

INDEPENDENT SCHOOL DISTRICT 271  
Bloomington, Minnesota

**REQUEST FOR SCHOOL BOARD ACTION**

DATE OF BOARD MEETING: February 27, 2017

SUBJECT: Participating Club Agreement between  
HealthPartners, Inc. and Independent School  
District 271

ORIGINATING DEPARTMENT: Community Services

APPROVAL OF ADMINISTRATIVE  
CABINET MEMBER: Tamra Sieve  
Executive Director of Community Services

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**RESOLUTION FOR BOARD TO ADOPT:**

RESOLVED, that the School Board of Independent School District 271 approves the Participating Club Agreement between HealthPartners, Inc. and Independent School District 271 to offer rewards to participating HealthPartners members who complete the monthly workout requirement.

**RECOMMENDATION OF SUPERINTENDENT:**

Approve.

**DETAILED BACKGROUND:**

The Participating Club Agreement with HealthPartners allows the District's Activity Centers to participate in the HealthPartners Frequent Fitness Program. HealthPartners determines the maximum monthly incentive and workout requirement. The Activity Center or data processor will pass the incentive back to members by a reduction in their membership fees if they meet the monthly workout requirement. The effective date is January 1<sup>st</sup> to ensure activity center members receive reimbursement for the first two months of the year if they qualify.

The District's legal counsel and insurance agent have reviewed the agreement.

## Participating Club Agreement

This Participating Club Agreement (“Agreement”) is entered into by and between HealthPartners, Inc., and its Related Organizations (defined below) (“HealthPartners”) and [Independent School District 271] (“Club”), effective this 1st day of January, 2017 (“Effective Date”).

WHEREAS, to promote the health of its employees and members, HealthPartners agrees to offer an Incentive (defined below) to certain Eligible Persons (defined below) who complete the monthly workout requirement at any Club location (“HealthPartners Frequent Fitness Program”); and

WHEREAS, the Club desires and HealthPartners agrees to allow the Club to become a participating club for purposes of the HealthPartners Frequent Fitness Program; and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, HealthPartners and Club hereby agree as follows:

### **1. Definitions.**

- 1.1 “Related Organization” means any organization now or hereafter formed that:
  - a. is controlled directly or indirectly by a party;
  - b. directly or indirectly controls a party; or
  - c. is controlled directly or indirectly by another corporation that also controls a party.
- 1.2 “Eligible Persons” means persons eligible to participate in the HealthPartners Frequent Fitness Program who are 18 years old or older and complete the monthly workout requirement at any of the participating Club locations. HealthPartners will determine Eligible Person status.
- 1.3 “Members” means Eligible Persons that are members of the Club.
- 1.4 “Incentive” means a monetary incentive given to Members who complete the monthly workout requirement.
- 1.5 “Processor” means a contracted fitness reimbursement data processor. This Agreement designates National Independent Health Club Association (NIHCA) as the Processor.

### **2. Rights and Responsibilities of the Parties.**

2.1 Determination of Eligible Persons. HealthPartners will determine Eligible Person status for participation in the HealthPartners Frequent Fitness Program. Eligible Person status is determined by program guidelines and is based on an individual’s employment, membership or participation in other service arrangements with HealthPartners. Club may request additional information on current HealthPartners Frequent Fitness Program guidelines.

2.2 Incentive Terms. HealthPartners will determine the maximum monthly Incentive and workout requirement. HealthPartners will confirm the Incentive and workout requirement to the Club as part of its routine program setup. HealthPartners may change the Incentive or workout requirement at any time with 90 days prior written notice to the Club. Changes will be effective the 1st day of the month following the 90 day notice. Club agrees to work with HealthPartners to communicate any Incentive and workout requirement changes to Members during that period.

2.3 Incentive Payments. Club or Processor agrees to pass Incentives back to Members in the form of direct payment to Members (e.g., direct deposit, cash payment or reductions to Club membership fees). Payments will be made by Processor within 15 days of receipt of the Incentive from HealthPartners. Club will not add additional reimbursement restrictions or impede disbursement. Club will not retain or withhold Incentives paid by HealthPartners intended for disbursement to Members. If Club dues are less than the maximum monthly Incentive, HealthPartners will reimburse these amounts only if the Club uses a Processor.

2.4 Enrollment. Club agrees to follow HealthPartners program guidelines to enroll Members into the HealthPartners Frequent Fitness Program. If the Club offers the HealthPartners Frequent Fitness Program and another program, such as the Silver&Fit® program, the Club will direct the Member to the appropriate program for which they are eligible. HealthPartners will provide Club with a reasonable amount of information for any programs it offers, so Club can correctly direct Members to the appropriate program.

2.5 Additional Discounts. Club may provide additional discounts to Members as it determines appropriate. If Club chooses to advertise these discounts to Members, any use of HealthPartners name may only be used in accordance with Article 4 of this Agreement.

2.6 Criteria. In order to become a participating club under the HealthPartners Frequent Fitness Program, Club will comply with the following criteria:

- a. Operate for the primary purpose of physical activity and:
  - i. offer a dedicated space for Members to work out and engage in physical activities;
  - ii. charge a recurring monthly club membership/program fee; and
  - iii. possess the necessary infrastructure, including software, hardware equipment, processes and procedures, to accurately record when Members access the Club, and report such workouts as specified by HealthPartners.
- b. Enter into a written agreement with Processor to obtain administrative services necessary to carry out the HealthPartners Frequent Fitness Program. Club is responsible for all rules, procedures, charges, fees and requirements of Processor as necessary to administer the HealthPartners Frequent Fitness Program; and
- c. Provide all Members with full access to Club facilities during Club's regular business hours.

### **3. Reporting**

Pursuant to the written agreement with Processor, Club agrees to cooperate and support Processor with the functions outlined in the Processor's agreement. The necessary functions include the following:

- a. Eligible Employer Groups. On or before the 1st day of each month, HealthPartners will provide Processor with a list of eligible employer groups for registration/eligibility verification. This information will be treated confidentially by Processor and access to it will be limited to Processor employees that need to use it in the functioning of their jobs. This information will not be used for any purpose other than registration/eligibility verification.

b. Member Eligibility. On or before the 10th day of each month, Processor will provide HealthPartners with a list of Members identifying the Member's name and the number of times the Member accessed the Club in the previous month. This report must be provided in a standard format designated by HealthPartners, or if the report is provided to Processor, in a format agreed to by HealthPartners and Processor.

c. Incentive. On or before the 25th day of the month in which the monthly report is received from Processor, HealthPartners will verify eligibility of each Member for the Incentive and provide a report to Club of Members eligible for the Incentive.

d. Reimbursement. HealthPartners will pay Processor for the Incentive after HealthPartners verifies eligibility of Members. Club will maintain the 2 month lag in reimbursement (for example, workouts in June will be reimbursed as scheduled in August). In no case will HealthPartners or Club reimburse Members for partial completion of the workout requirement. Club will return to HealthPartners or Processor any Incentive not disbursed to Members. If both parties agree that there have been routine delays in payment, parties will work together to establish a corrective action plan.

#### 4. Intellectual Property

4.1 Both parties acknowledge the other party's exclusive ownership of their trade names, trademarks, service marks and logos ("Marks"), whether presently existing or later established.

4.2 HealthPartners and Club may use the other party's Marks in press releases and similar notices ("Publicity") regarding the parties' business relationship arising out of this Agreement; provided that any such Publicity may not be released without the prior review and approval of the other party, which will not be unreasonably withheld or delayed.

HealthPartners may use the Club's Marks in brochures, publications, and marketing and promotional materials and communications to its members, and on the HealthPartners website ("Marketing Materials") regarding the HealthPartners Frequent Fitness Program.

HealthPartners will have a non-exclusive, non-transferable, royalty-free license to use Club Marks in Marketing Materials, and on the HealthPartners website to promote the HealthPartners Frequent Fitness Program arising out of this Agreement. HealthPartners will ensure that all of the Club's registered Marks used in the Marketing Materials and on the HealthPartners website contain the U.S. trademark registration symbol (i.e., ®) on the right shoulder of the Mark. HealthPartners will not remove, alter, cover, obfuscate or modify the foregoing trademark attribution or the U.S. trademark symbol specified above from the Marketing Materials or website without the prior written consent of Club.

4.3 Club will have a non-exclusive, non-transferable, royalty-free license to use **HEALTHPARTNERS**® in Club's Marketing Materials and on the Club website solely to promote the HealthPartners Frequent Fitness Program arising out of this Agreement. Club will ensure that **HEALTHPARTNERS**® used in the Marketing Materials and on the Club website contains the U.S. trademark registration symbol (i.e., ®) on the right shoulder of the Mark.

All copies of the Marketing Materials made by Club that bear **HEALTHPARTNERS**® will contain the following trademark attribution: "*HealthPartners*® is the registered trademark of *HealthPartners, Inc.*" The foregoing attribution will also appear on the Club website whenever it contains **HEALTHPARTNERS**®. Club will not remove, alter, cover, obfuscate or modify the

foregoing trademark attribution or the U.S. trademark symbol from the Marketing Materials or website without the prior written consent of HealthPartners.

Upon reasonable request, Club will cease using all HealthPartners Marks. Upon the termination of this Agreement, each party will immediately cease the use and distribution of the other party's Marks.

## **5. Termination**

This Agreement is effective as of the Effective Date. This Agreement will remain in effect until terminated by either party. Unless agreed to by both parties, any termination by the Club will be effective as of December 31st of the year in which effective written notice of termination is provided. Effective written notice of termination by the Club is notice given at least 120 days in advance of the effective date of termination (*i.e.*, in advance of December 31st). HealthPartners may terminate this Agreement at any time with 30 days advance written notice.

## **6. Mutual Indemnification.**

Subject to applicable law, Club agrees to indemnify and hold harmless HealthPartners from and against any and all losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses related to the defense of any claims), arising out of or resulting from: (a) Club's breach of this Agreement; or (b) from any compromise, breach or loss of Member's personal or financial data or information or other loss to the Member, caused by Club. HealthPartners agrees to indemnify and hold harmless Club from and against any and all losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses related to the defense of any claims), arising out of or resulting from: (a) HealthPartner's breach of this Agreement; or (b) from any compromise, breach or loss of Member's personal or financial data or information or other loss to the Member caused by HealthPartners.

## **7. Audit**

HealthPartners reserves the right to audit and examine any cost, payment and/or supporting documentation resulting from services provided under this Agreement. Any such audit(s) shall be undertaken by HealthPartners, or its representatives, at reasonable times, upon reasonable notice, at HealthPartners expense and, to the extent reasonably possible, so as not to interfere with the business or operations of the party being audited, and in conformance with generally accepted auditing standards then applicable. Club will not provide HealthPartners with a Member's bank account or other personal banking information.

## **8. Confidential Information and Injunctive Relief**

8.1 Confidentiality of Proprietary Information. During this Agreement, the parties may have access to or become acquainted with confidential information relating to the other party's business, including, without limitation, eligible employer groups, Member lists, names of Members, proprietary information, trade secrets and other intellectual property, non-public information, clinical, marketing, personnel and administrative policies, procedures, manuals and reports, and written agreements, including this Agreement ("Confidential Information"). The parties acknowledge and understand the importance of keeping such information, including the terms of this Agreement, confidential and agree never to use, except in performing under this Agreement, or to disclose such information to any third-party except as may be required by a

court or administrative order or except, with respect to HealthPartners, to an entity that controls, is controlled by or is under common control with, directly or indirectly, HealthPartners. If disclosure is ordered by a court or administrative order, the party subject to the order will immediately notify the other party. Upon termination of this Agreement, each party will immediately return all records or other tangible documents which contain, embody or disclose, in whole or in part, any Confidential Information to the other party. Confidential Information does not include: (a) information that is or becomes publicly available; (b) information already in the recipient's possession, but not provided by the discloser; (c) information disclosed to a recipient by a third-party; and (d) information independently generated by the recipient that in no way contains, reflects or is derived from the disclosed Confidential Information.

8.2 Injunctive Relief. The parties acknowledge and agree that if the obligations of this Agreement are not fully complied with, the breaching party may not have an adequate remedy at law. Therefore, in addition to any and all remedies available to the non-breaching party at law or equity, the non-breaching party shall be entitled to injunctive or equivalent relief to enforce the breaching party's compliance with the requirements set forth in Articles 4 and 8.

## 9. Miscellaneous

9.1 Disputes. If any dispute arises from this Agreement, the parties agree to attempt to resolve the dispute in advance of bringing any legal action.

9.2 Amendment. This Agreement may only be amended by a writing signed by both parties.

9.3 Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held invalid by a court of law or other tribunal, the invalidity of that provision will not affect any other provision of this Agreement.

9.4 Non-Assignment. Neither HealthPartners nor Club may assign this Agreement without the other party's prior written consent. Should written consent for assignment be granted, this Agreement is binding on any successors, assigns or subcontractors of HealthPartners or Club.

9.5 Governing Law and Jurisdiction. Except as otherwise provided under other applicable law, this Agreement is governed by the laws of the State of Minnesota. The appropriate jurisdiction for any litigation under this Agreement will be courts located within the State of Minnesota. Litigation in federal courts will be in the appropriate court in the State of Minnesota. The parties irrevocably consent and submit themselves to the personal jurisdiction of such courts for all purposes.

9.6 Survival. Articles 4, 6, 7, 8 and 9 will survive the termination of this Agreement with respect to any claim, action or proceeding relating to actions or omissions alleged to have occurred during the term of this Agreement.

9.7 Non-Waiver. The rights and remedies of the parties are cumulative and not alternative. Neither the failure nor delay by a party in exercising any right under this Agreement or the documents referred to in this Agreement, except for limitations provided by law, will operate as a waiver of such right, and no single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.

9.8 Notice. Any notice or other communication provided for by this Agreement must be in writing and will be deemed given or delivered when personally delivered or when deposited in the United States Mail, certified or registered, return receipt requested, postage prepaid and properly addressed, or by recognized overnight courier, next day delivery, charges prepaid, or if given by facsimile, upon evidence of transmission of facsimile, followed by registered or certified mail, addressed to the intended recipients as follows:

If to [HEALTHPARTNERS, INC.]  
[SCOTT AEBISCHER, SENIOR VICE PRESIDENT,  
HEALTHPARTNERS  
8170 33<sup>RD</sup> AVE SOUTH, BLOOMINGTON, MN 55425]

with a copy to:  
HealthPartners General Counsel  
P.O. Box 1309  
Minneapolis, MN 55440-1309

If to [INDEPENDENT SCHOOL DISTRICT 271]  
1350 W. 106<sup>TH</sup> STREET  
BLOOMINGTON, MN 55431

9.9 No Third-Party Beneficiaries. Except as expressly provided in this Agreement, no person or entity is intended to be or will be construed or deemed to be a third-party beneficiary to this Agreement. This Agreement confers no enforceable legal rights or remedies on any individuals or entities other than the parties, unless otherwise provided.

9.10 Integration. This Agreement, as may be amended from time to time, contains the entire understanding between the parties and replaces and supersedes all prior and contemporaneous oral or written agreements, representations and discussions relating to such subject matter.

9.11 Signatures and Counterparts. This Agreement may be executed by any form of signature authorized by law. Each counterpart will be deemed an original copy of the Agreement and, when taken together, will be deemed to constitute one and the same Agreement.

9.12 Headings. The section headings contained in this Agreement are for reference purposes only and will not affect the meaning or interpretation of this Agreement.

These terms are agreed to and accepted by:

[Independent School District 271]

HealthPartners, Inc.

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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