

**FITNESS PASSPORT SERVICE  
AGREEMENT**

**This Fitness Passport Service Agreement** (this “Agreement”) is entered into on April 12, 2022 (the “Effective Date”), by and between OptumHealth Care Solutions, LLC, including its affiliates (“Optum”) and City of Angleton, including its Participating Facilities (“Network or City”). For purposes of this Agreement, Network and Optum shall collectively be referred to herein as the “Parties” and individually as a “Party”.

**WHEREAS**, Network wishes to become part of the Optum Fitness Passport network comprised of facilities that provide services to support the Fitness Passport Program to Optum’s clients; and

**WHEREAS**, Optum provides its client’s Members access to the Fitness Passport Program (as further described in Appendix A attached hereto and incorporated by reference); and

**WHEREAS**, Optum desires to include Network as part of its Fitness Passport Program offering so that Optum’s client’s Members may have additional facilities to use in the Fitness Passport Program.

**NOW THEREFORE**, for and in consideration of the above recitals, and the mutual covenants and agreements set forth below, and in exchange for other valuable and adequate consideration which the Parties agree is sufficient to enter into this Agreement, the Parties agree as follows:

**ARTICLE 1  
DEFINITIONS**

Except as otherwise specifically indicated, the following terms shall have the following meanings in this Agreement (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

**Activation ID:** A unique system-generated number assigned by Optum and used by both Parties to identify a Member who enrolls in the Fitness Passport Program.

**Activation Letter:** A letter, which displays the Activation ID that Members print off and present to a Participating Facility to enroll in the Fitness Passport Program.

**Fitness Passport Program:** A program sponsored by Optum as described in Appendix A herein.

**Eligible Member:** A benefit holder enrolled in a qualifying health plan or individual covered by a qualifying employer that may or may not be a member of a Participating Facility and who is not enrolled in the Fitness Passport Program.

**Member:** A benefit holder enrolled in a qualifying health plan or individual covered by a qualifying employer that is a member of a Participating Facility and is enrolled in the Fitness Passport Program. .

**Participating Facility:** Each Network facility location, unless otherwise excluded as expressly stated in Appendix A herein that is obligated by this Agreement to participate in the Fitness Passport Program.

**Network Facility Reimbursement:** The amount of reimbursement Optum has agreed to remit to Network toward a Member’s monthly membership rate that Network represents has met the established Fitness Passport Program visit criteria as defined by Optum in Appendix A.

**ARTICLE 2  
TERM AND TERMINATION**

**2.1 Term.** The initial term of this Agreement shall begin on the Effective Date and shall continue through April 12, 2024 year (“Initial Term”). At least thirty days prior to the expiration of the Initial Term, Optum shall send notice to

Network that it wishes to renew the contract. After the notice is received by Network, Network has thirty days to accept, reject, or suggest a modification of the contract.

**Termination.** This Agreement shall be terminated by any of the following:

- a) If either party provides written notice of non-renewal for the next Renewal Term upon 60 days notice..
- b) By either Party upon mutual written agreement; or
  
- c) If either Party breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days after written notice is given by the non-breaching Party, the Agreement shall terminate at the end of the thirty (30) days after the date of the written notice. The parties agreed to use good faith efforts to cure the breach.
  
- d) This Agreement shall terminate immediately and automatically upon delivery to the other Party of written notice of termination on the occurrence of one of the following:
  - i. Bankruptcy, insolvency or the dissolution of either Party;
  - ii. Unauthorized assignment of this Agreement; or
  - iii. The loss of any license, qualification, authorization, accreditation or certification required for a Party to perform its duties under this Agreement that was not the result of such Party's willful or negligent act or omission.

Each Party agrees to notify the other Party in writing not later than thirty (30) days after the occurrence of any of the events referred to immediately above.

**2.2 Effect of Termination:** Upon termination of this Agreement, each Party shall immediately cease using any of the other Party's names, symbols, logos or other identifying trade dress (collectively "Mark"), including but not limited to uses of the Mark authorized by this Agreement.

**2.3 Ongoing Obligations.** Termination shall not affect either Party's liability for any obligations incurred by such Party prior to the effective date of termination.

**ARTICLE 3  
OBLIGATIONS OF NETWORK**

**3.1 Access to, Fulfillment of, and Membership Fees for the Fitness Passport Program.** Each Participating Facility shall provide all Members with unlimited visits to the Participating Facility and all standard Network services, during the hours of operation as advertised by the Participating Facility to include, if applicable, an initial orientation to a Participating Facility and the equipment. In connection with participating in the Fitness Passport Program, each Participating Facility will provide Members with unlimited visits to Participating Facility at the rate set forth in Appendix A.

**3.2 Acknowledgement.** Network acknowledges that Optum is not a payer of services nor an insurer with respect to any services provided by the Network as part of this Agreement.

**3.3 Compliance with Applicable Laws.** Both Parties shall comply with all applicable local, state of Texas and federal laws. Both parties shall also obtain and maintain any and all licenses required to fulfill its duties and obligations under this Agreement.

**3.4 Cooperation with Optum.** Both Parties agree Network shall be the first point of contact for Members and Eligible Members and shall assume all service responsibility with respect to Member participation in the Fitness Passport

Program, unless the Member or Eligible Member contacts Optum first, in which case that Member or Eligible Member will be re-directed to the Network. In the event of an escalated issue whereby Optum's assistance is required for resolution, Optum agrees to cooperate with Network in handling any complaints or inquiries from Members or Eligible Members regarding the Fitness Passport Program.

**3.5 Account Management.** Network will assign an account management individual or team to support Optum with implementation of the Fitness Passport Program.

#### **ARTICLE 4 OBLIGATIONS OF OPTUM**

**4.1 Payment to Network.** Optum shall pay Network the Network Facility Reimbursement set forth in Appendix A for each eligible Member that meets the Fitness Passport Program's monthly visit requirement. Payment details for the Network Facility Reimbursement are set forth in Appendix A.

**4.2 Hold Harmless.** Network agrees that the only payment Optum is responsible for is the Network Facility Reimbursement described in Section 4.1. The Member is responsible for all other costs, fees and charges related to services not included in the Network standard membership services.

**4.3 Promotion of Services.** Optum shall promote the Fitness Passport Program to Eligible Members through the Optum Web site, marketing and sales brochures, and other distribution channels designated by Optum, including but not limited to telephone and email communications. Optum shall be responsible for the design and production of any such materials and the design and maintenance of the Optum Web site.

#### **ARTICLE 5 CONFIDENTIALITY**

**5.1 Information.** Each Party acknowledges that in the course of performing under this Agreement, it may learn confidential, trade secret, or proprietary information concerning the other Party or concerning third parties to whom the other Party has an obligation of confidentiality. Each Party shall protect and not disclose the other's proprietary information, including but not limited to, trade secrets, lists of Activation IDs and Participating Facilities, Member information, reimbursement amounts, and patented, trademarked, trade-named, service-marked, and copyrighted material or other property belonging to it or to a third party to whom it has an obligation of confidentiality ("Confidential Information").

**5.2 Protection of Confidential Information.** Each Party agrees that during the term of this Agreement:

(a) it will use such Confidential Information only as permitted by this Agreement or as otherwise permitted in writing, (b) it will not disclose such Confidential Information orally or in writing to any third party without the prior written consent of the other Party, (c) it will take at least those precautions to protect the other's Confidential Information as it takes to protect its own similar information, and (d) it will not otherwise use such Confidential Information for its own purposes or that of any other person or entity. A Party may disclose Confidential Information if required by law, legal process, or court order, in which case the disclosing Party shall notify the other Party sufficiently in advance of the disclosure, as allowed by law, to permit intervention at the Other Party's option. The obligations stated in this Section shall survive termination of this Agreement for so long either Party has access to the other's Confidential Information. The parties agree the City is subject to the requirements of the Texas Government Code Chapter 552, Texas Public Information Act.

**5.3 Privacy.** Each Party agrees to be bound by any applicable state and federal rules and regulations concerning the privacy and security of Member information.

**5.4 Trademarks, Logos and Copyrighted Materials.** Network hereby acknowledges that Optum and its affiliates may, from time to time during the term of this Agreement, provide Network with marketing, promotional or other advertising materials intended for use in connection with the promotion of the Program (such materials together with all content, trademarks, trade names, or logos of Optum and its affiliates, the "Optum Marketing Materials"). Optum hereby grants to Network a revocable, nonexclusive, non-assignable and non-transferable right and license to use and display the

Optum Marketing Materials during the term of this Agreement without modification solely in connection with the promotion of the Program. Upon expiration or the earlier termination of this Agreement, the foregoing license shall automatically terminate and be of no further force and effect and Network shall immediately cease its use and display of the Optum Marketing Materials. All uses of the Optum Marketing Materials shall be subject to Optum’s prior approval. Optum hereby represents and warrants to Network that it has the right to grant the license as set forth in this paragraph. Except as expressly set forth in this Agreement, Network obtains no other rights in or to the Optum Marketing Materials and Optum and its respective affiliates reserve all rights.

Network hereby grants to Optum and its affiliates a revocable, nonexclusive, non-assignable and non-transferable right and license to use and display all names, trademarks, trade names, service marks and logos of Network and its affiliates (collectively, the “Network Marks”) during the term of this Agreement solely in connection with the administration and promotion of the Program. Upon expiration or the earlier termination of this Agreement, the foregoing license shall automatically terminate and be of no further force and effect.

**ARTICLE 6  
DISPUTE RESOLUTION**

If any dispute, claim, or controversy of any kind or nature relating to this Agreement arises between the Parties, the Parties agree to meet and make a good faith effort to resolve the dispute. If the dispute is not resolved within thirty (30) days after the Parties first met to discuss it, and either Party wishes to further pursue resolution of the dispute, that Party shall refer the dispute to non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association (“AAA”). In no event may the mediation be initiated more than four (4) years after the date one Party first gave written notice of the dispute to the other Party. A single mediator engaged in the practice of law, who is knowledgeable as to the subject matter relevant to the dispute, shall conduct the mediation under the then current rules of the AAA. The mediation shall be held in a mutually agreeable site. Nothing herein is included to prevent either Party from seeking any other remedy available at law including seeking redress in a court of competent jurisdiction.

**ARTICLE 7  
RESPONSIBILITY FOR DAMAGES AND INDEMNIFICATION**

**7.1 Responsibility for Damages.** Each Party shall be responsible for any and all damages, claims, liabilities, or judgments it incurs that arise as a result of its own acts or omissions.

Except for claims indemnified hereunder, or breaches of provisions related to confidentiality of information provided, in no event shall either Party be liable to the other for incidental, consequential, economic, special, or lost profit damages, even if such Party has been advised of the possibility of such damages. Consequential damages include, but are not limited to, lost profits, lost revenues, and lost business opportunities, whether or not the other Party was or should have been aware of the possibility of these damages.

**ARTICLE 8  
MISCELLANEOUS**

**8.1 Entire Agreement.** This Agreement, exhibits and attachments constitute the entire understanding between the Parties and supersedes all proposals, communications and agreements between the Parties relating to its subject matter.

**8.2 Independent Contractors.** The Parties’ relationship to each other is that of independent contractors. No Party shall be deemed to be, or hold itself out as, a partner, agent, employee or joint venture partner of any other Party. No Party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other Party, or to represent any other Party as an agent, employee or in any other capacity.

**Insurance.** Each Party, at its sole cost and expense, shall procure and maintain in full force and effect for the term of

this Agreement and after its termination for so long as the services are provided to Members pursuant to this Agreement, adequate commercial general liability insurance coverage, including but not limited to contractual liability insurance coverage, with limits that are reasonable and customary for its business to cover liabilities and claims which may arise in relation to or in connection with providing such Party's respective services under this Agreement, but in no event less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

**8.3 Certificate of Insurance.** Network and Optum agree to 1) provide the other, within ten (10) business days of a written request, with a Certificate of Insurance with respect to all liability insurance required under this Agreement, and 2) maintain the foregoing policy or policies of insurance without material change or cancellation except upon thirty (30) days written notice to the other Party.

**8.4 Fitness Passport Program Performance Standards.** The Fitness Passport Program Performance Standards are attached hereto and incorporated herein by reference as Appendix B.

**8.5 Assignment.** Except as provided in this Section, neither party may assign any of its rights and responsibilities under this Agreement to any person or entity without the prior written consent of the other party, which shall not be unreasonably withheld. Network and Optum acknowledge that persons and entities under contract with or affiliated with them may perform certain services under this Agreement. Network acknowledges that assignment by Optum of all or any of its rights and responsibilities under this Agreement to any affiliate shall not require Network's prior written consent.

**8.6 Successors.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heir(s), personal representatives, executors, administrators, successors, and assigns.

**8.7 Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas. The Contract shall be deemed to be entered into and performed in Brazoria County, Texas.

**8.8 Amendments.** No amendments, modifications, or additions to this Agreement shall be valid unless made in writing and signed by both the Network and Optum.

**8.9 Invalidity of Sections of Agreement.** If any portions of this Agreement shall, for any reason, be invalid or unenforceable such portions shall be ineffective only to the extent of such invalidity or unenforceability and the remaining portion or portions shall nevertheless be valid, enforceable and of full force and effect.

**8.10 Survival.** Those terms and conditions of this Agreement, which by their express terms, survive the termination of this Agreement, shall survive the termination of this Agreement.

**8.11 Notices.** Any notice, demand, or communication required under this Agreement shall be hand delivered or sent by commercial overnight delivery service, or if mailed, by pre-paid, first class mail to the addresses below. The addresses to which notices are sent may be changed by proper notice.

Notice to Optum:

Optum  
11000 Optum Circle  
Eden Prairie, MN 55344  
Attn: Contracts Administration MN101-W013

Notice to Network:

City of Angleton  
1601 N Valderas St  
Angleton, TX 77515-3240

And to:

Judith El Masri  
City Attorney  
Randle Law Office, LTD, L.L.P.  
820 Gessner, Suite 1570  
Houston, Texas 77024

**8.12 Counterparts.** This Agreement may be executed by electronic signatures or in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one agreement.

**IN WITNESS WHEREOF**, this Agreement is executed by the parties' authorized officers or representatives and shall be effective as of the Effective Date.

**OptumHealth Care Solutions, LLC**

11000 Optum Circle  
Eden Prairie, MN 55344

**City of Angleton**

1601 N Valderas St  
Angleton, TX, 77515-3240

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Agreement Number: 00816493.0

**Appendix A**

**Fitness Passport Program  
Fees and Description of Services**

- I. **Fitness Passport Program Description:** The Optum Fitness Passport Program provides eligible Members with pre-determined monthly membership rates to Participating Networks when they enroll in the Fitness Passport Program. The Optum Fitness Passport Program also reimburses Participating Networks a pre-determined amount when Members meet the established program criteria as defined by Optum.
  
- II. **Network Reimbursement Fees:** In connection with participating in the Fitness Passport Program, Optum will reimburse Network a pre-determined amount each calendar month for each participating Member, following Network’s validation and representation that the Member has met the program criteria as defined by Optum below. The Network Facility Reimbursement payment is associated with a Member’s cumulative number of monthly visits to any Participating Facility. For the avoidance of doubt, the Network Facility Reimbursement payment is not applicable to each Participating Facility individually.

<b>Medicare Member Participation Requirement</b>	<b>Network Reimbursement amount paid by Optum</b>
Medicare Member visits any Participating Facility during calendar month	\$20.00 per member per month
<b>Commercial Member Participation Requirement</b>	
Commercial Member visits any Participating Facility during calendar month	\$20.00 per member per month

Unless Network has notified Optum in writing no later than August 1<sup>st</sup> of the current Term the Network Reimbursement Fee will not be negotiable and will continue for the next Renewal Term.

1. **Most Favored Reimbursement.** Network agrees that the Network Facility Reimbursement as outlined in this Agreement is equal to or lower than the reimbursement per-visit rates and maximum monthly fees being offered by Network to any other customer for the same or similar services. If during the term of this Agreement Network enters into an agreement or arrangements with any other customer contracting with Network for the benefit of its members which includes lower reimbursement per-visit rates or maximum monthly fees for the same or similar services as stated in this Agreement, Network shall promptly identify such lower per-visit rates or maximum monthly fees to Optum, and the Parties shall execute an amendment to this Agreement to incorporate the change in Network Facility Reimbursement effective as of the date that the Network made such lower rates available to such customer.

III. **Description of Services:**

1. **Network Responsibilities.**

Network shall be responsible for:

- a) Participating Facility Membership Fees: In connection with participating in the Fitness Passport Program, Network shall waive any and all enrollment and membership fees for those Members that enroll in the Fitness Passport Program. Network will need to enroll the eligible Member in the Fitness Passport Program in order to be eligible for reimbursement.
- b) Network will reasonably cooperate with Optum to create Fitness Passport Program communication and promotional materials for Optum to send to Optum's clients, Members or Eligible Members.
- c) Maintaining a Web site that provides Participating Facilities locations including Network branches by zip code as well as a list of amenities and services, hours of operation and other information for each Participating Facility. Network shall allow Optum to link to this site for purposes of providing information to Eligible Members and Members. By the seventh day of each month or the next business day if the seventh day of the month falls on a weekend or holiday, the Network or Optum's designated third party will deliver to Optum, in a file format specified by Optum, a file containing the usage data for the prior month for every Member in the Fitness Passport Program, regardless of how many times they visited the Network each month. Network will report a Member's cumulative number of visits to any Participating Facility in the file containing usage data. Network is responsible for ensuring the submitted usage data is accurate. A maximum of one (1) visit per calendar day can be counted towards a Member's monthly visit total to Network. Network will be responsible for accurate reporting monthly and correct any errors in reporting. For purposes of this Agreement, Optum will only be responsible for those records that have been reported within two (2) months from the end of the reported month will be evaluated for possible Network Facility Reimbursement. For example, at the conclusion of the month of April, the Network has two calendar months to report a Member's April visit count for purposes of calculating a possible Network Facility Reimbursement. Upon identifying any processing errors Network will promptly notify Optum of these errors and the errors will be corrected in the next month's payment cycle.
- d) Assisting to resolve questions, complaints or grievances related to a Member's participation in the Fitness Passport Program and to notify Optum via e-mail correspondence of all unresolved Member disputes and grievances that require the involvement of Optum.
- e) Completing all enrollment paperwork, program training and staff training necessary to begin accepting Members within thirty (30) business days of the Agreement Effective Date. Network will be listed as a Participating Facility on Fitness Passport Program website within thirty (30) days of the Agreement Effective Date.
- f) Additional administrative and support services as described herein.

## 2. Optum Responsibilities.

Optum shall be responsible for:

- a) Communicating program overview to Members pursuant to Section 4.3 of the Agreement.
- b) Making reasonable efforts to notify Optum's Eligible Members of Fitness Passport Program enrollment guidelines and processes.
- c) Posting updated facilities as a Participating Facility directory on the Optum Web site pursuant to Section 4.3 of the Agreement when available.
- d) Upon receipt of Member Fitness Passport Program utilization information on a monthly basis from Network or Optum's designated third party, Optum will verify the eligibility of Members listed on the monthly Member usage file and indicate which Activation IDs meet eligibility requirements for Network Facility Reimbursement to Network. Optum will designate with an error code any records which are ineligible for any such payments.



e) By the twenty-third day of each month or the next business day if the twenty-third day of the month falls on a weekend or holiday, Optum will provide the eligibility verification file containing the payment amount of Network Facility Reimbursement to be reimbursed to Network. In addition, by the twenty-third day of the month Optum will send a payment via electronic funds transfer ("EFT") to Optum's designated third party equal to the total amount of Network Facility Reimbursement to Network for the prior month.

f) Additional administrative and support services as described herein.

3. Additional Fitness Passport Program Guidelines.

a) The Network Facility Reimbursement period for Network is calculated based on each calendar month only, regardless of the date of enrollment by the Member. A Member who signs up for the Fitness Passport Program will enable Network to be eligible to earn a Network Facility Reimbursement payment from Optum commencing as of the month the Member enrolls. For example, if the Member enrolls in the Fitness Passport Program on January 5, Network may earn the Network Facility Reimbursement if the Member meets their monthly attendance requirement at a Network on or after January 1 through the end of January.

**Appendix B**

**Fitness Passport Program  
Performance Standards**

Network and Optum accept the minimum performance standards set forth below.

**Section 1  
Minimum Standards**

**1.1 Customer Service:** Participating Facilities and Optum shall work together to resolve all Member complaints and grievances in a timely manner. Network will make best efforts to achieve the Customer Service Deliverables listed in Table 1 below:

<b>TABLE 1 - Customer Service</b>	
<b>Service Level Deliverables</b>	<b>Timeframe</b>
E-mails and written inquiries to Participating Facilities from Optum	Network will respond within two (2) business days
Member complaint and grievance resolution	Network must notify Optum in a timely manner of any disputes or other grievances involving Members and Network will work to resolve ninety-five percent (95%) of such disputes within seven (7) business days.

**1.2 Data and Payment Processing Schedule:** Network, Optum and Optum’s designated third parties, if applicable will use the following schedule set forth in Table 2 below for processing data and sending payment:

<b>TABLE 2 - Data and Payment Processing (per Appendix A)</b>		
<b>Network to provide Member usage file to Optum or Optum’s designated third party*</b>	<b>Optum to provide eligibility verification file to Optum’s third party</b>	<b>Optum or Optum’s designated third party to transmit the Network Facility Reimbursement to Network’s designated account</b>
By the seventh day of the month or the next business day if the seventh day of the month falls on a weekend or holiday, following the month of usage	By the twenty-third day of the month or the next business day if the twenty-third day of the month falls on a weekend or holiday, following the month of usage**	By the first day of the month or the next business day if the first day of the month falls on a weekend or holiday, following the exchange of data**
Example: February 7 for January usage	Example: February 23 for January usage	Example: March 1 for January usage received in February

\* If Optum notifies Network that Optum utilizes a third party to collect Member usage from Network, Network will provide Member’s monthly usage reports to Optum’s designated third party no later than by the fifth day of the month.

\*\* Subject to timely receipt of usage data received by Network