

## **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”).

### **DEFINITIONS**

For purposes of this Agreement, in addition to the terms elsewhere defined herein, the following terms shall have the meanings indicated:

1. **Agreement** shall mean this Healthways Provider Agreement between Facility and Healthways and any amendments thereto.
2. **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.
3. **Eligibility Summary** shall mean the document provided to Facility by Healthways that identifies specific Sponsoring Organizations that have contracted with Healthways to provide the Program. The Eligibility Summary, which shall be provided to Facility prior to the commencement of this Agreement, is incorporated herein by reference; the Eligibility Summary may be periodically updated by Healthways and such updates shall be communicated to Facility from time to time.
4. **Facility** shall mean Facility and any additional participating locations of Facility as mutually agreed 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.
5. **Healthways Network** shall mean, collectively, all participating locations that have entered into an agreement with Healthways to provide services to Program Members.
6. **Member** shall mean a Sponsoring Organization member, employee, dependent or other person eligible for the Program as determined by the Sponsoring Organization’s criteria.
7. **Program** shall mean the Healthways Affinity Program, a discount cash payment arrangement whereby Facility agrees to provide to eligible Affinity Members access to Facility services at a specific discount percent off Facility’s published fee schedule. Also included in the Program are all facets presented in the “Duties of Obligations of Facility” section of this Agreement.
8. **Sponsoring Organization** shall mean any sponsoring organization, 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.
9. **Term** shall mean the initial term of the Agreement and each successive one (1) year period of this Agreement.

### **DUTIES AND OBLIGATIONS OF FACILITY**

1. **Affinity Discount.** Facility agrees to extend to Healthways Affinity Program Members referred to Facility a \_\_\_\_\_% discount from the usual standard  initiation rate, and/or  membership rate. (Please indicate a discount percentage between 20% and 50% and check the appropriate service(s) you would like the discount to apply towards.)
2. **Joint Marketing.** Facility agrees to allow Healthways and Sponsoring Organization to use the 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 prior to their distribution.
3. **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 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. Upon termination of this Agreement, Healthways shall retain all rights to its trademarked and service marked names, logos, identities, formats, and materials, and Facility shall have no further right to use the same.

**MUTUAL WAIVER OF CLAIMS AND INDEMNIFICATION**

1. Unless caused by Healthways' or Sponsoring Organization's negligence or intentional wrongdoing, Facility hereby waives and releases all claims against Healthways and Sponsoring Organization, and/or any of their respective officers, directors, shareholders, employees, or representatives, in respect of a Member participating in the Healthways Network, and Healthways and Sponsoring Organization shall not be liable for injury to person or damage to property sustained by Members as a result of participation in Facility or any activities which may be undertaken in or sponsored by Facility, including but not limited to any accident, or from any occurrence, 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 and Sponsoring Organization 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 Facility's performance under this Agreement or participation of any Members in any activities undertaken in connection with or relating to this Agreement, except to the extent caused by Healthways' or Sponsoring Organization's negligence or intentional wrongdoing.
2. Unless caused by Facility's negligence or intentional wrongdoing, Healthways hereby waives and releases all claims against Facility, and/or any of their respective officers, directors, shareholders, employees, or representatives, in respect of a Member participating in the Healthways Network, and Facility shall not be liable for injury to person or damage to property sustained by Members as a result of participation in any activities which may be undertaken in or sponsored by Healthways, including but not limited to any accident, or from any occurrence, act, or from negligence or omission on the part of Healthways or any employee or agent thereof. Healthways shall indemnify, defend, and hold harmless Facility 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 Healthways' performance under this Agreement or participation of any Members in any activities undertaken in connection with or relating to this Agreement, except to the extent caused by Facility's negligence or intentional wrongdoing.

**INSURANCE**

1. 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 provide 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 to Healthways with this Agreement and within ten (10) days of request by Healthways thereafter. **PLEASE ATTACH A COPY OF GENERAL LIABILITY POLICY FACE SHEET.**
2. Both parties agree that to the extent permitted by law, Healthways and Facility 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.

**PROTECTIONS FOR MEMBERS**

1. **Operational Standards:** Facility agrees to operate in accordance with the following Healthways standards:
  - Membership/services will be made available to persons of all races, creeds, and nationalities and be in compliance with ADA standards for public facilities.
  - Facility will abide by all local, state, and federal Consumer Protection legislations as well as all other applicable laws.
  - Facility will follow OSHA safety standards.
  - Facility will not engage in unethical, deceptive, or misleading sales tactics.
  - Facility will employ staff that is efficient, professional, and courteous.
  - Facility will respond to and resolve, within 45 days, any consumer complaints brought against it by the Better Business Bureau, by any local, state, or federal Consumer Protection Agency, or similar agencies.

**DURATION AND TERMINATION**

1. **Initial Term.** This Agreement is effective the date of acceptance of Facility's signed copy of the Agreement by Healthways, and shall continue in full force and effect until December 31 of each year, subject to cancellation as provided below.
2. **Renewal of Agreement.** This Agreement shall be automatically renewed for successive one year terms after the initial Term unless either party gives 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 terms below.

3. Termination Without Cause. Either Party may terminate this Agreement without cause upon ninety (90) days written notice to the other Party.
4. 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.
5. 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.
6. 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) apparently permanent closure of Facility during normally scheduled operating hours resulting in denial of Program services to Members without a minimum of thirty (30) days prior written notice to Healthways; or 3) Healthways' determination that the health or safety of Members may be in jeopardy if this Agreement is not terminated.

#### **CONFIDENTIALITY**

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. 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.

#### **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:

If to Healthways:                   Healthways, 21251 Ridgetop Circle, Suite 150, Sterling, VA 20166  
Attn: Recruitment; Fax: 888-492-1026

If to Facility:                       (as shown on Exhibit A)

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.

#### **MISCELLANEOUS**

1. 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.
2. Business License and Regulatory Standards. Facility shall hold an active and 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.
3. 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.

4. Choice of Law; Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Arizona. The parties agree that the proper venue for any proceeding at law or in equity shall be Maricopa County, Arizona, and the parties waive any right to object to such venue.
5. 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.
6. 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.
7. 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.
8. 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.

By signing below, Facility hereby agrees to serve as a participating Healthways Network Facility upon the terms and conditions set forth in this Agreement.

\_\_\_\_\_  
Name of Facility

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EXHIBIT A**  
**FACILITY INFORMATION**

Facility Name: _____	
Physical Address: _____	
City, State, Zip: _____	
Web Site Address: _____	
Phone: _____	Fax Number: _____
Contact Name: _____	Title: _____
Contact Phone: _____	Email Address: _____
Mailing Address: _____	
(Please provide Mailing Address if not the same as the Physical Address above)	

***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 check the following programs/amenities offered by Facility:

<input checked="" type="checkbox"/>	<b>Amenity</b>	<input checked="" type="checkbox"/>	<b>Amenity</b>
<input type="checkbox"/>	Cardiovascular Equipment	<input type="checkbox"/>	Chiropractic Services
<input type="checkbox"/>	Group Exercise/Aerobics Area	<input type="checkbox"/>	Group Cycling
<input type="checkbox"/>	Hot Tub/Whirlpool	<input type="checkbox"/>	Indoor Track
<input type="checkbox"/>	Resistance Training Equipment	<input type="checkbox"/>	Massage
<input type="checkbox"/>	Steam and/or Sauna	<input type="checkbox"/>	Nutritional Services
<input type="checkbox"/>	Swimming Pool – Seasonal (not available throughout the year)	<input type="checkbox"/>	Personal Training
<input type="checkbox"/>	Swimming Pool – Year-Round	<input type="checkbox"/>	Physical Therapy
<input type="checkbox"/>	Acupuncture	<input type="checkbox"/>	Pilates
<input type="checkbox"/>	Child Care	<input type="checkbox"/>	

***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

Return to: Healthways, 21251 Ridgetop Circle, Ste 150, Sterling, VA 20166 (Fax 1-888-492-1026)  
**PLEASE ATTACH A COPY OF GENERAL LIABILITY POLICY FACE SHEET.**