

PERSONAL SERVICE CONTRACT

This Personal Service Contract is made by and between the Office of the Attorney General, a state agency, (the "OAG") whose address is 550 High Street, Sillers Building, 12th Floor, Jackson, Mississippi 39201 and Weight Watchers Inc., (the "Contractor") whose address is 800 Avery Boulevard, Suite 201, Ridgeland, MS 39157, on this the 9th day of August, 2017, under the following terms and conditions:

1. **Scope of Services** Pursuant to Senate Bill 2646, 2010 Regular Legislative Session, the OAG has retained the Contractor to provide the Contractor's weight loss plans and programs for eating right and living healthy. As part of this service, the OAG employees shall have access to the Contractor's dieting resources to assist weight loss and maintenance and Weight Watchers Meetings which shall be held at the OAG's main office or any other location mutually agreed upon by the parties to this Contract. Further, the Contractor agrees to suspend any bank draft or other form of payment for any OAG employee who is currently enrolled with the Contractor for the duration of this Contract and any renewals or extensions thereof.
2. **Contract Term** The period of performance of services under this Contract shall begin on August 14, 2017 and end no later than June 30, 2018, however, if a series has begun but has not concluded prior to June 30, 2018, the Session shall continue until the completion of the series.
3. **Consideration** The Contractor shall be paid a maximum of One Hundred Forty Four Dollars (\$144.00) per employee per 12 week series for these services. The Contractor shall invoice the OAG on Week 2 as outlined under paragraph 4 of this contract providing a list of the participating employees. The OAG is responsible for payment of all employees signed up by Week 2. The Contractor requires a minimum of twelve (12) participants to open a twelve week series. The total consideration under the term of this Contract shall not exceed Seven Thousand Two Hundred Dollars (\$7,200.00).
4. **E-Payment** The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The AGO agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.
5. **Paymode** Payments by state agencies using the Statewide Accounting System shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State, may at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. The Contractor understands and agrees that the

State is exempt from the payment of taxes. All payments shall be in United States currency.

6. **Availability of Funds** It is expressly understood and agreed that the obligation of the AGO to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the AGO, the AGO shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Agreement without damage, penalty, cost or expenses to the AGO of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
7. **Representation Regarding Contingent Fees** The Contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the Contractor's bid or proposal.
8. **Representation Regarding Gratuities** The Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.
9. **Record Retention and Access to Records** Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.
10. **Applicable Law** The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and venue for resolution of any dispute shall be Jackson, Hinds County, Mississippi. The Contractor shall comply with applicable federal, state, and local laws and regulations. Contractor expressly agrees that under no circumstances shall AGO be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Contractor. Further, nothing in this Contract

shall affect any statutory rights that AGO may have and such rights cannot be waived or limited by contract.

11. **Anti-Assignment /Subcontracting** Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
12. **Compliance with Laws** The Contractor understands that the AGO is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
13. **HIPAA Compliance** Contractor agrees to comply with the Administrative Simplifications provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.
14. **Transparency** This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this Contract is subject to provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

15. **E-Verification** If applicable, the Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp. 2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Contractor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. The Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws of these warranties, the breach of which may subject the Contractor to the following: (1) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (2) the loss of any license, permit, certification or other document granted to the Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (3) both – in the event of such cancellation/termination, the Contractor would also be liable for any additional costs incurred by the State due to the contract cancellation or loss of license or permit.
16. **Independent Contractor Status** The Contractor shall, at all times, be regarded as and shall be legally considered an Independent Contractor and shall at no time act as an agent for the AGO. Nothing contained herein shall be deemed or construed by AGO, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the AGO and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the AGO or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the AGO and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the AGO. No act performed or representation made, whether oral or written, by the Contractor with respect to third parties shall be binding on the AGO. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the AGO; and the AGO shall at no time be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The AGO shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the AGO shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the AGO for its employees.

17. **Termination for Convenience** The AGO may terminate this Contract with or without cause upon ten (10) days written notice to the Contractor. The Contractor may terminate this Contract with cause upon thirty (30) days written notice to the AGO.
18. **Modification or Renegotiation** This Agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal, state and/or the AGO revisions of any applicable laws or regulations make changes in this Contract necessary.
19. **Procurement Regulations** The Contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol Street, Suite 800, Jackson, Mississippi, for inspection, or downloadable at www.mspb.ms.gov.
20. **Ownership of Documents and Work Papers** The AGO shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Project which is the subject of this Agreement, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to the AGO upon termination or completion of the Agreement. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from the AGO and subject to any copyright protections.
21. **Indemnification** To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the AGO, its officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, and claims for damage arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this Contract. In the State's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold.
22. **Third Party Action Notification** The Contractor shall notify AGO in writing within five (5) business days of its receipt of liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Contractor or AGO by

any entity that may result in litigation related in any way to this Contract and/or which may affect the Contractor's performance under this Contract. Failure of the Contractor to provide such written notice to AGO shall be considered a material breach of this Contract and the AGO may, at its sole discretion, pursue its rights as set forth in the Termination clauses herein and any other remedies it may have at law or in equity.

23. **Notices** All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by facsimile provided that the original of such notice is sent by certified United States mail postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor:

Mallory Hemphill
Account Manager
Weight Watchers Inc.
800Avery Boulevard, Suite 201
Ridgeland, MS 39157

For AGO:

Mississippi Attorney General's Office
Attn: Robert Kersh
Director of Administration
P. O. Box 220
Jackson, MS 39205

24. **Severability** If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
25. **Change in Scope of Work** The AGO may order changes in the work, consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the AGO and the Contractor.
26. **Stop Work Order**
- (1) *Order to Stop Work:* The AGO may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this

clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the AGO shall either:

- (a) cancel the stop work order; or
- (b) terminate the work covered by such order as provided in the "Termination" clause.

(2) *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

- (a) the stop worker order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (b) the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the AGO decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(3) *Termination of Stopped Work:* If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

(4) *Adjustments of Price:* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Change in Scope of Work clause of the contract.

27. **Failure to Enforce** Failure by the AGO, at any time, to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the AGO to enforce any provision at any time in accordance with its terms.

28. **Conflict of Interest** Contractor shall notify the AGO of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to the AGO's satisfaction, the AGO reserves the right to terminate this Contract.

29. **Sovereign Immunity** By entering into this Contract with Contractor, the State of

Mississippi does, in no way, waive its sovereign immunities or defenses, as provided by law.

30. **Confidential Information** Contractor shall treat all AGO data and information to which it has access by its performance under this Contract as confidential and shall not disclose such data or information to a third party without specific written consent of AGO. In the event that Contractor receives notice that a third party requests divulgence of confidential or otherwise protected and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Contractor shall promptly inform the AGO and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive termination or completion of this Contract and shall continue in full force and effect and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Contract on behalf of, or under the rights of the Contractor following any termination or completion of this Contract.
31. **Inclusion of Quotes** The inclusion of Contractor's quote as an attachment to this Contract is not an acceptance of Contractor's terms and conditions. Any references to Contractor's terms and/or conditions of sale are not applicable to this Contract. Contractor expressly accepts all terms and conditions of the State of Mississippi.
32. **Trade Secrets, Commercial and Financial Information** It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.
33. **Termination Upon Bankruptcy** This contract may be terminated in whole or in part by [agency] upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.
34. **Debarment and Suspension** Contractor certifies to the best of its knowledge and belief, that it:
 - (1) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

(2) has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; PSCRB Rules and Regulations

(3) has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(4) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,

(5) has not, within a three year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

35. **Entire Agreement** This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supercedes or replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto.

This Contract has been entered into and executed by the parties hereto as of the day and year first above written.



JIM HOOD
ATTORNEY GENERAL
STATE OF MISSISSIPPI

 8/9/17

MALLORY HEMPHILL
ACCOUNT MANAGER
WEIGHT WATCHERS INC.