

AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT
O'BRIEN FITNESS CENTER SOUTH BEND PARKS AND RECREATION
SOUTH BEND , IN

Article 1	DEFINITIONS	6
1.01	Agreement	6
1.02	Annual Member Fee.	7
1.03	ASH Client	7
1.04	ASHLink. The	7
1.05	Benefit Year.	7
1.06	Contracted Center	7
1.07	Effective Date	7
1.08	Fitness Center Fitness Advisor.	7
1.09	Fitness Center Participating Location	7
1.10	Member(s)	7
1.11	Member Eligibility/Benefits	7
1.12	Member Payments	7
1.13	Member Renewal Report.	7
1.14	Member Termination Report	7
1.15	Non-Covered Services	8
1.16	Party(ies)	8
1.17	Program Compensation Rate	8
1.18	Services	8
1.19	Standard Fitness Center Membership	8
1.20	Quality Management Program	8
1.21	Visit	8
Article 2	ASH FITNESS' RESPONSIBILITIES	8
2.01	Prepare and Maintain Program Manual	8
2.02	Distribution of Revised Agreement, Attachments, Amendments, and Program Manual	8
2.03	Records Management	8
2.04	Maintain Eligibility	8
2.05	Communication Regarding Participation of Fitness Center	9
2.06	Deletion of Fitness Center Participating Location from Network Directories	9
2.07	ASH Fitness' Payment to Fitness Center	9
Article 3	FITNESS CENTER'S RESPONSIBILITIES	10
3.01	Business License(s) and Comply with Federal and State Law	10
3.02	Comply with Program Manual	10
3.03	Comply with Quality Management Program	10
3.04	Compliance with Medicare	10
3.05	Immediate Notification by Fitness Center of Certain Occurrences	10
3.06	Notification of Change in Any Information	10
3.07	Non-Interference with Property and Contract Rights	10
3.08	Election to Participate in all Product Offerings	11
3.09	Provision of Member Services	11
3.09.1	Standard Fitness Center Membership.	11
3.09.2	Conversion of Pre-Established Membership.	11
3.09.3	Fitness Center Fitness Advisor.	11
3.09.4	Offering of non-Covered Services and Notification to Members of Financial Responsibility for Member Payments for Non-Covered Services	11
3.09.5	Member Billing.	12
3.09.6	Non Discrimination	12
3.10	Verification of Member Eligibility and Services	12
3.11	Verification and Collection of Annual Member Fees (If Applicable)	12
3.12	Program Compensation	12
3.13	Billing Report Submission	12
3.14	Reimbursement Adjustments	13
3.15	Fitness Center's Participating Locations	13
3.16	Liability Insurance Limits	13
3.17	Fitness Center Removal from Provision of Program Services to Members by ASH Clients.	13
Article 4	CORRECTIVE ACTION PLANS	13
Article 5	TERM	13
Article 6	TERMINATION	14
6.01	Termination of This Agreement with Cause with Notice	14

6.02	ASH Fitness Immediate Termination of This Agreement for Cause with Notice	14
6.03	Fitness Center Program Participation Termination.	14
6.04	Fitness Center Appeal of Termination	14
6.05	Effect of Termination	14
6.06	Survival of Certain Contractual Provisions after Termination	14
6.07	Fitness Center Responsibility during Termination Notice Period	14
6.08	Fitness Center Responsibilities after Termination of Program, Location or Agreement	15
Article 7	HOLD HARMLESS	15
Article 8	COMMUNICATION OF RELATIONSHIP WITH ASH FITNESS AND ASH CLIENTS	15
Article 9	RECORDS AND DATA COLLECTION	15
9.01	Maintenance of Records	15
9.02	Access to Facility and Records	15
9.03	Confidential Member Information	15
Article 10	PROPRIETARY INFORMATION	17
Article 11	TRADEMARKS	17
11.01	Use of Names and Marks.	17
11.02	Identification of Marks and Form of Use.	17
11.03	Approval for Use of Marks.	18
11.04	Injunctive Relief.	18
Article 12	ASSIGNMENT AND CHANGE OF OWNERSHIP	18
Article 13	SUBCONTRACTS	18
Article 14	FORCE MAJEURE	18
Article 15	INDEPENDENT CONTRACTORS	18
Article 16	GOVERNING LAW	19
Article 17	SEVERABILITY	19
Article 18	DISPUTES BETWEEN FITNESS CENTER AND MEMBERS	19
Article 19	DISPUTES BETWEEN FITNESS CENTER AND ASH FITNESS	19
Article 20	DISPUTES BETWEEN FITNESS CENTER AND ASH CLIENT	20
Article 21	NOTICES	20
Article 22	ATTORNEYS' FEES; COSTS	21
Article 23	CAPTIONS	21
Article 24	NO THIRD PARTY BENEFICIARIES	21
Article 25	AMENDMENTS	21
Article 26	INSOLVENCY OF ASH FITNESS; PROTECTION OF INTERESTS OF FITNESS CENTER, MEMBERS, AND ASH CLIENTS	21
Article 27	ENTIRE AGREEMENT	22
Article 28	EFFECTIVE DATE OF AGREEMENT	23
ATTACHMENT A - SILVER&FIT® BASIC ATTACHMENT		24
1.0	DEFINITIONS	24
1.01	Silver&Fit Program	24
1.02	Silver&Fit Basic Fitness Center.	24
2.0	FITNESS CENTER OBLIGATIONS	24
2.01	Free Trial Obligation.	24
2.02	Fitness Center Listing Information.	24
3.0	PROGRAM COMPENSATION	24
ATTACHMENT B – SILVER&FIT® FULL ATTACHMENT		25
1.0	DEFINITIONS	25

1.01	Designated Silver&Fit Exercise Classes.	25
1.02	Silver&Fit Program	25
1.03	Silver&Fit Full Fitness Center.	25
1.04	Quarterly Social Activities	25
2.0	FITNESS CENTER OBLIGATIONS.	25
•	Level 1 Silver&Fit Full Fitness Center.	25
•	Level 2 Silver&Fit Full Fitness Center.	26
2.02	Designated Silver&Fit Exercise Classes.	26
2.03	Free Trial Obligation.	26
2.04	Silver&Fit Exercise Classes Health and Safety Guidelines.	26
2.05	Fitness Center Listing Information.	26
3.0	ASH FITNESS OBLIGATIONS.	26
3.01	FitnessEngagement.com.	26
3.02	Silver&Fit Online Fitness Center Listing.	26
4.0	PROGRAM COMPENSATION	26
4.01	Program Compensation.	26
ATTACHMENT B – EXHIBIT 1 SILVER&FIT® FULL – FITNESS CENTER ELECTION		28
ATTACHMENT C - FITNESSCOACH® ATTACHMENT		29
1.0	DEFINITIONS	29
1.01	FitnessCoach Program	29
1.02	Special Needs:	29
1.03	FitnessCoach Fitness Center.	29
1.04	Member Caregiver.	29
2.0	FITNESS CENTER OBLIGATIONS	29
2.01	Free Trial Obligation.	29
2.02	Member Caregiver Access.	29
3.0	PROGRAM COMPENSATION	29
ATTACHMENT D - ACTIVE&FIT® ATTACHMENT		31
1.0	DEFINITIONS	31
1.01	Active&Fit Program	31
2.0	FITNESS CENTER OBLIGATIONS.	31
2.01	Free Trial Obligation	31
3.0	PROGRAM COMPENSATION	31
ATTACHMENT E – INTENTIONALLY LEFT BLANK		32
ATTACHMENT F – EXERCISEREWARDS™ NETWORK ATTACHMENT		33
1.0	DEFINITIONS	33
1.01	ExerciseRewards Network	33
1.02	Member	33
1.03	Member Utilization Report	33
1.04	Program Services	33
2.0	FITNESS CENTER'S RESPONSIBILITIES	33
2.01	ExerciseRewards Network.	33
2.02	Verification of Member Eligibility	33
2.03	Conversion of Pre-Established Membership.	33
2.05	Member Payments.	34
2.06	One Time Trial Obligation	34
3.0	CORE AGREEMENT MODIFICATION	34
3.01	Provisions not Applicable to this Attachment.	34
4.0	DISCOUNTS	34
ATTACHMENT G - ASH CLIENT LIST		35
ATTACHMENT H - PERSONAL TRAINER ATTACHMENT		36
1.0	DEFINITIONS	36
1.01	Amount	36
1.02	Personal Trainer	36
1.03	Personal Trainer Benefit Program	36
1.04	Personal Trainer Services	36
2.0	FITNESS CENTER'S RESPONSIBILITIES	36

2.01	Provision of Personal Trainer Program	36
2.02	Personal Trainers	36
2.03	Personal Trainer Benefit Program	37
3.0	PROGRAM ELECTIONS AND COMPENSATION	37
<i>ATTACHMENT H – EXHIBIT 1 PERSONAL TRAINER - ASH CLIENT LIST</i>		38
<i>ATTACHMENT I - HEALTH AND SAFETY GUIDELINES AND CODE OF CONDUCT</i>		39
<i>ATTACHMENT J – MEDICARE ADVANTAGE and medicaid ADDENDUM</i>		40
<i>ATTACHMENT K –GUIDELINES FOR TRADEMARK USE BY THIRD PARTIES</i>		43
<i>ATTACHMENT L – PROGRAM COMPENSATION</i>		44

**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 City of South Bend, Indiana Venues, Parks & Arts Department O’Brien Fitness Center, by and through its governing board, the Board of Park Commissioners (hereinafter, “Fitness Center”). This Agreement will not become effective until both Fitness Center and ASH Fitness have signed it, as further outlined in Article 28. After Fitness Center and ASH Fitness have both signed this Agreement, Fitness Center will automatically become a Contracted Facility as of the Effective Date specified in Article 28 of this Agreement. Please read this Agreement carefully. This Agreement requires the use of arbitration on an individual basis to resolve disputes, rather than jury trials or class actions.

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 1.10);

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
 - Exhibit 1: Silver&Fit Full Fitness Center Election
- Attachment C: FitnessCoach® Attachment
 - Exhibit 1: FitnessCoach Member Caregiver Access Election
- Attachment D: Active&Fit® Attachment
- Attachment E: Intentionally Left Blank
- Attachment F: ExerciseRewards™ Network Attachment
- Attachment G: ASH Client List
- Attachment H: Personal Trainer Attachment
 - Exhibit 1: Personal Trainer - ASH Client List
- Attachment I: Health and Safety Guidelines and Code of Conduct
- Attachment J: Medicare Addendum
- Attachment K: Guidelines for Trademark Use by Third Parties
- Attachment L: Program Compensation Attachment

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

- 1.02 **Annual Member Fee.** Annual Member Fee, if included as part of an ASH Client's member benefit plan as specified in Attachment G to this Agreement, is a fee the member is required to pay in order to access Services. The Annual Member Fee, if applicable, will be paid to Fitness Center upon the Member's first visit to Fitness Center each benefit year as that term is defined below in section 1.04. Annual Member Fee shall not be considered a Member Payment as defined in Section 1.12.
- 1.03 **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. A sample of the ASH Client List is attached to this Agreement as Attachment G.
- 1.04 **ASHLink.** The ASHLink® system 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. ASHLink provides Fitness Center and its staff the ability to verify Member eligibility for an applicable program, submit billing reports and to verify status of reimbursements of submitted billing reports. Additionally, Fitness Center or its staff shall utilize ASHLink to access information relevant to this Agreement (i.e. Program Manual, renewal/termination reports, and Client Lists).
- 1.05 **Benefit Year.** Benefit Year is the twelve (12) month period specified in Attachment G.
- 1.06 **Contracted Center.** Contracted Center is a fitness center that has contracted with ASH Fitness.
- 1.07 **Effective Date.** The Effective Date is the date this Agreement becomes operative, as specified in Article 28 of this Agreement.
- 1.08 **Fitness Center Fitness Advisor.** The Fitness Center Fitness Advisor is an individual employed or contracted by Fitness Center that will support Services, as that term is defined in Section 1.18, by acting as the primary contact on behalf of the Fitness Center that Member will contact at the Fitness Center Participating Location and fulfills the requirements detailed in Section 3.09.3.
- 1.09 **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.
- 1.10 **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.
- 1.11 **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.
- 1.12 **Member Payments.** Member Payments are charges which are the direct financial responsibility of the Member and are paid directly to Fitness Center for any service which is a Non-Covered Service under this Agreement.
- 1.13 **Member Renewal Report.** Member Renewal Report is a report compiled by ASH Fitness and posted on ASHLink which lists Members whose ASH Fitness benefit program requires the Member to pay an Annual Member Fee each Benefit Year and whose current Benefit Year is expiring and who will be entering into a new Benefit Year. Members listed on the Member Renewal Report must pay their Annual Member Fee for the new Benefit Year to the Fitness Center in order to continue to receive ASH program services.
- 1.14 **Member Termination Report.** Member Termination Report is a report compiled by ASH Fitness and posted on ASHLink which lists Members who have terminated their Membership at the Fitness Center and/or are no longer eligible for participation under the program. Terminated Members shall be listed on the Member Termination Report for at least thirty (30) days from their termination date.

- 1.15 **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.
- 1.16 **Party(ies).** Party(ies) is/are the individual(s) or entity(ies) that execute this Agreement.
- 1.17 **Program Compensation Rate.** The Program Compensation Rate is the amount ASH Fitness will pay Fitness Center for the Standard Fitness Center Membership and Services for each Member who has signed a membership agreement with Fitness Center. The Program Compensation Rate is set forth in Attachment L for each program that applies to this Agreement.
- 1.18 **Services.** Services are those collective services which fall under this Agreement and its Attachments A through Attachment F and Attachment H.
- 1.19 **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.
- 1.20 **Quality Management Program.** The Quality Management Program, as set forth in the program manual, is the set of policies, processes, procedures and standards established, determined and utilized by ASH Fitness under this Agreement to evaluate and determine whether a Contracted Facility has satisfied all ASH Fitness' Health and Safety Guidelines and Code of Conduct requirements, available on ASHLink, adopted by ASH Fitness and to approve a Contracted Facility's participation in ASH Fitness and/or ASH Client's networks.
- 1.21 **Visit.** Unless otherwise specified in a program attachment, a Visit is where a Member utilizes the Fitness Center Participating Location for exercise.

ARTICLE 2 ASH FITNESS' RESPONSIBILITIES.

- 2.01 **Prepare and Maintain Program Manual.** ASH Fitness shall prepare and maintain a program manual setting forth ASH Fitness' policies, processes, standards and procedures regarding Fitness 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 25 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 notify all ASH Clients, no later than thirty (30) days after the effective date of Fitness Center Participating Location's resignation or termination of this Agreement, or of the need to delete the location's information from network directories and/or other such sources of Fitness Center information.
- 2.07 **ASH Fitness' Payment to Fitness Center.** ASH Fitness shall compensate Fitness Center in accordance with the Program Compensation Rates specified in Attachment L under which Fitness Center is participating within thirty (30) days of receipt of a billing report for Services provided to Members. For billing reports listing a Member for whom an Annual Member Fee applies, ASH Fitness shall deduct the amount of any Annual Member Fees from the compensation due to Fitness Center until such time the entire Annual Member Fee has been collected. If the member does not utilize the Fitness Center enough times during the Member's Benefit Year to satisfy the full amount of the Annual Member Fee, ASH Fitness will deduct any outstanding balances of the Annual Member Fee from the Fitness Center's compensation payment ninety (90) days after the end of the Member's Benefit Year until the entire Annual Member Fee has been reconciled.

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, Active&Fit and FitnessCoach (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 the 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 and/or Medicaid Managed Care plans, Fitness Center shall comply with the provisions outlined in Attachment J 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 (this includes personal trainers contracted or employed with Fitness Center if the Fitness Center is participating in the Personal trainer Benefit as set forth in Attachment H) 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 Attachment H and indicates in Article 28 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. Where there is no clear indication of participation, ASH Fitness will deem Fitness Center as participating in all programs. 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 Fitness Advisor. Fitness Center agrees to support Services by training one or more Fitness Center employee(s) as a Fitness Center Advisor available to Members during normal business hours to support Member questions and enrollment into the applicable Services as described in this Agreement and its Attachments.

3.09.4 Offering of non-Covered Services and Notification to Members of Financial Responsibility for Member Payments for Non-Covered Services. Fitness 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 1.12, at the time of service and shall bill Members according to the procedures described in the Program Manual. Where a Member upgrades their Standard Fitness 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 that Member's health plan is on the ASH Client list as participating in the applicable program as well as verify Member Eligibility in the applicable Services by requesting Member to show their current fitness card/welcome letter if applicable, and by verifying the Member's eligibility with ASH Fitness. 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 **Verification and Collection of Annual Member Fees (If Applicable).** If a Member's benefit plan includes an Annual Member Fee (see Attachment G), at the time of a Member's first attempt to utilize a Fitness Center Participating Location within a Benefit Year, Fitness Center shall verify with ASH Fitness whether Member has paid the required Annual Member Fee for the current Benefit Year. If the Member has not done so, then Fitness Center shall collect the Annual Member Fee from the Member and retain that amount pending submission of billing reports including the Member. Such amounts will be deducted from Program Compensation until the Annual Member Fee has been fully credited. Fitness Center shall only collect Annual Member Fees, if required under a Member's benefit plan, once at the Member's initial visit within the Benefit Year and only after verifying with ASH Fitness that the Member still owes the fee for the current Benefit Year. Members will be listed on the Member Renewal Report within thirty (30) days of a member's Benefit Year expiring. If a Member is on the Member Renewal Report, Fitness Center shall collect the applicable Annual Member Fee upon the Member's first visit of the Member's new Benefit Year. Members will remain on the Member Renewal Report for sixty (60) days.
- 3.12 **Program Compensation.** Fitness Center shall accept Program Compensation Rates, as specified in Attachment L as payment in full for the Services provided pursuant to this Agreement. Except for any applicable Annual Member Fees a Member must pay for Services, 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, including the Annual Member Fee collected from a Member.
- 3.13 **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. Such information should be submitted electronically via ASHLink or email. Any reports not received via ASHLink or emailed with the required format 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.

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.

- 3.14 **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.
- 3.15 **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.
- 3.16 **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. This insurance requirement will be required for each of the Fitness Center Participating Locations. Fitness Center shall maintain general and/or 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. Fitness Center will name ASH Fitness as an additional insured on its general and/or professional liability insurance policies.
- 3.17 **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. ASH Fitness will deliver all CAPs in writing to Fitness Center. Fitness Center agrees to comply with ASH Fitness' CAPs within the timelines specified and to respond to the CAP in writing or as otherwise requested. Fitness Center may submit information to ASH Fitness in response to the CAP which explains Fitness Center's position including, but not limited to, any information demonstrating that Fitness Center is in compliance with the Agreement or 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 28 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. If a Member wishes to continue to receive services from Fitness Center the process for continuing their membership is set forth in the Program Manual.

ARTICLE 7 HOLD HARMLESS.

To the extent not covered by insurance, Fitness 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 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 or arising from or relating to any act or responsibility of Fitness Club. To the extent not covered by insurance, 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.

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.

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 plan, records shall be retained in accordance with Section 8 of Attachment J. For all other Members, such records shall be retained by Fitness Center the greater of seven 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 health information. Therefore, ASH Fitness and Fitness Center shall abide by all Federal and State laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA) of 1996, regarding privacy, security and disclosure of Member personal information. Fitness 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 shall not directly or indirectly receive remuneration in exchange for any personal information of a Member obtained or created pursuant to fulfillment of obligations under this Agreement.

- 9.03.2** Upon discovering an incident where the personal information of a Member could have been acquired, used or disclosed in a manner not permitted under this Agreement, including situations where such personal information could have been viewed by persons other than Fitness 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, in compliance with Social Security Act § 1173(d), 45 C.F.R. § 164.530(c)(1) and any other implementing regulations issued by the U.S. Department of Health and Human Services, to preserve the integrity and confidentiality of and to prevent non-permitted or violating use or disclosure of Member's personal information.
- 9.03.4** Fitness Center shall notify ASH Fitness Privacy Office immediately of any requests for restrictions on uses and disclosure of personal information by a Member.
- 9.03.5** ASH Fitness is the exclusive owner of 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.
- 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, fax, email or hand delivery to:

American Specialty Health Fitness, Inc.
Attn: Privacy Officer
10221 Wateridge Circle

San Diego, CA 92121
E-mail: HIPAA@ashn.com
Tel: (800) 848-3555
Fax: (858) 237-3839

ARTICLE 10 PROPRIETARY INFORMATION.

All information, documents, software and other materials 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 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.

Upon termination of this Agreement, Fitness Center shall return to ASH Fitness all proprietary information in Fitness Center's possession, if requested, and in a manner to be specified by ASH Fitness. 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 Section 11.02 below. Any other use of ASH Marks is subject to the prior review and written approval of ASH Fitness.

11.02 Identification of Marks and Form of Use. Subject to the terms of this section, ASH Fitness grants Fitness Center a non-exclusive, non-transferable, royalty-free license to use the trademarks Silver&Fit®, Silver&Fit Signature Series Classes®, Active&Fit®, FitnessCoach™ 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. Fitness Center shall be allowed to use the ASH Marks as described above, as long as such use complies with this Article and the "Guidelines for Trademark Use by Third Parties" issued by ASH Fitness from time to time, a current version of which is attached hereto as Attachment K. In addition, Fitness Center shall mark the ASH Marks with the symbol "™" or "®" as appropriate, and include the following trademark attribution in reasonably close proximity to the first use of the ASH Marks in any document or on a screen display, or in a location to which users are directed for statements concerning the Fitness Center's ownership of intellectual property rights.

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

“[Silver&Fit®, Silver&Fit Signature Series Classes®, Active&Fit® and/or ExerciseRewards™] are trademarks of American Specialty Health Incorporated and are licensed by Fitness Center for use herein.”

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

- 11.03 **Approval for Use of Marks.** Approval in Section 11.02 above shall be deemed automatically withdrawn upon the effective date of expiration or termination of this Agreement, unless sooner withdrawn by written notice from ASH Fitness.
- 11.04 **Injunctive Relief.** The Parties agree that a breach of the terms and conditions of this Article shall cause immediate and irreparable harm. Therefore, in addition to any other rights or remedies available at law or in equity, 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.

ARTICLE 14 FORCE MAJEURE.

In the event that Fitness Center's operations are substantially interrupted by acts of war, fire, insurrection, labor disputes, riots, earthquakes or any other acts of nature, Fitness Center shall be relieved of Fitness Center's obligations as to those affected operations for the duration of such interruption. In the event that Fitness Center's ability to render Services is substantially interrupted because of an event described above, ASH Fitness shall have the right to terminate this Agreement in accordance with Article 6 of this Agreement. Such notice of termination may be withdrawn if ASH Fitness determines that Services can be performed despite the event or because the interruption has ended.

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), or facsimile with confirmation), (b) delivered in person, (c) sent by certified, registered mail, or "overnight express" by the United States Postal Service with return receipt requested and postage prepaid, or (d) sent "express mail," "two day delivery," "3-5 day ground" or any similar service offered by private, prepaid courier such as Federal Express, United Parcel Service or any similar organization. ASH Fitness shall send all notices to Fitness Center's ASHLink account, email, facsimile number or mailing address on file with ASH Fitness. Fitness Center shall provide at least thirty (30) day notice to any change in its email, facsimile number 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), or facsimile with confirmation) shall be deemed received one (1) business day after being sent.
- Notices delivered personally shall be deemed received upon actual receipt.

- Notices given by certified or registered mail shall be deemed received 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 ATTORNEYS' FEES; COSTS.

In the event that either Party brings legal action relating to this Agreement, including an arbitration or court action brought pursuant to Article 18, Article 19 or Article 20 herein, the prevailing Party shall be entitled to payment by the other of all reasonable attorneys' fees, costs and expenses incurred in such action.

ARTICLE 23 CAPTIONS.

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

ARTICLE 24 NO THIRD PARTY BENEFICIARIES.

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

ARTICLE 25 AMENDMENTS.

Any amendments to this Agreement, including but not limited to revised or newly issued attachments, 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 26 INSOLVENCY OF ASH FITNESS; PROTECTION OF INTERESTS OF FITNESS CENTER, MEMBERS, AND ASH CLIENTS.

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

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

If, within sixty (60) days after the date of the insolvency of ASH Fitness, an ASH Client provides written notice to Fitness 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.

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

ARTICLE 27 ENTIRE AGREEMENT.

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

ARTICLE 28 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 Attachment²
- Attachment C: FitnessCoach Attachment²
- Attachment D: Active&Fit Attachment
- Attachment F: ExerciseRewards Network Attachment³
- Attachment H: Personal Trainer 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.

CITY OF SOUTH BEND, INDIANA
BOARD OF PARK COMMISSIONERS for and
on behalf of the Venues Parks & Arts Department
O'Brien Fitness Center

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

Fitness Center Legal Name

Name Signed

d/b/a (if applicable)

Name Printed

Name Signed

Title

Name Printed

Date of Signature

Title

Date of Signature

Mailing Address:

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

Office Name

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

Address

City, State, Zip

² If Attachment B or Attachment C has been selected, Exhibit I to the attachment must be completed.