

Elements Fitness and Dance Membership and License Agreement

This membership and license agreement (“Agreement”) is made and entered into between Elements Fitness and Dance LLC (“Elements”), and you (“Instructor” or “Facility”), and shall be deemed effective as of Instructor’s/Facility’s enrollment date (the “Effective Date”).

1. Membership/License Fees.

- 1.1 **Membership Fee.** Instructor/Facility shall pay Elements a membership fee (the “Membership Fee”) in the amount of \$_____ per month, which shall be payable each and every month during the Term hereof, subject to the terms of the Termination Paragraph below. Elements reserves the right to offer discounts or other promotions that may affect the Membership Fee. Facility shall pay Elements a training fee for all instructors in the amount of \$_____ per instructor. Instructor/Facility’s failure to timely make any payments due hereunder shall be deemed in material breach of this Agreement, in which case Elements may deny or cancel any or all of Instructor/Facility’s Membership benefits and privileges and immediately terminate this membership.
- 1.2 **Acceptance.** Instructor’s/Facility’s payment of fees pursuant to this Agreement constitutes Instructor’s/Facility’s acceptance of the terms hereof.

2. Quality Standards and Maintenance

- 2.1 **Standards.** Instructor/Facility agrees that the nature and quality of all Services rendered by Instructor/Facility shall conform to the standards set by Elements as set forth in the Elements Manual, and as otherwise dictated by Elements from time to time.
- 2.2 **Maintenance.** Instructor/Facility agrees to cooperate with Elements in facilitating Elements’ control over the nature and quality of the Services offered by Instructor/Facility, use of Elements’ trademark and copyrights, to permit observation of Instructor’s/Facility’s classes, and to supply Elements with evidence confirming compliance with this Agreement upon request. Instructor/Facility shall comply with all applicable laws and regulations and obtain all appropriate government approvals pertaining to the provision of the Services and the advertising therefor.

3. Effective Date and Term

- 3.1 **Term.** The initial term of the Agreement shall be effective on _____ and be for _____ months from the Effective Date (“Initial Term”), and shall automatically renew for indefinite successive one-month periods unless or until Instructor/Facility breaches any part of this Agreement/ cancels his/her membership in accordance with this Agreement.
- 3.2 **Cancelling.** Instructor/Facility may cancel this Agreement and the membership at any time after the Initial Term. If the Instructor/Facility cancels his/her membership prior to the expiration of the Initial Term, they shall pay a termination fee of \$_____ for each month remaining in the Initial Term. If the Instructor/Facility cancels his/her membership after the Initial Term, he/she will pay the per-diem rate of \$_____ per day if the cancellation for the days the Program was used in that month/billing period. Cancellation immediately forfeits all of Instructor’s/Facility’s rights granted under this License Agreement.

4. Termination

- 4.1 **Termination for Cause.** Elements has the right to immediately terminate this agreement upon thirty (30) days written notice to Instructor/Facility in the event that Instructor/Facility breaches any provisions herein or upon Instructor’s/Facility illegal action or other conduct deemed by Elements to be disparaging or detrimental to Elements and its brand. At its sole discretion, Elements may provide Instructor/Facility an opportunity to cure the breach. If the Agreement is terminated within the Initial Term, Elements has the right to retain the Initial Term fee. If the Agreement is terminated after the Initial Term Instructor/Facility, will be charged at the per-diem rate for the days before termination in the current month.
- 4.2 **Effect of Termination.** Upon termination of this Agreement, Instructor/Facility shall immediately discontinue all use and return all of the Elements Program and all marks and materials related to the Elements Program.

5. Marks

- 5.1 Elements hereby grants to Instructor/Facility a non-exclusive, nontransferable license (“the License”) without warranty, to use the Elements Marks and name, as well as the name of its owner, to promote the Programs to be offered by the Instructor/Facility provided by Elements. The Mark shall be used in a manner complying with reasonable requirements of Elements as necessary to protect the Mark and brand image.

6. Relationship of Parties

- 6.1 Legal Relationship. The legal relationship between Elements Fitness and Dance and Instructor/Facility shall be that of licensor and licensee. Instructor/Facility has the rights to use the Program provided by Elements Fitness and Dance to conduct fitness classes only at an authorized fitness facility. Instructor/Facility 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.
- 6.2 Media. Instructor/Facility shall not make any statements or take any actions in any media whatsoever, including, without limitation, electronic media, print media, wireless media, or the world wide web, that reasonably may contradict the relationship set forth herein, that reasonably may confuse or mislead any person regarding the nature of the relationship between Elements and Instructor/Facility.

7. Liability

- 7.1 Limited Liability. Under no circumstances shall Elements or any of its affiliates be liable to Instructor/Facility or any other person for loss or damage of any nature arising out of or in connection with this Agreement. Instructor/Facility shall be limited to damages in an amount equal to sums paid to Elements Fitness and Dance under this contract.
- 7.2 Indemnification. Instructor/Facility shall indemnify, defend and hold harmless Elements and any of its affiliates from any and all losses, liabilities, damages and expenses that arises out of any breach by Instructor/Facility of any provision of this Agreement or from any other act of malfeasance of nonfeasance or breach on the part of Instructor/Facility.

8. Miscellaneous

- 8.1 Disclaimers. Elements makes no representations or warranties, express or implied, to Instructor/Facility with respect to the membership, or any implied warranties arising out of course of performance, dealing or trade usage.
- 8.2 Nature of Services. Instructor/Facility acknowledges and agrees that the physical nature of the Elements Programs, they may not be safe of appropriate for everyone. Instructor/Facility further acknowledges that any information Elements provides to Instructor/Facility regarding health and fitness is intended as educational aid and is not a substitute for the medical or healthcare advice that is provided by a medical professional.
- 8.3 Third Party. Instructor/Facility shall not sell, assign, copy, distribute, publish or otherwise provide the proprietary and confidential information regarding the Program provided by Elements in any other manner other than by means of a fitness class and promotion thereof. Promotional or training video-clips not exceeding 120 seconds in length will not be deemed to violate this provision.
- 8.4 Enforcement. 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. 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. Instructor/Facility irrevocable consents to venue in the state and federal courts of New York State. This Agreement and Instructor/Facility'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.

Printed Name of Instructor/Facility Rep.: _____ Signature _____ Date: _____

Elements Fitness and Dance Rep.: _____ Signature _____ Date: _____

Elements Fitness and Dance, LLC – 90 West Street, 5K, New York NY 10006 - 917-589-7319