

**FITNESS PASSPORT SERVICES
AGREEMENT BETWEEN
OPTUMHEALTH CARE
SOLUTIONS, LLC AND THE CITY
OF APACHE JUNCTION**

This Fitness Passport Service Agreement (this "Agreement") is entered into on _____, 2017 (the "Effective Date"), by and between OptumHealth Care Solutions, LLC, including its affiliates ("Optum") and City of Apache Junction Parks ("Network"). For purposes of this Agreement, Network and Optum shall collectively be referred to herein as the "Parties" and individually as a "Party".

RECITALS

- A.** Network wishes to become part of the Optum Fitness Passport Network comprised of facilities that provide services to support the Fitness Passport Program to customers of Optum.
- B.** Optum provides its customers and related Members access to the Fitness Passport Program (as further described in Appendix A).
- C.** Optum and Network wish to enter into this Agreement so that Optum customers and related Members may access the Fitness Passport Program and its associated benefits.

**AGREEMENT
ARTICLE 1
DEFINITIONS**

Except as otherwise specifically indicated, the following terms shall have the following meanings in this Agreement (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

Activation ID: A unique system-generated number assigned by Optum and used by both Parties to identify a Member who enrolls in the Fitness Passport Program.

Activation Letter: A letter, which displays the Activation ID that Members print off and present to a Participating Network Facility to enroll in the Fitness Passport Program.

Days: Calendar days unless otherwise noted.

Fitness Passport Program: A program sponsored by Optum as described in Appendix A herein. With Program Performance set forth in Appendix B.

Eligible Member: A benefit holder or a benefit holder's spouse enrolled in a qualifying health plan that may or may not be a member of a Participating Network Facility and is not enrolled in the Fitness Passport Program.

Member: A benefit holder or a benefit holder's spouse enrolled in a qualifying health plan that is enrolled in the Fitness Passport Program and is a member of a Participating Network Facility.

Participating Network Facility: A Network facility including its branches contracted under this Agreement to provide services to Members under the Fitness Passport Program as outlined in Appendix A herein.

Network Facility Reimbursement: The payment for which Optum has agreed to distribute to Network

for each Member who meets or exceeds the established Fitness Passport Program visit requirements as defined by Optum in Appendix A.

ARTICLE 2 TERM AND TERMINATION

2.1 Term. The initial term of this Agreement shall begin on the Effective Date and shall continue for a period of Five (5) years ("Initial Term").

2.2 Termination. This Agreement may be terminated by any of the following:

- a) After the Initial Term, either Party may terminate this Agreement at any time by giving a minimum one hundred twenty (120) day written notice to the other Party;
- b) By either Party upon mutual written agreement; or
- c) If either Party breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after written notice is given by the non-breaching Party, the Agreement shall terminate at the end of the thirty (30) day period.

Notwithstanding the above, this Agreement shall terminate immediately upon delivery to the other Party of written notice of termination on the occurrence of one of the following:

- a) Bankruptcy, insolvency or the dissolution of either Party;
- b) Assignment of this Agreement by either Party without the permission of the other Party; or
- c) The loss of any license, qualification, authorization, accreditation or certification required for a Party to perform its duties under this Agreement.

Each Party agrees to notify the other Party in writing not later than five (5) business days after the occurrence of any of the events referred to immediately above.

2.3 Effect of Termination: Upon termination of this Agreement, each Party shall immediately cease using the other Party's name, symbol or logo ("Mark"), including but not limited to uses of the Mark authorized by this Agreement. Notwithstanding, the obligation to pay Network Facility Reimbursement to Network by Optum shall survive Termination for 120 days after the termination date.

2.4 Ongoing Obligations. Termination shall not affect either Party's liability for any obligations incurred by such Party prior to the effective date of termination.

ARTICLE 3 OBLIGATIONS OF NETWORK

3.1 Access to, Fulfillment of, and Membership Fees for the Fitness Passport Program. Each Participating Network Facility shall provide all Members with access to the Participating Network Facility and all regular Network services, during the hours of operation as advertised by the Participating Network Facility to include, if applicable, an orientation to the Participating Network Facility and the equipment. In connection with participating in the Fitness Passport Program, each Participating Network Facility will provide Members with membership to their facility at the rate set forth in Appendix A.

3.2 Acknowledgement. Network acknowledges that Optum is not a payer of services nor an insurer with

respect to any services provided by the Network as part of this Agreement.

3.3 Compliance with Applicable Laws. Both Parties shall comply with all applicable local, state and federal laws. Network shall also obtain and maintain any and all licenses required to fulfill its duties and obligations under this Agreement.

3.4 Cooperation with Optum. Both Parties agree Network shall be the first point of contact for Members and Eligible Members and shall assume all service responsibility with respect to Member participation in the Fitness Passport Program, unless the Member contacts Optum first, in which case that Member will be re-directed to the Network. In the event of an escalated issue whereby Optum's assistance is required for resolution, Optum agrees to cooperate with Network in handling any complaints or inquiries from Members or Eligible Members regarding the Fitness Passport Program.

3.5 Account Management. Network will assign an account management team to support Optum with implementation of the Fitness Passport Program.

ARTICLE 4 OBLIGATIONS OF OPTUM

4.1 Payment to Network. Optum shall pay Network the Network Facility Reimbursement set forth in Appendix A for each eligible Member that meets or exceeds the Fitness Passport Program's monthly visit requirement. Payment details for the Network Facility Reimbursement are set forth in Appendix A.

4.2 Membership Payments. Network understands that Members are responsible for paying Participating Network Facilities the membership dues and/or associated fees beyond a standard membership. Optum shall not be responsible or liable for any membership dues and/or associated fees that a Member fails to pay to a Participating Network Facility.

4.3 Promotion of Services. Optum shall promote the Fitness Passport Program to Eligible Members through the Optum Web site, marketing and sales brochures, and other distribution channels designated by Optum, including but not limited to telephone and email communications. Optum shall be responsible for the design and production of any such materials and the design and maintenance of the Optum Web site.

ARTICLE 5 CONFIDENTIALITY

5.1 Information. Each Party acknowledges that in the course of performing under this Agreement, it may learn confidential, trade secret, or proprietary information concerning the other Party or third parties to whom the other Party has an obligation of confidentiality. Each Party shall protect and shall not disclose the other's proprietary information, including but not limited to, trade secrets, lists of Activation IDs and Participating Network Facilities, Member information, reimbursement amounts, and patented, trademarked, trade-named, service-marked, and copyrighted material or other property belonging to it or to a third party to whom it has an obligation of confidentiality ("Confidential Information").

5.2 Protection of Confidential Information. Each Party agrees that during the term of this Agreement: (a) it will use such Confidential Information only as permitted by this Agreement or as otherwise permitted in writing, (b) it will not disclose such Confidential Information orally or in writing to any third party without the prior written consent of the other Party, (c) it will take at least those precautions to protect the other's Confidential Information as it takes to protect its own similar information, and (d) it will not otherwise use such Confidential Information for its own purposes or that of any other person or entity.

A Party may disclose Confidential Information if required by law, legal process, or court order, in which case the disclosing Party shall notify the other Party sufficiently in advance of the disclosure, as allowed by law, to permit intervention at its option. The obligations stated in this Section shall survive termination of this Agreement for so long either Party has access to the other's Confidential Information.

5.3 Privacy. Each Party agrees to be bound by any applicable state and federal rules and regulations concerning the privacy and security of Member information.

ARTICLE 6 DISPUTE RESOLUTION/MEDIATION

6.1 Disputes. In the event that any dispute, claim, or controversy of any kind or nature relating to this Agreement arises between the Parties, the Parties agree to meet and make a good faith effort to resolve the dispute. If the dispute is not resolved within thirty (30) days after the Parties first met to discuss it, the Parties may agree to mediate the dispute. A single mediator engaged in the practice of law, who is knowledgeable as to the subject matter relevant to the dispute, shall conduct the mediation under Arizona mediation rules. . The mediation shall be held in a mutually agreeable site. Nothing herein is included to prevent either Party from seeking any other remedy available at law including seeking redress in a court of competent jurisdiction. The Parties shall split the cost of mediation equally. Mediations shall be non-binding.

ARTICLE 7 RESPONSIBILITY FOR DAMAGES

7.1 Responsibility for Damages. Each Party shall be responsible for any and all damages, claims, liabilities, or judgments it incurs that arise as a result of its own acts or omissions. Any costs for damages, claims, liabilities, or judgments incurred at any time by one Party as a result of the other Party's negligence or intentional wrongdoing shall be paid for or reimbursed by the other Party.

Except for claims indemnified hereunder, or breaches of provisions related to confidentiality of information provided, in no event shall either Party be liable to the other for incidental, consequential, economic, special, or lost profit damages, even if such Party has been advised of the possibility of such damages. Consequential damages include, but are not limited to, lost profits, lost revenues, and lost business opportunities, whether or not the other Party was or should have been aware of the possibility of these damages.

ARTICLE 8 MISCELLANEOUS

8.1 Entire Agreement. This Agreement, exhibits and attachments constitute the entire understanding between the Parties and supersedes all proposals, communications and agreements between the Parties relating to its subject matter.

8.2 Independent Contractors. The Parties' relationship to each other is that of independent contractors. No Party shall be deemed to be, or hold itself out as, a partner, agent, employee or joint venture partner of any other Party. No Party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other Party, or to represent any other Party as an agent, employee or in any other capacity.

8.3 Insurance. Each Party, at its sole cost and expense, shall procure and maintain in full force and effect for the term of this Agreement and after its termination for so long as the services are provided to Members pursuant to this Agreement, adequate commercial general liability insurance coverage,

including but not limited to contractual liability insurance coverage, with limits that are reasonable and customary for its business to cover liabilities and claims which may arise in relation to or in connection with providing such Party's respective services under this Agreement, but in no event less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

8.4 Certificate of Insurance. Network and Optum agree to 1) provide the other, within ten (10) business days of a written request, with a Certificate of Insurance with respect to all liability insurance required under this Agreement, and 2) maintain the foregoing policy or policies of insurance without material change or cancellation except upon thirty (30) days written notice to the other Party.

8.5 Right to Audit. Optum shall have the right to review or to appoint an independent third party auditor to review the files and materials used by Network for the purpose of auditing compliance by Network with the Access & Performance Minimums set forth in Section 1 of Appendix B. Optum may exercise such right of audit during normal business hours upon five (5) business days prior written notice to Network. Network shall cooperate with Optum's auditor in the performance of any audit. Optum shall be solely responsible for the cost of the audit, providing however, if such audit reveals reporting discrepancies to Optum, Network shall bear the costs of such audit.

8.6 Assignment. Except as provided in this Section, neither party may assign any of its rights and responsibilities under this Agreement to any person or entity without the prior written consent of the other party, which shall not be unreasonably withheld. Network and Optum acknowledge that persons and entities under contract with or affiliated with them may perform certain services under this Agreement. Network acknowledges that assignment by Optum of all or any of its rights and responsibilities under this Agreement to any affiliate shall not require Network's prior written consent.

8.7 Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heir(s), personal representatives, executors, administrators, successors, and assigns.

8.8 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona and any actions shall be brought in Pinal County, AZ. The Parties waive their right to change venue.

8.9 Amendments. No amendments, modifications, or additions to this Agreement shall be valid unless made in writing and signed by both the Network and Optum.

8.10 Invalidity of Sections of Agreement. If any portions of this Agreement shall, for any reason, be invalid or unenforceable such portions shall be ineffective only to the extent of such invalidity or unenforceability and the remaining portion or portions shall nevertheless be valid, enforceable and of full force and effect.

8.11 Survival. The terms and conditions of this Agreement, which by their express or implied terms, survive the termination of this Agreement, shall survive the termination of this Agreement.

8.12 Force majeure. Neither Party, 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 subcontractors or material men 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 Project. 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, subcontractors, vendors or investors desired by Parties in connection with the Project. Party agrees that Party 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 thirty (30) calendar 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.

8.13 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.

8.14 Conflict of Interest. This agreement is subject to, and may be terminated by the Network in accordance with the provisions A.R.S Section 38-511.

8.15 Notices. Any notice, demand, or communication required under this Agreement shall be hand delivered or sent by commercial overnight delivery service, or if mailed, by pre-paid, first class mail to the addresses below. The addresses to which notices are sent may be changed by proper notice.

Notice to Optum:
OptumHealth Care Solutions, LLC
Attn: Contracts Administration
11000 Optum Circle
Eden Prairie, MN 55344

Notice to Network:
City of Apache Junction
300 E. Superstition Blvd
Apache Junction, AZ 85119

8.16 Counterparts. This Agreement may be executed by electronic signatures or in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement is executed by the Parties' authorized officers or representatives and shall be effective as of the Effective Date.

OptumHealth Care Solutions, LLC
11000 Optum Circle
Eden Prairie, MN 55344

City of Apache Junction
300 E. Superstition Blvd.
Apache Junction, AZ 85119

Signature: 

Signature: _____

Print Name: JOEL COSTA

Print Name: _____

Print Title: CFO

Print Title: _____

Date: 9-14-2017

Date: _____

Internal Control No.: 00365406.0

APPROVAL AS TO FORM:

 9.18.17

R. Joel Stern, City Attorney

ATTESTATION:

Kathy Connelly, City Clerk

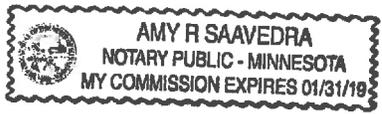
STATE OF Minnesota)
County of Hennepin) ss.

The foregoing was subscribed, sworn and acknowledge before me this 14 day of September, 2017, by Gal Costa.

Amy R Saavedra
Notary Public

My Commission Expires:
01/31/19

(seal)



STATE OF ARIZONA)
COUNTY OF _____) ss.

The foregoing was subscribed, sworn and acknowledge 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)

Appendix A

**Fitness Passport Program
Fees and Description of Services**

- I. **Fitness Passport Program Description:** The Optum Fitness Passport Program provides eligible Members with pre- determined monthly membership rates to Participating Networks when they enroll in the Fitness Passport Program. The Optum Fitness Passport Program also reimburses Participating Networks a pre-determined amount when Members meet the established program criteria as defined by Optum.
- II. **Network Reimbursement Fees:** In connection with participating in the Fitness Passport Program, Optum will reimburse Network for each participating Member a pre-determined amount each calendar month, when the Member meets the program criteria as defined by Optum below:

Member Participation Requirement	Network Reimbursement amount paid by Optum
Member visits Participating Network Facility during calendar month	\$4.00 per visit to Participating Network Facility with a maximum monthly payment of \$32.00 (8 visits)

III. Description of Services:

1. **Network Responsibilities.**

Network shall be responsible for:

- a) **Participating Network Facility Membership Fees:** In connection with participating in the Fitness Passport Program, Participating Network Facilities shall waive any and all enrollment and membership fees for those Members that enroll in the Fitness Passport Program. Members who have existing memberships with Participating Network Facilities or other gyms, either directly or through a third party, do not need to terminate their existing membership contract. Network will need to enroll the eligible Member in the Fitness Passport Program in order to be eligible for reimbursement.
- b) Network will reasonably cooperate with Optum to create Fitness Passport Program communication and promotional materials for Optum to send to Optum's clients, Members or Eligible Members.
- c) Maintaining a Web site that provides Participating Network Facilities locations including Network branches by zip code as well as a list of amenities and services, hours of operation and other information for each Participating Network Facility including braches. Network shall allow Optum to link to this site for purposes of providing information to Eligible Members and Members.

- d) By the seventh day of each month or the next business day if the seventh day of the month falls on a weekend or holiday, the Network or Optum's designated third party will deliver to Optum, in a mutually agreed upon file format, a file containing the usage data for the prior month for every Member in the Fitness Passport Program, regardless of how many times they visited the Network each month (from zero visits to 12 or more visits per month). Network is responsible for ensuring the submitted usage data is accurate. A maximum of one (1) visit per calendar day can be counted towards a Member's monthly visit total to Network. Only those records that have been reported within two (2) months from the end of the reported month will be evaluated for possible Network Facility Reimbursement. For example, at the conclusion of the month of April, the Network has two calendar months to report a Member's April visit count for purposes of calculating a possible Network Facility Reimbursement.
- e) Upon receipt of Fitness Passport Program utilization information on a monthly basis from Optum, on or before the first day of the month following the data submission or the next business day if the first day of the month falls on a weekend or holiday, Optum or Optum's designated third party will direct the Network Facility Reimbursement into Network's designated account via EFT. In the event that data processing errors are found, these errors can be corrected in the next month's payment cycle.
- f) Assisting to resolve questions, complaints or grievances related to a Member's participation in the Fitness Passport Program and to notify Optum via e-mail correspondence of all unresolved Member disputes and/or grievances that require the involvement of Optum.
- g) Additional administrative and support services as described herein.

2. Optum Responsibilities.

Optum shall be responsible for:

- a) Communicating program overview to Members pursuant to Section 4.3 of the Agreement.
- b) Making reasonable efforts to notify Optum's Eligible Members of Fitness Passport Program enrollment guidelines and processes.
- c) Posting updated facilities as a Participating Network Facility directory on the Optum Web site pursuant to Section 4.3 of the Agreement when available.
- d) Upon receipt of Member Fitness Passport Program utilization information on a monthly basis from Network or Optum's designed third party, Optum will verify the eligibility of Members listed on the monthly Member usage file and indicate which Activation IDs meet eligibility requirements for Network Facility Reimbursement to Network. Optum will designate with an error code any records which are ineligible for any such payments.
- e) By the twenty-third day of each month or the next business day if the twenty-third day of the month falls on a weekend or holiday, Optum will upload to the specified FTP site the eligibility verification file containing the payment amount of Network Facility Reimbursement to be reimbursed to Network. In addition, by the twenty-third day of the month Optum will send a payment via electronic funds transfer ("EFT") to Optum's designated third party equal to the

total amount of Network Facility Reimbursement to Network for the prior month.

f) Additional administrative and support services as described herein.

3. Additional Fitness Passport Program Guidelines.

- a) Details of Fitness Passport Program Member benefits are available upon request and may be changed from time to time at the sole discretion of Optum. Optum shall use reasonable commercial efforts to notify Participating Network Facilities thirty (30) days prior to such changes.
- b) The Network Facility Reimbursement period for Network is for each calendar month, not the fifteenth of the month to the fifteenth of the following month or based upon the date when the individual joins the Fitness Passport Program. A Member who signs up for the Fitness Passport Program will enable Network to be eligible to earn an Network Facility Reimbursement payment from Optum in the month he or she enrolls. For example, if the Member enrolls in the Fitness Passport Program on January 5, Network may earn the Network Facility Reimbursement if the Member meets their monthly attendance requirement at a Network on or after January 1 through the end of January.

Appendix B
Fitness Passport
Program Performance
Standards

Network and Optum accept the minimum performance standards set forth below.

Section 1
Minimum Standards

1.1 Customer Service: Participating Network Facilities and Optum shall work together to resolve all Member complaints and grievances in a timely manner. Network will make best efforts to achieve the Customer Service Deliverables listed in Table 1 below:

TABLE 1 - Customer Service	
Service Level Deliverables	Timeframe
E-mails and written inquiries to and from Participating Network Facilities and Optum	Response within two (2) business days
Member complaint and/or grievance resolution	Network must notify Optum in a timely manner of any disputes or other grievances involving Members and work to resolve ninety-five percent (95%) of such disputes within seven (7) business

1.2 Data and Payment Processing Schedule: Network, Optum and Optum's designated third parties, if applicable will use the following schedule set forth in Table 2 below for processing data and sending payment:

TABLE 2 - Data and Payment Processing (per Appendix		
Network or Optum's designated third party to upload usage file to Optum's FTP site *	Optum to upload eligibility verification file to Optum's third party designated FTP site	Optum or Optum's designated third party to transmit the Network Facility Reimbursement to Network's
By the seventh day of the month or the next business day if the seventh day of the month falls on a weekend or holiday, following the month of usage	By the twenty-third day of the month or the next business day if the twenty-third day of the month falls on a weekend or holiday, following the	By the first day of the month or the next business day if the first day of the month falls on a weekend or holiday, following the exchange of data
Example: February 7 for January usage	Example: February 23 for January usage	Example: March 1 for January usage and February data

* Member's monthly usage reports are to be reported to Optum's designated third party by the fifth day of the month.