

TIVITY HEALTH PROVIDER AGREEMENT

This Tivity Health Provider Agreement, its Program Schedules, exhibits and attachments, and any amendments thereto, (collectively the “Agreement”) is entered into between **TIVITY HEALTH SERVICES, LLC**, for itself and on behalf of its subsidiaries (hereinafter referred to as “Tivity Health”), a Delaware limited liability company, and the undersigned Facility (as defined below) (Tivity Health and Facility are collectively referred to herein as the “Parties”). This Agreement replaces and supersedes any other agreement between or among Facility and Tivity Health and its subsidiaries and affiliates for the Tivity Health programs and products represented herein. Following the execution hereof, all such other agreements shall be terminated on the effective date of this Agreement.

PREAMBLE

WHEREAS, Tivity Health has entered into agreements with Sponsoring Organizations (as defined below) to provide fitness services, benefits, and programs to eligible Members (as defined below) within an established network of fitness centers;

WHEREAS, Facility offers health and fitness programming and services; and

WHEREAS, Tivity Health would like to include Facility, and Facility desires to be included, as a member of the network of facilities for one or more Tivity Health products to provide basic fitness memberships and services, all on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual premises set forth above and the promises hereinafter appearing, and for other good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Definitions. The terms defined in this section shall have the meanings specified for all purposes of this Agreement.
 - a) “Confidential Information” means all provisions of this Agreement and any business expertise, manuals, videos, trade secrets, compensation, Sponsoring Organization Member information and any and all Tivity Health intellectual property.
 - b) “Facility” means the undersigned Facility whose name and other identifying information appear herein and any additional participating locations of Facility as mutually agreed to and set forth in Exhibit A, which have entered into this Agreement with Tivity Health to be part of its Tivity Health Network, on the terms and conditions set forth herein.
 - c) “Tivity Health Network” means, collectively, all participating locations that have entered into a contract agreement with Tivity Health to provide the Program.
 - d) “Member” means a Sponsoring Organization member, employee, dependent or other person eligible for the Program as determined by the Sponsoring Organization’s criteria.
 - e) “Program” means each of the Tivity Health programs described in the Program Schedules.
 - f) “Program Schedule” means each, and “Program Schedules” shall mean all, of the program schedules attached to this Agreement, and incorporated herein by reference, that describe the Tivity Health programs provided by Facility to Members of Sponsoring Organizations. Tivity Health and Facility acknowledge and agree that notwithstanding any other provision of this Agreement, Tivity Health may amend this Agreement upon sixty (60) days prior written notice to Facility to modify existing Program Schedules or to add one or more new Program Schedules, and that Facility may decline participation in a new Program Schedule or decline proposed modifications to an existing Program Schedule upon written notice to Tivity

Health within such sixty (60) day period if such modified or new Program Schedule would have a demonstrable material adverse effect on Facility.

- g) “Reference Guide” means the procedures and guidelines established by Tivity Health for participation in the Tivity Health Network by Facility and under which the Program is administered. The Reference Guide, which shall be provided to Facility prior to the commencement of this Agreement, is incorporated herein by reference; the Reference Guide may be periodically updated by Tivity Health and updated copies shall be provided to Facility from time to time.
- h) “Sponsoring Organization” means any organization, employer group, health plan or subset thereof that is contracted with Tivity Health to provide the Program to its members and whose members may therefore utilize Facility in accordance with the terms of this Agreement. Facility shall provide the Program to eligible Members of all Sponsoring Organizations. Sponsoring Organization information shall be available to Facility, and such Sponsoring Organization information shall be incorporated herein by reference.
- i) “Term” means the Initial Term of the Agreement and each successive one (1) year period as provided in the Term section of this Agreement.

2. Duties and Obligations of Facility.

- a) Acceptance to and Participation in the Tivity Health Network. Tivity Health’ validation and acknowledgement of this Agreement shall serve as notice of Facility’s acceptance into the Tivity Health Network. In order to become and remain a participant in the Tivity Health Network, Facility shall throughout the Term of this Agreement comply with the Reference Guide (including any updates thereto), including all quality assurance standards, operations, protocols, policies, procedures, follow-up guidelines, and health and safety standards of Tivity Health.
- b) Member Program Rights. Each Member shall establish and maintain a basic fitness membership with unrestricted hours at Facility, provided that such individual remains an eligible Member and this Agreement remains in effect. The Program excludes programs and services offered by Facility which carry additional charges beyond basic fitness membership services, such as racquetball, tennis, massage and other fee-based activities. If a Member requests services after being informed that the services are not covered under the Program, Tivity Health is not responsible for payment to Facility.
- c) Joint Marketing and Public Relations. During the Term of this Agreement, Facility agrees to allow Tivity Health and Sponsoring Organization to use the name, address, Program Rates and additional information provided by Facility in Exhibit A in marketing and advertising materials and campaigns. All marketing and advertising materials, and materials intended for distribution to Members prepared by Facility that refer to the Program, Tivity Health, or Sponsoring Organization shall be approved by Tivity Health in writing prior to their distribution. Facility agrees to make best efforts to coordinate all media communications through the Tivity Health Public Relations Department, and immediately inform Tivity Health of all media inquiries regarding the Program, Tivity Health, or Sponsoring Organization.
- d) Limited Facility Use of Tivity Health Trademarks, Logos, and Copyrighted Materials. Facility agrees that for the Term of this Agreement, all external marketing and advertising of all Tivity Health trademarked and service marked names, logos, identities, formats, and materials (the “Marks and Materials”), including the Program name, will first be approved in writing by Tivity Health, and at the conclusion of this Agreement, Facility shall cease all advertising, marketing, and references to the same. Nothing in this Agreement grants or shall be deemed to grant to either Party any right, title or interest in or to the other Party’s Marks and Materials. All use by Facility of Tivity Health’ Marks (including any goodwill associated therewith) shall inure to the benefit of Tivity Health.
- e) Research Studies. Facility shall obtain prior written approval from Tivity Health for any research or clinical studies of Members or the Program. Facility shall provide study findings and results to Tivity Health prior to any publication or presentation of such findings or results.

- f) Membership Conversion. Facility agrees that Members who are currently members of Facility will be able to inactivate or “freeze” their memberships for the duration of this Agreement so they may attend Facility at a reduced charge under the Program. At the time this Agreement terminates, or if applicable Members terminate their membership in Sponsoring Organization, those Members will then be responsible for the remaining terms of their individual memberships with Facility. Facility shall not refuse or dissuade eligible Members from participating in the Program.
 - g) Tivity Health Fitness Provider Portal. All Facility participating locations shall create and maintain user accounts on the web-based Tivity Health Fitness Provider Portal. Facility shall utilize the Tivity Health Fitness Provider Portal to verify Member eligibility and to obtain and access Tivity Health materials, including Sponsoring Organization information, training materials, Program forms, Program reports, and the Reference Guide.
3. Compensation. As payment for Program services, Member shall pay Facility according to the terms set forth in Exhibit A attached hereto for services provided on or after the Program Ready Date. Compensation paid by Member is inclusive of any and all taxes which Facility may be required to pay to any governmental authority.
4. Term.
- a) Initial Term and Ready Date. This Agreement will commence upon execution by the Parties, and shall continue in full force and effect until December 31, 2014 (“Initial Term”), subject to cancellation as provided in the Cancellation section below. Services to Members shall commence on a date following the commencement of this Agreement that shall be communicated to Facility by Tivity Health (“Ready Date”). The Initial Term and any and all Renewal Terms are referred to herein as the “Term”.
 - b) Renewal of Agreement. This Agreement shall be automatically renewed for successive one year terms after the Initial Term (the “Renewal Term”) unless either party gives written notice of termination at least one hundred twenty (120) days prior to the expiration of the Initial Term or the current Renewal Term of the Agreement or unless the Agreement is canceled pursuant to the Cancellation section below.
5. Cancellation.
- a) Change in Terms; Poor Usage. Tivity Health retains, upon thirty (30) days’ written notice, the right to terminate this Agreement or the participation by Facility under any Program Schedule for any location of Facility in Exhibit A on the basis of, in Tivity Health sole and reasonable discretion, poor usage of Facility by Members or upon termination or change in terms of a Sponsoring Organization’s contract with Tivity Health.
 - b) Bankruptcy. Notwithstanding any provision in this Agreement, if at any time there shall be filed by or against a party to this Agreement, in any court, tribunal, administrative agency, or any other forum having jurisdiction, pursuant to any applicable law, either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee, or conservator of all or a portion of the party's property, or if a party makes an assignment for the benefit of creditors, and if this action is not dismissed after ninety (90) calendar days, this Agreement may be immediately canceled and terminated by the other party.
 - c) Material Breach. If either party breaches any material term or condition of this Agreement, this Agreement may be terminated after written notice of such breach or default by the non-breaching party to the breaching party. The notice must specify the nature of said material breach and provide the breaching party thirty (30) days from receipt of the notice to correct the material breach. In the event the breaching party fails to cure the material breach within the thirty (30) day period, this Agreement shall automatically terminate upon completion of the thirty (30) day period, notwithstanding any other provision in this Agreement.
 - d) Early Termination. Notwithstanding any other provision of this Agreement, Tivity Health may terminate this Agreement at any time upon notice to Facility due to 1) failure of Facility to maintain required insurance coverage as set forth in this Agreement; 2) closure of Facility, resulting in denial of Program services to Members, without at least thirty (30) days’ prior written notice to Tivity Health; 3) fraudulent Program

utilization reporting by Facility; or 4) Tivity Health' reasonable determination that the health or safety of Members may be in jeopardy if this Agreement is not terminated.

- e) Early Termination for Failure to Report Utilization. Notwithstanding any other provision of this Agreement, Tivity Health may immediately terminate this Agreement for Facility's failure to report monthly utilization within stated guidelines and Tivity Health reserves the right to pursue any and all legal remedies for recompense related to such failure in reporting utilization.
6. Confidentiality. All Confidential Information between Tivity Health and Facility are shared in strictest confidence. During the Term and at all times thereafter, Facility shall not divulge, furnish or make accessible to anyone or use in any way (other than use in the ordinary course of providing services under this Agreement) any Confidential Information. Facility shall return to Tivity Health all of Tivity Health' materials (including any and all copies of such materials) used in the provision of the Program, including the Reference Guide and Member files, upon completion of this Agreement or in the event of its termination, or at any other time upon request from Tivity Health.
7. Member Contact. Facility agrees to not directly contact Members during the Term of this Agreement in regard to business related matters pertaining to the Program apart from payment of compensation due from Member to Facility under the Program, such as, but not limited to, switching health care plans, disenrolling, enrolling with other health care plans or similar entities, or contracting directly with Facility instead of Tivity Health and Sponsoring Organization.
8. Insurance. Facility shall obtain and maintain in force general liability insurance coverage in an amount of at least \$1,000,000 per occurrence, and shall cause such insurance to require that the carrier will provide Tivity Health written notice of expiration, termination, or cancellation at least thirty (30) days prior to any expiration, termination, or cancellation of such policy. Facility shall provide a current certificate of insurance with this Agreement and within ten (10) days of request by Tivity Health thereafter. **PLEASE ATTACH A COPY OF FACILITY LIABILITY POLICY FACE SHEET.**

Facility shall cause American Tivity Health Services, LLC, to be named as an additional insured on its general liability insurance policy "for all services provided under the contract agreement between Tivity Health and the insured." Facility shall provide such certificate of insurance to Tivity Health no later than thirty (30) days after Program Ready Date.

9. Notices. Unless expressly provided otherwise, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when sent by 1) facsimile transmission using equipment that provides automatic verification of transmission; 2) hand delivery, including by a recognized courier service; or 3) registered or certified mail, postage prepaid, return receipt requested. Notices under the Agreement to Facility shall be to the Contract Administrator in Exhibit A. Notices under the Agreement to Tivity Health shall be to: Tivity Health Provider Networks Department, 1445 South Spectrum Blvd., Suite 100, Chandler, Arizona 85286; Fax: 602-391-2138.

Facility shall provide a minimum of ten (10) days notice to Tivity Health in the event of a change in any of the information provided in Exhibit A of this Agreement. Either party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this section for the giving of notice.

10. Miscellaneous.
- a) Compliance with Federal and State Rules and Regulations. For the Term of this Agreement, Facility shall comply with all applicable federal and state rules and regulations regarding services provided to Members.
- b) Business License and Regulatory Standards. Facility shall hold an active and unrestricted business license as required by law, covering all aspects of services offered, and meet occupational health and safety requirements and regulatory standards in the state and jurisdiction in which Facility operates.
- c) Priority of Documents. Any conflict, ambiguity or inconsistency between the terms and conditions in this Agreement, the Program Schedules, the Exhibits and any document referred to in or incorporated into this Agreement shall be resolved in accordance with the following decreasing order of priority: i. this

Agreement; ii. The Program Schedules; iii. the Exhibits; and iv. such other referenced or incorporated documents.

- d) Severability. Should any provision herein be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable in any respect, in whole or in part, the offending provisions shall not affect the enforceability of the remaining provisions of this Agreement.
- e) Amendment of Agreement to Comply with Law. Tivity Health and Facility acknowledge and agree that Tivity Health may amend this Agreement in order to comply with applicable law, by sixty (60) days' prior written notice to Facility, and that Facility may elect to withdraw its acceptance with regard to such amendment within such sixty (60) day period if such amendment would have a demonstrable material adverse effect on Facility. If Facility elects not to accept such amendment, this Agreement will terminate and each Party's obligations shall cease with regard to the other, except that Tivity Health shall be obligated to pay, within thirty (30) days of the effective date of termination, any unpaid amounts owed to Facility.
- f) Applicable Law. The validity of this Agreement and of any of its terms and provisions, as well as the rights and duties of the Parties hereunder, shall be interpreted and enforced pursuant to and in accordance with the laws of the State of Tennessee.
- g) Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.
- h) Entire Agreement. This Agreement, together with any Exhibits and Schedules hereto, represents the entire understanding and agreement among the Parties with respect to the subject matter hereof and shall supersede any prior writings, understandings, or agreements among the Parties with respect to the subject matter hereof.
- i) Modification. Unless specifically set forth in this Agreement, no alteration, amendment, waiver, cancellation or any other change in any term or condition of this Agreement shall be valid or binding on either Party unless the same shall have been mutually agreed to in writing by both Parties.
- j) Sale of Business/Transfer of Assets. If Facility desires to sell or transfer all or substantially all of its assets or business to another entity, or transfers to a third party a controlling interest in its assets or business, Facility shall so advise Tivity Health in writing at least ninety (90) days' prior to the sale or transfer date. Upon notification of sale, Tivity Health may, in its sole discretion, choose to terminate the Agreement effective on date of sale or extend the terms of the Agreement to the new entity.
- k) Authority to Sign. The individual signing below on behalf of Facility represents and warrants that he/she has all requisite corporate power and authority to enter into this Agreement on behalf of Facility.

PROGRAM SCHEDULE

Program Name: Tivity Health Fitness Reimbursement Program

Program Description: The Program is offered to Members of the Sponsoring Organization. The Program includes basic fitness membership services, which may include other Tivity Health services, for Members; also included in the Program are all facets presented in the Duties and Obligations of Facility section of the Agreement.

1. Program Duties and Obligations of Facility. In exchange for the compensation to be paid by Member, Facility shall perform the following services:
 - a) Program Implementation Process. To prepare for Program commencement, Facility agrees to participate in the following 1) coordination with Tivity Health of electronic reporting containing the required data elements; 2) Tivity Health-scheduled and led training.
 - b) Program Enrollment. Facility shall enroll Members in the Program in accordance with the protocol defined in the Reference Guide or other protocol mutually agreed between the Parties.
 - c) Reporting Obligations of Facility. Facility shall report Program utilization to Tivity Health on a monthly basis. Program utilization reporting shall consist of all 1) Program forms completed during the previous month as applicable; 2) visits for the month; 3) amount each active Member is paying Facility. Facility shall prepare a report of daily visits and utilization from the month summarizing activity and containing the required data elements and submit it electronically to Tivity Health no later than the fifth (5th) day of the following month. The required file format, data elements and submission options are defined in the Reference Guide. The Parties to this Agreement shall work cooperatively to establish correct and acceptable electronic monthly utilization data reporting; Tivity Health may provide technical support to Facility if necessary. **NOTE: This reporting requirement is important for member satisfaction and all member complaints related to incorrect or missing reporting shall be referred directly to Facility and Facility shall resolve such complaints within 10 business days.**
 - d) Facility Staff Training. Facility staff who have regular contact with Members are required to participate in Tivity Health training prior to commencement of the Program and as needed thereafter to account for staff turnover and to ensure proper service for Members.
 - e) Dispute Resolution. Facility agrees that in the event any disagreement arises between Facility, Tivity Health and/or Sponsoring Organization on any matter whatsoever, Tivity Health, Facility, and/or Sponsoring Organization or any subset thereof shall work with the other party(ies) to reach a resolution of the disagreement, and no one shall involve Members in any matter concerning such a disagreement. Facility shall not contact a member for any reason related to a dispute between Tivity Health, Facility and/or Sponsoring Organization.

In the event a dispute arises between Facility and Member, Facility agrees to use commercially reasonable efforts in resolving any disputes.
 - f) One-Week Trial. Facility shall offer a minimum of a one-week trial membership for each eligible Member at no cost to Member, Sponsoring Organization or Tivity Health.
2. Program Rates and Fees. Facility agrees to offer Members eligible for the Tivity Health Fitness Reimbursement Program discounted rates as provided in Exhibit A. Facility is encouraged to provide at least 20% discount in monthly membership rate and waive the enrollment/initiation fees to influence Member's choice of facility.
 - a) Rate Changes. Facility may change the Program Discounted Monthly Membership Rate and Program Discounted Enrollment/Initiation Fee effective upon acknowledgement by Tivity Health of notification by Facility.