

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 51

Council Meeting Date: January 15, 2018

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

CONTACT PERSON: E. Michael Leonard, CAO *ML*

Cheryl Bell, Director of Parks and Recreation

SUMMARY EXPLANATION:

Resolution authorizing agreement between City of Biloxi and Tivity Health Services, LLC for senior health and fitness memberships at Donal Snyder Community Center and program reimbursement for participation

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit A: Tivity Health Partner Location Agreement

Submittal Authorization: Council President _____ Mayor

STAFF RECOMMENDATION: Staff recommends approval

COUNCIL ACTION: Motion By: _____ Second By: _____

Vote:	Councilmember	Yes	No	Other	Councilmember	Yes	No	Other
	Lawrence	_____	_____	_____	Tisdale	_____	_____	_____
	Gines	_____	_____	_____	Glavan	_____	_____	_____
	Newman	_____	_____	_____	Barrett	_____	_____	_____
	Deming	_____	_____	_____				

ACTION TAKEN:

RESOLUTION NO.

RESOLUTION AUTHORIZING AGREEMENT BETWEEN CITY OF BILOXI AND
TIVITY HEALTH SERVICES, LLC FOR SENIOR HEALTH AND FITNESS
MEMBERSHIPS AT DONAL SNYDER COMMUNITY CENTER AND PROGRAM
REIMBURSEMENT FOR PARTICIPATION

WHEREAS, the City of Biloxi, Mississippi (the "City") through its Department of Parks and Recreation, holds health and fitness classes for senior citizens at the Donal Snyder Community Center on Pass Road on occasion;

WHEREAS, Tivity Health Services, LLC ("Tivity") has contacted Cheryl Bell, Director of the Department of Parks and Recreation, and offered reimbursement for certain senior citizen fitness classes and memberships;

WHEREAS, under the terms and conditions of the Tivity Health Partner Location Agreement (the "Agreement"), attached hereto as Exhibit "A," the City's Donal Snyder Community Center will be a health facility at which Tivity member-senior citizens ("Program Members") may participate in health and wellness activities;

WHEREAS, Tivity shall compensate the City based on Program Member visits, with a maximum cap payment per program participant per month;

WHEREAS, Tivity offers three programs for which Biloxi shall participate and be compensated for participation, including the SilverSneakers Fitness Program, Prime Program and Prime Private Brand Program;

WHEREAS, for a SilverSneakers Fitness Program membership, Tivity shall pay Biloxi \$2.50 per Member Visit with a cap of \$20.00 per Member per month; and

WHEREAS, for a Prime Fitness Program membership, Tivity shall pay the City \$3.50 per Member Visit with a cap of \$30.00 per Member per month;

WHEREAS, for a Prime Private Brand Fitness Program membership, shall pay the City \$3.50 per Member Visit with a cap of \$30.00 per Member per month;

WHEREAS, the City shall submit its Tivity program monthly utilization data by the fifth day of the following month;

WHEREAS, according to the Agreement, the City agrees to appropriately staff the Donal Snyder Center for a minimum of six hours per day, Monday through Friday;

WHEREAS, upon execution of the Agreement, the City agrees to deactivate any existing gym/facility membership relationship the Program Members may have with the Donal Snyder Center;

WHEREAS, the Parks and Recreation Department proposes participation in the Tivity Fitness Programs at the Donal Snyder Center and execution of the Agreement is in the best interest of the City;

WHEREAS, the term of the Agreement shall be from the date of execution to December 31, 2019;

WHEREAS, the contract term shall continue thereafter for periods of one year, unless cancelled by one hundred and twenty days written notice of either party; and

WHEREAS, it is the recommendation of the Parks and Recreation Department to execute and accept the attached Tivity Health Partner Location Agreement, as set forth in the document attached as Exhibit "A."

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, AS FOLLOWS:

Section 1. The findings, conclusions and statements of fact contained in the preamble of this resolution are hereby ratified, approved and adopted.

Section 2. The Mayor is hereby authorized to execute and accept the Tivity Health Partner Location Agreement on behalf of the City of Biloxi for participation in Tivity Health programs at the Donal Snyder Community Center in substantially the same form as Exhibit "A," upon the terms and conditions stated therein.

Section 3. This resolution will take effect upon adoption.

TIVITY HEALTH PARTNER LOCATION AGREEMENT

This Tivity Health Partner Location Agreement (this “**Agreement**”) is between **TIVITY HEALTH SERVICES, LLC** (“**Tivity Health**”), and the “**Facility**” named below. This Agreement is effective as of as of the date of the signature by the Facility below (“**Effective Date**”). Facility desires that it and its other locations listed on **Exhibit A-1** be included as a member of Tivity Health’s network of locations for the purposes of fitness memberships and/or offering Tivity Health’s programs, and Tivity Health desires Facility to be a member of Tivity Health’s network.

Facility. The undersigned Facility and any additional participating locations of Facility as mutually agreed to and set forth in **Exhibit A-1**, which have entered into this Agreement with Tivity Health to be part of its Tivity Health Network.

Facility Contact. Facility has designated the person named on **Exhibit A-2** as authorized to represent Facility in communicating with Tivity Health about this Agreement.

Pricing. Tivity Health will pay Facility the selected program fees in **Attachment A**.

Programs. Facility will offer each Tivity Health program marked in **Attachment A**.

Term. The term of this Agreement runs from the Effective Date to December 31 of the current year (“**Initial Term**”) and thereafter will automatically renew for one (1) year periods running from January 1 to December 31, provided that after the Initial Term, either party may terminate this Agreement upon 120 days’ prior written notice.

Terms & Conditions. This Agreement will be governed by the Standard Terms and Conditions as they appear on Tivity Health’s Fitness Provider Portal located at <https://fitness.tivityhealth.com> (as updated by Tivity Health from time-to-time, the “**Portal**”).

The Tivity Health materials on the Portal are incorporated by reference as an integral part of this Agreement.

This Agreement supersedes any prior agreements and represents the entire understanding and agreement between the parties regarding the subject matter of this Agreement.

Tivity Health and Facility each sign below to agree to be bound to the terms of this Agreement as of the Effective Date.

TIVITY HEALTH SERVICES, LLC

Name of Facility

Signature

Signature

Tivity Health Printed Name

Printed Name

Tivity Health Title

Title

Date

Date



ATTACHMENT A**Notices, Utilization Payment, Programs and Pricing****1. Notices to Facility and Tivity Health.**

Facility Contact: Attached Exhibit A-2

Tivity Health Contact: Tivity Health PL Contracting Department
1445 South Spectrum Blvd.
Chandler, Arizona 85286
Phone: (480) 444-5400
Email: PLContracting@tivityhealth.com

2. Facility Locations. Attached Exhibit A-1**3. Program Utilization Payment.**

- a) Program Utilization Payment for Selected Tivity Health Programs. Tivity Health shall compensate Facility based on Program Member Visits, with a maximum cap payment 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. Tivity Health shall not compensate Facility for more than one Program Visit per day. Program Participant shall mean a Member, who, after completing the Program enrollment, has used the Program at a facility in the Tivity Health Network at least once in a given month.
- b) Payment Schedule. Payment shall be processed for direct deposit by Tivity Health by the last day of the month following the month in which Program Visits occurred ("following month"), provided Tivity Health 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 Tivity Health within thirty (30) days of receipt of payment; appeals brought at a later date will not be eligible for review.

4. Programs and Pricing. A description of each Program appears on the Portal: <https://fitness.tivityhealth.com>

- SilverSneakers® Fitness Program Offering Basic Member Access
\$2.50 per Member Visit up to \$20.00 per Member per Month
- Prime® (Fully Subsidized for Members 18+)
\$3.50 per Member Visit up to \$30.00 per Member per Month
- Prime Private Brand® (Member Pay Program)
\$3.50 per Member Visit up to \$30.00 per Member per Month

STANDARD TERMS AND CONDITIONS

1. **Definitions.** All terms not defined herein will have the meanings given to them in the Partner Location Agreement between Tivity Health and Facility (the “**Agreement**”).

a) “**Confidential Information**” means this Agreement, the identity of any Tivity Health customer, Participant information and information a recipient should reasonably understand to be confidential given the nature of such information, including, without limitation, any Tivity Health IP.

b) “**Sponsoring Organization**” means any organization, employer group, health plan or subset thereof that is contracted with Tivity Health to provide the Program to its members and whose members may therefore utilize Facility in accordance with the terms of this Agreement. Facility shall provide the Program to eligible Members of all Sponsoring Organizations. Sponsoring Organization information shall be available to Facility, and such Sponsoring Organization information shall be incorporated herein by reference.

c) “**Participant**” means a Sponsoring Organization member, employee, dependent or other person eligible for the Program, determined by the Participant verification process outlined in the Reference Guide.

d) “**Program**” means each Tivity Health program elected in the Agreement and as described on the Portal.

e) “**Reference Guide**” means the procedures and guidelines set forth on the Portal for participation in the Tivity Health network.

f) “**Tivity Health IP**” means any and all intellectual property associated with the Program and tangible embodiments thereof, including, without limitation: the Portal, the Reference Guide; Program descriptions, processes and know-how; Tivity Health content on the Portal; and all data regarding activity at the Facility, such as utilization reports.

2. **Facility Responsibilities.** In exchange for the compensation to be paid by Tivity Health, Facility shall perform the following services:

a) **Program Implementation Process.** To prepare for Program commencement, Facility agrees to participate in the following 1) coordination with Tivity Health of electronic reporting containing the required data elements; 2) Tivity Health-scheduled and led training; and 3) Tivity Health’s evaluation of Facility to certify Facility’s preparedness to provide Program (the date by which each of these has been completed, the Ready Date.)”

b) **Staffed Hours.** Facility shall be appropriately staffed in accordance with professionally-recognized standards of fitness programs a minimum of six (6) hours per day, Monday through Friday.

c) **Program Enrollment.** Facility shall enroll Participants in the Program in accordance with the protocol defined in the Reference Guide or other protocol mutually agreed between the Parties.

d) **Reporting Obligations of Facility.** Facility shall report Program utilization to Tivity Health on a monthly basis. Program utilization reporting shall consist of all 1) Program forms completed during the previous month as applicable; and 2) visits for the 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 Tivity Health no later than the fifth (5th) day of the following month. The required file format, data elements and submission options are defined in the Reference Guide. The Parties to this Agreement shall work cooperatively to establish correct and acceptable electronic monthly utilization data reporting, Tivity Health may provide technical support to Facility if necessary.

e) **SilverSneakers® Program Advisor.** Facility shall designate one staff member as the SilverSneakers Program Advisor, who shall serve as a liaison to Tivity Health and as a resource person for SilverSneakers Participants utilizing the Tivity Health Network and is knowledgeable concerning all services provided by Facility to Participants.

f) **Guest Pass Program.** Facility shall provide Program services to persons presenting a Tivity Health guest pass. Properly documented guest visits will be counted the same as a Participant visit for purposes of calculating Facility’s compensation.

g) **Reference Guide.** Facility must comply with the Reference Guide to remain a part of Tivity Health’s network.

h) **Access to Program at No Charge.** Facility will provide all Participants access to the Program at no charge to the Participants.

i) **Tivity Health Network Reciprocity.** Facility will ensure that all of Facility’s locations listed in the Agreement allow access to all Participants.

j) **Membership Conversion.** Upon the Effective Date, Facility will inactivate any existing gym/facility membership relationship a Participant may have with Facility, which inactivation will be for the duration of the Agreement. Facility will not collect any monthly dues, cancellation fees, or other fees during the inactivation period. Upon termination of the

Agreement or the termination of a Participant's membership with a Tivity Health customer, Facility may re-activate that Participant's inactivated Facility membership.

k) Portal. Facility's participating locations will create and maintain user accounts on the web-based Tivity Health Fitness Provider Portal. Facility shall utilize the Tivity Health Fitness Provider Portal to verify Participant eligibility and to obtain and access Tivity Health materials, including Sponsoring Organization information, training materials, Program forms, Program reports, and the Reference Guide.

l) Communications. Facility will coordinate all external communications through Tivity Health. Facility will immediately notify Tivity Health of all external inquiries regarding any Tivity Health Program, Tivity Health, or a Tivity Health customer.

m) Return of Materials. Facility will promptly return all Tivity Health Program materials upon termination of the Agreement or at Tivity Health's request.

n) Fraud, Waste and Abuse Training. Applicable Facility personnel will complete fraud, waste and abuse training as required by the Center for Medicare and Medicaid Services and provide confirmation of completion of same on the Portal.

o) Insurance. Facility will maintain commercially reasonable levels of general liability insurance in order to satisfy Facility's obligations to Tivity Health under this Agreement and as is reasonable and appropriate and industry-standard given Facility's business operations.

3. Use of Trademarks, Logos, and Copyrighted Materials. Each party grants the other a limited and non-exclusive right to use the other's trademarked or service-marked name, logo, identity, format, and materials solely for use for the purposes outlined in this Agreement (the "**Marks and Materials**"); provided, any use by Facility must be approved in advance and in writing by Tivity Health. Upon termination of the Agreement Facility will cease all use, advertising, marketing, and referencing of Tivity Health Marks and Materials. Nothing in the Agreement grants either party any right, title or interest in or to the Marks and Materials of the other party. All use by Facility of Tivity Health's Marks and Materials (including goodwill) will be for the sole benefit of Tivity Health.

4. Tivity Health IP. Tivity Health is the sole and exclusive owner of any and all Tivity Health IP, and nothing in the Agreement will alter Tivity Health's ownership rights in the Tivity Health IP whatsoever. Facility may not sell, license or otherwise transfer the Tivity Health IP.

5. Disagreements. If the parties have a disagreement they will work in good faith to resolve it. Neither party will sue the other in front of a judge or jury; rather, all unresolved disagreements will be resolved exclusively by binding arbitration. Neither party will initiate, support, or otherwise participate in class action lawsuits, class-wide arbitrations, private attorney-general actions or the like against the other party.

6. Research Studies. Facility must seek prior written approval (which Tivity Health may decline in its sole discretion) from Tivity Health before undertaking any research or clinical study of Participants or Programs. Facility will provide study findings and results to Tivity Health prior to any publication or presentation of same. Tivity Health may withhold approvals hereunder in its sole discretion.

7. Compensation. Tivity Health will pay Facility the fees and rates set forth in the Agreement. Facility will be responsible to pay its own taxes on any payment received from Tivity Health.

8. Termination.

- a. Early Termination. Notwithstanding any other provision of this Agreement, Tivity Health may terminate this Agreement at any time upon notice to Facility due to 1) closure of Facility, resulting in denial of Program services to Participants, without thirty (30) days' prior written notice to Tivity Health; 2) fraudulent Program utilization reporting by Facility; or 3) Tivity Health's reasonable determination that the health or safety of Participants may be in jeopardy if this Agreement is not terminated.
- b. Bankruptcy. If at any time there is filed by or against a party to the Agreement 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 such action is not dismissed after 90 calendar days, the Agreement may be immediately terminated by the other party.
- c. Material Breach. If either party breaches a material term or condition of the Agreement, the non-breaching party may terminate the Agreement on notice to the other party specifying the nature of the breach as long as the breach is not cured within 30 days after such notice.
- d. Default. Tivity Health may at its sole discretion and without limiting its other remedies withhold payment of any amounts otherwise due to Facility if Facility commits an act of fraud or commits a material breach of the Agreement.

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e. Immediate Termination. Tivity Health may immediately terminate the Agreement upon notice to Facility in the event of (i) Facility closure; (ii) fraudulent reporting of Program utilization by Facility; (iii) Tivity Health's determination that a Participant's health or safety may be at risk; or (iv) Facility or any of its owners, employees, agents, or affiliates have been convicted of Medicare fraud or appear on any state or federal government exclusion list, including, without limitation, the System for Award Management or the Office of Inspector General's List of Excluded Individuals and Entities.

f. Termination for Convenience. Tivity Health may terminate the Agreement for convenience with 30 days prior written notice to Facility. In such case, Tivity Health shall have no further obligation or liability to Facility apart from the payment of fees owed.

9. Confidentiality. During the Term and at all times thereafter, Facility may not divulge to anyone or use in any way any Confidential Information.

10. Participant Contact. Facility agrees not to contact Participants during the Term of this Agreement regarding business matters of the Program, including, without limitation, switching health plans, disenrolling, enrolling with other health plans or similar entities, or contracting directly with Facility. Facility will not dissuade Participants from engaging in any Tivity Health Program.

11. Notices. All notices and other communications under this Agreement must be in writing, sent to the applicable contact listed in the Agreement, and will be deemed to have been duly given, made and received when sent by (a) electronic mail or (b) hand delivery, including by a recognized courier service.

12. Waiver of Claims. Unless caused by the gross negligence or intentional wrongdoing of Tivity Health, Tivity Health's customers, or any applicable government agency, Facility hereby waives and releases all claims (known and unknown) against Tivity Health, Tivity Health's customers, and applicable government agencies, and/or any of their respective officers, directors, shareholders, employees, affiliates or representatives (collectively, "Tivity Health Affiliates") sustained by Participants as a result of the Participant's engagement in the Program or any other activities undertaken in or sponsored by Facility.

13. Indemnification. Facility will indemnify, defend, and hold harmless Tivity Health and all Tivity Health Affiliates and their respective officers, directors,

shareholders, employees, and representatives from any and all Losses. For purposes of this Section 13, "Losses" means all claims, demands, suits, liabilities, damages, obligations, and expenses (including without limitation reasonable attorneys' fees) incurred by Tivity Health related to negligence or willful misconduct of Facility or its officers, directors, employees, agents or affiliates.

14. Cooperation in Defense. Tivity Health and Facility agree that, to the extent permitted by law, they will cooperate with one another in the defense of any claim arising from any acts of their respective officers, shareholders, employees, or agents and will give one another written notice of any claims arising in relation to the Agreement.

15. Miscellaneous.

a. Compliance with Federal and State Rules and Regulations. Facility will comply with all applicable federal and state rules and regulations regarding services provided to Participants.

b. Business License and Regulatory Standards. Facility will hold an active and unrestricted business license as required by law and meet occupational health and safety requirements and regulatory standards in the state and jurisdiction in which Facility operates.

c. Severability. Should any provision of the Agreement 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 will not affect the enforceability of the other provisions.

d. Amendment of Agreement to Comply with Law. Tivity Health may amend this Agreement to comply with applicable law upon 60 days' prior written notice to Facility, and Facility may terminate this Agreement during such period if the amendment would have a demonstrable material adverse effect on Facility.

e. Applicable Law. The Agreement is governed by the laws of the State of Delaware, without giving effect to its conflicts of laws provisions, and each party submits to the exclusive jurisdiction of the courts of the State of Delaware.

f. Sale of Business/Transfer of Assets. Facility will notify Tivity Health in writing at least 90 days before it sells or transfers all or substantially all of its assets or business.

g. Survival. Sections 12 through 15 will survive termination of the Agreement, regardless of the reason for termination.

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EXHIBIT A-1

FACILITY INFORMATION

The information in the box below is intended for marketing purposes. Please confirm that it is accurate.

Facility Name:	_____
Physical Address:	_____ _____
Phone Number:	_____
Web Site Address:	_____
<i>*To enable marketing of amenities and services are marketed, please designate your basic amenities below and all amenities upon initial log in to the Fitness Provider Portal.</i>	
Amenity/Program	<input checked="" type="checkbox"/>
Cardiovascular Equipment	Offered as part of basic membership at no additional cost to Members
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	

Fax: () _____ Direct Fax Need to call first

General Email: _____

Who will be our primary location contact (Tivity Health Program Advisor)? This individual will be responsible for scheduling training, coordinating with our Provider Services Liaison, and will need access to member records.

Contact Person: _____

Contact Title: _____

Contact Phone: () _____

Contact Fax: () _____

Contact Email: _____

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

Mailing Address:	_____ _____
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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 location type:

- Men and women
- Women only
- Men only

CONFIDENTIAL

CONTRACT ADMINISTRATOR

Name: _____

Title: _____

Mailing Address: _____

Phone: () _____

Fax: () _____

Email: _____

The Contract Administrator shall receive legal correspondence regarding the Agreement, shall have access to payment information for all Facilities in Exhibit A-1 to this Agreement, and shall be responsible for setting up Tivity Health Fitness Provider Portal accounts for Facility staff.

Who should Tivity Health contact to coordinate the technical aspects of monthly utilization data reporting? This individual will need to have specific information about your location's reporting capabilities, and be responsible for obtaining management approval for establishing a reporting method.

Name: _____

Phone: _____

Email: _____

PROGRAM DESCRIPTIONS

SilverSneakers® Fitness Program – Basic Participant Access Program Description:

In exchange for the compensation to be paid by Tivity Health, Facility shall offer the Program to Participants of the Sponsoring Organization as a fully subsidized program for Medicare, Group Retirees and Older Adults that includes a basic fitness membership, which may include other Tivity Health services, for Participants provided through a network of facilities; also included in the Program are all facets presented in the Terms and Conditions section of the Partner Location Agreement. Program brands include SilverSneakers® Fitness program, Tivity Health ACCESS, and other brand names for the Mature Market Fully Subsidized Program communicated to Facility by Tivity Health from time to time.

Prime® (Fully Subsidized for Participant) Program Description:

In exchange for the compensation to be paid by Tivity Health, Facility shall offer the Program to Participants of the Sponsoring Organization as a Commercial Fully Subsidized Program; The Program includes basic fitness membership services for Participants provided through a network of facilities; also included in the Program are all facets presented in the Terms and Conditions section of the Partner Location Agreement. Program Brands include Prime®, Prime MCA, and other brand names for the Commercial Fully Subsidized Program communicated to Facility by Tivity Health from time to time.

- a) Introductory Orientation for Prime Participants. Facility shall offer the Program to all Participants identified by Tivity Health as eligible for the Program. In addition to a basic fitness membership at no cost to the Participant, Facility shall provide Participants with an added value program component (i.e., a thirty (30) minute personalized orientation session or personal training session).

Prime Private Brand® (Participant Pay Program) Program Description:

In exchange for the compensation to be paid by Tivity Health, Facility shall offer the Program to Participants of the Sponsoring Organization a Commercial Participant Pay Program; also included in the Program are all facets presented in the Terms and Conditions section of the Partner Location Agreement. For purposes of this Program, Participant Pay is defined as a monthly payment made by Participant to Tivity Health to participate in the Program. Program brands include Prime PB and other brand names for the Commercial Participant Pay Program communicated to Facility by Tivity Health from time to time.

- a) Introductory Orientation for Prime Participants. Facility shall offer the Program to all Participants identified by Tivity Health as eligible for the Program. In addition to a basic fitness membership at no cost to the Participant, Facility shall provide Participants with an added value program component (i.e., a thirty (30) minute personalized orientation session or personal training session).