPS LOGO/PUBLICITY

Subject to the terms of the Contract and excluding necessary use to perform the services set forth in this Contract, no Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS' Director of Communication and Public Affairs.

27. ORDER OF PRIORITY

Should Contractor and MPS sign Contractor's Contract in addition to this Contract, the terms set forth in this Contract shall govern in the event of a conflict.

28. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

29. COMPLIANCE REQUIREMENT

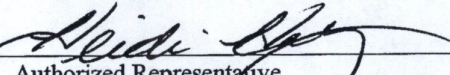
The HUB requirement on this Contract is 0%. The student engagement requirement of this Contract is 0 hours. The Career Education requirement for this Contract is 0 hours. Failure to achieve these requirements may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

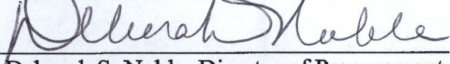
[SIGNATURE BLOCK FOLLOWS ON NEXT PAGE]

IN WITNESSES WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR (Vendor V026016)

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By 
Authorized Representative

By 
Deborah S. Noble, Director of Procurement

Date: 9-3-14

Date: 9-8-14

Healthy Contributions LLC
12181 Mango Ave So
Hastings, MN 55033
(800) 317-2739

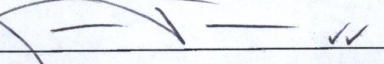
SSN/FEIN:

Budget Code: DWC-0-0-EMB-DW-EMDI

NOTE: BUDGET CODES THAT ARE NOT LOCAL SCHOOL BUDGET CODES, MUST BE APPROVED BY APPROPRIATE DEPARTMENT OR PROGRAM ADMINISTRATOR.

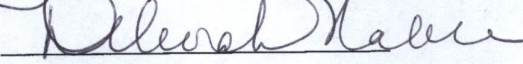
This Contract is not enforceable until signed by the Department of Finance. Payment will not be made on any contract not on file in the Department of Finance. A minimum of fifteen business days is required for approval.

Reviewed by Division of Insurance and Risk Management

By  ✓

Date: 09-17-14

Approved as to form and independent contractor status by Department of Finance.

By 

Date: 9-17-14

EXHIBIT A

C o l	Element	Type	Max Leng th	Definition
A	Employee ID	Varchar	6	Unique Employee ID as indicated on Payroll Check
B	First Name	Varchar	50	Member First Name
C	Last Name	Varchar	50	Member Last Name
D	Middle Initial	Varchar	1	Member Middle Initial - (Optional data, must have column in spreadsheet)
E	Date of Birth	Date	8	Member Date of Birth Format YYYYMMDD Example: for 12/15/1985 enter 19851215
F	Address Line 1	Varchar	50	Address 1
G	Address Line 2	Varchar	50	Address 2 - (Optional data, must have column in spreadsheet)
H	City	Varchar	50	City
I	State	Varchar	2	State
J	Zip	Numeric	5	Zip
K	Activity Year and Month	Numeric	6	Year and Month for this credit. Format is YYYYMM (year and month). Example: for 12/2006 enter 200612
L	Visit Count	Numeric	2	Number of DAYS the member worked out at participating facility that month (Maximum one workout per day counts toward total)
M	Member Id	Varchar	6	Member number assigned by fitness center Example: AB1234
N	Contract Signed Date	Date	8	Original date the member enrolled at the fitness center. Format is YYYYMMDD. (Optional data – field can be empty) Example: for 07/12/2001 enter 20010712
O	Program Enrollment Date	Date	8	Date enrolled in _____ Program at this club. Format is YYYYMMDD. If day (DD) information cannot be supplied, default to 01. Example: for 02/01/2007 enter 20070201
P	Email Address	Varchar	50	Member personal email address (Optional data – field can be empty)
Q	Monthly Dues Amount	Numeric	6	Dues that member is paying – before credit. Example: 49.52 Split in half if dual or family membership
R	Club id	Numeric	4	Club ID assigned by Healthy Contributions Example: 3999
S	Club Name	Varchar	50	Club Name

The Return file will have this included:

T	Reimbursement Amount	Numeric	5	Amount to be credited to the member. Numeric 5 digits with decimal Example 20.00
U	Error Code	Varchar	3	Number corresponding to return description
V	Return Description	Varchar	255	Message indicating condition of the return.

File Layout Information

- File sent to Healthy Contributions should include *a record for each member who has signed up for the program*, regardless of the number of workouts for the month being reported (i.e., include 0 workouts through 31 workouts) All members will be on one document.
- File must be in the TAB delimited file format named as follows CLUB ID/YEAR/MONTH.txt Example: 9999200809.txt
- There will be no headers (field names) in the file sent to Healthy Contributions.
- All fields must be present for each record, even if they are empty.
- Fields must all be in the indicated order.

Please refer any file layout questions to Healthy Contributions at 1.800.317.2739 or info@healthycontributions.com.

EXHIBIT B

All terms used herein shall have the meaning set forth in the Professional Services Contract dated August 11, 2014 between the Milwaukee Board of School Directors and Healthy Contributions, LLC. Each party agrees to the following provisions relating to the registration and reimbursement processes contemplated by ¶ 1 of the Contract:

Contractor, in its sole and reasonable discretion, will approve and enroll the Fitness Centers to participate in the Program and will provide the member enrollment administrative services set forth on Exhibit C to the Contract.

Upon designation of a new Fitness Center to participate in the Program, Contractor will provide such Fitness Center with all necessary enrollment forms, as well as any communication materials agreed upon by the parties hereto.

Contractor will maintain a toll-free telephone support line during reasonable business hours to assist Fitness Centers in implementing the Program, and will communicate with the Fitness Centers on a reasonable basis regarding the Program.

Contractor will maintain a reporting portal, (the "Reporting Portal"), to which MPS and Fitness Centers will have access.

Contractor will otherwise manage the Program on behalf of MPS, in accordance with the reasonable guidelines and parameters for the Program adopted by MPS and communicated to and accepted by Contractor.

By the 10th day of each month, (or by the next business day if such date falls on a weekend or bank holiday), during the term of this Contract and during the next succeeding month following the termination of this Contract, Contractor shall post in the Reporting Portal a list of visits by Participating Employees at a Fitness Center during the previous calendar month in accordance with Program guidelines. Contractor shall notify MPS by email when the list has been posted. Contractor will not, however, be liable to MPS or be in breach of the Contract due to the failure of any Fitness Center or MPS to comply with its reporting obligations to Contractor, and Contractor's obligations hereunder are contingent upon receiving reports from MPS and Fitness Centers in the formats and timeframes described herein.

By the 20th day of each month succeeding the calendar month in which the Monthly Payment is earned (or by the next business day if such date falls on a weekend or bank holiday) during the term of this Contract, MPS shall pay the Contractor the Monthly Payment as determined by MPS's payroll schedule, (to be communicated to Contractor), on the "Return File" (set forth as Exhibit D to this Contract).

By the 20th day of each month succeeding the calendar month, (or by the next business day if such date falls on a weekend or bank holiday), during the term of this Contract, and upon receipt of the Return File from MPS, Contractor will post return reports in the form agreed to by the parties in the Reporting Portal.

If MPS terminates a Participating Employee's employment or eligibility for the Program, MPS will notify Contractor on the next return report available. Contractor will thereafter notify Fitness Centers of this change in status. MPS will pay any Monthly Payment due to the Participating Employee as usual. Contractor will use its best efforts to ensure the Fitness Center will not submit additional requests for any unapplied Monthly Payment due more than thirty (30) days after the termination of the employment or eligibility and notification of status of employee.

The parties hereto agree that any additional programming, technical development requests, or additional obligations requested of Contractor by MPS not set forth in ¶ 1 of the Contract shall constitute "Additional Work," which shall be paid for by MPS at prices to be agreed upon between MPS and Contractor pursuant to a separate Statement of Work, mutually agreeable to both parties. Such requests shall be sent to Contractor's National Director of Employee Wellness Programs, or such other individual as may be designated by Contractor.