

RESOLUTION NO. R-22-03

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH AMERICAN SPECIALTY HEALTH (ASH) FOR PROVIDING FITNESS SERVICES TO MEMBERS OF AMERICAN SPECIALTY HEALTH.

WHEREAS, 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 arrangements with ASH Fitness for the provision of Services to their Members.


WHEREAS, ASH Fitness wishes to arrange for and facilitate the provision of Services to Members with the Gladstone Community Center.

WHEREAS, the Gladstone Community Center has all necessary licenses and authorizations to operate in its location in which it operates and wishes to contract with ASH Fitness for the provision of Services to Members;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI AS FOLLOWS:

THAT, the City Manager of the City of Gladstone, Missouri is hereby authorized to accept and enter into an agreement to provide fitness services for American Specialty Health.

INTRODUCED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 10th DAY OF JANUARY 2022.



R.D. Mallams, Mayor

ATTEST:



Becky Jarrett, Deputy City Clerk



Request for Council Action

RES # R-22-03

BILL # City Clerk Only

ORD # City Clerk Only

Date: 1/6/2022

Department: Parks & Recreation

Meeting Date Requested: 1/10/2022

Public Hearing: Yes Date: [Click here to enter a date.](#)

Subject: American Specialty Health Member Fitness Agreement

Background: American Specialty Health (ASH) is a private insurance group who provides benefits to their members by paying for memberships to fitness centers in the insurance member's area. ASH has requested the Gladstone Community Center to become one of those sites. As a result and through the attached agreement, ASH will pay the Gladstone Community Center \$20/month/member so long as the member goes to the center one time during the month.

Budget Discussion: Funds are budgeted in the amount of \$0 from the N/A Fund. Ongoing costs are estimated to be \$ 0 annually. Previous years' funding was \$

Public/Board/Staff Input: Staff recommends entering this agreement to garner more members to the Gladstone Community Center resulting in increased revenue.

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Justin Merkey
Department Director/Administrator

SW
City Manager

JM
City Attorney

ATTACHMENT I

SUPERSEDING ADDENDUM

1. This superseding addendum is made and entered by and between the City of Gladstone, Missouri (“City”) and American Specialty Health Fitness, Inc. (“ASH”). This superseding addendum has the effective date of the Agreement.
2. This superseding addendum form is hereby made a part of the Fitness Center Services Agreement by and between the parties hereto (“Agreement”), modifying and superseding where it is inconsistent. All other terms and conditions of the Agreement remain unchanged, and this addendum is expressly incorporated and made a part of the Agreement.
3. This Agreement shall not be deemed to create any third-party benefit hereunder for any member of the public or to authorize anyone, not a party hereto, to maintain suit pursuant to the terms of this Agreement.
4. Article 19, “Disputes Between Fitness Center and ASH Fitness” is deleted in its entirety and is replaced by the below

Notwithstanding any provision of the Agreement to the contrary, the parties agree that any action at law, suit in equity, or other judicial proceeding arising out of this Agreement shall be instituted only in the Circuit Court of Clay County, Missouri or in the federal court of the Western District of Missouri.



Waiver of Jury Trial and Class Action. THE PARTIES AGREE TO WAIVE ANY RIGHT TO A JURY TRIAL WITH REGARD TO ANY DISPUTE ARISING OUT OF THIS AGREEMENT. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL AND TO PURSUE ANY CLAIM OR ACTION ON A CLASS OR CONSOLIDATED BASIS OR IN A REPRESENTATIVE CAPACITY IN ANY COURT ACTION ARISING AMONG THE PARTIES UNDER THIS AGREEMENT OR OTHERWISE RELATED TO THIS AGREEMENT, WHETHER MADE BY CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR OTHERWISE.

5. Notwithstanding any provision of the Agreement to the contrary, nothing in the Agreement shall constitute or be construed or deemed to constitute a waiver of the City’s sovereign immunity. The parties agree that the City is not indemnifying ASH or any other person or entity for any reason whatsoever.
6. Article 7, “Hold Harmless” is deleted.
7. In accordance with the laws of the State of Missouri, specifically Missouri Constitution, art. VI, section 26, notwithstanding any provision to the contrary, nothing in the Agreement shall be construed as creating an obligation or debt beyond the City’s fiscal year, and in the event that it does, performance of the City’s obligations under the Agreement is expressly subject to appropriation of funds by the City year-to-year during the duration of the Agreement. In the event City fails to appropriate funds or make monies available for

any fiscal year covered by the term of the Agreement for the services to be provided, the Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to City, and such termination shall not be a breach of the Agreement, and any unused payment made to ASH shall be returned to City.

8. ASH agrees not to disclose any confidential information received from the City or otherwise acquired while performing the services. Confidential information for purposes of this section is information that would constitute a closed record under Missouri's Sunshine Law, Chapter 610, RSMo.
9. Paragraph 3.15, "Liability Insurance Limits" is deleted.
10. City represents and covenants that at all times during the Term of this Agreement it will be insured or self-insured for public liability risks in an amount of at least \$1,000,000 per occurrence.

City shall cause ASH to be named as an additional insured on its general liability insurance policy.
11. Notwithstanding any provision of the Agreement to the contrary, the parties acknowledge that the City is subject to the Missouri Sunshine Law, Chapter 610, RSMo, and furthermore the Agreement shall not preclude in any manner the City's ability to respond to a request for records and the City is not obligated to notify the ASH of the Sunshine Law request prior to responding, and furthermore any disclosure by the City pursuant to the Missouri Sunshine Law shall not be considered a breach of any portion of the Agreement.
12. This superseding addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference.

American Specialty Health Fitness, Inc.:	City of Gladstone, Missouri:
	
By: <u>George DeVries</u>	By: Scott Wingerson
Title: <u>Chairman & CEO</u>	City Manager
Dated: 3/16/2022	Dated: <u>3/22/22</u>

AMERICAN SPECIALTY HEALTH FITNESS, INC.

FITNESS CENTER SERVICES AGREEMENT

GLADSTONE COMMUNITY CENTER

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

THIS FITNESS CENTER SERVICES AGREEMENT, (“this Agreement”) is entered into between American Specialty Health Fitness, Inc., a Delaware corporation (“ASH Fitness”), and the fitness center whose name and other identifying information appear on the signature page herein (“Fitness Center”). This Agreement will be effective as of the Effective Date specified in Article 27 of this Agreement.

This Agreement supersedes and replaces any prior Fitness Center Services Agreements entered into between ASH Fitness and Fitness Center.

RECITALS

WHEREAS, 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 arrangements with ASH Fitness for the provision of Services to their Members (as defined below in Section 1.08);

WHEREAS, ASH Fitness wishes to arrange for and facilitate the provision of Services to Members;

WHEREAS, Fitness Center has all necessary licenses and authorizations to operate in its location(s) in the State(s) in which it operates and wishes to contract with ASH Fitness for the provision of Services to Members;

NOW, THEREFORE, ASH Fitness and Fitness Center 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. Agreement is this Fitness Center Services Agreement between Fitness Center and ASH Fitness, the attachments and exhibits listed below, the Program Manual and any amendments to such documents.

- Attachment A: Silver&Fit® Basic Attachment
- Attachment B: Silver&Fit® Full Attachment
- Attachment C: Active&Fit® Attachment
- Attachment D: Intentionally Left Blank
- Attachment E: Intentionally Left Blank
- Attachment F: Intentionally Left Blank
- Attachment G: Medicare Addendum
- Attachment H: Program Compensation Attachment
- Attachment I: Superseding Addendum

The attachments and exhibits listed above and the Program Manual are hereby incorporated by reference. However, Fitness Center’s obligations will be dependent upon its agreement to participate in the programs described in Attachment A through Attachment F as indicated on the signatory page of this Agreement.

1.02 ASH Client. ASH Client is 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. ASH Clients will be listed on the ASH Client List which is provided to Fitness Center by ASH Fitness.

1.03 ASHLink. The ASHLink® system as described in the Program Manual is 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 Center via the Internet.

1.04 Benefit Year. Benefit Year is the twelve (12) month period specified in the ASH Client List.

- 1.05 **Contracted Center.** Contracted Center is a fitness center that has contracted with ASH Fitness.
- 1.06 **Effective Date.** The Effective Date is the date this Agreement becomes operative, as specified in Article 27 of this Agreement.
- 1.07 **Fitness Center Participating Location.** A Fitness Center Participating Location is the Fitness Center location where Services will actually be performed. For ease of reference, Fitness Center and Fitness Center Participating Location shall be used interchangeably for a Fitness Center with only one participating location.
- 1.08 **Member(s).** Member(s) is/are individual(s) who is/are eligible to receive Services by meeting all the eligibility requirements for participation in a program.
- 1.09 **Member Eligibility/Benefits.** Member Eligibility/Benefits is 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.
- 1.10 **Member Payments.** Member Payments are charges which are the direct financial responsibility of the Member and are paid directly to Fitness for any service which is a Non-Covered Service under this Agreement.
- 1.11 **Member Termination Report.** Member Termination Report as described in the program manual is a report which lists Members who have terminated their Membership at the Fitness Center and/or are no longer eligible for participation under the program.
- 1.12 **Non-Covered Services.** Non-Covered Services are all services other than a Standard Fitness Center Membership and any other program components as clearly laid out in each attachment and as applicable to the Member's benefit. All Non-Covered Services are ineligible for compensation by ASH Fitness and are the direct responsibility of the Member.
- 1.13 **Party(ies).** Party(ies) is/are the individual(s) or entity(ies) that execute this Agreement.
- 1.14 **Program Compensation Rate.** The Program Compensation Rate is the amount ASH Fitness will pay Fitness Center for each Member who has signed a membership agreement with Fitness Center and has had at least 1 Visit in the month that Fitness Center is seeking compensation for. The Program Compensation Rate is set forth in Attachment H for each program that applies to this Agreement.
- 1.15 **Services.** Services are those collective services which fall under this Agreement and its Attachments A through Attachment F.
- 1.16 **Standard Fitness Center Membership.** A Standard Fitness Center Membership provides Member with at least the following services: access to a Fitness Center 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 Center 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 Center Membership does not include instructor-led classes, personal training and other amenities for which the Fitness Center routinely charges a separate fee.
- 1.17 **Visit.** Unless otherwise specified in a program attachment, a Visit is where a Member utilizes the Fitness Center Participating Location for exercise. A Visit does not include virtual video workout sessions or individual video exercises.

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 Center'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 24 of this Agreement. ASH Fitness may distribute all materials directly to Fitness Center and to each Fitness Center Participating Location, where such information pertains to the Fitness Center 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 Center with services related to Member Eligibility verification for Services to be provided by Fitness Center. ASH Fitness makes no representation or guarantees concerning the number of Members, if any, that will access Fitness Center under this Agreement.
- 2.05 **Communication Regarding Participation of Fitness Center.** ASH Fitness and its affiliates shall communicate the participation of Fitness Center in ASH Fitness or its affiliates' programs to existing and prospective ASH Clients in various forms, including but not limited to ASH Client proposals, ASH Fitness or ASH Client network directories and the applicable websites accessed by Members. Such communication may include information such as Fitness Center's name and logo, address, telephone number, and available services. 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 Center Participating Location where that location may perform Services for ASH Client.
- 2.06 **Deletion of Fitness Center Participating Location from Network Directories.** ASH Fitness will remove Fitness Center information from the online directory as of the effective date of Fitness Center Participating Location's resignation or termination of this Agreement.
- 2.07 **ASH Fitness' Payment to Fitness Center.** ASH Fitness shall compensate Fitness Center in accordance with the Program Compensation Rates specified in Attachment H under which Fitness Center is participating within thirty (30) days of receipt of a billing report for Services provided to Members.

Fitness Center and ASH Fitness agree that a program of equal to best pricing and equal to best reimbursement model supports fair and competitive pricing and that fair and competitive pricing fosters program competition, enhancement and innovation, and reduces costs. The parties agree that Fitness Center will offer to ASH Fitness Equal To Or Best Pricing and an Equal To Or Best Reimbursement model for Subsidized Fitness Programs. For the purposes of this Agreement and any Attachments, Subsidized Fitness Benefit Programs means any of programs by which an eligible individual receives membership with and/or access to Fitness Center in connection with Silver&Fit and Active&Fit (collectively "Fitness Benefit Programs"). Any ASH Fitness consumer-direct purchase program is not included in this definition. "Equal To Or Best Pricing" means that Fitness Center agrees that for each contract it enters with any third party(s) offering Subsidized Fitness Benefit Programs, the rates that Fitness Center will charge such third party(s) will not be less than the rate that Fitness Center charges ASH Fitness under this contract. Equal To Or Best Reimbursement Model means that Fitness Center will not utilize any reimbursement model that permits a third party offering Subsidized Fitness Benefit Programs to reimburse Fitness Center for fitness services at a lower rate than the rate that Fitness Center is charging ASH Fitness under this contract, regardless of the reimbursement model.

Nothing herein shall prevent Fitness Center and a third party offering Subsidized Fitness Benefit Programs from agreeing to a rate lower than the rate Fitness Center charges ASH Fitness pursuant to this contract at the time of the agreement, or from agreeing to a reimbursement model that permits the third party to reimburse Fitness Center for fitness services at a rate lower than the rate Fitness Center is charging ASH Fitness under this contract at the time of the agreement, regardless of reimbursement model. If Fitness Center contracts with a third party to offer lower pricing or a better reimbursement model than which it has with ASH Fitness, Fitness Center will provide notice to ASH Fitness in advance of the effective date of such third party agreement and, upon ASH Fitness' written notice stating that ASH Fitness wishes to have the rates that Fitness Center charges ASH Fitness reduced to reflect the better pricing/reimbursement model offered to the third party ("Pricing Notice"), Fitness Center shall automatically provide the same lower pricing and/or the better reimbursement model to ASH Fitness as of the effective date of the third party contract. Upon ASH Fitness' delivery to Fitness Center of the Pricing Notice, this agreement will be deemed automatically amended to incorporate the lower rates and/or better reimbursement model with all other contract terms remaining unchanged. The parties agree that the existence of Equal To Or Best Pricing and Reimbursement Models will be subject to audits by an independent third party agreed upon by ASH Fitness and Fitness Center. If Fitness Center does not provide the advance notice required by this paragraph, ASH Fitness shall have the right to recover the difference between the lower price and/or reimbursement model and ASH Fitness' current pricing and reimbursement model as of the effective date of the lower price and/or reimbursement model by offsetting future payments to Fitness Center until such time the recovery is complete. Such remedy does not exclude ASH Fitness from seeking other remedies to which it may be entitled.

ARTICLE 3 FITNESS CENTER'S RESPONSIBILITIES.

- 3.01 **Business License(s) and Comply with Federal and State Law.** Fitness Center shall maintain and demonstrate upon request by ASH Fitness that Fitness Center has appropriate business licenses for its operations at each of the Fitness Center Participating Locations and meets all federal and state regulations applicable to such operations.
- 3.02 **Comply with Program Manual.** Fitness Center shall comply fully with the Program Manual as described in Section 2.01.
- 3.03 **Comply with Quality Management Program.** Fitness Center shall comply with ASH Fitness' quality management program and shall cooperate with ASH Fitness in ASH Fitness' administration of its grievance procedures, which can be found in the Program Manual, including procedures to resolve complaints or grievances filed by Members with ASH Fitness as they pertain to Fitness Center and its responsibilities under this Agreement.
- 3.04 **Compliance with Medicare and/or Medicaid Requirements.** Where Fitness Center is providing Services to Members enrolled in an ASH Client's Medicare Advantage plan and/or Medicaid Managed Care plans, Fitness Center shall comply with the provisions outlined in Attachment G to this Agreement.
- 3.05 **Immediate Notification by Fitness Center of Certain Occurrences.** Fitness Center shall notify ASH Fitness in writing by overnight mail service, email, facsimile or other means of notification made available to Fitness Center by ASH Fitness within forty-eight (48) hours of the occurrence of: i) the commencement of any voluntary or involuntary bankruptcy proceedings by or against Fitness Center or any similar proceedings; ii) any lapse of general and/or professional liability insurance maintained by Fitness Center; iii) the filing of criminal charges against Fitness Center's owners, directors, management or staff that directly interact with Members that Fitness Center's owner(s) or manager(s) know(s), or reasonably should have known ; iv) a change in Fitness Center's ownership and/or management; (v) any change to, including but not limited to the loss or potential loss of, its business license; and (vi) any potential non-compliance or suspected non-compliance with applicable federal or state law or regulation relevant to this Agreement.
- 3.06 **Notification of Change in Any Information.** Fitness Center shall notify ASH Fitness at least sixty (60) days prior to any change in Fitness Center or Fitness Center Participating Location's physical address, Fitness Center or Fitness Center 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 Center 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 Center agrees that Fitness Center 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 Center violates this Section, Fitness Center 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 Center 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 Center 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 Center may elect to participate in any program specified in Attachment A through Attachment F and indicates in Article 27 which programs it wishes to participate in. Fitness Center 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. Any time after the Effective Date of the Agreement Fitness Center may choose to expand the programs it participates in. However, after the Effective Date Fitness Center may only terminate participation in a specific program, pursuant to Article 6.

- 3.09 **Provision of Member Services.** Fitness Center responsibilities for the provision of Member Services are outlined in this Section 3.09.

3.09.1 **Standard Fitness Center Membership.** Fitness Center shall provide Members with a Standard Fitness Center Membership and any other services as required by the applicable program attachments. The Standard Fitness Center Membership shall include, at no cost to the Member, an orientation session to familiarize Members with the Fitness Center and its equipment.

3.09.2 **Conversion of Pre-Established Membership.** Fitness Center agrees to assist any Member that has a previously established membership with Fitness Center and the Member becomes eligible for a program under this Agreement. Fitness Center will freeze the Member's previously established Fitness Center membership, or terminate the membership without any penalty to the member and accept the Program Compensation rate as payment in full for the Standard Fitness Center 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 and the membership was frozen, Fitness Center shall re-activate the Member's frozen membership subject to the original terms and conditions of the previously established membership. Fitness Center 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 Center Staff.** Fitness Center agrees to support Services by training one or more Fitness Center employee(s) in the ASH Fitness programs to support Member questions and enrollment into the applicable Services as described in this Agreement and its Attachments during normal business hours.

3.09.4 **Offering of non-Covered Services and Notification to Members of Financial Responsibility for Member Payments for Non-Covered Services.** Fitness Center may upgrade or sell Members additional products or services not covered under this Agreement or any applicable program

attachment but only if Fitness Center informs Members in advance and in writing that such products and services are Non-Covered Services, are the Member's financial responsibility, and are completely voluntary on the part of the Member. Fitness Center shall collect appropriate Member Payments as that term is defined in Section 1.10, 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 Center Membership, Fitness Center 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 Center's standard fee for a basic membership (this is not the Program Compensation Rate but the standard fee charged by the Fitness Center). Fitness Center agrees to refund any amounts paid by a Member that the Fitness Center collects in a manner not consistent with this Section.

- 3.09.5 Member Billing.** Nothing in this Agreement shall preclude Fitness Center 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 Center complied with Section 3.10. Any such charges shall be consistent with Fitness Center's lowest standard membership dues. In addition, as Section 3.09.4 details, Fitness Center 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 Center shall not illegally 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, gender identity, veteran status, evidence of insurability or geographic location within the service area or source or amount of compensation. Fitness Center 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 Center shall verify Member Eligibility and applicable Services with ASH Fitness at the time of a Member's first attempt to utilize Fitness Center Participating Location within a Benefit Year. Fitness Center shall verify the Member's eligibility with ASH Fitness by using the member's fitness card/welcome letter or by collecting the member's first name, last name and day/month of birth. Fitness Center may contact ASH Fitness via ASHLink or call customer service to verify eligibility. Member's current fitness card/welcome letter is not a guarantee of current eligibility and Fitness Center must verify the Member's eligibility with ASH Fitness upon the Member's first Visit to the Fitness Center Participating Location.
- 3.11 Program Compensation.** Fitness Center shall accept Program Compensation Rates, as specified in Attachment H as payment in full for the Fitness Center Visits and Services provided pursuant to this Agreement. Fitness Center 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 Center Membership. Fitness Center shall be responsible for any and all sales, use or other taxes which may be imposed on the compensation paid to Fitness Center by ASH Fitness or any fees for Non-Covered Services collected from a Member. The number of Visits compensated in a month shall not limit the number of Visits a Member may make to Fitness Center in a month. Members must have unlimited access and their visits may exceed the Visits compensated per month as specified in Attachment H. A Member may make multiple Visits to Fitness Center over the course of one day, however, Fitness Center is only entitled to receive compensation for one (1) of those Visits. Program services will be compensated by ASH Fitness up to the maximum number of sessions and the maximum amount specified in Attachment H.
- 3.12 Billing Report Submission.** Unless otherwise specified in a program attachment, Fitness Center will submit a billing report each month and shall provide supporting information to ASH Fitness that identifies each Visit at a Fitness Center Participating Location, the Member name, Member's Fitness Identification number program abbreviation, Member month and day of birth and the dates of the Visit. Total number of visits will not be accepted for reimbursement. Such information should be submitted electronically via ASHLink unless an alternate method has been agreed to by ASH Fitness. Any reports not received via ASHLink will not be

accepted for payment. ASH Fitness will reject any reports that are not submitted in the required format and/or do not include the required fields listed in this section. Only actual Visits to the Fitness Center Participating Location should be submitted. Virtual or streamed video workout sessions or individual video exercises by eligible Members are not permitted to be billed for reimbursement and should not be submitted in the billing report. Including such activities on the billing report may be considered by ASH Fitness as fraudulent billing. ASH Fitness reserves the right to perform random audits to verify accuracy of billing reports and may also contact members to confirm Visits made to a Fitness Center Participating Location.

Billing reports received over ninety (90) days after the date of service will not be approved for payment due to late submission. Fitness Center shall waive all charges against Member, ASH Fitness and/or ASH Client related to a billing report received by ASH Fitness more than ninety (90) 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 Center's Participating Locations.** Where Fitness Center has more than one location operating under the terms of this Agreement, Fitness Center 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 Center shall require each Fitness Center 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 Center shall maintain professional liability insurance, comprehensive general liability insurance and/or any other insurance policies, including but not limited to Workers' Compensation, in accordance with ASH Fitness' liability insurance requirements in this Agreement. Fitness Center shall notify ASH Fitness within five (5) days of any material change to any or all insurance policies, which shall include, but not be limited to, a reduction in a policy amount or cancellation or non-renewal of a policy. All such policies required under this section shall be primary to any insurance available to ASH Fitness. This insurance requirement will be required for each of the Fitness Center Participating Locations. Fitness Center shall maintain general liability insurance in the amount of one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) in the aggregate, 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 Center Participating Location. ASH Fitness recognizes that the Fitness Center is a municipality and as such may be self-funded under provisions of applicable state statutes and local ordinances.
- 3.16 **Fitness Center Removal from Provision of Program Services to Members by ASH Clients.** Fitness Center acknowledges that an ASH Client may, in its sole discretion, request ASH Fitness to remove or restrict Fitness Center from providing Member Services to ASH Client's Members and if necessary impose sanctions on Fitness Center.

ARTICLE 4 CORRECTIVE ACTION PLANS

Corrective Action Plans. ASH Fitness shall have the ability to evaluate Fitness Center's participation and performance in accordance with the terms of this Agreement and fitness industry business practices. If ASH Fitness finds that Fitness Center is not performing in accordance with the terms of this agreement, ASH Fitness may issue a Corrective Action Plan (CAP) to Fitness Center as more fully described in the Program Manual. Fitness Center 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 27 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, this Agreement shall automatically renew for one (1) year on each successive January 1st, unless a) either Party provides the other Party with written notice at least one hundred twenty (120) days prior to the renewal date of its intention not to renew this Agreement, or b) prior to such renewal, 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 Center Participating Location(s) participation, immediately upon written notice by ASH Fitness to Fitness Center upon any of the following occurrences:
- a) A determination that services rendered to a Member by Fitness Center 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 Center or Fitness Center's staff, agent or representative in connection with this Agreement;
 - c) The filing and/or conviction of any criminal charges against Fitness Center's directors, officers, owners or employees;
 - d) The termination of any contractual relationship other than this Agreement between Fitness Center and ASH Fitness, or an ASH Fitness' affiliate;
 - e) Fitness Center is not participating in at least one program pursuant to this Agreement;
 - f) Fitness Center has no Fitness Center Participating Locations; or
 - g) Any occurrence or condition which materially impairs the ability of Fitness Center or a Fitness Center Participating Location to perform responsibilities under this Agreement.
- 6.03 Fitness Center Program Participation Termination.** Fitness Center may terminate participation in a program by providing at least one hundred twenty (120) days' notice prior to the expiration of the current term. Such termination of participation will be effective on January 1st immediately preceding the notice.
- 6.04 Fitness Center Appeal of Termination.** Fitness Center 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 Center with a new Effective Date for this Agreement
- 6.05 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.
- 6.06 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, 3.07, 3.09.2, 6.05, 6.06, and 6.07, in addition to, Article 7, Article 8, Article 9, Article 10, Article 15, Article 16, Article 18, Article 19, and Article 20.

6.07 Fitness Center Responsibility during Termination Notice Period. Where Fitness Center or ASH Fitness provides notice of non-renewal pursuant to Article 5 or termination pursuant to Section 6.01 Fitness Center shall continue to provide Services pursuant to this Agreement up to and including the effective date of termination or non-renewal.

6.08 Fitness Center Responsibilities after Termination of Program, Location or Agreement. Fitness Center 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 Center shall inform any Member who seeks Services that the location is no longer contracted with ASH Fitness.

ARTICLE 7 HOLD HARMLESS.

Fitness Center 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: i) any act or omission of Fitness Center, Fitness Center's agents, partners, associates, employees or representatives in providing or failing to provide Services in conjunction with this Agreement to Members; ii) arising from or relating to any act or responsibility of Fitness Center; or iii) any injuries occurring at the Fitness Center. Nothing in this Agreement constitutes a waiver by Fitness Center of any statutory or common law defenses, immunities or limits on liability. ASH Fitness shall be solely responsible for and shall hold Fitness Center 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, its agents, employees or representatives in connection with ASH Fitness' responsibilities under this Agreement.

The party requesting indemnification "Indemnified Party" will notify the other party "Indemnifying Party" in writing of its knowledge or receipt of any notice of a potential demand, claim or legal action (collectively "Legal Claim") or the commencement a Legal Claim as soon as practicable, provided that the failure to notify the Indemnifying Party will not relieve the Indemnifying Party from any liability under this Agreement except to the extent that the Indemnifying Party's ability to defend against or avoid Legal Claims has been prejudiced by such delay. The Indemnifying Party shall promptly (and in no event later than thirty (30) days after receiving notice of a Legal Claim) decide whether to assume control of the defense of a Legal Claim. If the Indemnifying Party does not elect to control such defense, then the Indemnified Party shall assume such control of the defense and the Indemnifying Party will remain liable to indemnify for all reasonable attorneys' fees and costs. In the event that the Indemnifying Party elects to control the defense of Legal Claims, the Indemnifying Party's choice of counsel shall be reasonably satisfactory to the Indemnified Party, and the Indemnified Party shall be entitled to participate in such defense and shall cooperate fully in connection therewith, including in determining the validity of any Legal Claim or assertion requiring indemnity hereunder and in defending against third parties with respect to the same. The party that is not controlling the defense of a Legal Claims may have its own counsel present at its own cost to monitor proceedings related to the Legal Claims. The Indemnifying Party hereby agrees not to settle or compromise any Legal Claims without prior written consent of the Indemnified Party.

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

Fitness Center 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 Center display and/or distribute materials to promote programs associated with this Agreement. If Fitness Center sends an advertisement or communication without prior approval from ASH Fitness, ASH Fitness reserves the right to remove Fitness Center from its Fitness Center directory and restrict access to new members for a period of one (1) month for the first occurrence and three (3) months for the second occurrence.

ASH fitness reserves the right to terminate this Agreement after the third occurrence of an advertisement or communication being sent without ASH Fitness' approval.

ARTICLE 9 RECORDS AND DATA COLLECTION.

9.01 Maintenance of Records. Fitness Center 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 Center, 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 and/or Medicaid plans, records shall be retained in accordance with Section 8 of Attachment G. For all other Members, such records shall be retained by Fitness Center the greater of ten years or in accordance with applicable state laws.

9.02 Access to Facility and Records. Fitness Center 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 Center's facilities, equipment, books, papers, and records relating to Fitness Center'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 information. Therefore, ASH Fitness and Fitness Center shall abide by all applicable Federal and State laws and regulations regarding privacy, security and disclosure of Member personal information. Fitness Center 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 non-public information that can be used to identify a particular Member. Fitness Center 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 Center shall 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 Center further certifies that use of any information collected, created or received through access as noted above is strictly limited to purposes required to meet obligations under this agreement and may not be directly or indirectly sold, exchanged, bartered or otherwise brokered for consideration to any third parties.

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 Center employees authorized by the Fitness Center to perform duties under this Agreement, Fitness Center shall immediately, but in no case later than one business day, report the incident to ASH Fitness' Privacy Office. Fitness Center will expediently supply all information reasonably requested by ASH Fitness regarding the investigation of suspected privacy incidents referenced above.

9.03.3 Fitness Center shall advise members of its workforce of their obligations to protect and safeguard Members' personal information obtained or created in the fulfillment of Fitness Center's obligations under this Agreement. Fitness Center will develop, implement, maintain and use appropriate administrative, technical and physical safeguards consistent with minimum standards set forth in state or federal law (such as the 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 Center shall notify ASH Fitness Privacy Office immediately of any requests received from a Member related to obligations under this Agreement for restrictions on uses and disclosure of personal information, any requests for deletion of personal information, any requests for an accounting of personal information, or any requests to authorize an agent to act on the Member's behalf. Fitness Center will direct any questions or concerns regarding ASH's privacy practices to the ASH Privacy Office.
- 9.03.5 ASH Fitness is the exclusive owner of information, including personal information, generated or used by Fitness Center for fulfillment of its obligations under the terms of this Agreement.
- 9.03.6 Fitness Center will indemnify and hold harmless ASH Fitness, its officers, directors, employees or agents 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 non-permitted or violating use or disclosure of Members' personal information by Fitness Center or any subcontractor, agent, person or entity under Fitness Center's control. Nothing in this Agreement constitutes a waiver by Fitness Center of any statutory or common law defenses, immunities or limits on liability.
- 9.03.7 Upon termination, cancellation, expiration or other conclusion of the services provided by Fitness Center, Fitness Center will if feasible, return to ASH Fitness or destroy all Confidential Member Information in whatever form or medium including any electronic medium under Fitness Center's custody or control that Fitness Center created or received for or from ASH Fitness. Fitness Center 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 Center. If return or destruction of Confidential Member Information is infeasible, Fitness Center 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, 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 of any sort furnished to Fitness Center by ASH Fitness including, without limitation, this Agreement and any rates included in this Agreement, the Program Manual, any Client Lists, and any copyrighted or trademarked materials, shall be the property of ASH Fitness and shall be treated as confidential. Such proprietary information shall not be disclosed to anyone who does not have a need to know such information and is only to be used by Fitness Center in connection with the performance of Fitness Center's obligations under this Agreement and only in the manner provided for in this Agreement. Fitness Center shall not disclose or use any proprietary information or trade secrets for Fitness Center's own benefit during the term of this Agreement or after termination of this Agreement, except as required by law or as authorized in writing by ASH Fitness. Fitness Center shall have no ownership rights in said proprietary information including, but not limited to, copying, use or distribution of said proprietary information. ASH Fitness acknowledges that Fitness Center is subject to the requirements of its state's Public Records Act and that some information which ASH Fitness deems confidential may be disclosed under this Act. In the event that any such proprietary information of ASH Fitness is required to be

disclosed by Fitness Center by law or valid order of a court or other governmental authority, Fitness Center shall, to the extent legally permitted, give notice to ASH Fitness. ASH Fitness shall be responsible for objecting to such disclosure or for obtaining a protective order requiring that the proprietary information so disclosed be used only for the purposes for which the order was issued.

Upon termination of this Agreement, Fitness Center shall destroy all proprietary information in Fitness Center's possession. Fitness Center shall cooperate with ASH Fitness in maintaining the confidentiality of such proprietary information at all times during and after termination of this Agreement.

Fitness Center acknowledges that a breach of the terms and conditions of this Article shall cause immediate and irreparable harm to ASH Fitness, and as such, ASH Fitness shall be entitled to seek any monetary and equitable relief allowed by law. Notwithstanding the foregoing, in the event a breach of confidentiality involves any rates set forth in this Agreement, ASH Fitness may, in its discretion, immediately reduce the compensation rates paid to Fitness Center.

ARTICLE 11 TRADEMARKS

11.01 Use of Names and Marks. This Agreement does not grant Fitness Center 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 Center may use ASH Fitness' name or ASH Marks solely in connection with identifying the relationship as contemplated in this Agreement or as specified in the Program Manual. Any other use of ASH Marks is subject to the prior review and written approval of ASH Fitness. Fitness Center shall be allowed to use the ASH Marks Silver&Fit®, Silver&Fit Signature Series Classes®, Active&Fit®, and/or ExerciseRewards™ on its web sites and print media for the promotion of Fitness Center's participation in the applicable programs for which Fitness Center is a Contracted Facility¹. Such use must comply 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 can be found in the Program Manual. Approval in this Section 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.

11.02 Injunctive Relief. The Parties agree that a breach of the terms and conditions of this Article may cause immediate and irreparable harm. Therefore, in addition to any other rights or remedies available at law or in equity, ASH Fitness 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, in its discretion, assign all or a portion of its rights or responsibilities under this Agreement to any party at any time without approval of Fitness Center. 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 Center shall not subcontract any of its obligations under this Agreement to any third party without the prior written approval of ASH Fitness, which may be withheld or withdrawn in its sole discretion. Where ASH Fitness allows Fitness Center to subcontract any of its obligations to another party, Fitness Center shall remain ultimately responsible to ASH Fitness for the Services performed hereunder.

¹ Silver&Fit, Silver&Fit Signature Series Classes, Active&Fit, and ASHLink are registered trademarks of American Specialty Health, Incorporated. All rights are hereby reserved.

ARTICLE 14 FORCE MAJEURE.

Neither party will be liable for delay in delivery or nonperformance in whole or in part (other than a failure to pay any amount due hereunder), nor will the other party have the right to terminate this Agreement where delivery or performance has been affected by a Force Majeure Event, except as otherwise specifically provided in this Section or in any Termination provisions of this Agreement. "Force Majeure Event" means any act or event, whether foreseen or unforeseen, that prevents a nonperforming party, in whole or in part, from performing its obligations under this Agreement, or satisfying any conditions to the obligations of the performing party under this Agreement where: (i) the act or event is beyond reasonable control of and not the fault of the nonperforming party, e.g. war, terrorism, riot or insurrections, law or regulation, strike, flood, fire, explosion, pandemic, epidemic, quarantine or other similar event; (ii) the nonperforming party has been unable to avoid or overcome the act or event by the exercise of best efforts; and (iii) the nonperforming party gives notice to the performing party as soon as is practicable after the act or event (or commencement of the act or event if the Force Majeure event lasts more than three (3) calendar days) stating the nature of the act or event, its anticipated duration, and any action the nonperforming party is taking to avoid or minimize its effect

The suspension of performance will be of no greater scope and no longer duration than is reasonably required and the nonperforming party must use commercially reasonable efforts to remedy its inability to perform. In the event the suspension of performance continues for twenty-one (21) calendar days after the initial occurrence of the Force Majeure Event, and such failure to perform would constitute a material breach of this Agreement in the absence of such Force Majeure Event, then ASH Fitness may terminate this Agreement immediately by providing written notice to Fitness Center.

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 Center shall be responsible solely to eligible Members for Services. Fitness Center is an independent contractor and ASH Fitness shall have no dominion or control over Fitness Center, Fitness Center-Member relationship, Fitness Center's personnel or Fitness Center's services. Fitness Center and Fitness Center'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 Center 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 Center may become subject. Fitness Center 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 for all liabilities and in accordance with Section 3.16 of this Agreement. Where Fitness Center has independent contractors, Fitness Center will require its independent contractors to carry the required insurance amounts specified in Section 3.16 if not covered under Fitness Center's insurance.

ARTICLE 16 GOVERNING LAW.

This Agreement shall be interpreted and governed by the laws of the State in which the Fitness Center is located, except to the extent that law is contrary to or preempted by federal law. Any provisions required to be in this Agreement by any law shall bind the Parties hereto, whether or not expressly provided in this Agreement.

ARTICLE 17 SEVERABILITY.

In the event any provision of this Agreement is rendered invalid or unenforceable by state or federal law or declared null and void by any court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and effect unless otherwise specified in this Agreement. In the event that a provision of this Agreement is rendered invalid or unenforceable or declared null and void as provided herein, and its removal has the effect of materially altering the obligations of either Party in such manner as, in the judgment of the Party affected, will cause serious financial hardship to such Party or will cause such Party to act in violation of its corporate articles or bylaws,

the Party so affected shall have the right to terminate this Agreement by providing the other Party with at least fifteen (15) days prior written notice.

ARTICLE 18 DISPUTES BETWEEN FITNESS CENTER AND MEMBERS.

Where ASH Fitness and/or an ASH Client determine that a dispute between Fitness Center 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 Center 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 Center 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 CENTER AND ASH FITNESS.

In the event of any dispute between Fitness Center and ASH Fitness (or their respective affiliates, owners, employees, agents, predecessors, or successors) arising out of or relating to this Agreement, Fitness Center and ASH Fitness shall first attempt in good faith to resolve the dispute mutually between themselves. If Fitness Center and ASH Fitness are unable to resolve the dispute by mutual agreement then all matters in controversy shall be submitted, upon the motion of either party, to binding arbitration pursuant to the requirements of the Federal Arbitration Act, 9 U.S.C. §§ 1-16. Arbitration proceedings shall be administered by the American Arbitration Association ("AAA") in accordance with the AAA. The arbitrator shall be bound by applicable state and federal law, subject to Article 16, and shall issue a written opinion setting forth findings of fact and conclusions of law. Fitness Center and ASH Fitness agree to share equally the AAA administrative fee as well as the arbitrator's fees and expenses, if any, unless otherwise assessed by the arbitrator. The administrative fees shall be advanced by the initiating Party, subject to final apportionment by the arbitrator. In addition, except as provided below, in any arbitration commenced by the Fitness Center, if the amount of the Fitness Center's claims is less than \$10,000, the Fitness Center's share of the AAA administrative fees and the arbitrator's fees and expenses shall be capped at \$25. And if the amount of the Fitness Center's claims is between \$10,000 and \$50,000, the Fitness Center's share of the AAA administrative fees and the arbitrator's fees and expenses shall be capped at \$500. However, if the arbitrator concludes that the Fitness Center's claims are frivolous or brought for an improper purpose (as measured by the standards of Federal Rule of Civil Procedure 11(b)), then all such fees and expenses shall be allocated by the arbitrator in accordance with the AAA Commercial Arbitration Rules, and Fitness Center agrees to reimburse ASH Fitness for any monies paid on Fitness Center's behalf that would be Fitness Center's responsibility under those rules.

Fitness Center and ASH Fitness agree that the arbitrator's award may be enforced in any court having jurisdiction thereof by the filing of a petition to enforce said award. Costs of filing to have an award enforced may be recovered by the Party which brings such action.

Any arbitration proceedings shall occur in the state in which Fitness Center is providing Services to Members pursuant to this Agreement.

Unless forbidden by applicable law, Fitness Center and ASH Fitness agree that if they become involved in a claim or dispute under the arbitration process outlined herein, neither Party will disclose to any other person not directly involved in the arbitration process: (i) the substance of, or basis for, the claim; (ii) the content of any testimony or other evidence presented at the arbitration hearing or obtained through discovery; or (iii) the terms or amount of any agreement reached pursuant to arbitration.

The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim without affecting other contracted Fitness Facilities. The Contracted Fitness Center and ASH Fitness agree that they may bring claims against the other only in their respective individual capacities, and not as a plaintiff or class member in any purported class, representative, or private Attorney General proceeding. Further, unless all parties agree otherwise, the arbitrator may not consolidate more than one contracted Fitness Center's claims, and may not otherwise preside over any form of a class, representative, or private attorney general proceeding. If a court decides that applicable law precludes enforcement of any of this subsection's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

ARTICLE 20 DISPUTES BETWEEN FITNESS CENTER AND ASH CLIENT.

In the event of any dispute between Fitness Center and an ASH Client (or their respective affiliates, owners, employees, agents, predecessors, or successors) arising out of or relating to this Agreement, at the request of ASH Fitness, Fitness Center 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 Center 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 Center, shall be in writing and shall be (a) delivered by electronic means (i.e. ASHLink, sent via an inalterable email document (such as PDF)), (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. ASH Fitness shall send all notices to Fitness Center's ASHLink account, email or mailing address on file with ASH Fitness. Fitness Center shall provide at least thirty (30) day notice to any change in its email or mailing address to ASH Fitness via ASHLink, or to the email, or address provided below.

NOTICES TO ASH FITNESS:

American Specialty Health Fitness, Inc.
P.O. Box 509117
San Diego, CA 92150-9117

For specific email addresses, call ASH Fitness at (877) 329-2746. The appropriate email address will be provided depending on the nature of the Notice.

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)) 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 two (2) 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 two (2) business days after delivery to the United States Postal Service, Federal Express, United Parcel Service or any similar organization.

ARTICLE 22 CAPTIONS.

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

ARTICLE 23 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 Center other than Fitness Center, subject only to Article 25.

ARTICLE 24 AMENDMENTS.

Any amendments to this Agreement shall be mutually agreed to by the parties. Any amendments to ASH Client Lists or revisions to the Program Manual shall be issued by ASH Fitness and shall be automatically effective and

incorporated into this Agreement on the date received or deemed received pursuant to Article 21 of this Agreement, unless otherwise specified in such notice or required by applicable state law.

ARTICLE 25 INSOLVENCY OF ASH FITNESS; PROTECTION OF INTERESTS OF FITNESS CENTER, MEMBERS, AND ASH CLIENTS.

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 or its Agreement with ASH Clients.

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).

To the extent this Article grants any rights to any ASH Client, Fitness Center agrees and acknowledges that ASH Client is a third-party beneficiary of this Article and shall have all rights granted under law by a third-party beneficiary to enforce this Article.

ARTICLE 26 ENTIRE AGREEMENT.

This Agreement, subject to Attachment I, "Superseding Addendum", 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, 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 27 EFFECTIVE DATE OF AGREEMENT.

ASH Fitness will provide Fitness Center with notice of the Effective Date after Fitness Center 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 Center 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 Center agrees to participate in the following attachments, as indicated with a check in the attachment(s) box:


- Attachment A: Silver&Fit Basic Attachment
- Attachment B: Silver&Fit Full Attachment
- Attachment C: Active&Fit Attachment

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the dates set forth below.

FITNESS CENTER
(type or print clearly)

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

City of Gladstone, Missouri
Fitness Center Legal Name


Name Signed

d/b/a (if applicable)

George DeVries
Name Printed


Name Signed

Chairman & CEO
Title

Scott Wiggins
Name Printed

3/16/2022
Date of Signature

City Manager
Title

3/22/22
Date of Signature

Mailing Address:
American Specialty Health Fitness, Inc.
P.O. Box 509117
San Diego, CA 92150-9001

City of Gladstone
Company Name

Office Address:
American Specialty Health Fitness, Inc.
10221 Wateridge Circle
San Diego, CA 92121

2010 Al Helms, Gladstone
Mailing Address

mo 64118
City, State, Zip

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT A - SILVER&FIT® BASIC 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 Center. As a Silver&Fit Basic Fitness Center shall provide Members the Standard Fitness Center Membership as set forth in Section 3.09.1 of the Agreement.

2.0 FITNESS CENTER OBLIGATIONS

In addition to the obligations in Article 3 of the Agreement, Fitness Center shall have the following obligations for this program:

- 2.01** Free Trial Obligation. Fitness Center shall offer and honor a one-time free trial (guest pass) for each Member to try out the fitness center prior to joining if the member requests one.
- 2.02** Fitness Center Listing Information. Fitness Center must maintain current and accurate listing information with ASH Fitness. Fitness Center shall notify ASH Fitness with a change to listing information in accordance with Section 3.06 of the Agreement.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CLUB SERVICES AGREEMENT**

ATTACHMENT B – SILVER&FIT FULL 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 Designated Silver&Fit Exercise Classes. Designated Silver&Fit Exercise Classes are older adult oriented exercise classes that Fitness Center agrees to allow ASH Fitness to approve as a Silver&Fit exercise class in its directory for ASH Clients and Members. The Fitness Center may choose to offer one or more classes from the following categories:

- Silver&Fit Signature Series Classes® (these classes as designed by ASH Fitness and are available to Fitness Center to offer as a Designated Silver&Fit Exercise Class. Any equipment required for these classes may either be provided by Fitness Center itself or to Fitness Center by ASH Fitness for an additional fee.)
- Senior Dance
- Senior Yoga
- Strength/Cardio Training for older adults
- Tai Chi
- Aqua
- Fall Prevention
- Special Conditions

Fitness Center shall elect how many classes it wishes to designate as a Silver&Fit Exercise Class each week in the Fitness Center Election Section of this Attachment, attached hereto as Exhibit 1. Fitness Center may not designate an older adult exercise class sponsored by or provided by any organization which is a competitor of ASH Fitness.

1.02 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.

1.03 Silver&Fit Full Fitness Center. As a Silver&Fit Full Fitness Center, Fitness Center shall provide Members with a Standard Fitness Center Membership as set forth in Section 3.09.1 of the Agreement, Designated Silver&Fit Exercise Classes and/or Quarterly Social Activities.

1.04 Quarterly Social Activities. Quarterly Social Activities are quarterly events sponsored by Fitness Center. Examples of these social events may consist of, but is not limited to, bagels and coffee, off-site walking clubs, and potlucks.

2. FITNESS CENTER OBLIGATIONS.In addition to the obligations in Article 3 of the Agreement, Fitness Center shall have the following obligations for this program:

2.01 Designated Silver&Fit Exercise Classes. Fitness Center agrees that it shall have at least one (1) instructor who has obtained proper credentials (e.g. certifications, teaching licenses, certificates of completion) to teach the particular Designated Silver&Fit Exercise Class. Fitness Center shall arrange

for any required payment for the exercise programs or training classes required, either by (a) Fitness Center on behalf of the instructor or (b) the instructor directly.

2.02 Free Trial Obligation. Fitness Center shall offer and honor a one-time free trial (guest pass) for each Member to try out the fitness center prior to joining if the member requests one.

2.03 Silver&Fit Exercise Classes Health and Safety Guidelines. Fitness Center shall comply with ASH Fitness' Health & Safety Guidelines for Designated Silver&Fit Exercise Classes. These guidelines are in addition to the Health and Safety Guidelines in Attachment I of this Agreement and shall be distributed to Fitness Center upon notifying ASH Fitness of its election to offer Designated Silver&Fit Exercise Classes. Upon Fitness Center's acceptance of these guidelines, the elected classes shall be listed in ASH Fitness' Fitness Center listing as Designated Silver&Fit Exercise Classes.

2.04 Fitness Center Listing Information. Fitness Center must maintain current and accurate listing information with ASH Fitness. Fitness Center shall notify ASH Fitness with a change to listing information in accordance with Section 3.06 of the Agreement.

3. ASH FITNESS OBLIGATIONS. FitnessEngagement.com. Fitness Center shall have access to a web site that will provide tools to help assist Fitness Center in providing the Silver&Fit Program to Members. The website shall include training materials to help assist with the Designated Silver&Fit Exercise Classes, as well as promotional fliers for Fitness Center to use to promote the Silver&Fit Program and Designated Silver&Fit Exercise Classes.

3.02 Silver&Fit Online Fitness Center Listing. ASH Fitness shall provide ASH Clients and Members with an online Fitness Center listing of participating Fitness Centers. The online listing shall list the Designated Silver&Fit Exercise Classes offered by Fitness Center and if Fitness Center holds Quarterly Social Activities.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT C - ACTIVE&FIT® ATTACHMENT

1.0 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 Active&Fit Program. The Active&Fit Program is a fitness program whereby ASH Fitness or its affiliates arrange for the provision of Services to Members. This program provides Member with a Standard Fitness Center Membership.

2.0 **FITNESS CENTER OBLIGATIONS**

2.01 Free Trial Obligation. Fitness Center shall offer and honor a one-time free trial (guest pass) for each Member to try out the fitness center prior to joining if the member requests one.

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FITNESS CENTER SERVICES AGREEMENT

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT G – MEDICARE ADVANTAGE AND MEDICAID ADDENDUM

This exhibit is entered into by American Specialty Health Fitness, Inc. (“ASH Fitness”) and the Fitness Center listed on the signature page of the Agreement (“Fitness Center”) 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 and Medicaid Members.

WHEREAS, ASH Fitness has entered into contracts with ASH Clients who offer fitness benefits as part of its Medicare Advantage and/or Medicaid Managed Care plans which require ASH Fitness to include specific contract language in its contract with Fitness Center;

WHEREAS, Fitness Center will be providing Services on behalf of ASH Fitness for certain Medicare Advantage and/or Medicaid members of ASH Clients;

NOW, THEREFORE, the Parties agree to add the following provisions to the Agreement with respect to Medicare Advantage and/or Medicaid members of ASH Clients:

- 1 **Member Non-Liability.** Fitness Center 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 Center 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 Center represents and warrants that Fitness Center or any person who owns more than five percent (5%) of Fitness Center are not excluded from participation in a federal or state healthcare program, including but not limited to, Medicare and Medicaid. Also, Fitness Center represents that it does not now employ or contract with, and shall not in the future employ or contract with any individual excluded from participation in such federal or state programs to provide Services to Members. Fitness Center shall check key employees and persons employed, contracted or otherwise affiliated with Fitness Center and any person owning more than five percent (5%) of Fitness Center 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 or has been terminated for cause or default on public transactions and public programs as well as non-reinstatement. Such lists (commonly referred to as Exclusion Lists) include, but are not limited to, the U.S. Department of Health and Human Services Office of Inspector General List of Excluded Individuals/Entities, the General Service Administration Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs, and state published Medicaid exclusion lists). For the purpose of this agreement the term “key employee” refers to all employees/contractors who are (i) involved with the receipt of funds from Members or submit claims/bills to ASH concerning services provided to Members, and (ii) individuals who lead/teach exercise classes that are specifically tailored to Members. Fitness Center shall maintain records relating to its checks of these lists in accordance with Section 8 of this addendum. Fitness Center 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 Center’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 Center against the Exclusions Lists or (b) Fitness Center’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 Center in circumstances where (a) or (b) above apply are also subject to recoupment by ASH Fitness upon request and Fitness Center agrees to comply with any such requests. If Fitness Center is revoked or excluded from participating in Medicare, Fitness Center shall submit, within 60 days after the effective date of the revocation or exclusion, all billing reports for services furnished prior to the CMS revocation or exclusion date. [42 C.F.R. 422.752(a)(8)]

- 3 **Compliance with Federal and State Law.** Fitness Studio 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 Center 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 Center shall cooperate with all independent quality review and improvement activities relating to Services being provided by Fitness Center required by ASH Fitness and/or ASH Client's or CMS pertaining to the provision of Services. [42.C.F.R. 422.204(b)(4)]
- 5 **Member Appeals and Grievances.** Fitness Center shall cooperate and comply with all ASH Fitness, ASH Clients, 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 Center shall participate in the collection and submission of data to CMS. Where applicable, Fitness Center 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 ASH Client member records or other health and enrollment information is maintained by Fitness Center, Fitness Center 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 Center 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 Center 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 Center 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 Center 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 Center 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 Center 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 Center at any time. [42 C.F.R. 422.504(e)(4)]
9. **ASH Client Accountability.** Notwithstanding anything set forth in the Agreement, Fitness Center and ASH Fitness acknowledge and agree that, with respect to Services furnished under this Agreement for ASH Client's, ASH Clients oversee and are ultimately accountable to CMS for any functions and responsibilities performed by Fitness Center.

Fitness Center shall comply with ASH Fitness's policies and procedures as set forth in the Fitness Center Program Manual. Such policies and procedures have been reviewed and approved by ASH Clients. Fitness Center shall furnish Services to members consistent with the requirements of CMS and, including but not limited to, ASH Fitness's contractual obligations to ASH Clients. [42 C.F.R. 422.504(i)(4)(iii) and 42 C.F.R. 422.112]

10. **Insolvency.** If, within sixty (60) days after the date of insolvency of ASH Fitness, an ASH Client provides written notice to Fitness Center 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 Center, in accordance with the provisions of this Agreement, for any billing reports submitted for Services rendered by Fitness Center 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 Center 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 six (6) months after the date of the insolvency, as specified by ASH Client.
11. **Compliance Training.** Fitness Center will provide its employees and any contractors directly involved in providing Services under this Agreement the CMS Medicare Parts C & D Fraud, Waste, and Abuse Training and General Compliance Training module posted on ASHLink within ninety (90) days of hire or contracting and annually thereafter and allow ASH Fitness access to Fitness Center's records upon request to ensure Fitness Center is providing the required trainings. [42 C.F.R. 422.504(h)(1)]
12. **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. [42 C.F.R. 422.504(k)(1) and (2)]

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT H – PROGRAM COMPENSATION

SILVER&FIT BASIC FITNESS CENTER:

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

Benefit Program	Standard Compensation Rate	Maximum Number of Fitness Center Visits Compensated Per Month	Monthly Compensation Maximum
Silver&Fit Basic	TBD	10	TBD

SILVER&FIT FULL FITNESS CENTER:

The following compensation rate is for a Silver&Fit Full Fitness Center in the Silver&Fit Program:

Benefit Program	Standard Compensation Rate	Maximum Number of Fitness Center Visits Compensated Per Month	Monthly Compensation Maximum
Silver&Fit Full	TBD	12	TBD

ACTIVE&FIT FITNESS CENTER:

The following compensation rate is for the Active&Fit Program:

Benefit Program	Standard Compensation Rate	Maximum Number of Fitness Center Visits Compensated Per Month	Monthly Compensation Maximum
Active&Fit	TBD	10	TBD