



Dear Prospective Healthways Provider:

Healthways is pleased to present you with the attached Healthways Provider Agreement, providing an opportunity for you to participate in the Healthways provider network. Please note that the terms and conditions of the agreement, including payment, are to remain strictly confidential. Healthways' execution of your submitted agreement will be contingent on how your amenities and location fit into the Healthways network. Following receipt of the signed agreement, Healthways will contact you regarding your opportunity to join the provider network.

Please use this fax cover sheet to fax the entire signed agreement and a copy of your location's certificate of insurance to Healthways. To confirm receipt of your agreement, please call 1-800-295-4993 ext. 5182. Please mail the original documents to: Healthways Contracts Department, 1445 S. Spectrum Blvd., Suite 100, Chandler, AZ 85286. We look forward to receiving your agreement application.

Confidential Fax Transmittal

To:	Fax Number:	Phone Number:
Healthways Contracts Department	602-391-2138	1-800-728-8492 ext. 5182
From:		
Number of Pages (including cover sheet):		
Re: Application for Participation in the Healthways Provider Network		

Yes, I am interested in participating in the Healthways provider network. I am attaching the following documents for consideration:

- ✓ Entire signed, completed contract agreement
 - Sign and date the agreement
 - Complete one Exhibit A-1 for each location covered under the agreement (you may make copies of the exhibit if necessary)
 - Complete Exhibit A-2
- ✓ Certificate of insurance evidencing a minimum of \$1M general liability insurance (Must show current policy number, expiration date, limits of liability and insured premises)

Comments: _____

1445 S. Spectrum Blvd., Suite 100 | Chandler, AZ 85286 | 800.295.4993

HEALTHWAYS PROVIDER AGREEMENT

This Agreement is entered into between **AMERICAN HEALTHWAYS SERVICES, INC.**, for itself and on behalf of its subsidiaries (hereinafter referred to as "Healthways"), a Delaware corporation, and the undersigned Facility whose name and other identifying information appear herein ("Facility"). This Agreement replaces and supersedes any other agreement between or among Facility and Healthways and its subsidiaries and affiliates for the Healthways 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, Healthways has entered into agreements with health plans and other sponsoring organizations to provide fitness services, benefits, and programs to eligible Members within an established network of fitness centers;

WHEREAS, Facility offers health and fitness programming and services;

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

AGREEMENT

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:

1. **Definitions.** Unless the context otherwise requires, the terms defined in this Section shall have the meanings specified for all purposes of this Agreement.
 - a) **"Account Manager"** shall mean a Healthways employee or contractor overseeing the Program contemplated by this Agreement. As the official liaison between Healthways and Sponsoring Organization, and Healthways and Facility, this Account Manager will be responsible for implementation and management of the Program.
 - b) **"Agreement"** shall mean this Healthways Provider Agreement between Healthways and Facility and any amendments thereto.
 - c) **"Confidential Information"** shall mean any Sponsoring Organization membership information or Healthways business expertise, manuals, guides, videos, contracts, trade secrets, and financial projections, including compensation to be made to Facility pursuant to the terms of this Agreement, and any Facility membership information, business expertise, manuals, guides, contracts, trade secrets, and financial projections, to which Healthways may obtain access as part of this Agreement. **Healthways acknowledges that Facility is subject to the South Dakota Public Records Act and that this definition is intended to be as inclusive as possible, subject to the limitations of South Dakota Codified Law, Title 1, Chapter 27.**
 - d) **"Facility"** shall mean Facility and any additional participating locations of Facility as mutually agreed to and set forth in Exhibit A, which have entered into this Agreement with Healthways to be part of its Healthways Network, on the terms and conditions set forth herein.
 - e) **"Healthways Network"** shall mean, collectively, all participating locations that have entered into a contract agreement with Healthways to provide the Program.

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- f) "Member" shall mean a Sponsoring Organization member, employee, dependent or other person eligible for the Program as determined by the Sponsoring Organization's criteria.
- g) "Program" means all of the Healthways programs described in the Program Schedules.
- h) "Program Schedule" shall mean each, and "Program Schedules" shall mean all, of the program schedules attached to this Agreement, and incorporated herein by reference, that describe the Healthways programs provided through each program's Healthways Network to Members of Sponsoring Organizations. Healthways and Facility acknowledge and agree that Healthways may amend this Agreement, from time to time, by 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 elect to withdraw its participation in a modified or new Program Schedule within such sixty (60) day period if such modified or new Program Schedule would have a material adverse effect on Facility.
- i) "Reference Guide" shall mean the procedures and guidelines established by Healthways for participation in the Healthways 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 Healthways and updated copies shall be provided to Facility from time to time.
- j) "Sponsoring Organization" shall mean any organization, employer group, health plan or subset thereof that is contracted with Healthways 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. Healthways shall provide Sponsoring Organization information to Facility, and such Sponsoring Organization information shall be incorporated herein by reference.
- k) "Term" shall mean 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 Healthways Network. In order to become and remain a participant in the Healthways Network, Facility shall throughout the Term of this Agreement comply with the Reference Guide, including all operations, protocols, policies, procedures, follow-up guidelines, and health and safety standards of Healthways. Healthways' execution of this Agreement shall serve as notice of Facility's acceptance into the Healthways Network.
- b) Member Program Rights. Members shall be entitled, at no charge, including those fees normally associated with initiation or monthly dues, to establish a basic fitness membership with unrestricted hours at Facility, provided that such individual remains a Member and this Agreement remains in effect. The Program excludes all those programs and services offered by Facility which carry additional charges beyond basic fitness membership services, such as racquetball, tennis, massage therapy, lessons related to recreational sports, tournaments, and similar fee-based activities. Facility shall not impose any charges on Members for Program services covered under this Agreement. If a Member requests services after being informed by Sponsoring Organization or Facility that the services are not covered under the Program, the Member shall be solely liable for payment.
- c) Compliance with Health and Safety Standards. Facility shall comply with all health and safety standards as outlined in the Reference Guide.
- d) Joint Marketing and Public Relations. Facility agrees to allow Healthways and Sponsoring Organization to use the name, address, phone, amenities and web site information provided 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, Healthways, or Sponsoring Organization shall be approved by Healthways in writing prior to their distribution. Facility agrees to make best efforts to coordinate all media communications through the Healthways Public Relations Department,

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and immediately inform the Healthways Account Manager of all media inquiries regarding the Program, Healthways, or Sponsoring Organization.

- e) Limited Facility Use of Healthways Trademarks, Logos, and Copyrighted Materials. Facility agrees that for the Term of this Agreement, all external marketing and advertising of all Healthways trademarked and service marked names, logos, identities, formats, and materials, including the Program name, will first be approved in writing by Healthways, and that at the conclusion of this Agreement, Facility shall cease all advertising, marketing, and references to the same. At no time during the Term of this Agreement shall Facility refer to Healthways-created programs and/or classes under any title or name other than Program name or other authorized Healthways-owned trademarks. Upon termination of this Agreement, Healthways shall retain all rights to its trademarked and service marked names, logos, identities, formats, and materials, including the Program name, and Facility shall have no further right to use the same.
- f) Customer Service. Facility agrees that in the event any disagreement arises between Facility, Healthways and/or Sponsoring Organization on any matter whatsoever, Healthways, 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.
- g) Facility Meeting Space and Participation. Subject to the approval of Facility, Sponsoring Organization shall be able to display Sponsoring Organization marketing brochures, banners, posters, et cetera within Facility. Additionally, subject to the approval of Facility, Sponsoring Organization may hold enrollment meetings, health fairs, health and wellness classes, and public relations activities within Facility. All such functions are restricted to availability and must be scheduled with reasonable preparation time. Approval for such requests will not be unreasonably withheld. All distribution of any Sponsoring Organization materials, including brochures, banners, and posters, as well as any activity or event shall be coordinated directly with and approved by the Healthways Account Manager.
- h) Quality Assurance Program. As a provider of fitness services to Members, Facility acknowledges the importance of quality management systems in providing quality customer service. Therefore, Facility shall, with the support of Healthways, cooperate in a quality assurance program to ensure quality customer service. Such cooperation shall include compliance with Facility operations reviews and corrective procedures as defined in the Reference Guide.
- i) Member Experience. Facility agrees to offer and participate in activities designed to encourage the frequent and ongoing participation of Members enrolled in the Program. Such activities may be a part of Facility's existing member retention efforts, or may be based on Healthways' Member retention program. Facility shall work cooperatively with Healthways to implement strategies to manage the Healthways experience within the Facility.
- j) Research Studies. Facility shall notify Healthways of any and all research or clinical studies of Members or the Program. Facility shall not proceed with such studies without the prior written approval of Healthways. Facility shall provide study findings and results to Healthways prior to any publication or presentation of such findings or results.
- k) Membership Conversion. Facility agrees that Members eligible for a fully subsidized Program who are currently members of Facility will be able to inactivate or "freeze" their memberships for the duration of this Agreement and pay no monthly dues, cancellation fee, or other fees during the inactivation period so that they may attend Facility at no 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.
- l) Healthways Network Reciprocity. For the Term of this Agreement, all Members utilizing the Program will be allowed, after completing Program enrollment, to visit any and all Healthways Network participating locations offering the Healthways Program for which they are eligible. All participating locations, including the undersigned, will accept Members and be compensated in accordance with the

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terms of this Agreement. Reciprocity rights under this Agreement shall not include locations of Facility or other affiliated facilities not specifically set forth in Exhibit A.

3. Compensation. Facility shall be compensated by Healthways for Program services offered to Members during the Term of this Agreement as follows:
 - a) Compensation for Program Services. As payment for Program services, Healthways shall pay Facility according to the terms set forth in each applicable Program Schedule attached hereto for services provided on or after the Program Rollout Date. Compensation paid by Healthways is inclusive of any and all taxes which Facility may be required to pay to any governmental authority.
 - b) Financial Transaction. Healthways will make payment to Facility via check or other payment procedure as may be mutually agreed upon by Facility and Healthways.
4. Term.
 - a) Initial Term. This Agreement will commence upon execution by the Parties, and shall continue in full force and effect until December 31, 2011 ("Initial Term"), subject to cancellation as provided in the Cancellation section below.
 - b) Program Rollout Date. The Program Rollout Date shall be a date following the commencement of this Agreement, communicated to Facility by Healthways. Notwithstanding any other provision of this Agreement, Facility shall not permit Members to use the Program prior to the Program Rollout Date.
 - c) Renewal of Agreement. This Agreement shall be automatically renewed for successive one year terms after the initial Term unless either party gives written notice of termination at least sixty (60) 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. Healthways 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 poor usage of Facility by Members or upon termination or change in terms of a Sponsoring Organization's contract with Healthways. In the event Healthways removes Facility from the Healthways Network, Facility shall be compensated per this Agreement for services rendered up to and including the date of cancellation.
 - 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. Either party may terminate this Agreement by providing the other party with a minimum of thirty (30) days prior written notice in the event the other party commits a material breach of any provision of this Agreement. The notice must specify the nature of said material breach. The breaching party shall have 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) days notice period, notwithstanding any other provision in this Agreement.
 - d) Unresolved Corrective Action. If the corrective action process defined in the Reference Guide has been exhausted, and an issue(s) remains unresolved, Healthways reserves the right to cancel this Agreement upon thirty (30) days written notice to Facility.

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- c) Early Termination. Notwithstanding any other provision of this Agreement, Healthways may terminate this Agreement at any time upon notice to Facility due to 1) failure of Facility to maintain necessary insurance coverage as required by this Agreement; 2) closure of Facility, resulting in denial of Program services to Members, without a minimum of thirty (30) days prior written notice to Healthways; 3) fraudulent Program utilization reporting by Facility; or 4) Healthways' reasonable determination that the health or safety of Members may be in jeopardy if this Agreement is not terminated.
 - f) Default. In the event that Facility defaults under this Agreement or the Agreement is terminated pursuant to the Material Breach Section or the Early Termination Section above, Healthways may, at its sole discretion and without limiting other remedies available to Healthways at law or in equity, withhold payment of any amounts otherwise due and payable to Facility under this Agreement.
6. Confidentiality. Healthways acknowledges that Facility is subject to the South Dakota Public Records Act and that information exchanged between Healthways and Facility may be subject to disclosure under South Dakota Codified Law, Title 1, Chapter 27. To the extent that information is not subject to disclosure under the act, all Confidential Information between Healthways and Facility, including the provisions of this Agreement, 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, except where any such Confidential Information is subject to disclosure by Facility pursuant to South Dakota Codified Law, Title 1, Chapter 27. Upon completion of this Agreement or in the event of its termination, Facility shall return to Healthways all of Healthways' materials used in the provision of the Program, including the Reference Guide and Member files.
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, 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 Healthways and Sponsoring Organization.
8. Enforceability. Facility acknowledges and agrees as follows:
- a) The amount of payment by Healthways pursuant to the Agreement shall not limit the amount of damages, if any, to which Healthways may be entitled as a result of the breach by Facility of any of the provisions of this Agreement; and
 - b) 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.
9. 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 Healthways 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 Healthways thereafter. **PLEASE ATTACH A COPY OF FACILITY LIABILITY POLICY FACE SHEET.**
10. 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, addressed as set forth below,

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If to Healthways:

Healthways
Contracts Department
1445 South Spectrum Blvd., Suite 100
Chandler, Arizona 85286
Fax: 602-391-2138

If to Facility (please complete if different from contact information in Exhibit A):

Name

Address

Address

Phone

Email

Fax

Facility shall provide a minimum of ten (10) days notice to Healthways 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.

11. 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 an unrestricted business license as required by law, not subject to stipulations, practice limitations, probationary periods, temporary supervision requirements, or other limitations, and covering all aspects of services offered such as exercise, recreational safety, health, beauty, and food service, and occupational health and safety requirements, and meet regulatory standards in the state and jurisdiction in which Facility operates.
- c) Severability. Should any one or more of the provisions of this Agreement or of any agreement entered into pursuant to this Agreement be determined to be illegal or unenforceable, all other provisions of this Agreement and of each other agreement entered into pursuant to this Agreement shall be given effect separately from the provision or provisions determined to be illegal or unenforceable and shall not be affected thereby.
- d) Amendment of Agreement. This Agreement may be amended by Healthways upon written notice to Facility if necessary in order to comply with applicable law. Healthways and Facility acknowledge and agree that Healthways may amend this Agreement, from time to time, 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 material adverse effect on Facility.
- e) Choice of Law; Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of **South Dakota** without giving effect to any choice of law or conflict of law provision or rule (whether of the State of **South Dakota** or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of **South Dakota**. The parties agree that the proper venue for any proceeding at law or in equity shall be **Pennington County, South Dakota**, and the parties waive any right to object to such venue.
- f) 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

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such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

- g) Integration. 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.
- h) Sale of Business/Transfer of Assets. If Facility desires to sell or transfer its business to another entity, Facility shall so advise Healthways in writing at least ninety (90) days prior to the sale or transfer date. Facility warrants and covenants this Agreement will be part of the sale or transfer, and will be assumed by the new entity and that the new entity will honor and be fully bound by the terms and conditions of the Agreement. Notwithstanding the above, upon notification of sale, Healthways 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.
- i) 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.

IN WITNESS WHEREOF, the parties have agreed as set forth above.

AMERICAN HEALTHWAYS SERVICES, INC.
a Delaware corporation

CITY OF RAPID CITY
Name of Facility

Signature

By: _____
Signature Mayor

Mary Jo Ferron

ATTEST:

~~Printed Name~~ FINANCE OFFICER

Director, Fitness Programs

(SEAL)

~~Printed Name~~

Date

Date

PROGRAM SCHEDULE

Program Name: Mature Market Fully Subsidized Program

Program Brands: SilverSneakers® Fitness Program, SilverSneakers® Private Brand, and other brand names for the Mature Market Fully Subsidized Program communicated to Facility by Healthways from time to time

Member Type: Medicare, Group Retirees and Older Adults

Program Description: The Program is offered to Members of the Sponsoring Organization. The Program includes SilverSneakers exercise classes and basic fitness membership services for Members provided through a network of facilities; also included in the Program are all facets presented in the Duties and Obligations of Facility Section of the Agreement.

- I. Program Duties and Obligations of Facility. In exchange for the compensation to be paid by Healthways, Facility shall perform the following services:
 - a) Program Implementation Process. To prepare for Program commencement, Facility agrees to participate in the following: 1) an introductory session given by Healthways for Facility management and staff; 2) coordination with Healthways of electronic reporting containing the required data elements; 3) Healthways-scheduled and led training in-services for representatives from applicable Facility departments; 4) Healthways' evaluation of Facility conducted by the Account Manager prior to the Program Rollout Date to certify Facility's preparedness to provide Program; and 5) an initial Program Enrollment Process, which shall require representatives from Facility to enroll new Members at Facility.
 - b) Member Access. Facility shall ensure that Members have access to Facility only during those hours when Facility is appropriately staffed in accordance with professionally-recognized standards of fitness and wellness programs, and that Facility is so staffed a minimum of six (6) staffed hours per day, Monday through Friday, between the hours of 5:00 a.m. to 5:00 p.m. Facility agrees to inform Members that the Program is only provided during staffed hours. Use of Facility during non-staffed hours is strictly between Facility and the Member. Visits that occur outside of Facility's staffed hours are not payable as Program Visits.
 - c) Program Enrollment Process. Enrollment in the Program includes an organized series of introduction and information forms and processes that are to be completed by Members on their first visit to Facility before they begin participating in the Program. The Program Enrollment Process may be amended by Healthways from time to time. Facility staff shall administer the Program Enrollment Process for all Members upon their first visit to Facility and prior to participation in the Program. The Program Enrollment Process will include the following procedures in accordance with the Reference Guide: 1) the Member shall complete the Program enrollment forms; 2) the Member shall be cleared for exercise prior to actual participation in the Program; 3) the Member shall receive a facility membership card; 4) the Member shall receive a fitness demonstration for safe usage of exercise equipment and amenities, and an orientation to Facility programs and offerings. Healthways shall supply master enrollment forms to Facility. Facility shall bear the cost of preparing and supplying the enrollment forms, including the cost of membership cards if necessary, and will have enrollment forms available for interested Members during all business hours.
 - d) Reporting Obligations of Facility. Facility shall report Program utilization to Healthways on a monthly basis. Program utilization reporting shall consist of all a) Program forms, including enrollment forms completed during the previous month, and b) visits for the month.
 - 1) At the end of each month, 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 Healthways no later than the fifth (5th) day of the following month. The required file format and data elements are defined in the Reference Guide. The parties to this Agreement shall work

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cooperatively to establish correct and acceptable electronic monthly utilization data reporting; Healthways may provide technical support to Facility if necessary.

- e) SilverSneakers Classes. SilverSneakers Classes are Healthways-owned and managed group exercise classes, and include the Healthways-owned and registered trademark name "SilverSneakers" and the accompanying logo, and all Healthways/SilverSneakers materials describing class formats and structure. Facility shall provide Healthways' group exercise class, SilverSneakers Muscular Strength and Range of Movement, a minimum of two days per week on non-consecutive days. All SilverSneakers classes shall be offered during Members' primary hours of utilization. Facility agrees to add additional classes if the current classes remain at capacity for four (4) or more consecutive weeks, or as demand dictates, and will solely bear the costs of adding such classes. Facility and Healthways agree to work cooperatively to add optional SilverSneakers classes for more advanced students as needed.
- f) SilverSneakers Class Equipment. Healthways shall ensure that Facility has all required equipment for the classes available by the Program Rollout Date, including chairs, elastic tubing with handles, hand-held weights and appropriate music, and shall provide such equipment to Facility as necessary. Following the Program Rollout Date, Facility shall be responsible for maintaining and replenishing the equipment, and shall comply with the exact specifications for this equipment as defined in the Reference Guide. In the event this Agreement is cancelled for any reason prior to the completion of the initial Term of the Agreement, Healthways shall have the option of retaining ownership of all equipment provided to Facility by Healthways.
- g) Instructor Training Workshop. Healthways will hold an instructor training workshop to provide Facility instructors with the necessary guidelines to teach the SilverSneakers class according to Program specifications. The training workshop, which will last approximately four (4) hours, will be led by a Healthways representative and will include the Healthways-designed Instructor Manual, class protocols, formats, choreography and Healthways recognition as an official SilverSneakers instructor. Two (2) instructors from Facility will be able to attend the initial workshop at no charge; additional instructors who pre-register may attend the initial workshop for a nominal fee.
- h) Facility Staff Qualifications. All fitness professionals who come in contact with Members shall be qualified for their respective positions. All group exercise instructors must 1) possess current CPR certification, 2) be eighteen years of age or older, and 3) have either a) a two or four year degree in physical activity education or a related field with ten hours per year of continuing education credits, or b) possess a nationally recognized certification that is available to the general population and requires continuing education courses and CPR certification as criteria for recertification. Each instructor teaching a SilverSneakers group format class must complete the Healthways instructor training workshop for that class prior to teaching the class and once every four years thereafter, and attend a minimum of one Healthways sponsored continuing education workshop annually.
- i) SilverSneakers Senior AdvisorSM Program. Facility shall designate one staff member as the SilverSneakers Senior Advisor, who shall serve as a liaison to Healthways and as a resource person for SilverSneakers Members utilizing the Healthways Network, and is knowledgeable concerning all services provided by Facility to Members. The SilverSneakers Senior Advisor shall be available during those hours that most closely follow the Members' primary hours of utilization. Healthways will schedule and provide mandatory training for SilverSneakers Senior Advisors as well as updated training sessions.
- j) Guest Pass Program. Sponsoring Organization may implement a guest pass program. Guests shall be required to complete a Guest Pass and Physical Activity Waiver prior to utilizing Facility. Properly documented guest visits will be counted the same as Program Visits for purposes of calculating Facility's compensation.
- k) Program Training for Facility Staff. Facility staff, including front desk staff, group exercise instructors, fitness professionals, SilverSneakers Senior Advisors, and other Facility employees who have regular contact with Members are required to attend Healthways training in-services prior to

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commencement of the Program and as needed thereafter to account for staff turnover and to ensure proper service for Members.

2. Exclusivity. Facility agrees to an exclusive relationship with Healthways during the Term of this Agreement for all fully subsidized Medicare memberships, programs, products, and services, and Facility will not contract with any health plan, insurance plan, or third party benefits administrator to provide services that may compete in any way with the services being offered by Healthways. For the purposes of this Exclusivity provision, "fully subsidized" shall mean that the Member does not provide any direct payment to Facility.
3. Services to Members of Sponsoring Organization. Facility agrees that during the Term and for a period of one (1) year after the completion or termination of this Agreement, Facility shall not contract to provide a fully subsidized fitness benefit to Members of the Sponsoring Organization which has contracted with Healthways to provide the Program in a geographic area proximate to Facility, or engage in any competing fully subsidized fitness network business (defined as the ownership, management, or consultation of programs or services similar to those covered by this Agreement).
4. Insurance. Facility shall cause American Healthways Services, Inc., to be named as an additional insured on its general liability insurance policy "for all services provided under the contract agreement between Healthways and the insured." Facility shall provide such certificate of insurance to Healthways no later than thirty (30) days after Program Rollout Date and within ten (10) days of request by Healthways thereafter.
5. Medicare Compliance for Program(s) Provided to Medicare Recipients. In recognition that Sponsoring Organization and its subcontractors may be obligated to comply with all applicable federal governmental regulations regarding services to Medicare members, Healthways and Facility mutually agree to comply with the following for services provided to Medicare Members.
 - a) Compliance with Federal and State Laws. Healthways and Facility acknowledge that payments made to Facility under this Agreement may be made from federal funds. Therefore, in connection with all services rendered under the Agreement, Healthways and Facility agree to comply with the requirements of the contracts between Healthways' customers and CMS (the "CMS Contracts"), and all applicable federal and state laws and regulations and CMS guidance and instructions, including, but not limited: to all Medicare laws, such as the Medicare Modernization Act and the regulations contained in 42 CFR Parts 422 and 423; all applicable state and federal privacy and security requirements, including but not limited to the confidentiality, privacy and security provisions for Medicare health plans contained in the regulations found at 42 CFR 422.118 and 42 CFR 423.136; and all applicable laws, regulations and guidance designed to prevent fraud, waste or abuse of federal funds, including the False Claims Act (31 U.S.C. 3729 et seq.), the Anti-kickback statute (Social Security Act § 1128B(b)), and HIPAA administrative simplification rules (45 CFR Parts 160, 162, and 164).
 - b) Right to Inspect. Healthways and Facility acknowledge and agree that the Department of Health and Human Services (HHS), the Comptroller General, or their designees, or any applicable state or federal governmental entity, or Sponsoring Organization, shall have the right to inspect, evaluate, and audit any pertinent contracts, books, documents, papers, and records involving transactions related to services provided under this Agreement to Medicare Members. Healthways and Facility shall maintain accurate records of compliance with this Agreement ("Records") in accordance with recognized accounting and document retention practices and in a format that shall permit audit. Such Records shall be maintained by Healthways and Facility for a period of ten (10) years following expiration or termination of this Agreement. This right to inspect shall extend for a period of ten (10) years from the termination date of the CMS Contracts (or applicable CMS Contract), or the date of completion of any audit in connection with the Medicare health plans, whichever is later. Healthways and Facility will make its books and other records available in accordance with 42 CFR 422.504(i)(2) and 42 CFR 423.505(i)(2) and any other applicable laws and regulations. In the event Facility is unable to retain such records for ten (10) years, Facility shall provide the records to Healthways at the conclusion of this Agreement and Healthways shall retain the records on behalf of Facility.

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- c) External Review. Healthways and Facility agree to cooperate with all independent quality review and improvement organization activities required by CMS and/or Sponsoring Organization pertaining to the provision of services to Sponsoring Organization Members.
- d) Privacy/Confidentiality. Healthways and Facility agree to safeguard the privacy of any information that identifies a particular Sponsoring Organization Member in accordance with federal and state laws and Sponsoring Organization policy and to maintain Sponsoring Organization Members' records in an accurate and timely manner.
- e) Non-Discrimination. Healthways and Facility agree to not discriminate against any person because of race, sex, age, marital status, national origin, religion, color, citizenship, disability, health status, health insurance coverage or veteran status. As applicable, Healthways and Facility agree to comply with: (1) Title VI of the Civil Rights Act of 1964 as implemented by regulations at 45 CFR Part 84; (2) The Age Discrimination Act of 1975 as implemented by regulations at 45 CFR Part 91; (3) The Americans With Disabilities Act; (4) The Rehabilitation Act of 1973; (5) Other laws applicable to recipients of federal funds; and (6) All other applicable laws and rules. This Agreement incorporates by reference and is subject to the following regulations of the Office of Federal Contract Compliance Programs, Department of Labor: 41 C.F.R. §60-1.4, Equal Opportunity Clause; 41 C.F.R. §60-250.5, Equal Opportunity Clause and Affirmative Action Clause for Special Disabled Veterans and Veterans of the Vietnam Era; 41 C.F.R. §60-741.5, Equal Opportunity Clause and Affirmative Action Clause for Handicapped and Disabled Persons. Healthways and Facility agree not to discriminate against any Medicare Advantage Member on the basis of any factor that is related to health status, including, but not limited to the following: (1) medical condition, including mental as well as physical illness; (2) claims experience; (3) receipt of health care; (4) medical history; (5) genetic information; (6) evidence of insurability, including conditions arising out of acts of domestic violence; and (7) disability.
- f) Exclusion of Certain Persons. Healthways and Facility each certify that neither it nor any of its principals (officers, directors, owners, partners, key employees, principal investigators, researchers or management or supervisory personnel) (Principals) is presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in any federal grant, benefit, contract or program (including, but not limited to, Medicare and Medicaid) by any Federal department or agency. Facility agrees to provide immediate written notice to Healthways if it learns at any time that the certification herein was erroneous when submitted or if, during the term of this Agreement, it, or any of its Principals, is debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in any federal grant, benefit, contract or program. If subcontracting is permitted by this Agreement, Healthways and Facility agree that its subcontractors will comply with the foregoing covenant. Healthways and Facility agree that debarment, suspension, proposed debarment or suspension, ineligibility or exclusion of either party, or any of its Principals or subcontractors, shall constitute cause for immediate termination of this Agreement. Healthways and Facility further agree to comply with all Federal anti-terrorism rules and regulations. Each party's signature below shall serve as certification that, to the best of the party's knowledge, the party (a) is not, (b) has not been designated as, (c) is not owned, affiliated, or controlled by, and (D) does not support, assist or aid a suspected terrorist organization or individual as defined by Federal law including, but not limited to, Executive Order 13224.
- g) Hold Harmless. With the exception of charges for services not covered under this Agreement, Healthways and Facility shall in no event bill, charge, collect a deposit from, or hold liable for any debts of Healthways or Facility, Members or any applicable government agency. In the event a Member provides payment to Facility for services provided pursuant to this Agreement, Healthways retains the right to deduct an equivalent amount from the compensation payable to Facility for the purpose of Member reimbursement. All obligations under this Section shall survive the termination of this Agreement, regardless of the cause giving rise to such termination, including, without limitation, insolvency of either party or breach of this Agreement.
- h) Waiver of Claims and Indemnity. Unless caused by the negligence or intentional wrongdoing of Healthways, Sponsoring Organization, or any applicable government agency, Facility hereby waives and releases all claims against Healthways, Sponsoring Organization, and applicable government

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agency, and/or any of their respective officers, directors, shareholders, employees, or representatives, in respect of a Member participating in the Healthways Network, and Healthways, Sponsoring Organization, and government agency shall not be liable for injury to person or damage to property sustained by Sponsoring Organization's Members as a result of participation in any activities which may be undertaken in or sponsored by Facility, including, but not limited, to any accident, or from any occurrence, or act, or from negligence or omission on the part of Facility or any employee or agent thereof. Facility shall indemnify, defend, and hold harmless Healthways, Sponsoring Organization, Members, and applicable government agency and their respective officers, directors, shareholders, employees, and representatives, on a current basis, from any and all claims, demands, suits, liabilities, damages, obligations, and expenses (including without limitation reasonable attorneys' fees) arising out of or in any way related to any negligent act or other wrongful conduct by Facility under this Agreement, except to the extent caused by the negligence or intentional wrongdoing of Healthways, Sponsoring Organization, or applicable government agency.

Healthways and Facility agree that to the extent permitted by law, both parties shall cooperate with one another in the defense of any claim arising from alleged tortious acts of their respective officers, shareholders, employees, or agents and to give one another written notice of any claims covered by this paragraph. All obligations under this Section shall survive the termination of this Agreement, regardless of the cause giving rise to such termination, including, without limitation, insolvency of either party or breach of this Agreement.

- i) Professionally-Recognized Standards. Healthways and Facility shall provide the Program to Sponsoring Organization Members in a manner consistent with quality assurance standards, the Reference Guide, and professionally-recognized standards of fitness and wellness programs.

6. Compensation.

- a) Program Utilization Payment. Healthways shall compensate Facility \$3.00 per Program Visit, up to a maximum of \$30.00 per Program Participant per month. Program Visit shall mean one distinct occasion, recorded and reported by Facility in accordance with procedures specified in the Reference Guide, during which a Member enters Facility to enroll in or use the Program. Healthways shall not compensate Facility for more than one Program Visit per day. Program Participant shall mean a Member, who, after completing the Program Enrollment Process, has used the Program at a facility in the Healthways Network at least once in a given month.
- b) Minimum Payment Guarantee. With the exception of the month in which Program Rollout occurs, Facility is guaranteed the greater of (1) the Program Utilization Payment above, or (2) a minimum monthly payment of \$250.00 per location of Facility identified in Exhibit A. For the month in which Program Rollout occurs, the Minimum Payment Guarantee will be pro-rated based on the number of days remaining in the month beginning with the Program Rollout Date.
- c) Payment Schedule. Payment shall be either mailed or processed for direct deposit by Healthways by the last day of the month following the month in which Program Visits occurred ("following month"), provided Healthways receives Facility's monthly utilization data by the fifth (5th) day of the following month. In the event utilization data is not received in a timely manner, payment may be delayed. Payment for monthly utilization received after the last day of the following month will be denied for non-timely filing and will not be eligible for reimbursement or appeal. Appeals must be brought to the attention of Healthways within thirty (30) days of receipt of payment or remittance report; appeals brought at a later date will not be eligible for review.

PROGRAM SCHEDULE

Program Name: Commercial Fully Subsidized Program

Program Brands: Prime® and other brand names for the Commercial Fully Subsidized Program communicated to Facility by Healthways from time to time

Member Type: Commercial

Program Description: The Program is offered to Members of the Sponsoring Organization. The Program includes basic fitness membership services for Members provided through a network of facilities; 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 Healthways, Facility shall perform the following services:
 - a) Program Implementation Process. To prepare for Program commencement, Facility agrees to participate in the following: 1) an introductory session given by Healthways for Facility management and staff; 2) coordination with Healthways of electronic reporting containing the required data elements; and 3) Healthways-scheduled and led training for representatives from applicable Facility departments.
 - b) Introductory Orientation for Prime Members. Facility shall offer the Program to all Members identified by Healthways as eligible for the Program. In addition to a basic fitness membership at no cost to the Member, Facility shall provide Members with an added value program component (i.e., a thirty (30) minute personalized orientation session or personal training session), based on Healthways' Prime Program training of Facility staff.
 - c) Reporting Obligations of Facility. Facility shall report Program utilization to Healthways on a monthly basis. Program utilization reporting shall consist of all a) Program forms, and b) Program Visits for the month.
 - 1) At the end of each month, 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 Healthways no later than the fifth (5th) day of the following month. The required file format and data elements are defined in the Reference Guide. The parties to this Agreement shall work cooperatively to establish correct and acceptable electronic monthly utilization data reporting; Healthways may provide technical support to Facility if necessary.
 - d) Program Training for Facility Staff. Facility staff who have regular contact with Members are required to participate in Healthways training prior to commencement of the Program and as needed thereafter to account for staff turnover and to ensure proper service for Members.
2. Compensation.
 - a) Program Utilization Payment. Healthways shall compensate Facility \$3.50 per Program Visit, up to a maximum of \$35.00 per Program Participant per month. Program Visit shall mean one distinct occasion, recorded and reported by Facility in accordance with procedures specified in the Reference Guide, during which a Member enters Facility to enroll in or use the Program. Healthways shall not compensate Facility for more than one Program Visit per day. Program Participant shall mean a Member, who, after completing the Program Enrollment Process, has used the Program at a facility in the Healthways Network at least once in a given month.
 - b) Payment Schedule. Payment shall be either mailed or processed for direct deposit by Healthways by the last day of the month following the month in which Program Visits occurred ("following month"), provided Healthways receives Facility's monthly utilization data in a timely manner. In the event

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utilization data is not received in a timely manner, payment may be delayed. Payment for monthly utilization received after the last day of the following month will be denied for non-timely filing and will not be eligible for reimbursement or appeal. Appeals must be brought to the attention of Healthways within thirty (30) days of receipt of payment or remittance report; appeals brought at a later date will not be eligible for review.

ADDENDUM

Facility hereby agrees to provide the Affinity product to commercial members under the terms and conditions set forth in this Agreement, and as described below.

Product Description: The Affinity product is a discount cash payment arrangement whereby Facility agrees to provide to individuals eligible for Affinity access to Facility services at a specific discount percent off Facility's published fee schedule.

Affinity Discount: Facility agrees to extend to individuals eligible for the Healthways Affinity product discounted services as follows. The following discounts represent a **minimum of 10% off at least one of the rates:**

Standard Initiation Rate: _____ % Discount

Monthly Membership Rate: _____ % Discount

EXHIBIT A-1

FACILITY INFORMATION

The information in the box below is intended for distribution to Members. Please confirm that it is accurate.

Facility Name: _____

Physical Address: _____

Phone Number: _____

Web Site Address: _____

Please check the following amenities offered by Facility:

Amenity/Program	<input checked="" type="checkbox"/> Offered as part of basic membership at no additional cost to Members	<input checked="" type="checkbox"/> Not offered as part of basic membership - additional cost to Members
Cardiovascular Equipment		
Group Exercise/Aerobics Area		
Hot Tub/Whirlpool		
Resistance Training Equipment		
Steam and/or Sauna		
Swimming Pool - Seasonal (not available throughout the year)		
Swimming Pool - Year-Round		
Acupuncture		
Child Care		
Chiropractic Services		
Group Cycling		
Indoor Track		
Massage		
Nutritional Services		
Personal Training		
Physical Therapy		
Pilates		

Fax: (____) _____ Direct Fax Need to call first

General Email: _____

Who is responsible for daily Facility operations (i.e., owner, general manager)?

Contact Person: _____

Contact Title: _____

Contact Phone: (____) _____

Contact Fax: (____) _____

Contact Email: _____

Mailing Address (if not the same as Physical Address):

Mailing Address:	_____

Shipping Address (if not the same as Physical Address):

Shipping Address:	_____

Staffed Hours of Operation

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open							
Closed							

Are Members able to access Facility during unstaffed hours? No Yes

What non-English languages does staff speak fluently? Please list:

Please select one category that best describes Facility:

- Commercial
- JCC
- Medical/hospital
- Municipal
- YMCA
- YWCA
- Other not-for-profit

Please select one location type:

- Men and women
- Women only
- Men only

EXHIBIT A-2

TAXPAYER IDENTIFICATION NUMBER (TIN) CERTIFICATION AND BUSINESS LICENSE	
Employer identification number	<input type="text"/>
OR	
Social Security number	<input type="text"/>
Business Name:	_____
<input type="checkbox"/> Individual/sole proprietor	<input type="checkbox"/> Partnership
<input type="checkbox"/> Corporation	<input type="checkbox"/> Exempt from backup withholding
<input type="checkbox"/> Other _____	
Business License No.:	_____
Licensing Authority (i.e., County/State):	_____
By signing this Agreement, under penalty of perjury I certify that: 1) all information provided above is true and correct to the best of my knowledge, 2) all Facilities in Exhibit A-1 to this Agreement are providing services under the above TIN, and 3) in the event that the Business Name above differs from a Facility Name in Exhibit A-1 to this Agreement, then Facility is operating as a d/b/a of the above Business Name.	

Payment Address:	_____

Attention:	Accounts Receivable

<i>Who should Healthways contact to coordinate the technical aspects of monthly utilization data reporting?</i>	
Name:	_____
Phone:	() _____
Email:	_____