

**AMERICAN SPECIALTY HEALTH NETWORKS, INC.**

**FITNESS CLUB SERVICES AGREEMENT**

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

THIS FITNESS CLUB SERVICES AGREEMENT, (“this Agreement”) is entered into between American Specialty Health Networks, Inc., a California corporation (“ASH Networks”), and \_\_\_\_\_ (“Fitness Club”). This Agreement will not become effective until both Fitness Club and ASH Networks have signed it. After Fitness Club and ASH Networks have both signed this Agreement, Fitness Club will automatically become a Contracted Club as of the Effective Date specified in Article 25 of this Agreement.

**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) wish to enter into arrangements for the provision of Services to their insured or employees (collectively referred to as “Members” and further defined below);

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

WHEREAS, Fitness Club has all necessary licenses and authorizations to operate in its location(s) in the State(s) in which it operates and wishes to be contracted by ASH Networks;

WHEREAS, where appropriate, Fitness Club and ASH Networks intend for the amended provisions of this Agreement to entirely replace and supersede any inconsistent provisions found in the previously executed Fitness Club Provider Services Agreement between Fitness Club and ASH Networks, as of the Effective Date of this Agreement; and

WHEREAS, Fitness Club and ASH Networks desire to enter into this Agreement.

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

- Attachment A: Silver&Fit<sup>1</sup> Basic Attachment
- Attachment B: RESERVED
- Attachment C: Active&Fit Attachment
- Attachment D: Affinity Attachment
- Attachment E: Personal Trainer Attachment
- Exhibit 1: ASH Client Summaries
- Attachment F: ASH Client List
- Attachment G: Health and Safety Guidelines and Code of Conduct
- Attachment H: Program Compensation Attachment

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

- 1.02 ASH Client.** ASH Client is a health care service plan, health maintenance organization, employer group, trust fund, third party administrator, or other person or entity who contracts with ASH Networks or an ASH Networks' affiliate to arrange for the provision of Services to Members.
- 1.03 Contracted Club.** Contracted Club is a fitness club or fitness clubs that has contracted with ASH Networks.
- 1.04 Effective Date.** The Effective Date is the date this Agreement becomes operative, as specified in Article 25 of this Agreement. The Effective Date is determined by ASH Networks upon completion of all necessary pre-contractual requirements. The Effective Date may be a date later than the date this Agreement is signed by both Parties. ASH Networks will provide Fitness Club with notice of the Effective Date after Fitness Club returns one original copy of this Agreement to ASH Networks, all pre-contractual requirements are fulfilled based upon a determination by ASH Networks, and the Agreement becomes fully executed.
- 1.05 Fitness Club Participating Location.** A Fitness Club Participating Location is the Fitness Club location where Services will actually be performed. For a Fitness Club with only one location participating, for ease of reference, this Agreement may refer to Fitness Club and Fitness Club Participating Location interchangeably. For a Fitness Club which has numerous locations participating under the term of this Agreement Fitness Club Participating Locations will speak to those functions the locations will specifically have to perform.
- 1.06 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.
- 1.07 Member Eligibility/Benefits.** Member Eligibility/Benefits is information maintained by ASH Networks or one of its affiliates pertaining to each Member regarding his or her eligibility, including initial date of eligibility, term of membership and benefits.
- 1.08 Member Payments.** Member Payments are charges which are the direct financial responsibility of the Member and are paid directly to Fitness Club. Member Payments may be collected by Fitness Club subject to the terms of Member's Benefit.
- 1.09 Member Termination Report.** Member Termination Report is a report compiled by ASH Networks or its affiliates which lists Members who have terminated their Membership at the Fitness Club and/or are no longer eligible to sign a membership agreement with Fitness Club. Member Termination Reports are sent to Fitness Clubs. Terminated Members shall be listed on the Member Termination Report for thirty (30) days from their termination date.
- 1.10 Non-Covered Services.** Non-Covered Services are all services other than a Standard Fitness Club Membership and any other program components as clearly laid out in each attachment (i.e. fitness classes, social events and personal training sessions). All Non-Covered Services are ineligible for compensation by ASH Networks or ASH Clients.
- 1.11 Party(ies).** Party(ies) is/are the individual(s) or entity(ies) that execute this Agreement.
- 1.12 Program Compensation Rate.** The Program Compensation Rate is the amount ASH Networks will pay Fitness Club for the Standard Fitness Club Membership and Services for each Member who has signed a membership agreement with Fitness Club. The Program Compensation Rate is set forth in Attachment H for each program that applies to this Agreement. The Program Compensation Rate in no way limits the number of Visits a Member may utilize the Fitness Club each month.

- 1.13 **Services.** Services are those collective services which fall under this Agreement and its attachments A through attachment E.
- 1.14 **Standard Fitness Club Membership.** A Standard Fitness Club Membership provides Member with at least the following services: access to a Fitness Club 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 Club 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 Club Membership does not include instructor-led classes that the Fitness Club charges a separate fee for, nor does it include personal training, or use of other club amenities for which there is a separate fee (such as saunas, whirlpool, swimming pools, racquetball, handball or tennis courts, if applicable).
- 1.15 **Quality Management Program.** The Quality Management Program is the set of policies, processes, procedures and standards established, determined and utilized by ASH Networks under this Agreement to evaluate and determine whether a Contracted Club has satisfied all ASH Networks’ Health and Safety Guidelines and Code of Conduct requirements adopted by ASH Networks and to approve a Contracted Club’s participation in ASH Networks and/or ASH Client’s networks.
- 1.16 **Visit.** Unless otherwise specified in a program attachment, a Visit is where a Member utilizes the Fitness Club Participating Location for exercise.

## ARTICLE 2 ASH NETWORKS’ RESPONSIBILITIES.

- 2.01 **Prepare and Maintain Program Manual.** ASH Networks shall prepare and maintain a program manual setting forth ASH Networks’ policies, processes, standards and procedures regarding Fitness Club’s participation in any ASH Networks’ network (“Program Manual”).
- 2.02 **Distribution of Revised Agreement, Attachments, Amendments, and Program Manual.** ASH Networks shall prepare and distribute any updated Agreements, new or updated attachments and exhibits, Member Termination Reports, ASH Client Lists, amendments and/or Program Manual, which may be revised by ASH Networks in accordance with Article 22 of this Agreement. ASH Networks may distribute all materials directly to Fitness Club and to each Fitness Club Participating Location, where such information pertains to the Fitness Club Participating Location.
- 2.03 **Records Management.** ASH Networks 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 Networks or its affiliates shall provide Fitness Club with services related to Member Eligibility verification for Services to be provided by Fitness Club.
- 2.05 **No Representation or Guarantee of Member Enrollment.** ASH Networks makes no representation or guarantees concerning the number of Members, if any, that will access Fitness Club under this Agreement.
- 2.06 **Confidentiality of Member Information.** ASH Networks 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 of non-public personal health information.
- 2.07 **Communication Regarding Participation of Fitness Club.** ASH Networks and its affiliates shall communicate the participation of Fitness Club in ASH Networks or its affiliates’ programs to existing and prospective ASH Clients in various forms, including but not limited to marketing materials, ASH Networks or ASH Client network directories and the applicable websites accessed by Members. Such

communication may include information as referenced in Section 2.08. ASH Networks shall assist Members to select a Contracted Club under the Member's program.

- 2.08 Use of Fitness Club Participating Locations Information by ASH Networks and ASH Clients.** ASH Networks shall include Fitness Club Participating Locations in ASH Networks' network directory and/or websites. In addition, ASH Networks shall, within sixty (60) days of the effective date of a location, notify ASH Clients of the addition of a Fitness Club Participating Location where that location may perform Services for ASH Client. ASH Networks and ASH Clients may publish demographic information regarding Fitness Club Participating Location, including but not limited to, the location's name, address, telephone number, available services and hours of operation. Such demographic information may also be provided for inclusion by ASH Networks and ASH Clients in network directories, websites and/or information systems for communication to Members, potential members and employer groups.
- 2.09 Deletion of Fitness Club Participating Location from Network Directories.** ASH Networks will notify all ASH Clients, no later than thirty (30) days after the effective date of Fitness Club Participating Location's resignation or termination of this Agreement, a Fitness Club's termination under a specific program or a Fitness Club's termination of a participating location as referenced in Section 5.01 and 5.03, of the need to delete the location's information from network directories and/or other such sources of Fitness Club information.
- 2.10 ASH Networks' Payment to Fitness Club.** ASH Networks shall compensate Fitness Club in accordance with the Program Compensation Rates specified in Attachment H under which Fitness Club is participating within thirty (30) days of receipt of a billing report for Services provided to Members:
- 2.11 Corrective Action Plans.** ASH Networks shall evaluate Fitness Club's participation and performance in accordance with the terms of this Agreement and fitness industry business practices. Where ASH Networks finds Fitness Club is not performing in accord ASH Networks may issue a Corrective Action Plan (CAP) to Fitness Club. ASH Networks shall deliver all CAPs in writing to Fitness Club. The CAP will communicate:
- a) The manner in which Fitness Club's practices are not in accordance with the terms of this Agreement or do not meet the recognized fitness industry standards adopted by ASH Networks;
  - b) Requirements of this Agreement with which Fitness Club is not in compliance;
  - c) Performance improvement requirements of the Fitness Club;
  - d) Timeline required for Fitness Club to acknowledge intent to comply; and
  - e) Timeline established by ASH Networks for Fitness Club to demonstrate achievement of the required level of performance, compliance or improvement.

Where a Fitness Club fails to respond to or comply with a CAP ASH Networks will consider this a material breach of this Agreement giving rise to ASH Network's right to terminate for cause pursuant to Section 5.04.

### **ARTICLE 3 FITNESS CLUB'S RESPONSIBILITIES.**

- 3.01 Comply with Federal and State Law.** Fitness Club shall maintain and demonstrate upon request by ASH Networks that Fitness Club has appropriate business licenses for its operations at each of the Fitness Club Participating Locations and meets all federal and state regulations applicable to such operations. Fitness Club shall submit evidence of such licensure to ASH Networks upon request.
- 3.02 Comply with Program Manual.** Fitness Club shall comply fully with the Program Manual as described in Section 2.01.
- 3.03 Comply with Quality Management Program.** Fitness Club shall comply fully with the Quality Management Program and shall cooperate with ASH Networks in ASH Networks' administration of its grievance procedures, including procedures to resolve complaints or grievances filed by Members with ASH Networks. Fitness Club agrees and acknowledges that such procedures shall include, but not be

limited to, a system for identifying and resolving deficiencies and the evaluation of, among other things, compliance with customer service requirements and Quality Management Program requirements.

**3.04 Immediate Notification by Fitness Club of Certain Occurrences.** Circumstances may impact Fitness Club's status. ASH Networks, ASH Clients, regulators and accreditation agencies have expectations and/or requirements for providing notification to Members of Contracted Club status. To satisfy these expectations, ASH Networks will monitor and promptly address issues related to any change in Fitness Club's status as described below. Therefore, Fitness Club shall notify ASH Networks in writing by overnight mail service, email, facsimile or other means of notification made available to Fitness Club by ASH Networks within forty-eight (48) hours of the occurrence of any of the following:

- a) The commencement of any voluntary or involuntary bankruptcy proceedings by or against Fitness Club or any similar proceedings;
- b) Any lapse of general liability insurance maintained by Fitness Club;
- c) The filing of any criminal charges against Fitness Club's owners, directors or employees by a District Attorney, the State Attorney General or any other government official or agency;
- d) The filing of any criminal charges against a personal trainer contracted or employed with Fitness Club (Applicable only if Fitness Club is participating in Personal Trainer Benefit – Attachment E);

**3.05 Notification of Change in Any Information.** Fitness Club agrees to provide ASH Networks a periodic electronic directory of all Fitness Club Participating Locations which shall include the location name, physical address, mailing address, e-mail address, telephone number, services available and programs which the location will be participating in. Fitness Club shall notify ASH Networks of any change in Fitness Club or Fitness Club Participating Location's physical address sixty (60) days prior to the change and of any change in Fitness Club or Fitness Club Participating Location's mailing address, telephone number, email address, office hours, taxpayer identification number, or any other information listed in the Network Application, not less than thirty (30) calendar days in advance where such time is available or as soon as possible.

**3.06 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 Club agrees that Fitness Club shall not:

- a) Interfere with ASH Networks' property rights or contract rights, including, without limitation, ASH Networks' or its affiliates' contractual relationship with any Member or ASH Client;
- b) Advise or counsel any Member to dis-enroll from ASH Networks, or any of its affiliates, or advise or counsel any ASH Client, Contracted Club, or other ASH Networks contracted provider to terminate contracts with ASH Networks, or an affiliate, or advise or counsel any other party which has contracted with ASH Networks, ASH Networks' affiliates, or any ASH Client for the provision of services to terminate, cancel or decline to renew contracts;
- c) Solicit any Member or any other party which has enrolled or contracted with ASH Networks, ASH Networks' affiliates or ASH Client for the provision of Services to become a Member, subscriber, insured or other type of covered person under coverage offered by any other health care service plan, health maintenance organization, health insurer, preferred provider organization or any other similar organization, plan or program which provides similar coverage; or
- d) Harass, threaten or attempt to intimidate any Member or Contracted Club regarding any communication between the Member, Contracted Club, ASH Networks, its affiliates or ASH Client.

Nothing in this Section shall prohibit Fitness Club from maintaining a direct relationship with Member that is no longer enrolled in a program with ASH Networks or its affiliates due to Member dis-enrollment or termination of this Agreement.

If Fitness Club violates this Section, Fitness Club acknowledges that Fitness Club will be responsible for paying any and all actual damages incurred by ASH Networks 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 Networks or ASH Client for the violation of this Section, Fitness Club

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 Networks' other rights under this Agreement, at law or in equity.

- 3.07 Election to Participate in all Product Offerings.** Fitness Club may elect to participate in any program specified in Attachment A through Attachment E. Fitness Club must indicate which programs Fitness Club wishes to participate in, where there is no clear indication ASH Networks will deem Fitness Club as participating in all programs. Fitness Club must participate in at least one program at all times but is not obligated to participate in all programs. Prior to the Effective Date of this Agreement Fitness Club shall notify ASH Networks of its program participation. Any time after the Effective Date of the Agreement Fitness Club may chose to expand the programs it participates in. However, after the Effective Date Fitness Club may only terminate participation in a specific program, pursuant to Article 5, subject to the provision that Fitness Club must participate in at least one program.
- 3.08 One Week Trial Obligation.** Fitness Club shall offer and honor a one time one-week trial membership for each Member.
- 3.09 Provision of Member Services.** Fitness Club is responsible for ensuring that Members receiving services in Fitness Club's Participating Locations have a positive customer service experience. In this connection, Fitness Club has the following responsibilities:
- 3.09.1 Fitness Club Notification to Members of Financial Responsibility for Member Payments and Non-Covered Services.** Members must be notified by Fitness Club of their financial responsibility for amounts they may owe Fitness Club prior to the provision of any Non-Covered Services. Therefore, Fitness Club agrees to notify Members in writing prior to commencement of any service which shall incur additional Member charges as described in Section 3.14. Fitness Club shall collect appropriate Member Payments, at the time of service and shall bill Members according to the procedures described in the Program Manual. Fitness Club agrees to refund any amounts paid by a Member that the Fitness Club collects in a manner not consistent with this Section.
- 3.09.2 Non Discrimination.** Fitness Club shall not illegally discriminate against Member for any reason, including but not limited to age, sex, marital status, religion, ethnic background, national origin, political affiliation, ancestry, race, color, sexual orientation, health disability status or source or amount of compensation. Fitness Club shall offer Services to a Member covered by ASH Networks 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 Networks or its affiliates.
- 3.10 Verification of Member Eligibility and Services.** Unless otherwise specified in a program attachment, Fitness Club shall verify Member Eligibility and applicable Services with ASH Networks at the time of Member's first attempt to utilize Fitness Club Participating Location and then periodically during the provision of applicable Services. Fitness Club shall verify Member Eligibility and applicable Services by requesting Member to show their program identification card, and where a Member does not have a program identification card to show, by contacting ASH Networks. Member's program identification card is not a guarantee of current eligibility.
- 3.11 Program Compensation.** Fitness Club shall accept Program Compensation Rates, as specified in Attachment H as payment in full for the Services provided pursuant to this Agreement. Fitness Club 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 Club Membership.
- 3.12 Member Billing.** Nothing in this Agreement shall preclude Fitness Club 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 Club complied with Section 3.10. Any such charges shall be consistent with Fitness Club's lowest normal membership dues. In addition, as Section 3.09.1 details, Fitness Club may charge a Member for Non-Covered Services where Member has been informed, in writing, prior to the provision of the Non-Covered Services.

**3.13 Conversion of Pre-Established Membership.** Fitness Club agrees to assist Member where Member has a previously established membership with Fitness Club and becomes eligible for a program under this Agreement. Fitness Club agrees to:

- a) Allow Member's previously established membership to "freeze" without any penalty or termination of the previously established membership.
- b) Accept the Program Compensation Rate as payment for the Standard Fitness Club Membership on behalf of the Member while the Member is eligible for the program and while the Member's previously established club membership is "frozen".
- c) Re-activate the Member's "frozen" membership with no penalties or activation fees, subject to the original terms and conditions of the Member's previously established club membership, when Member becomes ineligible for the program.
- d) Reinstate the previously frozen membership for the period of time that was remaining on that membership at the time it was frozen.

**3.14 Offering of Non-Covered Services.** Fitness Clubs may allow a Member to upgrade monthly memberships, products or services subject to additional fees for Non-Covered Services. Fitness Club may sell Members additional products and services not covered under the Program Compensation Rate only upon advanced written notice that such products and services are Non-Covered Services and are Member's financial responsibility under the program. The price of an upgraded membership must be equal to or less than pricing offered to the general public ("Upgraded Membership Price"). The cost to the Member shall be the Upgraded Membership Price minus the Fitness Club's standard fee for a basic membership (note this is not the Program Compensation Rate but the standard fee charged by Fitness Club).

Fitness Club agrees to promptly refund any amounts charged to Member that are later determined not to be owed by the Member.

It is the intent of ASH Networks for Members to have their Standard Fitness Club Membership paid, in accordance with the Program Compensation Rate, by ASH Networks to the Fitness Club pursuant to each attachment. Fitness Club may not seek payment from ASH Networks for Member Payments.

**3.15 Billing Report Submission.** (Where Applicable) Unless otherwise specified in a program attachment, Fitness Club will submit a billing report and shall provide supporting information to ASH Networks that identifies a Visit at a Fitness Club Participating Location, the Member name, Member identification number, Member month and day of birth, health plan name and the date of the Visit. Such information may be provided electronically or in paper claim formats, that are mutually agreed upon, by the 15th day of the month following the month Services were provided to all Members. This reporting may be a sign in sheet provided by ASH Networks OR a report of Member utilization generated by Fitness Club through any other method deemed appropriate for the purpose of verifying a Member's Visit to a Fitness Club Participating Location.

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

**3.16 Reimbursement Adjustments** (Where Applicable). ASH Networks may be required to make an adjustment to a reimbursement previously paid by ASH Networks in order to correct an over or under payment as a result of (1) corrected information received by ASH Networks, or (2) incorrect determination of benefit or (3) an incorrect calculation of payment amounts.

If such adjustment results from an under payment to Fitness Club, ASH Networks will provide additional payment for the balance due to Fitness Club. Fitness Club has eighteen (18) months from the date of the initial under-payment to contact ASH Networks to request a reimbursement adjustment due to the under-payment that was the result of an error or improper denial of a reimbursement by ASH Networks.

If such adjustment results from an over payment to Fitness Club, ASH Networks shall communicate in advance and in writing of the intent to recover the overpayment amount from future reimbursements and shall provide Fitness Club an opportunity to respond to such intent. ASH Networks may request a refund for any overpayment from Fitness Club in lieu of recovering such overpayments from future reimbursement payments. ASH Networks shall be entitled to a refund for an overpayment provided that the adjustment is made within one hundred and eighty (180) days after the initial payment or any shorter period as specified by law, unless the overpayment was the result of fraud on the part of the Fitness Club. If Fitness Club disagrees with ASH Networks overpayment determination, Fitness Club may appeal the determination as set forth in Article 17.

**3.17 Fitness Club's Participating Locations** (Where Applicable). Where Fitness Club has numerous facilities operating under the terms of this Agreement Fitness Club shall have the following obligations in regards to all of their participating locations.

**3.17.1 Agreement Notification.** All locations which are eligible and which Fitness Club has chosen to participate in any program offered under this Agreement shall be provided in the application to ASH Networks. Where Fitness Club adds additional participating location, Fitness Club shall provide ASH Networks with notice of the new location thirty (30) calendar days prior to the intended start of the new location. To be eligible to participate in a program, the Fitness Club must receive a notice from ASH Networks of the acceptance of the new location's eligibility to participate in a program. This notice shall supply the effective date of the new Fitness Club Participating Location. The new Fitness Club Participating Location will not be eligible to receive compensation from ASH Networks for Services provided to Members prior to that effective date.

**3.17.2 Informing Participating Locations.** Fitness Club shall be responsible for conveying and disseminating to each Fitness Club Participating Location, all information, updates and changes ASH Networks provides or makes for the purpose of this Agreement, including, but not limited to a copy of this Agreement, subsequent amendments, policy changes, assignments or terminations. In addition, pursuant to Section 2.02 ASH Networks may also inform Fitness Club Participating Locations of such information.

**3.17.3 Ensuring Compliance.** Fitness Club shall require each Fitness Club Participating Location to comply with the requirements of this Agreement and any applicable state or federal law or regulations.

**3.17.4 Member Use of Multiple Locations.** Where Fitness Club allows Members to utilize numerous Fitness Club Participating Locations under one Membership Agreement, Fitness Club must notify ASH Networks, in advance, of this membership feature. Fitness Club shall remain responsible for submitting billing reports pursuant to Section 3.14. Where Fitness Club offers this feature, Fitness Club is not entitled to any additional compensation per Member.

**3.18 General Liability Insurance Limits.** Fitness Club shall maintain liability insurance, comprehensive general liability insurance and any other insurance policies, including but not limited to Workers' Compensation, in accordance with ASH Networks' liability insurance requirements and of standard form in the applicable state. Fitness Club shall notify ASH Networks within five (5) days of any material change to any or all insurance policies. This insurance requirement will be required for each of the Fitness Club Participating Locations. Fitness Club shall maintain general 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 Club Participating Location.

**3.19 Fitness Club's Corrective Action Plans.** Fitness Club agrees to comply with ASH Networks CAPs within the timelines specified and to respond to the CAP in writing or as otherwise requested by ASH Networks. Fitness Club may submit information to ASH Networks in response to the CAP which explains the Fitness Club's position including, but not limited to, any information demonstrating that Fitness Club is in compliance with the Agreement or Program Manual. Fitness Club 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 Networks. Fitness Club agrees to demonstrate a consistent pattern of compliance with ASH Networks' program and a CAP.

#### **ARTICLE 4 TERM.**

The initial term of this Agreement shall be from the Effective Date specified in Article 25 of this Agreement through and including December 31<sup>st</sup>, of this year, subject to the termination provisions set forth in Article 5. After the initial term, this Agreement shall automatically renew for one (1) year on each successive January 1<sup>st</sup>, unless terminated by either Party, as provided herein.

#### **ARTICLE 5 TERMINATION.**

**5.01 Termination of a Program or Participating Location.** Either Party may terminate Fitness Club's participation in a specific program offered under this Agreement, or may terminate the participation of a specific location through sixty (60) calendar day prior written notice to the other Party, or as otherwise specified by state law. Both Parties acknowledge and agree that notice of termination of a program or a Fitness Club Participating Location need not specify any cause, reason, grounds, justification or other basis for the termination other than the exercise of the Party's rights under this Section. However, Fitness Club must be participating in at least one program, and must have at least one location participating to remain a Contracted Club with ASH Networks.

**5.02 Termination of This Agreement with or without Cause with Notice.** Notwithstanding any other provision in this Agreement, either Party may terminate this Agreement at any time with or without cause by providing at least sixty (60) days prior written notice of termination to the other Party, or as otherwise specified by state law. Both Parties acknowledge and agree that notice of termination of this Agreement need not specify any cause, reason, grounds, justification or other basis for the termination other than the exercise of the Party's rights under this Section.

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

- a) If ASH Networks determines that services rendered to a Member by Fitness Club or a Fitness Club Participating Location in conjunction with this Agreement do not meet the recognized fitness industry standards adopted by ASH Networks and/or potentially place a Member at risk;
- b) Any material misrepresentation, falsification or failure to provide accurate information to ASH Networks, ASH Client, or a Member by Fitness Club or Fitness Club's staff, agent or representative in connection with this Agreement;
- c) Fitness Club's commission of any act or Fitness Club's conduct or any allegation of conduct, for which Fitness Club's license may be subject to revocation, suspension or the imposition of any limitation, whether or not actually revoked, suspended or limited, or if Fitness Club is otherwise disciplined by any licensing, regulatory or professional agency with jurisdiction over Fitness Club;
- d) The filing and/or conviction of any criminal charges against Fitness Club's directors, officers, owners or employees by the District Attorney, the State Attorney General, or any other federal or state government agency;
- e) The termination of any contractual relationship other than this Agreement between Fitness Club and ASH Networks, an ASH Networks' affiliate, and/or any adverse change in the scope or type of services that Fitness Club is available by ASH Networks or an ASH Networks' affiliate to provide;
- f) Fitness Club is not participating in at least one program pursuant to this Agreement;
- g) Fitness Club has no Fitness Club Participating Locations; or
- h) Any occurrence or condition which materially impairs the ability of Fitness Club or a Fitness Club Participating Location to perform responsibilities under this Agreement.

The sixty (60) days notice requirement specified in Section 5.01 of this Agreement shall not apply to any termination that is based on an occurrence listed in this Section.

- 5.04 Fitness Club Appeal of Termination.** ASH Networks' appeals process includes the following appeal levels:
- 5.04.1 Appeal.** Fitness Club may appeal ASH Networks' termination for cause by providing a written request to ASH Networks, no more than thirty (30) days from the date of the termination notice by ASH Networks, unless otherwise specified by state law. The appeal may result in a rescission of the termination, reinstatement, or a decision to uphold the termination.
- 5.04.2 Term Effective Date.** Such appeal rights may occur before and/or after the effective date of termination and shall not alter the effective date of termination. If a termination appeal results in a reinstatement, ASH Networks may provide Fitness Club with a new Effective Date subsequent to the termination date.
- 5.05 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.
- 5.06 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, 3.06, 3.09.1, 3.13(c), 5.05.1, 5.06, 5.07, and 5.08, in addition to , Article 6, Article 7, Article 8, Article 9, Article 12, Article 13, Article 15, Article 16, and Article 17.
- 5.07 Fitness Club Responsibility during Termination Notice Period.** Where Fitness Club or ASH Networks provides notice of termination pursuant to section 5.01 or 5.03 Fitness Club shall continue to provide Services pursuant to this Agreement up to and including the effective date of termination.
- 5.08 Fitness Club Responsibilities after Termination of Program, Location or Agreement.** Fitness Club understands that materials such as network directories provided to Members by ASH Networks or ASH Clients may continue to reflect that a location is participating in the ASH Networks and/or ASH Client's network for some period of time following the termination of a location's participation. Some Members may be unaware of the location's termination. Therefore, to avoid Member confusion regarding the location's status with ASH Networks and/or ASH Client, regardless of which Party terminates this Agreement or a location's participation, for a period of one (1) year following the termination, Fitness Club shall be financially and contractually responsible to notify, in writing, any Member who seeks services at a terminated location, that the location is no longer contracted with ASH Networks and/or ASH Client and is ineligible for compensation from ASH Networks.

Nothing in this Section shall preclude a location that is no longer contracted with ASH Networks from continuing to provide services to Members who wish to continue receiving services from Fitness Club, provided that Fitness Club informs the Member that they are no longer a contracted fitness club with ASH Networks and the Member agrees in advance and in writing to be solely responsible for all charges associated with receiving services from Fitness Club. Fitness Club will not seek reimbursement from ASH Networks for any services provided to a Member after the termination date of this Agreement.

## **ARTICLE 6 HOLD HARMLESS.**

To the extent not covered by insurance, Fitness Club shall be solely responsible for and shall hold ASH Networks 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 Club, Fitness Club'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 Networks shall be solely responsible for and shall hold Fitness Club 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 Networks, its agents, employees or representatives in connection with ASH Networks' responsibilities under this Agreement.

## **ARTICLE 7 COMMUNICATION OF RELATIONSHIP WITH ASH NETWORKS AND ASH CLIENTS.**

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

## **ARTICLE 8 RECORDS AND DATA COLLECTION.**

- 8.01 Maintenance of Records.** Fitness Club shall maintain and provide ASH Networks, 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 Club, in such form and containing such information as is required by applicable federal and state law, and such other information as ASH Networks, ASH Clients, or other such agencies may require. Such records shall be retained by Fitness Club in accordance with applicable state laws.
- 8.02 Access to Facility and Records.** Fitness Club shall provide access to ASH Networks, at reasonable times upon request by ASH Networks and/or ASH Client, to monitor program compliance and inspect Fitness Club's facilities, equipment, books, papers, and records relating to Fitness Club's performance under this Agreement.
- 8.03 Confidential Member Information.** ASH Networks and Fitness Club 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 information. Fitness Club agrees to maintain records and other information with respect to Members in an accurate and timely manner, to provide timely access by Members to the records and information that pertain to them and to safeguard the privacy of any information that identifies a particular Member. Fitness Club shall limit uses and disclosures of personal information obtained from ASH Networks (including any information received from ASHLink) solely for payment and related operational purposes permitted or required by this Agreement or as required by law. Upon discovering a suspected breach of personal Member information Fitness Club shall immediately report the incident to ASH Networks' designated Privacy Officer.

## **ARTICLE 9 PROPRIETARY INFORMATION.**

All information, documents, software and other materials of any sort furnished to Fitness Club by ASH Networks including, without limitation, the Program Manual, any Client Lists, and any copyrighted or trademarked materials, shall be the property of ASH Networks. Such proprietary information is only to be used by Fitness Club in connection with the performance of Fitness Club's obligations under this Agreement and only in the manner provided for in this Agreement. Fitness Club shall not disclose or use any proprietary information or trade secrets for Fitness Club's own benefit during the term of this Agreement or after termination of this Agreement, except as authorized in writing by ASH Networks. Fitness Club 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 Club shall return to ASH Networks all proprietary information in Fitness Club's possession, if requested, and in a manner to be specified by ASH Networks. Fitness Club shall cooperate with ASH Networks in maintaining the confidentiality of such proprietary information at all times during and after termination of this Agreement.

## **ARTICLE 10 ASSIGNMENT AND CHANGE OF OWNERSHIP.**

ASH Networks 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 Club.

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 11 FORCE MAJEURE.**

In the event that Fitness Club's operations are substantially interrupted by acts of war, fire, insurrection, labor disputes, riots, earthquakes or any other acts of nature, Fitness Club shall be relieved of Fitness Club's obligations as to those affected operations for the duration of such interruption. In the event that Fitness Club's ability to render Services is substantially interrupted because of an event described above, ASH Networks shall have the right to terminate this Agreement in accordance with Article 5 of this Agreement. Such notice of termination may be withdrawn if ASH Networks determines that Services can be performed despite the event or because the interruption has ended.

#### **ARTICLE 12 INDEPENDENT CONTRACTORS.**

**12.01** 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.

**12.02** Fitness Club shall be responsible solely to eligible Members for Services. Fitness Club is an independent contractor and ASH Networks shall have no dominion or control over Fitness Club, Fitness Club-Member relationship, Fitness Club's personnel or Fitness Club's services. Fitness Club and Fitness Club's employees and agents shall not have any claim, under this Agreement or otherwise, against ASH Networks for vacation pay, sick leave or retirement or other benefits of any kind. During the term of this Agreement or any renewals hereof, Fitness Club shall be fully responsible and liable for all state and federal income taxes or other taxes to which payments made by ASH Networks to Fitness Club may become subject. Fitness Club 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.

#### **ARTICLE 13 GOVERNING LAW.**

This Agreement shall be interpreted and governed by the laws of the State in which the Fitness Club is located. 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 14 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. 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 15 DISPUTES BETWEEN FITNESS CLUB AND MEMBERS.**

Controversies or claims between Fitness Club and Members arising out of Fitness Club's performance of this Agreement shall not be governed by this Agreement except as provided herein. Fitness Club and Member may seek any appropriate legal action to resolve any such controversy or claim deemed necessary, except as provided in this Agreement.

In the event ASH Networks is informed by either Fitness Club or Member or becomes aware of a dispute between Fitness Club and Member, ASH Networks and/or ASH Client shall determine if such dispute is subject to the

provisions of this Agreement and ASH Networks and/or ASH Client is obligated to address the dispute as an appeal or grievance in accordance with its policies, processes, procedures and standards. Fitness Club agrees to participate in and to provide such assistance and information to ASH Networks at no cost or expense to ASH Networks as may be necessary or helpful to ASH Networks in administering any Member grievance or appeals process described in the Program Manual and in reviewing and evaluating ASH Networks Member grievances or appeals presented for resolution thereunder.

#### **ARTICLE 16    DISPUTES BETWEEN FITNESS CLUB AND ASH NETWORKS.**

In the event of any dispute between Fitness Club and ASH Networks arising out of or relating to this Agreement, Fitness Club and ASH Networks shall first attempt in good faith to resolve the dispute mutually between themselves. In order to initiate the resolution process, Fitness Club shall contact ASH Networks in writing or by telephone. If Fitness Club and ASH Networks are unable to resolve the dispute by mutual agreement, including but not limited to, utilizing all available levels of ASH Networks' grievance and appeals processes, unless otherwise prohibited by state law, then all matters in controversy shall be submitted, upon the motion of either party, to binding arbitration under the Commercial Arbitration Rules of the National Arbitration Forum ("the Forum"). The arbitrator shall be bound by applicable state and federal law, subject to Article 13, and shall issue a written opinion setting forth findings of fact and conclusions of law. The arbitrator must have experience in resolving matters of the same type under dispute in the same jurisdiction. Fitness Club and ASH Networks agree that the decision of the arbitrator shall be final and binding as to each of them. The Party against whom the award is rendered shall pay any monetary award and/or comply with any other order of the arbitrator within sixty (60) days after the entry of judgment.

In all cases submitted to the Forum, Fitness Club and ASH Networks agree to share equally the Forum 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.

Fitness Club and ASH Networks 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.

Should Fitness Club or ASH Networks, prior to submitting a dispute to arbitration, desire to utilize other impartial dispute settlement techniques such as mediation or fact-finding, a joint request for such services may be made to the Forum, or the Parties may initiate such other procedures as they may mutually agree upon at such time.

Any arbitration proceedings shall occur in San Diego, California or in the state in which Fitness Club is providing Services to Members pursuant to this Agreement.

Fitness Club and ASH Networks 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.

#### **ARTICLE 17    DISPUTES BETWEEN FITNESS CLUB AND ASH CLIENT.**

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

#### **ARTICLE 18    NOTICES.**

Any notice required or permitted to be given under this Agreement to ASH Networks or Fitness Club, 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.

Notice(s) sent by ASH Networks shall be delivered, mailed, or sent for delivery to the Fitness Club's ASHLink account, email address, facsimile number or mailing address on file with ASH Networks. If Fitness Club changes the email address, facsimile number, or other address, Fitness Club shall provide written notice of the change to ASH Networks at least thirty (30) days prior to the effective date of the change. Notice(s) sent by Fitness Club shall be delivered, mailed or sent for delivery to ASH Network via ASHLink (where available) or to the email address, facsimile number or mailing address provided below.

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.

**NOTICES TO ASH NETWORKS:**

American Specialty Health Networks, Inc.  
P.O. Box 509001  
San Diego, CA 92150-9001

For specific email addresses and facsimile numbers, call ASH Networks at (877) 329-2746. The appropriate email address or facsimile number will be provided depending on the nature of the Notice.

**ARTICLE 19 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 15, Article 16 or Article 17 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 20 CAPTIONS.**

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

**ARTICLE 21 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 Club other than Fitness Club, subject only to Article 23.

**ARTICLE 22 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 Networks and shall be automatically effective and incorporated into this Agreement on the date received or deemed received pursuant to Article 18 of this Agreement, unless otherwise specified in such notice or required by applicable state law.

**ARTICLE 23 INSOLVENCY OF ASH NETWORKS; PROTECTION OF INTERESTS OF FITNESS CLUB, MEMBERS, AND ASH CLIENTS.**

ASH Networks and Fitness Club each expressly agrees to the inclusion of this Article in this Agreement to provide a means to protect the interests of Fitness Club, Members, and ASH Clients in the event of the insolvency of ASH Networks. This Article shall apply only in the event of the insolvency of ASH Networks and only if, as a result of the insolvency, ASH Networks 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 Networks means the filing of a voluntary petition by ASH Networks, or the filing of an involuntary petition by ASH Networks' 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 Networks shall not include the filing of a voluntary petition by ASH Networks, or the filing of an involuntary petition by ASH Networks' 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 Networks, an ASH Client provides written notice to Fitness Club 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 Club, in accordance with the provisions of this Agreement, for any billing reports submitted for Services rendered by Fitness Club to any such Member on or after the date of the insolvency, to the extent ASH Networks has not paid such reimbursements, and (b) ASH Client otherwise shall use its best efforts to discharge the duties of ASH Networks under this Agreement, or to cause ASH Networks to discharge those duties, with regard to any such Member, then Fitness Club 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 Club 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 24 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.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.

**ARTICLE 25 EFFECTIVE DATE OF AGREEMENT.**

ASH Networks shall determine the Effective Date of this Agreement upon completion of all necessary pre-contractual requirements. Fitness Club agrees to be bound by the Effective Date as determined by ASH Networks and indicated immediately below.

The Effective Date of this Agreement is \_\_\_\_\_.  
[To be completed by ASH Networks Only]

Fitness Club 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: Reserved
- Attachment C: Active&Fit Attachment
- Attachment D: Affinity Attachment
- Attachment E: Personal Trainer Attachment

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

FITNESS CLUB  
(type or print clearly)

AMERICAN SPECIALTY HEALTH NETWORKS, INC.  
(To be filled out by ASH Networks only)

\_\_\_\_\_  
Name Signed

\_\_\_\_\_  
Name Signed

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Mailing Address:

Mailing Address:

\_\_\_\_\_  
Office Name

American Specialty Health Networks, Inc.  
P.O. Box 509001  
San Diego, CA 92150-9001

\_\_\_\_\_  
Address

Office Address:

\_\_\_\_\_  
City, State, Zip

American Specialty Health Networks, Inc.  
777 Front Street  
San Diego, CA 92101

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**AMERICAN SPECIALTY HEALTH NETWORKS, INC.  
FITNESS CLUB 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 Basic Program. The Silver&Fit Basic Program is offered to Members that are health plan enrollees eligible for Medicare coverage or are group retirees. This program provides Member with a Standard Fitness Club Membership.

**2.0**    PROGRAM COMPENSATION.

Fitness Club hereby agrees to participate in the Silver&Fit Basic Program subject to the compensation schedule listed in Attachment H. The number of visits compensated in a month shall not limit the number of visits a Member may make to Fitness Club 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 Club over the course of one day, however, Fitness Club is only entitled to receive compensation for one (1) of those visits.

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

**ATTACHMENT B - RESERVED**

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**AMERICAN SPECIALTY HEALTH NETWORKS, INC.  
FITNESS CLUB 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 wellness or insured program whereby ASH Networks or its affiliates arrange for the provision of Services to Members. This program provides Member with a Standard Fitness Club Membership.

**2.0**    PROGRAM COMPENSATION.

Fitness Club hereby agrees to participate in the Active&Fit Program subject to the compensation schedule listed in Attachment H. The number of visits compensated in a month shall not limit the number of visits a Member may make to Fitness Club 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 Club over the course of one day, however, Fitness Club is only entitled to receive compensation for one (1) of those visits.

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**ATTACHMENT D - AFFINITY 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**    Affinity Program. (Commonly referred to by some ASH Clients, regulators, accreditations agencies, or others as “Discount Programs”). ASH Networks’ Affinity Program consists of Affinity Services offered to Members at a best available preferred rate or specific discounted rate.
- 1.02**    Affinity Services. Affinity Services are services provided to Members eligible for an Affinity Program. Fitness Club is paid directly by Member for Affinity Services, in accordance with applicable discount offered by Fitness Club, as specified at the end of this attachment and is not eligible for compensation by ASH Networks under this Agreement.
- 1.03**    Member. For the purpose of this attachment a Member is solely an individual eligible to receive Services. Members will not need to complete Member Enrollment prior to signing a membership agreement with a Fitness Club.

**2.0**    FITNESS CLUB’S RESPONSIBILITIES.

- 2.01**    Affinity Program. Fitness Club shall offer a Member access to Fitness Club a ten percent (10%) or higher discount off the regular membership fees/dues and/or enrollment fees, unless previously contracted at the lowest published rate available to the public. Fitness Club will be featured and/or made available to those Members eligible for the Affinity Program. Promotion may include, but not limited to, customized web site directory listing, customized search criteria featuring said discount, open enrollment materials, and/or in materials to eligible Members by mail upon request.
- 2.02**    Conversion of Pre-Established Membership. Fitness Club agrees to assist Member where Member has a previously established membership with Fitness Club and becomes eligible for the Affinity Program under this Agreement. Fitness Club agrees to allow Member’s previously established membership to become discounted to Fitness Club’s agreed upon discount for Affinity Services where the discounted rate is lower than Member’s previously established membership rate.
- 2.03**    Member Payments. Fitness Club shall notify Member of Member’s financial responsibility for amounts Member may owe Fitness Club for Affinity Services prior to the provision of Affinity Services. Fitness Club shall set up a payment process with Member and shall not seek payment for Affinity Services from ASH Networks or ASH Client.

**3.0**    CORE AGREEMENT MODIFICATION

- 3.01**    Provisions not Applicable to this attachment. The following provisions of the main body of the Agreement are not applicable to this attachment: Sections 1.08, 2.10, 3.10, 3.11, and 3.15.

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**4.0 DISCOUNTS.**

No Program Compensation Rate applies to this attachment.

Fitness Club agrees to provide the following discounts for Members

Please indicate below minimum discount of at least 10% where applicable:

	<b><u>Affinity Program</u></b> <u>Fitness Club discount on monthly or annual membership)</u>		<b><u>Affinity Program</u></b> <b><u>(Fitness Club discount)</u></b> <u>(No monthly membership or annual dues)</u>
<u>Initiation/Enrollment Fee</u>	_____ %	<b>OR</b>	<u>Fitness Session Fees</u>
<u>Monthly Dues</u>	_____ %		_____ %
<u>Personal Trainer Fees</u>	_____ %		

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**ATTACHMENT E - PERSONAL TRAINER 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** Amount. Co-payment Amount is a payment made directly to the Fitness Club by the Member for each Personal Trainer Service. Co-payment Amounts are specified in the ASH Client Summaries attached via Exhibit 1 to this attachment.
- 1.02** Personal Trainer Benefit Program. Personal Trainer Benefit Program means an arrangement pursuant to which Fitness Club arranges for the provision of personal training sessions to Member.
- 1.03** Personal Trainer Services. Personal Trainer Services refers to training provided by a certified personal trainer employed or contracted by a Fitness Club to assist Member in reaching desired health status such as weight loss or gain, or appropriate/effective exercise programs. A training session is of a duration not less than forty-five (45) minutes which assist Members in reaching their desired health status by focusing on subjects such as weight loss/gain, nutritional coaching, appropriate effective exercise program implementation and enhancing a Member's fitness level.

**2.0** FITNESS CLUB'S RESPONSIBILITIES.

- 2.01** Provision of Personal Trainer Program. Fitness Club shall provide Services when ASH Client elects to participate in the Personal Trainer Benefit Program. Personal Trainer Benefit Program is offered only if the Member's health plan and/or employer group has elected to include them and shall be noted through Exhibit 1 to this attachment.
- 2.02** Personal Trainers. Fitness Club agrees to comply with ASH Networks Quality Management Program criteria when employing a personal trainer who will provide services to a Member. Fitness Club agrees:
- a) Personal trainer shall be actively certified and in good standing with a certification body that is accredited through with the National Commission of Certifying Agencies "NCCA".
  - b) Personal Trainer must not have been convicted of a felony. Personal trainer must sign an attestation and Fitness Club must hold on file such attestation that personal trainer has never been convicted of a felony or Fitness Club must perform a criminal background check searching for any felony convictions, using Choicepoint or other similar databases, and shall hold appropriate documentation on file that no felony convictions were discovered.
  - c) Personal trainer must not have been convicted of a misdemeanor directly related to the provision of Personal Trainer Services. Personal trainer must sign an attestation and Fitness Club must hold on file such attestation that personal trainer has never been convicted of a misdemeanor directly related to the provision of Personal Trainer Benefit Program or Fitness Club must perform a criminal background check searching for any misdemeanor convictions, using Choicepoint or other similar databases, and shall hold appropriate documentation on file that no misdemeanor convictions were discovered.
  - d) Personal trainer must not have any negligence related malpractice cases. Personal trainer must sign an attestation and Fitness Club must hold on file such attestation that personal trainer has never had a malpractice settlement or judgment against him or her due to his or her negligence.

- e) Personal Trainer must not have any sanctions or actions by a state or federal regulatory agency. Personal Trainer must sign an attestation and club must hold on file that Personal Trainer has never had a sanction or action against him or her due to his or her negligence.
- f) Personal trainer must follow all appropriate assessment and risk management guidelines of the Fitness Club and one of the NCCA organizations.
- g) Personal trainer must question Member (using at a minimum the physical activity readiness questionnaire (PARQ) or a comparable pre-activity assessment tool) to assess the Member's health status and interaction with the Member's medical physician related to the fitness program.
- h) Personal trainer must question the Member about the Member's interaction with the Member's medical physician related to the fitness program.
- i) Personal trainer must maintain appropriate documentation and records related to the training interaction, Member progress and adverse events.
- j) Personal trainer will store any confidential health information or related confidential information in a secure location away from public access

### **2.03 Personal Trainer Benefit Program.**

- a) Fitness Club agrees to only provide personal training sessions to Member's eligible under the Personal Trainer Benefit Program as verified by ASH Networks.
- b) Personal Training Session shall last a minimum of forty-five (45) minutes and shall be used to assist Members in reaching their desired health status.
- c) Fitness Club shall offer and honor one (1) free initial orientation session at no charge to ASH Networks or Member. This session shall be utilized to introduce a Member to the Fitness Club and to introduce Member to a personal training session.
- d) Personal training sessions provided under the Personal Trainer Benefit Program are eligible for compensation at compensation rate as specified in Exhibit 1 to this attachment for each ASH Client.

### **3.0 PROGRAM ELECTIONS AND COMPENSATION.**

Fitness Club hereby agrees to participate in the Personal Training Benefit Program subject to the compensation schedule listed in Attachment H. Personal Trainer Services will only be compensated by ASH Networks up to the maximum number of sessions and the maximum amount per session established for the Personal Trainer Benefit Program, less any Co-payment Amount paid to Fitness Club by a Member as further specified in Exhibit 1 to this attachment. Co-payment Amounts are made upon each Visit.

**AMERICAN SPECIALTY HEALTH NETWORKS, INC.  
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**EXHIBIT 1 - ATTACHMENT E PERSONAL TRAINER - ASH CLIENT SUMMARIES**

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**ATTACHMENT F - ASH CLIENT LIST**

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**ATTACHMENT G - HEALTH AND SAFETY GUIDELINES AND CODE OF CONDUCT**

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

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

ASH Networks' Health & Safety Guidelines and Code of Conduct has been adapted from the following sources:

- Peterson, James A, and Tharrett, Stephen J, editors 2<sup>nd</sup> ed. *ACSM's Health/Fitness Facility Standards and Guidelines*, second edition. Champaign, IL: Human Kinetics, 1997.
- International Health, Racquet and Sportsclub Association, 2001.  
[http://download.ihrsa.org/pubs/club\\_membership\\_conduct.pdf](http://download.ihrsa.org/pubs/club_membership_conduct.pdf)

**AMERICAN SPECIALTY HEALTH NETWORKS, INC.  
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**ATTACHMENT H – PROGRAM COMPENSATION**

**SILVER&FIT BASIC PROGRAM:**

The following compensation rate is for the Silver&Fit Basic Program:

<u>Benefit Program</u>	<u>Compensation Rate</u>	<u>Maximum Number of Visits Compensated Per Month*</u>	<u>Monthly Compensation Maximum</u>
<u>Silver&amp;Fit Basic Program</u>	<u>\$3.00</u>	<u>10</u>	<u>\$30.00</u>

**ACTIVE&FIT PROGRAM:**

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

<u>Benefit Program</u>	<u>Compensation Rate</u>	<u>Maximum Number of Visits Compensated Per Month*</u>	<u>Monthly Compensation Maximum</u>
<u>Active&amp;Fit Program</u>	<u>\$3.00</u>	<u>10</u>	<u>\$30.00</u>

**PERSONAL TRAINER PROGRAM:**

The following compensation rate is for the Personal Trainer Program:

<u>Benefit Program</u>	<u>Description</u>	<u>Compensation</u>
<u>Personal Trainer Program</u>	1 session of Personal Trainer Services (Limited to 1 session per day)	\$45.00 (Includes Co-Payment)