



ESTIMATE AND AGREEMENT FOR PROFESSIONAL FITNESS PROGRAM SERVICES

This Agreement must be signed and returned before any Programs may commence.

Client: _____

Estimated \$ _____ or \$ _____ per hour for _____ hours.

Fixed Fee for the Services: \$ _____ =

For Estimates: The fees and expenses shown are minimum estimates. Final fees and expenses shall be shown when invoice is rendered. The Client's approval shall be obtained for any increase in fees or expenses that exceed the above estimate by ten percent (10%) or more.

Additional Expenses: The Client shall reimburse the Elements Fitness and Dance for all expenses arising from this assignment at cost.

Cancellation Fees: Cancellation fees are based on the amount of work completed. Fifty percent (50%) of the final fee is due within 30 days of notification that for any reason the job is cancelled or postponed before the final stage. One hundred percent (100%) of the total fee is due despite cancellation or postponement of the job if the design has been completed. Upon cancellation, all rights to the use of Elements Fitness and Dance products, services and materials revert to the Elements Fitness and Dance, and all manuals or materials must be returned.

Payment: All invoices are payable within 30 days of receipt. A one and a half percent (1½ %) monthly service charge is payable on all overdue balances. The grant of any license or is conditioned on receipt of full payment. All transfer of rights from Elements Fitness and Dance to Client is conditioned upon payment in full for the services rendered. If payment in full is not made, all rights remain with or revert to Elements Fitness and Dance.

Scheduled or target completion date: _____ =

The scope of Services includes: (Check all that apply)

Initial Consultation

Facility License to use Fitness Programs in Facility

Instructor License to teach Fitness Programs independently

Training of Instructors

Procurement of Fitness Equipment

Design of Fitness/Service Programs

License to teach Fitness Programs in Facility

Territory _____

Conceptual Design of Fitness Facility

Monthly: Update of Fitness Program Maintenance of License \$ _____ per month for _____ months.

Description of Services to be performed:

(ATTACH SHEET IF NECESSARY)

Elements Fitness and Dance, LLC

Client

By: Andrea M. Fornarola

By:

Date

Date

Client Contact Name
E-mail
Phone Number
Client Billing Address

TERMS

Revisions: Revisions to a custom designed program may be made only at the preliminary stage. Additional fees will be charged for revisions made at Client's request after the initial program design presentation, and for revisions reflecting a new direction to the assignment, or new conceptual input. However, no additional fee shall be charged for revisions required to conform to the original assignment description. Client shall, within five (5) days of delivery of the Services, confirm that it is in accordance with Client's specifications. Should Client deem the Program unacceptable, after its completion, the Client will need to inform the Elements Fitness and Dance in writing of the issues and allow the Elements Fitness and Dance reasonable time to cure any defects. Should the Program still be deemed unacceptable to the Client, after the Elements Fitness and Dance was afforded a reasonable time to cure defects, then all rights revert to the Elements Fitness and Dance, except for rights in content provided by Client or in Client's name, marks or logos.

Confidentiality: The Client agrees that he/she shall not disclose, use or otherwise make available any Confidential Information received hereunder. He/she further agrees to treat all Confidential Information with the same degree of care that he/she employs to protect his/her own confidential information which, in no event, shall be less than the minimum standard of care. Provided, however, that such Confidential Information shall not include any information (a) already known to Client at the time of disclosure as evidenced by receiving party's written records; (b) becomes publicly known other than through acts or omissions of the receiving party, or anyone that obtained the information or materials from the receiving party; (c) disclosed to the receiving party by a third party who was not and is not under any obligation of confidentiality; (d) independently developed by receiving party without knowledge of or access to the Confidential Information, as evidenced by the receiving party's written records; or (e) approved for release by written authorization from disclosing with client party. If Client is required by law to disclose any of the Confidential Information, he/she shall: (i) promptly notify Elements Fitness and Dance; (ii) reasonably assist Elements Fitness and Dance to obtain a protective order or other remedy of disclosing party's election; (iii) provide Elements Fitness and Dance prior review of any disclosure; (iv) only provide that portion of the Confidential Information that is legally required; and (v) make reasonable efforts to obtain reliable assurance that the Confidential Information will be maintained in confidence. Elements Fitness and Dance understands that Client will not be restricted with whom they may conduct business with, on any past/existing/future projects, in any way. Client does agree to honor all stated confidentiality agreements with Elements Fitness and Dance, and will not share any Elements Fitness and Dance proprietary information or proprietary methods, to any third parties, and will not use such proprietary information for any purpose unless within a project for Elements Fitness and Dance.

Permissions and Releases: The Client agrees to indemnify and hold the Elements Fitness and Dance harmless against any and all claims, costs, and expenses, including attorney's fees for negligence or breach by client.

Warranty of Originality: The Elements Fitness and Dance warrants and represents that, the Project content is original and unencumbered by ownership claims from any third party, and will not violate the rights of any third party.

Reservation of Rights: Client shall retain all right, title and interest in the material content provided by the Client, including articles, photographs, names, marks and logos of Client. Except as specifically agreed, Elements Fitness and Dance shall have no right or license to make commercial use of the Client's documents for any purpose other than the Project outlined in this Agreement. All rights not expressly granted above are retained by the Elements Fitness and Dance, including any electronic rights or usage, and including, but not limited to, all rights in sketches, comps or other preliminary materials. Any use by Client additional to that expressly granted above requires arrangement for payment of a separate fee. Elements Fitness and Dance will own all rights in newly created Program created hereunder and hereby grants Client a license to use the Program at the fee set forth, but not for derivative works unless a fee for a transfer of rights has been paid. Client hereby grants to Elements Fitness and Dance a perpetual, royalty-free license to use any Program for the purpose of educational purposes and the marketing of the Elements Fitness and Dance's business, provided that such uses do not explicitly or impliedly indicate Client's endorsement of Elements Fitness and Dance. Where applicable the Client will be given credit.

License: The legal relationship between Elements Fitness and Dance and Client shall be that of licensor and licensee. Client has the rights to use the Program provided by Elements Fitness and Dance to conduct fitness classes only at an authorized fitness facility. Client shall not record, sell, or share the Program in any other manner than an instructional class. Client shall acknowledge Elements Fitness and Dance by incorporating the Program name as derived by Elements Fitness and Dance in all references to a class using the Program. Client must understand that they are renting the Program from Elements Fitness and Dance and under no circumstances may they assign their Program to another Client to train a class. Any reference to the Program must be accompanied by some element of acknowledgement towards Elements Fitness and Dance. Upon termination of the Agreement, all the above rights are terminated; continuation of which will be a violation of law.

Miscellaneous: This Agreement shall be governed by the laws of the state of New York, without regard to any choice-of-law provisions. In any litigation or arbitration arising under or relating to this Agreement the parties shall bear their own attorney's fees and litigation and/or arbitration costs and expenses. Client shall be limited to damages in an amount equal to sums paid to Elements Fitness and Dance under this contract. The parties shall undertake reasonable attempts to resolve all disputes arising out of this Agreement in an amicable manner and may agree to submit to arbitration. Should either party have to resort to enforcement of the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees from the other party. The parties may also seek injunctive relief to enforce their rights under this contract where the same is reasonably necessary to protect their interests and minimize damages. All rights and remedies shall be cumulative. Client irrevocably consents to venue in the state and federal courts of New York State. This Agreement and Client's specifications constitute the entire agreement between the parties with respect to the subject matter and supersede all prior communications, agreements or understandings, written or oral. In the event of a conflict between any purchase order and the terms of this Agreement, this Agreement shall govern. Any amendment to this Agreement must be in writing and signed by both parties. The delay or failure to assert a right or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition. A valid waiver must be executed in writing and signed by the party granting the waiver. Each party acknowledges that it was provided an opportunity to seek advice of counsel and as such this Agreement shall not be strictly construed for or against either party. The provisions of this Agreement are severable, and if any provision of this Agreement is determined to be invalid or unenforceable under any controlling body of law, such invalidity or non-enforceability shall not in any way affect the validity or enforceability of the remaining provisions.