

AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS FACILITY SERVICES AGREEMENT
WITH CITY OF APACHE JUNCTION, AZ

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
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THIS FITNESS FACILITY SERVICES AGREEMENT, ("this Agreement") is entered into between American Specialty Health Fitness, Inc., a Delaware corporation ("ASH Fitness"), and the City of Apache Junction, Arizona, an Arizona municipal corporation, ("Fitness Facility"). This Agreement will not become effective until both Fitness Facility and ASH Fitness have signed it. After Fitness Facility and ASH Fitness have both signed this Agreement, Fitness Facility will automatically become a Contracted Facility as of the Effective Date specified in Article 31 of this Agreement.

RECITALS

A. Insurers, trust funds, health care service plans, health maintenance organizations, employer groups and other groups (collectively referred to as "ASH Clients" and further defined below) have entered into agreements with ASH Fitness for the provision of Services to their Members (as defined below in Section 1.10).

B. ASH Fitness wishes to arrange for and facilitate the provision of Services to Members.

AGREEMENT

NOW, THEREFORE, ASH Fitness and Fitness Facility agree as follows:

ARTICLE 1 DEFINITIONS.

For purposes of this Agreement and in addition to the terms elsewhere defined herein, the following terms shall have the meanings indicated:

1.01 Agreement. This Fitness Club Services Agreement between Fitness Facility and ASH Fitness, the attachments and exhibits listed below, the Program Manual and any amendments to such documents.

Attachment A: Silver&Fit¹ Basic Facility Attachment
Attachment G: ASH Client List
Attachment I: Health and Safety Guidelines and Code of Conduct
Attachment J: Medicare Addendum
Attachment K: Guidelines for Trademark Use by Third Parties
Attachment L: Program Compensation Attachment

The attachments and exhibits listed above and the Program Manual are hereby incorporated by reference.

1.02 Annual Member Fee. If included as part of an ASH Client's member benefit plan the fee the Member is required to pay in order to access Services.

1.03 ASH Client. A health care service plan, health maintenance organization, insurer, employer group, trust fund, third party administrator, or other person or entity who contracts with ASH Fitness or an ASH Fitness' affiliate to arrange for the provision of Services to Members and who is listed on the ASH client list provided to Fitness Facility, a sample of which is attached to this Agreement as Attachment G.

- 1.04 **ASHLink**. A proprietary software system developed by an ASH Fitness affiliate and utilized by ASH Fitness to support the secure and confidential electronic distribution of information with Fitness Facility via the Internet.
- 1.05 **Contracted Facility**. A fitness club or fitness clubs that has contracted with ASH Fitness.
- 1.06 **Days**. Calendar days.
- 1.07 **Effective Date**. The date this Agreement becomes operative, as specified in Article 31.
- 1.08 **Fitness Facility Fitness Advisor**. An individual employed or contracted by Fitness Facility that will support Services, as that term is defined in Section 1.17, by acting as the primary contact on behalf of the Fitness Facility that Member will contact at the Fitness Facility Participating Location and fulfills the requirements detailed in Section 3.09.3.
- 1.09 **Fitness Facility Participating Location**. The location where Services will actually be performed and for ease of reference, Fitness Facility and Fitness Facility Participating Location shall be used interchangeably for a Fitness Facility with only one participating location.
- 1.10 **Member(s)**. Individual(s) who is/are eligible to receive Services by meeting all the eligibility requirements for participation in a program.
- 1.11 **Member Eligibility/Benefits**. Information maintained by ASH Fitness or one of its affiliates pertaining to each Member regarding his or her eligibility, including initial date of eligibility, term of membership and benefits.
- 1.12 **Member Payments**. Charges which are the direct financial responsibility of the Member and are paid directly to Fitness Facility for any service which is a Non-Covered Service under this Agreement.
- 1.13 **Member Termination Report**. A report compiled by ASH Fitness and posted on ASHLink which lists Members who have terminated their Membership at the Fitness Facility and/or are no longer eligible for participation under the program. Terminated Members shall be listed on the Member Termination Report for at least thirty (30) days from their termination date.
- 1.14 **Non-Covered Services**. All services other than a Standard Fitness Facility Membership and any other program components as clearly laid out in each attachment and as applicable to the Member's benefit.
- 1.15 **Party(ies)**. The individual(s) or entity(ies) that execute this Agreement.
- 1.16 **Program Compensation Rate**. The amount ASH Fitness will pay Fitness Facility for the Standard Fitness Facility Membership and Services for each Member who has signed a membership agreement with Fitness Facility.
- 1.17 **Services**. Those collective services which fall under this Agreement Attachment A.
- 1.18 **Standard Fitness Facility Membership**. Member benefits which provides at least the following services: access to a Fitness Facility Participating Location during normal facility hours of operation for the use of cardiovascular exercise equipment (e.g. treadmills, exercise bicycles, "elliptical machines", etc.), strength or resistance training equipment (e.g. selectorized equipment, free weights, etc.), and use of locker room and shower facilities. It also includes instructor-led classes (such as group fitness classes, Pilates, group cycling, yoga, etc.) which do not require a separate fee to be paid to Fitness Facility for an individual class or set of classes, but are routinely included for the general membership as part of the general monthly fee. The Standard Fitness Facility Membership does not include instructor-led classes, personal training and other amenities for which the Fitness Facility routinely charges a separate fee.

- 1.19 **Quality Management Program.** The set of policies, processes, procedures and standards established, determined and utilized by ASH Fitness under this Agreement to evaluate and determine whether a Contracted Facility has satisfied all ASH Fitness' Health and Safety Guidelines and Code of Conduct requirements adopted by ASH Fitness and to approve a Contracted Facility's participation in ASH Fitness and/or ASH Client's networks.
- 1.20 **Visit.** Member utilization of a Fitness Facility Participating Location for exercise.

ARTICLE 2 ASH FITNESS' RESPONSIBILITIES.

- 2.01 **Prepare and Maintain Program Manual.** ASH Fitness shall prepare and maintain a program manual setting forth ASH Fitness' policies, processes, standards and procedures regarding Fitness Facility's participation in any ASH Fitness' fitness network ("Program Manual").
- 2.02 **Distribution of Revised Agreement, Attachments, Amendments, and Program Manual.** ASH Fitness shall prepare and distribute any updated Agreements, attachments and exhibits, Member Termination Reports, ASH Client Lists, amendments and/or Program Manual, which may be revised by ASH Fitness in accordance with Article 25 of this Agreement. ASH Fitness may distribute all materials directly to Fitness Facility and to each Fitness Facility Participating Location, where such information pertains to the Fitness Facility Participating Location.
- 2.03 **Records Management.** ASH Fitness and its affiliates shall develop, update and maintain policies and procedures that comply with applicable statutory and regulatory requirements for the secure and confidential storage, retention, retrieval and destruction of all records pertaining to its business operations, whether these records are in paper or electronic form.
- 2.04 **Maintain Eligibility.** ASH Fitness or its affiliates shall provide Fitness Facility with services related to Member Eligibility verification for Services to be provided by Fitness Facility. ASH Fitness makes no representation or guarantees concerning the number of Members, if any, that will access Fitness Facility under this Agreement.
- 2.05 **Communication Regarding Participation of Fitness Facility.** ASH Fitness and its affiliates shall communicate the participation of Fitness Facility in ASH Fitness or its affiliates' programs to existing and prospective ASH Clients in various forms, including but not limited to ASH Fitness or ASH Client network directories and the applicable websites accessed by Members. Such communication may include information such as the location's name, address, telephone number, available services and hours of operation. ASH Fitness shall assist Members to select a Contracted Facility under the Member's program. In addition, ASH Fitness shall, within sixty (60) days of the effective date of a location, notify ASH Clients of the addition of a Fitness Facility Participating Location where that location may perform Services for ASH Client.
- 2.06 **Deletion of Fitness Facility Participating Location from Network Directories.** ASH Fitness will notify all ASH Clients, no later than thirty (30) days after the effective date of Fitness Facility Participating Location's resignation or termination of this Agreement, or of the need to delete the location's information from network directories and/or other such sources of Fitness Facility information.
- 2.07 **ASH Fitness' Payment to Fitness Facility.** ASH Fitness shall compensate Fitness Facility in accordance with the Program Compensation Rates specified in Attachment L under which Fitness Facility is participating within thirty (30) days of receipt of a billing report for Services provided to Members.

ARTICLE 3 FITNESS FACILITY'S RESPONSIBILITIES.

- 3.01 **Comply with Federal and State Law.** Fitness Facility shall comply with all federal and state and local laws applicable to Fitness Facility and Services provided under this Agreement.
- 3.02 **Comply with Program Manual.** Fitness Facility shall comply fully with the Program Manual as described in Section 2.01.

- 3.03 Comply with Quality Management Program.** Fitness Facility shall comply with the Quality Management Program and shall cooperate with ASH Fitness in ASH Fitness' administration of its grievance procedures, including procedures to resolve complaints or grievances filed by Members with ASH Fitness as they pertain to Fitness Facility and its responsibilities under this Agreement.
- 3.04 Compliance with Medicare Requirements.** Where Fitness Facility is providing Services to Members enrolled in an ASH Client's Medicare Advantage plan, Fitness Facility shall comply with the provisions outlined in Attachment J to this Agreement.
- 3.05 Immediate Notification by Fitness Facility of Certain Occurrences.** Fitness Facility shall notify ASH Fitness in writing by overnight mail service or email, within 96 hours of the occurrence of: i) the commencement of any voluntary or involuntary bankruptcy proceedings by or against Fitness Facility or any similar proceedings; ii) any lapse of general and/or professional liability insurance maintained by Fitness Facility; iii) Fitness Facility's owner(s) or manager(s) knows, or reasonably should have known, of the filing of criminal charges against Fitness Facility's owners, directors, management or staff that directly interact with Members.
- 3.06 Notification of Change in Any Information.** Fitness Facility shall notify ASH Fitness at least sixty (60) days prior to any change in Fitness Facility or Fitness Facility Participating Location's physical address, Fitness Facility or Fitness Facility Participating Location's mailing address, telephone number, email address, office hours, taxpayer identification number, or any other information listed in the Network Application. Where sixty (60) days prior notice is not possible, Fitness Facility shall notify ASH Fitness as soon as possible of such changes.
- 3.07 Non-Interference with Property and Contract Rights.** During the term of this Agreement and for one (1) year following the date of its termination, Fitness Facility agrees that Fitness Facility shall not interfere with ASH Fitness or an ASH Fitness affiliate's property or contract rights with any ASH Client or Member. This includes, but is not limited to, advising any Member to dis-enroll from any Services, advising any party who has contracted with ASH Fitness or an ASH Fitness Affiliate to terminate, cancel or decline renewal of its contract, and/or solicit any Member to enroll for the provision of similar services offered by any other firm administering fitness benefit programs, health care service plan, health maintenance organization, health insurer, preferred provider organization or any other similar organization.

If Fitness Facility violates this Section, Fitness Facility acknowledges that it will be responsible for paying any and all actual damages incurred by ASH Fitness or any ASH Client as a result of that violation and may be liable for other costs, expenses, damages, claims or liabilities; and, if money damages are insufficient to compensate ASH Fitness or ASH Client for the violation of this Section, Fitness Facility may be subject to an injunction prohibiting the activity which constitutes a violation of this Section and/or other equitable relief. Nothing in this Section shall affect any of ASH Fitness' other rights under this Agreement, at law or in equity. Nothing in this Section shall prohibit Fitness Facility from maintaining a direct relationship with Member that is no longer enrolled in a program with ASH Fitness or its affiliates due to Member dis-enrollment or termination of this Agreement.

- 3.08 Election to Participate in all Product Offerings.** Fitness Facility may elect to participate in any program specified in Attachment A through and indicates in Article 31 which programs it wishes to participate in. Fitness Facility is not obligated to participate in all programs but must participate in at least one program at all times while this Agreement is in effect. Where there is no clear indication of participation, ASH Fitness will deem Fitness Facility as participating in all programs. Any time after the Effective Date of the Agreement Fitness Facility may choose to expand the programs it participates in. However, after the Effective Date, Fitness Facility may only terminate participation in a specific program, pursuant to Article 6.
- 3.09 Provision of Member Services.** Fitness Facility has the following responsibilities:
- 3.09.1 Standard Fitness Facility Membership.** Fitness Facility shall provide Members with a Standard Fitness Facility Membership and any other services as required by the applicable program

attachments. The Standard Fitness Facility Membership shall include, at no cost to the Member, an orientation session to familiarize Members with the Fitness Facility and its equipment.

- 3.09.2 Conversion of Pre-Established Membership.** Fitness Facility agrees to assist any Member that has a previously established membership with Fitness Facility and the Member becomes eligible for a program under this Agreement. Fitness Facility will freeze the Member's previously established fitness facility membership without any penalty or termination of the membership and accept the Program Compensation rate as payment in full for the Standard Fitness Facility Membership on behalf of the Member while they are eligible for ASH Program Services. Where a Member is no longer eligible for ASH Program Services, Fitness Facility shall re-activate the Member's frozen membership subject to the original terms and conditions of the previously established membership. Fitness Facility shall not charge Member any activation fees or penalties for the re-activation and such membership shall be reinstated for the period of time that was remaining on the membership at the time it was frozen.
- 3.09.3 Fitness Facility Fitness Advisor.** Fitness Facility agrees to support Services by training one or more Fitness Facility employee(s) as a Fitness Facility Advisor during normal business hours to support Member questions and enrollment into the applicable Services as described in this Agreement and its Attachments.
- 3.09.4 Offering of non-Covered Services and Notification to Members of Financial Responsibility for Member Payments for Non-Covered Services.** Fitness Facility may upgrade or sell Members additional products or services not covered under this Agreement or any applicable program attachment but only if Fitness Facility informs Members in advance and in writing that such products and services are Non-Covered Services and are the Member's financial responsibility. Fitness Facility shall collect appropriate Member Payments as that term is defined in Section 1.12, at the time of service and shall bill Members according to the procedures described in the Program Manual. Where a Member upgrades their Standard Fitness Facility Membership, Fitness Facility agrees that the upgraded membership will be equal to or less than the pricing offered to the general public ("Upgraded Membership Price") and the cost to the Member shall be the Upgraded Membership Price minus the Fitness Facility's standard fee for a basic membership (this is not the Program Compensation Rate but the standard fee charged by the Fitness Facility). All Non-Covered Services are ineligible for compensation by ASH Fitness and are the direct responsibility of the Member. Fitness Facility agrees to refund any amounts paid by a Member that the Fitness Facility collects in a manner not consistent with this Section.
- 3.09.5 Member Billing.** Nothing in this Agreement shall preclude Fitness Facility from charging Member for Services rendered, where Member is determined to not be eligible, including retroactive determinations, for a program under this Agreement and where Fitness Facility complied with Section 3.10. Any such charges shall be consistent with Fitness Facility's lowest standard membership dues. In addition, as Section 3.09.4 details, Fitness Facility may charge a Member for Non-Covered Services where Member has been informed, in writing, prior to the provision of the Non-Covered Services.
- 3.09.6 Non Discrimination.** Fitness Facility shall not discriminate against Member for any reason, including but not limited to race, ethnicity, national origin, religion, gender, age, mental or physical disability, health status, payment experience, medical history, genetic information, political affiliation, evidence of insurability—or geographic location within the service area or source or amount of compensation. Fitness Facility shall offer Services to a Member covered by ASH Fitness or one of its affiliates in the same manner, in accordance with the same standards, and within the same time availability as services offered to members who are not covered by ASH Fitness or its affiliates.

- 3.10 Verification of Member Eligibility and Services.** Unless otherwise specified in a program attachment, Fitness Facility shall verify Member Eligibility and applicable Services with ASH Fitness at the time of a Member's first attempt to utilize Fitness Facility Participating Location within a Benefit Year. Fitness Facility shall verify that Member's health plan is on the ASH Client list as participating in the applicable

program as well as verify Member Eligibility in the applicable Services by requesting Member to show their current program identification card/welcome letter, or the Member's health plan identification card if the Member does not have their current program identification card/welcome letter, and by verifying the Member's eligibility with ASH Fitness. Fitness Facility may contact ASH Fitness via ASHLink or call customer service to verify eligibility. Member's current program identification card/welcome letter or health plan identification card is not a guarantee of current eligibility and Fitness Facility must verify the Member's eligibility with ASH Fitness upon the Member's first visit to the Fitness Facility Participating Location. Where a Member has not yet paid their Annual Member Fee, if applicable, to ASH Fitness prior to their first visit to Fitness Facility, Fitness Facility shall allow the Member to work out that day with a free trial pass. Fitness Facility must instruct the Member to contact ASH Fitness and pay their applicable Annual Member Fee prior to their next visit to Fitness Facility. If after the free trial visit, the Member does not pay their applicable Annual Member Fee to ASH Fitness and Fitness Facility continues to allow the Member to work out at Fitness Facility, those visits will not be reimbursed by ASH Fitness.

3.11 Program Compensation. Fitness Facility shall accept Program Compensation Rates, as specified in Attachment L as payment in full for the Services provided pursuant to this Agreement. Fitness Facility shall not charge the Member an initiation fee, enrollment fees, processing fee, monthly membership fees and/or any other administrative fees for the Standard Fitness Facility Membership. Fitness Facility shall be responsible for any and all sales, use or other taxes which may be imposed on the compensation paid to Fitness Facility by ASH Fitness.

3.12 Billing Report Submission. Unless otherwise specified in a program attachment, Fitness Facility will submit a billing report each month and shall provide supporting information to ASH Fitness that identifies each Visit at a Fitness Facility Participating Location, the Member name, Member's identification number listed on the Member's program identification card/welcome letter or health plan identification card, program abbreviation, Member month and day of birth, health plan name and the dates of the Visit. Such information may be submitted through ASHLink, electronically or in paper claim formats, that are mutually agreed upon by the Parties. Fitness Facility must submit billing reports in chronological order (i.e. January's billing report must be submitted prior to February's billing report). Billing reports submitted out of order will be denied.

Billing reports received over one hundred eighty (180) days after the date of service will not be approved for payment due to late submission. Fitness Facility shall waive all charges against Member, ASH Fitness and/or ASH Client related to a billing report received by ASH Fitness more than one-hundred eighty (180) days after the date of service.

3.13 Reimbursement Adjustments. ASH Fitness may be required to make an adjustment to a reimbursement previously paid by ASH Fitness in order to correct an over or under payment as a result of (1) corrected information received by ASH Fitness, or (2) incorrect determination of benefit or (3) an incorrect calculation of payment amounts. The process for any reimbursement adjustment shall be set forth in the Program Manual.

3.14 Fitness Facility's Participating Locations. Where Fitness Facility has more than one facility operating under the terms of this Agreement, Fitness Facility shall have additional obligations, including but not limited to: Agreement notification, informing participating locations, and members' use of multiple locations. These additional obligations shall be described in the Program Manual. Fitness Facility shall require each Fitness Facility Participating Location to comply with the requirements of this Agreement and any applicable state or federal law or regulations, including but not limited to, the federal False Claims Act (31 U.S.C. §§ 3729–3733). Any incidents of non-compliance should be reported immediately to ASH Fitness upon discovery.

3.15 Liability Insurance Limits. Fitness Facility shall maintain professional liability insurance, comprehensive general liability insurance and any other insurance policies, including but not limited to Workers' Compensation, in accordance with ASH Fitness' liability insurance requirements in this Agreement. To the extent that the Fitness Facility is notified by its insurance company, the Fitness Facility shall notify ASH Fitness when applicable of any material change to any or all insurance policies. This insurance requirement will be required for each of the Fitness Facility Participating Locations. Fitness Facility shall maintain

general and professional liability insurance in the amount of one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate per year for each Fitness Facility Participating Location.

ARTICLE 4 CORRECTIVE ACTION PLANS

Corrective Action Plans. ASH Fitness shall have the ability to evaluate Fitness Facility's participation and performance in accordance with the terms of this Agreement and fitness industry business practices. If ASH Fitness finds that Fitness Facility is not performing in accordance with the terms of this agreement, ASH Fitness may issue a Corrective Action Plan (CAP) to Fitness Facility. ASH Fitness will deliver all CAPs in writing to Fitness Facility. Fitness Facility agrees to comply with ASH Fitness' CAPs within the timelines specified and to respond to the CAP in writing or as otherwise requested. Fitness Facility may submit information to ASH Fitness in response to the CAP which explains Fitness Facility's position including, but not limited to, any information demonstrating that Fitness Facility is in compliance with the Agreement or Program Manual. Fitness Facility acknowledges that a frequent or repeated lack of compliance with a program requirement may be considered a pattern of performance that is unacceptable to ASH Fitness and may consider this a material breach of the Agreement giving rise to the right to terminate the Agreement for cause pursuant to Section 6.02.

ARTICLE 5 TERM.

The initial term of this Agreement shall be from the Effective Date specified in Article 31 of this Agreement through and including December 31st of the current year subject to the termination provisions set forth in Article 6. After the initial term, the Agreement will need to be renewed by both parties prior to January 1 of the following year. If either Party elects to not renew the Agreement prior to January 1 of the following year, the Agreement is terminated pursuant to Article 6.

ARTICLE 6 TERMINATION.

6.01 Termination of This Agreement with Cause with Notice. Notwithstanding any other provision in this Agreement, either Party may terminate this Agreement with cause for the other Party's breach of any material term, covenant or condition and subsequent failure to cure such breach. The Party asserting cause for termination of this Agreement ("Terminating Party") shall provide written notice of termination to the other Party ("Receiving Party"). The notice of termination shall specify the breach or deficiency underlying the cause for termination. Receiving Party shall have thirty (30) calendar days from the receipt of such notice to cure the breach or deficiency to the satisfaction of the Terminating Party. If Receiving Party fails to cure the breach or deficiency, this Agreement shall terminate upon written notice from the Terminating Party. The termination date shall be the date the Receiving Party receives such notice or such other date as may be specified in the notice.

6.02 ASH Fitness Immediate Termination of This Agreement for Cause with Notice. ASH Fitness may terminate this Agreement, or a Fitness Facility Participating Location(s) participation, immediately upon written notice by ASH Fitness to Fitness Facility upon any of the following occurrences:

- a) A determination that services rendered to a Member by Fitness Facility in conjunction with this Agreement do not meet the recognized fitness industry standards adopted by ASH Fitness and/or potentially place a Member at risk;
- b) Any material misrepresentation, falsification or failure to provide accurate information to ASH Fitness, ASH Client, or a Member by Fitness Facility or Fitness Facility's staff, agent or representative in connection with this Agreement;
- c) The filing and/or conviction of any criminal charges against Fitness Facility's directors, officers, owners or employees;
- d) The termination of any contractual relationship other than this Agreement between Fitness Facility and ASH Fitness, or an ASH Fitness' affiliate;
- e) Fitness Facility is not participating in at least one program pursuant to this Agreement;
- f) Fitness Facility has no Fitness Facility Participating Locations; or
- g) Any occurrence or condition which materially impairs the ability of Fitness Facility or a Fitness Facility Participating Location to perform responsibilities under this Agreement

- 6.03 Fitness Facility Appeal of Termination.** Fitness Facility may appeal ASH Fitness' termination for cause by providing a written request to ASH Fitness within thirty (30) days from the date of the termination notice by ASH Fitness. Such appeal rights may occur before and/or after the effective date of termination. If a termination appeal results in a reinstatement, ASH Fitness may provide Fitness Facility with a new Effective Date for this Agreement
- 6.04 Effect of Termination.** Except as otherwise provided herein, this Agreement shall be of no further force or effect following the date of termination, except that each Party shall remain liable for any obligations or liabilities arising from the activities carried on by it hereunder prior to the date of termination.
- 6.05 Survival of Certain Contractual Provisions after Termination.** Notwithstanding any other provision of this Agreement, the following provisions of this Agreement shall survive any termination of this Agreement: Sections 2.02, 2.04, 3.01, 3.09.2, 6.04, 6.05, and 6.06, in addition to, Article 7, Article 8, Article 9, Article 10, Article 15, Article 16, Article 18, Article 19, and Article 20.
- 6.06 Fitness Facility Responsibility during Termination Notice Period.** Where Fitness Facility or ASH Fitness provides notice of non-renewal pursuant to Article 5 or termination pursuant to Section 6.01 Fitness Facility shall continue to provide Services pursuant to this Agreement up to and including the effective date of termination or non-renewal.
- 6.07 Fitness Facility Responsibilities after Termination of Program, Location or Agreement.** Fitness Facility understands that materials such as network directories provided to Members by ASH Fitness or ASH Clients may continue to reflect that a location is participating in the ASH Fitness and/or ASH Client's network for some period of time following the termination of a location's participation. Therefore, to avoid Member confusion regarding the location's status with ASH Fitness, regardless of which Party terminates this Agreement or a location's participation, Fitness Facility shall inform any Member who seeks Services that the location is no longer contracted with ASH Fitness. If a Member wishes to continue to receive services from Fitness Facility the process for continuing their membership is set forth in the Program Manual.

ARTICLE 7 HOLD HARMLESS.

To the extent not covered by insurance, Fitness Facility shall be solely responsible for and shall hold ASH Fitness free and harmless from any claims, losses, damages, liabilities, costs, expenses, attorneys' fees and costs or obligations arising from or relating to any act or omission of Fitness Facility, Fitness Facility's, employees or representatives in providing or failing to provide Services in conjunction with this Agreement to Members. To the extent not covered by insurance, ASH Fitness shall be solely responsible for and shall hold Fitness Facility free and harmless from any claims, losses, damages, liabilities, costs, expenses, attorneys' fees and costs or obligations arising from or relating to any act or omission of ASH Fitness employees or representatives in connection with ASH Fitness' responsibilities under this Agreement.

ARTICLE 8 COMMUNICATION OF RELATIONSHIP WITH ASH FITNESS AND ASH CLIENTS.

Fitness Facility shall not initiate any written communication, solicitation or advertisement of any type referencing the relationship with ASH Fitness and/or ASH Client without the prior written approval of the communication by ASH Fitness. This includes, but is not limited to, Internet web pages, social networking, newspapers, yellow pages, billboards, mass mailings, telemarketing, location posters or business cards. Only where ASH Fitness reviews and gives prior written approval may Fitness Facility display and/or distribute materials to promote programs associated with this Agreement.

ARTICLE 9 RECORDS AND DATA COLLECTION.

- 9.01 Maintenance of Records.** Fitness Facility shall maintain and provide ASH Fitness, and upon the request of ASH Clients, U.S. Department of Health and Human Services, U.S. Department of Justice, Office of Inspector General, Center for Medicare and Medicaid Services and/or other federal and state agencies, with all records relating to Services provided to each Member by Fitness Facility, in such form and containing such information as is required by applicable federal and state law, and such other information as ASH

Fitness, ASH Clients, or other such agencies may require. For Members enrolled in an ASH Client's Medicare Advantage plan, records shall be retained in accordance with Section 8 of Attachment J. For all other Members, such records shall be retained by Fitness Facility the greater of seven years or in accordance with applicable state laws.

9.02 Access to Facility and Records. Fitness Facility shall provide access to ASH Fitness, at reasonable times upon request by ASH Fitness ASH Client, and/or regulatory agencies with oversight of ASH Fitness or ASH Client operations, to monitor program compliance and inspect Fitness Facility's facilities, equipment, books, papers, and records relating to Fitness Facility's performance under this Agreement.

9.03 Confidential Member Information.

9.03.1 ASH Fitness and its affiliates shall protect access to, and distribution of, information and/or records that are subject to regulatory requirements for protection of member information and privacy including, but not limited to protection for non-public personal health information. Therefore, ASH Fitness and Fitness Facility shall abide by all Federal and State laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA) of 1996, regarding privacy, security and disclosure of Member personal information. Fitness Facility agrees to maintain records and other information with respect to Members in an accurate and timely manner, to provide timely access by Members to the records and information that pertain to them and to safeguard the privacy of any information that can be used to identify a particular Member, including but not limited to the Member's health plan name or health plan identification number ("Personal Information"). Fitness Facility shall limit uses and disclosures of Personal Information obtained in connection with this Agreement (including any information received from ASH Fitness or through ASHLink) solely for payment and related operational purposes permitted or required by this Agreement or as required by law. Fitness Facility shall only use such Personal Information only to the extent minimally necessary to satisfy those obligations. Any other use of Personal Information obtained in connection with this Agreement is strictly prohibited unless required by law or as otherwise permitted in writing by ASH Fitness. This specifically includes using Member's Personal Information obtained or created in fulfillment of obligations under this Agreement for marketing and fundraising purposes. Fitness Facility shall not directly or indirectly receive remuneration in exchange for any Personal Information of a Member obtained or created pursuant to fulfillment of obligations under this Agreement.

9.03.2 Upon discovering an incident where the Personal Information of a Member could have been acquired, used or disclosed in a manner not permitted under this Agreement, including situations where such Personal Information could have been viewed by persons other than Fitness Facility employees authorized by the Fitness Facility to perform duties under this Agreement, Fitness Facility shall immediately, but in no case later than one (1) business day, report the incident to ASH Fitness' Privacy Office. Fitness Facility will expediently supply all information reasonably requested by ASH Fitness regarding the investigation of suspected privacy incidents referenced above.

9.03.3 Fitness Facility shall advise members of its workforce of their obligations to protect and safeguard Members' Personal Information obtained or created in the fulfillment of Fitness Facility's obligations under this Agreement. Fitness Facility will develop, implement, maintain and use appropriate administrative, technical and physical safeguards, in compliance with Social Security Act §1173(d), 45 C.F.R. §164.530(c)(1) and any other implementing regulations issued by the U.S. Department of Health and Human Services, to preserve the integrity and confidentiality of and to prevent non-permitted or violating use or disclosure of Member's Personal Information

9.03.4 Fitness Facility shall notify ASH Fitness Privacy Office immediately of any requests for restrictions on uses and disclosure of Personal Information by a Member.

9.03.5 ASH Fitness is the exclusive owner of Personal Information generated or used by Fitness Facility for fulfillment of its obligations under the terms of this Agreement.

- 9.03.6** Fitness Facility will indemnify and hold harmless ASH Fitness, its officers, directors, employees from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and costs and court or proceeding costs, arising out of or in connection with any unauthorized or intentional non-permitted or violating use or disclosure of Members' Personal Information by Fitness Facility or any subcontractor, agent, person or entity under Fitness Facility's control.
- 9.03.7** Upon termination, cancellation, expiration or other conclusion of the services provided by Fitness Facility, Fitness Facility will if feasible, return to ASH Fitness or destroy all Confidential Member Information in whatever form or medium including any electronic medium under Fitness Facility's custody or control that Fitness Facility created or received for or from ASH Fitness. Fitness Facility will complete such return or destruction as promptly as possible, but no later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the services provided by Fitness Facility. If return or destruction of Confidential Member Information is infeasible, Fitness Facility will extend the protections of this Article 9 to such information and limit its further use or disclosure to those purposes that make return or destruction of Confidential Member Information infeasible.
- 9.03.8** Notices to the ASH Fitness Privacy Office may be sent by overnight mail, first class mail, fax, email or hand delivery to:

American Specialty Health Fitness, Inc.
Attn: Privacy Officer
10221 Wateridge Circle
San Diego, CA 92121
E-mail: HIPAA@ashn.com
Tel: (800) 848-3555
Fax: (858) 237-3839

ARTICLE 10 PROPRIETARY INFORMATION.

All information, documents, software and other materials furnished to Fitness Facility by ASH Fitness including, without limitation, the Program Manual, any Client Lists, and any copyrighted or trademarked materials, shall be the property of ASH Fitness. Such proprietary information is only to be used by Fitness Facility in connection with the performance of Fitness Facility's obligations under this Agreement and only in the manner provided for in this Agreement. Fitness Facility shall not disclose or use any proprietary information or trade secrets for Fitness Facility's own benefit during the term of this Agreement or after termination of this Agreement, except as authorized in writing by ASH Fitness. Fitness Facility shall have no ownership rights in said proprietary information including, but not limited to, copying, use or distribution of said proprietary information.

Upon termination of this Agreement, Fitness Facility shall return to ASH Fitness all proprietary information in Fitness Facility's possession, if requested, and in a manner to be specified by ASH Fitness. Fitness Facility shall cooperate with ASH Fitness in maintaining the confidentiality of such proprietary information at all times during and after termination of this Agreement.

ARTICLE 11 TRADEMARKS

- 11.01 Use of Names and Marks.** This Agreement does not grant Fitness Facility a license or sublicense, except as provided in this Article 11, to use the names, trademarks, service marks, corporate names, trade names, domain names, or logos owned by ASH Fitness or its parent company American Specialty Health Incorporated ("ASH Marks"). During the term of this Agreement Fitness Facility may use ASH Fitness' name or ASH Marks solely in connection with identifying the relationship as contemplated in this Agreement or as specified in Section 11.02 below. Any other use of ASH Marks is subject to the prior review and written approval of ASH Fitness.
- 11.02 Identification of Marks and Form of Use.** Subject to the terms of this section, ASH Fitness grants Fitness Facility a non-exclusive, non-transferable, royalty-free license to use the trademark Silver&Fit on its web

sites and print media for the promotion of Fitness Facility's participation in the applicable programs for which Fitness Facility is a Contracted Facility. Fitness Facility shall be allowed to use the ASH Marks as described above, as long as such use complies with this Article and the "Guidelines for Trademark Use by Third Parties" issued by ASH Fitness from time to time, a current version of which is attached hereto as Attachment K. In addition, Fitness Facility shall mark the ASH Marks with the symbol "™" or "®" as appropriate, and include the following trademark attribution in reasonably close proximity to the first use of the ASH Marks in any document or on a screen display, or in a location to which users are directed for statements concerning the Fitness Facility's ownership of intellectual property rights.

"Silver&Fit® is a trademark of American Specialty Health Incorporated and are licensed by Fitness Facility for use herein."

Fitness Facility shall not alter the ASH Marks in any way, including but not limited to, skewing, changing the color, rotating, separating logo elements or changing the typeface.

11.03 Approval for Use of Marks. Approval in Section 11.02 above shall be deemed automatically withdrawn upon the effective date of expiration or termination of this Agreement, unless sooner withdrawn by written notice from ASH Fitness.

11.04 Injunctive Relief. The Parties agree that a breach of the terms and conditions of this Article shall cause immediate and irreparable harm. Therefore, in addition to any other rights or remedies available at law or in equity, each Party is entitled to seek injunctive relief to restrain or enjoin the breach, without any requirement of bond or security.

ARTICLE 12 ASSIGNMENT AND CHANGE OF OWNERSHIP.

ASH Fitness may assign all or a portion of its rights or responsibilities under this Agreement to any party with prior written notice to the Fitness Facility. All provisions of this Agreement and obligations arising hereunder shall extend to and be binding upon the Parties hereto and their respective successors and assignees and shall inure to the benefit, and be enforceable by the Parties hereto and their respective legal representatives, successors and assignees.

ARTICLE 13 SUBCONTRACTS

Fitness Facility shall not subcontract any of its obligations under this Agreement to any third party without the prior written approval of ASH Fitness.

ARTICLE 14 FORCE MAJEURE.

Neither Fitness Facility nor ASH Fitness, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subconsultants or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the Fitness Facility's operations. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular consultants, subconsultants, vendors or investors desired by ASH Fitness in connection with the Fitness Facility's operations. ASH Fitness agrees that ASH Fitness alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within 5 business days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

ARTICLE 15 INDEPENDENT CONTRACTORS.

- 15.01** None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment between the Parties, other than that of independent parties contracting solely for the purpose of effectuating this Agreement.
- 15.02** Fitness Facility shall be responsible solely to eligible Members for Services. Fitness Facility is an independent contractor and ASH Fitness shall have no dominion or control over Fitness Facility, Fitness Facility-Member relationship, Fitness Facility's personnel or Fitness Facility's services. Fitness Facility and Fitness Facility's employees and agents shall not have any claim, under this Agreement or otherwise, against ASH Fitness for vacation pay, sick leave or retirement or other benefits of any kind. During the term of this Agreement or any renewals hereof, Fitness Facility shall be fully responsible and liable for all state and federal income taxes or other taxes to which payments made by ASH Fitness to Fitness Facility may become subject. Fitness Facility is responsible to maintain all necessary insurance policies, such as workers' compensation, errors and omissions, and general business liability insurance in amounts necessary to provide adequate coverage.

ARTICLE 16 GOVERNING LAW.

The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties each agree to waive their separate rights to a trial by a jury. This waiver means that the trial or settlement proceedings will be held before a judge in accordance with the terms and conditions of this agreement. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

ARTICLE 17 SEVERABILITY.

Fitness Facility and ASH Fitness each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring Fitness Facility to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by Applicable Laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

ARTICLE 18 DISPUTES BETWEEN FITNESS FACILITY AND MEMBERS.

Where ASH Fitness and/or an ASH Client determine that a dispute between Fitness Facility and Member is subject to the provisions of this Agreement and ASH Fitness and/or ASH Client's appeals and grievance processes, policies, procedures and standards, Fitness Facility agrees to assist ASH Fitness and provide any information necessary, at no cost to ASH Fitness, for ASH Fitness to review and evaluate a Member grievance or appeal presented for resolution. ASH Fitness' grievance and appeal process is described in the Program Manual. This section does not preclude Fitness Facility and Member from seeking any appropriate legal action to resolve any controversy, dispute or claim which is not governed by the terms of this Agreement.

ARTICLE 19 DISPUTES BETWEEN FITNESS FACILITY AND ASH FITNESS.

In the event of any dispute between Fitness Facility and ASH Fitness arising out of or relating to this Agreement, Fitness Facility and ASH Fitness shall first attempt in good faith to resolve the dispute mutually between themselves. If Fitness Facility and ASH Fitness are unable to resolve the dispute by mutual agreement, the all matters in controversy may be submitted to a court of competent jurisdiction in accordance with Article 16.

ARTICLE 20 DISPUTES BETWEEN FITNESS FACILITY AND ASH CLIENT.

In the event of any dispute between Fitness Facility and a ASH Client arising out of or relating to this Agreement, at the request of ASH Fitness, Fitness Facility shall first attempt in good faith to resolve the dispute mutually with the ASH Client through ASH Fitness, including but not limited to, utilizing all available levels of ASH Fitness' grievance and appeals processes, unless otherwise prohibited by state law. Fitness Facility may seek ASH Fitness' assistance with regard to any dispute by contacting ASH Fitness in writing or by telephone at the address and telephone referenced in Article 21.

ARTICLE 21 NOTICES.

Any notice required or permitted to be given under this Agreement to ASH Fitness or Fitness Facility, shall be in writing and shall be (a) delivered by electronic means (i.e. ASHLink, sent via an inalterable email document (such as PDF), or facsimile with confirmation) , (b) delivered in person, (c) sent by certified, registered mail, or "overnight express" by the United States Postal Service with return receipt requested and postage prepaid, or (d) sent "express mail," "two day delivery," "3-5 day ground" or any similar service offered by private, prepaid courier such as Federal Express, United Parcel Service or any similar organization.

NOTICES TO ASH FITNESS:

American Specialty Health Fitness, Inc.
P.O. Box 509117
San Diego, CA 92150-9001
ASH Fitness (877) 329-2746

NOTICES TO FITNESS FACILITY:

City of Apache Junction Parks and Recreation
300 E. Superstition Blvd.
Apache Junction, AZ 85119
City of Apache Junction (480) 474-5241

Notice shall be effective on the earlier of the date received or the date deemed received.

- Notices given by electronic means (i.e. ASHLink, sent via an inalterable email document (such as PDF), or facsimile with confirmation) shall be deemed received one (1) business day after being sent.
- Notices delivered personally shall be deemed received upon actual receipt.
- Notices given by certified or registered mail shall be deemed received three (3) United States Postal Service business days after the date mailed.
- Notices given by "3-5 day ground" will be deemed received five (5) business days after the date delivered to the United States Postal Service, Federal Express, United Parcel Service or any similar organization.
- Notices sent for delivery by any other means specified in this first paragraph of this Article shall be deemed received three (3) business days after delivery to the United States Postal Service, Federal Express, United Parcel Service or any similar organization.

ARTICLE 22 ATTORNEY-COSTS

In the event that either Party brings legal action relating to this Agreement, the prevailing Party shall be entitled to payment by the other of all reasonable attorneys' fees, costs and expenses incurred in such action.

ARTICLE 23 CAPTIONS.

Captions in this Agreement are descriptive only and shall not affect the intent or interpretation of this Agreement.

ARTICLE 24 NO THIRD PARTY BENEFICIARIES.

Except as otherwise expressly provided in this Agreement, nothing in this Agreement shall create or be deemed to create any rights or remedies in any third party, including but not limited to a Member or a Fitness Facility other than Fitness Facility, subject only to Article 26.

ARTICLE 25 AMENDMENTS.

Fitness facility has the right to reject any amendments to this Agreement, including but not limited to, revised or newly issued attachments, ASH Client Lists or revisions to the Program Manual. Where Fitness Facility does not agree with the terms of an amendment, Fitness Facility may terminate this Agreement upon one hundred twenty (120) days prior written notice to ASH Fitness. No Amendment, modifications or addition to this agreement shall be valid unless made in writing and signed by both Parties.

ARTICLE 26 INSOLVENCY OF ASH FITNESS; PROTECTION OF INTERESTS OF FITNESS FACILITY, MEMBERS, AND ASH CLIENTS.

ASH Fitness and Fitness Facility each expressly agrees to the inclusion of this Article in this Agreement to provide a means to protect the interests of Fitness Facility, Members, and ASH Clients in the event of the insolvency of ASH Fitness. This Article shall apply only in the event of the insolvency of ASH Fitness and only if, as a result of the insolvency, ASH Fitness is unable to discharge its duties under this Agreement. This Article shall not apply in any other circumstances.

For purposes of this Article, the insolvency of ASH Fitness means the filing of a voluntary petition by ASH Fitness, or the filing of an involuntary petition by ASH Fitness' creditors, under Chapter 7 of the Bankruptcy Code (Liquidation), and the date of the insolvency shall be the date on which any such petition is filed. The insolvency of ASH Fitness shall not include the filing of a voluntary petition by ASH Fitness, or the filing of an involuntary petition by ASH Fitness' creditors, under Chapter 11 of the Bankruptcy Code (Reorganization). Notwithstanding anything in this Article, this Article shall not apply to the extent its application would violate any provision of the Bankruptcy Code or any other applicable federal or state statute or regulation, any automatic or other stay issued pursuant to the Bankruptcy Code, any order issued by the court with jurisdiction over the bankruptcy proceeding, or any other court order.

If, within sixty (60) days after the date of the insolvency of ASH Fitness, an ASH Client provides written notice to Fitness Facility stating that, with regard to any Member who is a beneficiary, employee, member, or insured of that ASH Client, (a) ASH Client shall pay Fitness Facility, in accordance with the provisions of this Agreement, for any billing reports submitted for Services rendered by Fitness Facility to any such Member on or after the date of the insolvency, to the extent ASH Fitness has not paid such reimbursements, and (b) ASH Client otherwise shall use its best efforts to discharge the duties of ASH Fitness under this Agreement, or to cause ASH Fitness to discharge those duties, with regard to any such Member, then Fitness Facility shall continue to be available to render Services to those Members and shall continue to render Services to those Members in accordance with the provisions of this Agreement for up to (60) days after the date of the insolvency, as specified by ASH Client. To the extent this Article grants any rights to any ASH Client, Fitness Facility hereby expressly agrees and acknowledges that ASH Client is a third-party beneficiary of the provisions of this Article and shall have all rights granted under law by a third-party beneficiary to enforce the provisions of this Article.

ARTICLE 27 ENTIRE AGREEMENT.

This Agreement includes all attachments, the Program Manual, and all amendments thereto. Each Party acknowledges that no representation, inducement, promise or agreement, orally or otherwise, has been made by any Party or anyone acting on behalf of any Party, which is not embodied herein. In the event of an inconsistency between this Agreement and any ASH Client Summary or this Agreement and attachments, this Agreement, the ASH Client List or attachments, respectively, shall control the rights and duties of the Parties. In the event of any inconsistency between the Program Manual and this Agreement, this Agreement, together with any attachments, exhibits and amendments, including any current ASH Client List, shall control the rights and duties of the Parties.

ARTICLE 28 TIME IS OF THE ESSENCE.

Time is of the essence with the respect to all provisions in this agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.

ARTICLE 29 CONFLICT OF INTEREST.

This agreement is subject to, and may be terminated by the Fitness Facility in accordance with the provisions A.R.S 38-511

ARTICLE 30 NON-EXCLUSIVITY.

Each party understands and acknowledges that the relationship created hereby is of a non-exclusive nature, meaning either party may do business with any other party that provides the same or similar services

ARTICLE 31 EFFECTIVE DATE OF AGREEMENT.

ASH Fitness will provide Fitness Facility with notice of the Effective Date after Fitness Facility returns one original copy of this Agreement to ASH Fitness, and all pre-contractual requirements are fulfilled based upon a determination by ASH Fitness. Fitness Facility agrees to be bound by this Agreement as of the Effective Date as determined by ASH Fitness and indicated immediately below.

The Effective Date of this Agreement is _____
[To be completed by ASH Fitness Only]

Fitness Facility agrees to participate in the following attachments, as indicated with a check in the attachment(s) box:

☒ Attachment A: Silver&Fit Basic Facility Attachment

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

FITNESS FACILITY
(type or print clearly)

City of Apache Junction
Fitness Facility Legal Name

d/b/a (if applicable)

Name Signed

Jeff Serdy
Name Printed

AMERICAN SPECIALTY
HEALTH FITNESS, INC
(To be filled out by ASH Fitness only)

George DeVries
Name Signed

George DeVries
Name Printed

Chairman + CEO
Title

9-26-17
Date of Signature

Mayor
Title

Date of Signature

Attestation

Kathy Connelly, City Clerk

APPROVAL ASTD FORM:

10.2.17
R.J. STERN, CITY CLERK

Mailing Address:

City of Apache Junction

Office Name

300 E. Superstition Blvd.

Address

Apache Junction, AZ 85119

City, State, Zip

Mailing Address:

American Specialty Health Fitness,
Inc.

P.O. Box 509117

San Diego, CA 92150-9001

Office Address:

American Specialty Health Fitness,
Inc.

10221 Wateridge Circle

San Diego, CA 92121

STATE OF _____)
County of _____) ss.

The foregoing was subscribed and sworn to before
me this _____ day of _____, 20____,
by _____.

SEE ATTACHED
CALIFORNIA JURY

Notary
Public

My Commission Expires:

(seal)

STATE OF ARIZONA)
COUNTY OF _____) ss.

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

1
2
3
4
5
6

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of SAN DIEGO

Subscribed and sworn to (or affirmed) before me

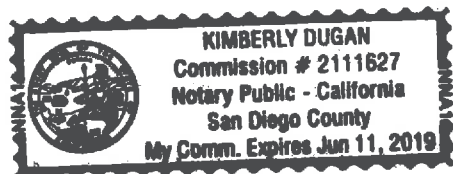
on this 25 day of SEPTEMBER, 2017,
 by GEORGE DEVRIES
 Date Month Year

(1)

(and (2) N/A),
 Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence
 to be the person(s) who appeared before me.

Signature [Signature]
 Signature of Notary Public



Seal
 Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

The foregoing was subscribed and sworn to before
me this _____ day of _____, 20____, by Jeff Serdy, as
Mayor of the City of Apache Junction, Arizona, an Arizona
municipal corporation.

Notary
Public

My Commission Expires:

(seal)

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS FACILITY SERVICES AGREEMENT
WITH CITY OF APACHE JUNCTION**

ATTACHMENT A - SILVER&FIT BASIC FACILITY ATTACHMENT

1.0 **DEFINITIONS.**

For purposes of this attachment and in addition to the terms defined in the Agreement, the following terms shall have the meanings indicated:

- 1.01** **Silver&Fit Program.** The Silver&Fit Program is an exercise and healthy aging program offered to Members that are health plan enrollees eligible for Medicare coverage or are group retirees.
- 1.02** **Silver&Fit Basic Fitness Facility.** As a Silver&Fit Basic Facility, Fitness Facility shall provide Members the Standard Fitness Facility Membership as set forth in Section 3.09.1 of the Agreement.

2.0 **PROGRAM COMPENSATION.**

Fitness Facility hereby agrees to participate in the Silver&Fit Program as a Silver&Fit Basic Facility, subject to the compensation schedule listed in Attachment L. The number of visits compensated in a month shall not limit the number of visits a Member may make to Fitness Facility in a month. Members must have unlimited access and their visits may exceed the visits compensated per month as specified in Attachment L. A Member may make multiple visits to Fitness Facility over the course of one day, however, Fitness Facility is only entitled to receive compensation for one (1) of those visits. Silver&Fit services will be compensated by ASH Fitness up to the maximum number of sessions and the maximum amount specified in Attachment L.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS FACILITY SERVICES AGREEMENT
WITH CITY OF APACHE JUNCTION**

ATTACHMENT G - ASH CLIENT LIST

Client offers national access unless otherwise specified.								
The following ASH Fitness Clients are currently eligible as noted below:								
	Client Name	Effective Date	S&F	A&F	Affinity	ERN	FitnessCoach	
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS FACILITY SERVICES AGREEMENT
WITH CITY OF APACHE JUNCTION**

ATTACHMENT I - HEALTH AND SAFETY GUIDELINES AND CODE OF CONDUCT

Fitness Facility warrants and represents that each Fitness Facility Participating Location, subject to this Agreement, shall maintain and abide by ASH Fitness' Health & Safety Guidelines and Code of Conduct, as follows:

- Fitness Facility is able to respond in a timely manner to any reasonably foreseeable emergency event that threatens the health and safety of facility users. Toward this end the Fitness Facility has an appropriate emergency plan that can be executed by qualified personnel in a timely manner.
- Each person who has supervisory responsibility for a physical activity program or area at Fitness Facility has demonstrable professional competence in that physical activity program or area.
- Fitness Facility posts appropriate signage alerting users to the risks involved in their use of those areas of Fitness Facility that present potential increased risk(s).
- If Fitness Facility offers youth services or programs, it provides appropriate supervision.
- Fitness Facility shall not discriminate against Members for any reason, including but not limited to age, sex, marital status, religion, ethnic background, national origin, ancestry, political affiliation and race.
- Fitness Facility shall abide by all local, state, or federal consumer protection legislation and all other applicable laws.
- Fitness Facility responds to and endeavors to resolve, within sixty (60) days, any consumer complaints made to the Better Business Bureau or state or local consumer protection agencies (or other such agencies).
- Fitness Facility will not sell prepaid, lifetime memberships.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS FACILITY SERVICES AGREEMENT
WITH CITY OF APACHE JUNCTION**

ATTACHMENT J – MEDICARE ADVANTAGE ADDENDUM

This exhibit is entered into by American Specialty Health Fitness, Inc. (“ASH Fitness”) and the Fitness Facility listed on the signature page of the Agreement (“Fitness Facility”) and is intended to add certain provisions to the Agreement in order to comply with requirements of the Centers for Medicare and Medicaid Services (“CMS”). If any provision in the Agreement is inconsistent with the terms of this attachment, the provisions of this attachment shall be controlling and supersede the provisions of the Agreement for Medicare Advantage Members.

WHEREAS, ASH Fitness has entered into contracts with Medicare Advantage Organizations (“MAO” or “ASH Clients”) which require its first tier entities (such as ASH Fitness) to include specific contract language in its contracts with their downstream entities (such as Fitness Facility)

NOW, THEREFORE, the Parties agree to add the following provisions to the Agreement with respect to Medicare Advantage members of ASH Fitness’ contracted MAO health plans:

- 1 **Member Non-Liability.** Fitness Facility shall in no event, including insolvency of ASH Fitness, hold any Member liable for payment of any fees that are the legal obligation of ASH Fitness. This provision does not prohibit Fitness Facility from charging the Member for services not covered under this Agreement, provided the Member was informed in advance and in writing of the fees to be charged. This provision shall survive termination of the Agreement. [42 C.F.R. 422.504(g)(1)(i) and 42 C.F.R. 422.504(i)(3)(i)]
- 2 **Excluded Individuals.** Fitness Facility represents and warrants that Fitness Facility or any person who owns more than five percent (5%) of Fitness Facility are not excluded from participation in a federal or state program, including but not limited to, Medicare and Medicaid. Also, Fitness Facility shall not employ or contract with any individual excluded from participation in such federal or state programs to provide Services to Members. Furthermore, Fitness Facility represents and warrants that it maintains no affiliation, whether physical or economic, with any person excluded from participation in said federal or state programs. Fitness Facility hereby represents and warrants that no such excluded person currently owns more than five percent (5%), is employed by, under contract with, or otherwise affiliated with Fitness Facility. Fitness Facility shall check persons employed, contracted or otherwise affiliated with Fitness Facility and any person owning more than five percent (5%) of Fitness Facility against the appropriate lists upon hire or contract and monthly thereafter to determine if the persons have been excluded from participation in a federal or state program (e.g. U.S. Department of Health and Human Services Office of Inspector General List of Excluded Individuals/Entities and the General Service Administration Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs). Fitness Facility shall maintain records relating to its checks of these lists in accordance with Section 8 of this addendum. Fitness Facility agrees to indemnify ASH Fitness or ASH Clients, as applicable, for any civil monetary penalties levied against an ASH Client or ASH Fitness as a result of (a) Fitness Facility’s failure to properly screen all employed, affiliated or contracted persons who provide Services to Members and/or hold or held more than a five percent (5%) interest in Fitness Facility against the Exclusions lists or (b) Fitness Facility’s permitting an individual or entity found on the Exclusions Lists to provide Services to any Medicare Advantage Members, or otherwise be affiliated with those services, under this Agreement. Payments received by Fitness Facility in circumstances where (a) or (b) above apply are also subject to recoupment by ASH Fitness upon request and Fitness Facility agrees to comply with any such requests. [42 C.F.R. 422.752(a)(8)]
- 3 **Compliance with Federal and State Law.** Fitness Facility acknowledges that payments for Services hereunder are, in whole or in part, derived from federal funds and receipt of such payment is subject to all laws and regulations applicable to recipients of such funds. Therefore, Fitness Facility shall comply with all laws and regulations applicable to individuals and entities receiving federal funds and all other applicable federal and state laws and regulations, including, but not limited to, those laws and regulation governing participating in the Medicare Advantage or Special Needs Plan Programs, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, as well as their implementing regulations. [42 C.F.R. 422.504(h)]

- 4 **Quality Review and Improvement.** Fitness Facility shall cooperate with all independent quality review and improvement activities relating to Services being provided by Fitness Facility required by ASH Fitness and/or ASH Fitness's contracted MAO health plans or CMS pertaining to the provision of Services. [42 C.F.R. 422.204(b)(4)]
- 5 **Member Appeals and Grievances.** Fitness Facility shall cooperate and comply with all ASH Fitness, ASH Fitness's contracted MAO health plans, and CMS requirements regarding appeals of members, including the obligation to provide information to ASH Fitness within the timeframe reasonably requested for such purpose. [42 C.F.R. 422.562(a)]
- 6 **Collection of Data.** When requested by ASH Fitness, Fitness Facility shall participate in the collection and submission of data to CMS. Where applicable, Fitness Facility shall certify, the accuracy of the data collected and submitted under this section. [42 C.F.R. 422.504(c)]
- 7 **Member Records.** In addition to the requirements set forth in Section 9.03 of the Agreement, to the extent any MAO member records or other health and enrollment information is maintained by Fitness Facility, Fitness Facility shall: 1) safeguard the privacy of any information that identifies a particular member and abide by all federal and state laws and regulations regarding confidentiality and disclosure of all protected health information; 2) maintain member records and information in an accurate and timely manner; and 3) ensure timely access by members to their own records and information in accordance with federal and State laws and regulations. Information from or copies of records may be released only in accordance with federal and state laws and regulations governing such records and the information contained therein. [42 C.F.R. 422.118]
- 8 **Records and Inspections.**
- (a) ASH Fitness and Fitness Facility recognize and agree that the United States Department of Health and Human Services (DHHS), the Comptroller General, or their designees may audit, evaluate or inspect any books, contracts, and other records of ASH Fitness and Fitness Facility that pertain to any aspect of services performed under this Agreement for purposes of a Medicare product, or as the Secretary of DHHS may deem necessary. ASH Fitness and Fitness Facility shall retain all records related to the provision Services for a period of ten (10) years after the final date of the contract period and shall make available their premises, physical facilities and equipment, records related to the provision of Services or any additional relevant information that DHHS may require. [42 C.F.R. 422.504(e)(3)]
- (b) CMS, the Comptroller General, or their designees have the right to inspect, evaluate and audit ASH Fitness and Fitness Facility for a period of ten (10) years after the final date of the contract period or the completion of an audit, whichever is later, unless: (a) CMS determines that there is a special need to retain a particular record or group of records for a longer period and notifies ASH Fitness or Fitness Facility at least thirty (30) days before the normal disposition date; (b) there has been a termination, dispute or fraud or similar fault by ASH Fitness or Fitness Facility in which case retention may be extended to ten (10) years from the date of any final resolution of the termination or fraud or similar fault; or (c) CMS determines that there is a reasonable possibility of fraud, in which case it may inspect, evaluate and audit ASH Fitness and Fitness Facility at any time. [42 C.F.R. 422.504(e)(4)]
9. **MAO Health Plan Accountability.** Notwithstanding anything set forth in the Agreement, Fitness Facility and ASH Fitness acknowledge and agree that, with respect to Services furnished under this Agreement for ASH Fitness's contracted MAO health plans, ASH Fitness's contracted MAO health plans oversee and are ultimately accountable to CMS for any functions and responsibilities performed by Fitness Facility. Fitness Facility shall comply with ASH Fitness's policies and procedures as set forth in the Fitness Facility Program Manual. Such policies and procedures have been reviewed and approved by ASH Fitness' contracted MAO health plans. Fitness Facility shall furnish Services to members consistent with the requirements of CMS and, including but not limited to, ASH Fitness's contractual obligations to its contracted MAO health plans. [42 C.F.R. 422.504(i)(4)(iii) and 42 C.F.R. 422.112]

10. **Compliance Training.** Fitness Facility will provide its employees and any contractors directly involved in providing Services under this Agreement the compliance training included in the Fitness Facility Program Manual within ninety (90) days of hire or contracting and annually thereafter. [42 C.F.R. 422.504(h)(1)]
11. **Amendment and Severability of Contracts.** Notwithstanding any provision in the Agreement, this Exhibit may be amended upon request or mandate by CMS to comply with all relevant federal and State laws and regulations and government pronouncements. Additionally, this Exhibit shall be amended to exclude any Medicare product or State-licensed entity specified by CMS. A separate agreement for any such excluded product or entity will be deemed to be in place when such request is made. Amendments will be provided in accordance with Article 25 of the Agreement. [42 C.F.R. 422.504(k)(1) and (2)]

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS FACILITY SERVICES AGREEMENT
WITH CITY OF APACHE JUNCTION**

ATTACHMENT K –GUIDELINES FOR TRADEMARK USE BY THIRD PARTIES

American Specialty Health Incorporated (“ASH”) counts among its most valuable assets the company’s trademarks and the goodwill they represent. Protection of these marks is a priority for ASH. These guidelines on the proper use of ASH trademarks have been developed for Licensees and other third parties. The status of ASH trademarks is continually changing, and it may be necessary to revise these guidelines from time to time. These guidelines are designed to ensure proper legal usage of ASH trademarks, and to prevent consumer confusion that can result from improper or illegal usage.

1. Never vary the spelling, add or delete hyphens (even for normal hyphenation at the end of a line of text), make one word two, or use a possessive or plural form of the trademark. ASH trademarks are always used as adjectives followed by a generic term (such as “HMO”) and never as nouns or verbs.
2. When using an ASH trademark on any materials that will be distributed or presented to the public, use the registered symbol ® on the most prominent (or if none is prominent, the first) appearance of a trademark registered with the U.S. Patent and Trademark Office. For any ASH trademark that is not registered, the ™ symbol should be used in place of the registered trademark symbol. Once marked, it is not normally necessary to mark subsequent appearances of the trademark in the same publication.
3. Every appearance of ASH logos and product names in stylized form should always appear with the appropriate ® or ™ symbol, and may be used only under license with ASH. Unauthorized use is strictly prohibited.
4. A logo is a graphical design that may include text and other design elements. ASH product signatures are logos created to identify products that are licensed or owned by ASH. Stylized trademarks or “logotypes” are those that appear in word form in a particular style of type by ASH. An example includes the following:



ASH logos, product signatures, or trademarks in stylized form may be used only if the user has obtained a prior written license from ASH and the user complies with the terms and conditions of the license. Under no circumstance may the user modify, distort or add to ASH logos, product signatures, or stylized trademarks.

The term “American Specialty Health”, when used to refer to products, is a trademark, and its use is governed by the guidelines above. However, when “American Specialty Health Incorporated” is used only to refer to ASH as a corporate name, no trademark marking or attribution is necessary. Therefore, ~~do not use the~~ ® or ™ symbols shall not be used.

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FITNESS FACILITY SERVICES AGREEMENT
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ATTACHMENT L – PROGRAM COMPENSATION

SILVER&FIT BASIC FACILITY:

The following compensation rate is for a Silver&Fit Basic Fitness Facility in the Silver&Fit Program:

Benefit Program	Standard Compensation Rate	Maximum Number of Visits Compensated Per Month	Monthly Compensation Maximum
Silver&Fit Basic	\$26.00	1	\$26.00