

AGREEMENT FOR HEALTH CLUB CONSULTANT CONSULTING SERVICES

**PREVIEW**

IN CONSIDERATION of the mutual promises and covenants that are contained in this Agreement, the Parties agree as follows:

**I. PARTIES**

The parties to this Agreement are:

1.1 [NAME], hereinafter referred to as "Consultant".

1.2 [NAME], hereinafter referred to as "Client".

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2.1 The purpose of this Agreement is to obtain fitness and wellness instruction and management services for Client's employee fitness center.

**III. DUTIES**

3.1 Per the proposed bid, Consultant shall provide consultation, instruction and training for aerobics classes, fitness classes, floor exercises and programs, weight lifting and other fitness or wellness related services at Client's fitness center.

3.2 Consultant shall manage and supervise other fitness or health consultants at Client's fitness center.

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3.3 Consultant agrees to devote the time, effort, energy and resources that may be required in order to accomplish the purpose of this Agreement. Consultant agrees not to place other work, jobs, duties or agreements over the duties contemplated herein.

3.4 Consultant agrees to complete all reports, forms or other necessary documentation required by Client for the performance of this Agreement. Decisions as to the nature of duties necessary to perform under this Agreement shall be in Client's sole discretion.

**THANK YOU**

3.5 Consultant agrees to provide prompt, courteous, efficient and professional efforts to promote the duties and transactions contemplated under this Agreement.

**IV. COMPENSATION**

4.1 Client shall pay Consultant the compensation that is set forth in Exhibit "A"; the exhibit is attached hereto and incorporated herein for reference for all purposes.

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4.2 Client shall not be liable to the Consultant for any expenses or other costs incurred by Consultant in connection with the performance of this Agreement other than those listed in Exhibit "A" hereto. No extra charges of any kind will be allowed unless specifically agreed to in writing by Client.

4.3 The Consultant is responsible for payment of any and all insurance premiums that the Consultant may incur including errors and omissions policies, medical or life policies.

4.4 Consultant shall be responsible for all federal and state taxes and contributions incident to any duties, work or services rendered hereunder, including but not limited to, federal and state income taxes, employee withholding taxes, worker's compensation insurance, sales taxes, use taxes, property taxes, permit fees, licensing fees, etc. which can be assessed against Consultant or Consultant's employees or sub-contractors.

4.5 Consultant shall make any and all reports required in connection therewith, including, but not limited to IRS 941 reports. It is expressly agreed that Client shall not be responsible for or liable for any payment of taxes accruing by reason of any duties, work or services rendered hereunder. Consultant hereby indemnifies and holds Client harmless from any and all liability and claims for payments for such taxes and contributions as well as any and all penalties, interest, costs, or legal defense fees assessed in connection therewith.

## V. RELATIONSHIP AND AUTHORITY

5.1 Consultant agrees and stipulates that all work or services provided hereunder shall be performed in the capacity of an independent contractor rather than an employee. The parties have not formed, either expressly or impliedly, any joint venture or partnership arrangement. Under no circumstances shall Consultant be deemed an employee, partner of the other, nor shall Consultant act as an agent of Client.

5.2 Client has the general right of inspection and supervision in order to secure the satisfactory completion of the duties contemplated herein. Client shall not have control over the Consultant's hours, times, employment, or the like with the exception that Consultant shall comply with and observe any rules, operating schedules, deadlines, or other time considerations which may be applicable to Client's facilities.

5.3 Consultant has no authority to act for or on behalf of Client except as provided for in this Agreement; no other authority, power, right or use is granted or implied.

5.4 Consultant may not make, revise, alter, depart, or otherwise diverge from Client's rules, policies, terms or conditions; Client shall furnish the same to Consultant.

5.5 Consultant shall be responsible for Consultant's own work and every part thereof.

**PREVIEW**

- a. Consultant specifically assumes any and all risk of damage or injury from whatever cause to property or persons.
- b. Consultant shall be held responsible for the satisfactory completion of the work assigned in accordance with the intent of the terms, conditions, specifications and drawings which may have been furnished in the connection therewith.
- c. Consultant shall provide without extra charge any and all incidental items required as part of Consultant's work even though not particularly specified or indicated in this Agreement.
- d. If Consultant has a valid objection to the use of any material, appliance or method of construction requested by Client, Consultant shall make a written report of such objection to Client. Client shall consider the objection and determine whether the objection will be granted or denied.

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**V. GENERAL AND ADMINISTRATIVE PROVISIONS**

**6.1 ENTIRE AGREEMENT:**

This Agreement along with any Exhibits represents the entire Agreement by and between the parties.

**6.2 AMENDMENT, CHANGES OR MODIFICATION:**

**THIS DOCUMENT**

This Agreement may not be amended, added to, changed or modified except by a written Agreement which has been duly executed by all of the parties' authorized representatives.

**6.3 ASSIGNMENT AND SUBCONTRACTING:**

Except as to a subsidiary, affiliate, or operating division of either party hereto, neither this Agreement, nor any duty, right or interest therein may be delegated, assigned, subcontracted or otherwise transferred in any manner without the prior written consent of Client, and any effort to the contrary shall be void.

Consultant will not subcontract without Client's prior written consent for the

**THANK YOU**

**6.4 CHOICE OF LAW:**

This Agreement shall be subject to and governed under the laws of the State of [STATE]. Any and all obligations and payments are due and performable and payable in [COUNTY] County, [STATE].

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The parties agree that venue for purposes of any and all lawsuits, causes of action, arbitrations, or other disputes shall be in [COUNTY] County, [STATE].

6.5 **DISPUTES:**

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In the event that a dispute occurs applicable to the operation, construction, interpretation, or enforcement of this Agreement, the parties hereby agree to submit the dispute to a commercial arbitrator so that the matter may be arbitrated in lieu of resolving the dispute in a court of law or equity.

The parties shall choose an arbitrator from the American Arbitration Association pursuant to the following process: The parties shall request from the American Arbitration Association a list of nine commercial arbitrators. Each party, assuming there are two parties to the Agreement, shall have four strikes, and thereby strike from the list the arbitrators they do not wish to use. The remaining arbitrator, or one that has not been struck, will be the arbitrator to hear the matter.

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6.6 **FURTHER ASSURANCES:**

Each party further agrees that it shall take any and all necessary steps and sign and execute any and all necessary documents or Agreements required to implement the terms of the Agreement of the parties contained in this Agreement.

Each party also agrees to refrain from taking any action, either expressly or impliedly, which would have the effect of prohibiting or hindering the performance of the other party to this Agreement.

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6.7 **INDEMNITY:**

Consultant agrees to indemnify and hold Client harmless from any and all obligations, loses, damages, claims, demands or lawsuits which are caused in whole or part by Consultant.

This indemnity shall protect Client in the event Consultant causes, either directly or indirectly, any personal or property damage, loss, destruction, including but not limited to any fires, explosions, death, injury, liability, or other claims that could be made against Client, its successors, assigns, customers and users of its goods, work or services, as a result of Consultant's actions, goods, work or service, including but not limited to Consultant, its employees, agents, sub-contractors or other personnel's intentional conduct, negligence or other damaging actions.

**THANK YOU**

This indemnity shall become effective in the event that Client or any other person or entity claims or alleges to have suffered any damages, claims, injury, loss or other contingency which could or did result from the goods, work or services purchased or ordered per this Agreement.

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Consultant shall pay for all legal defense expenses incurred pursuant to this indemnification and Consultant shall reimburse Client for all expenses, fees, damages or other costs that result from the actions or conduct of Consultant, its employees, agents, sub-contractors or other personnel.

This indemnification will apply whether Consultant or Client defends any such suit or claim and whether the matter involves property damage or personal injury claims.

This indemnification clause shall survive this Agreement and be enforceable as a separate Agreement in the event the same becomes necessary.

6.8 **INSURANCE:**

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In the event that Client deems and informs Consultant that insurance is required for Consultant's duties hereunder, Consultant shall carry at its own expense with a reliable insurance company satisfactory to Client insurance including but not limited to worker's compensation insurance, public liability property damage insurance, automobile public liability and casualty, collision, fire, and theft insurance, cargo insurance, and marine equipment insurance, and a general purpose insurance policy to cover theft of equipment and/or materials taken or stolen from the job site.

- a. Consultant hereby agrees prior to commencement of the services to be performed hereunder that it shall furnish to Client satisfactory evidence of the insurance coverage required hereunder, and the certificate shall provide a [NUMBER OF DAYS] day written notification provision that notice to Client is required to be sent prior to cancellation of or material change to such insurance.
- b. Any insolvency, bankruptcy, or failure or any insurance company carrying insurance for Consultant, or failure of any insurance company to pay any claims accruing on the same, shall not be held by Consultant to constitute waiver or estoppel of any of Client's rights against Consultant. Consultant agrees to indemnify and hold Client harmless from any and all claims or liability contemplated in this Agreement.
- c. Insurance policies shall be written to protect Consultant and Client against any and all liability for damage, loss, or expense arising from damage to property or injury to or death of any person or persons arising in any way out of or in connection with or resulting from the services performed hereunder. Consultant and its sub-contractors shall furnish Client with a Certificate of Insurance naming Client as an additional insured. Consultant and its insurers agree to waive their respective rights of subrogation against Client.

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For Agreements which require services of labor, Consultant and its sub-contractors shall maintain at its sole cost and expense, from the time any work is

commenced hereunder until the work is fully performed and discharged, insurance of the kind and with minimum limits as listed below:

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<b>Type of Insurance</b>	<b>Amount of Insurance</b>
Workers' Compensation	Statutory
Employers' Liability	[\$AMOUNT]
Commercial General Liability*	[\$AMOUNT]
Comprehensive Automobile Liability*	[\$AMOUNT]

\*or Excess Liability Insurance with Limits in the aggregate of \$[AMOUNT].

6.9 **NOTICES:**

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Any and all notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if sent by facsimile transmission or mailed by certified mail, return receipt requested, postage prepaid, and addressed as follows:

[NAME]	[NAME]
[ADDRESS]	[ADDRESS]
[CITY, STATE, ZIP]	[CITY, STATE, ZIP]
[ATTENTION]	[ATTENTION]

**THIS DOCUMENT**

Either party hereby reserves the right to designate in writing to the other party any change of name, change of person, or address to which the notices shall be sent.

6.10 **PARAGRAPH HEADINGS, USE OF PRONOUNS, AND CAPTIONS:**

The captions, numbering sequences, titles, paragraph headings, punctuation, and organization used in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or any part of it. The paragraph headings used in this Agreement are descriptive only and shall have no legal force or effect whatsoever other than to aid a reasonable interpretation of the Agreement. The titles to each of the various articles and paragraphs are included for convenience of reference only and shall have no effect on or be deemed as part of the text of this Agreement. Use of the neuter or the singular to refer to the parties described in this Agreement shall be deemed a proper reference whether a party is an individual, partnership, corporation, association, trust, a group of two or more individuals, partnerships, or corporations, or a joint venture.

**THANK YOU**

Any grammatical changes required to make the provisions of this Agreement apply to individuals, or groups of individuals, such as males versus females,  
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corporations, associations, partnerships, trusts or other entities shall, in all instances be assumed as though each case were fully expressed.

**PREVIEW**

**6.11 PAROL EVIDENCE, STATUS OF AGREEMENT AND PRIOR UNDERSTANDINGS:**

This Agreement and the exhibits attached hereto and incorporated herein, if any, contain the entire Agreement of the parties and there are no representations, inducements, promises, Agreements, arrangements or undertakings, oral or written, between the parties to this Agreement other than those set forth herein and duly executed in writing.

No Agreement of any kind shall be binding upon either party unless and until the same has been made in writing and duly executed by both parties.

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Upon execution of this Agreement by all parties, all previous Agreements, Agreements, oral understandings, representations, arrangements, or undertakings of any kind relative to the matters contained in this Agreement are hereby superseded and canceled and all claims and demands not contained in this Agreement are deemed fully completed and satisfied.

**6.12 PARTIES BOUND CLAUSE AND SUCCESSORS:**

This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, executor, administrators, legal representatives, successors and assigns.

**THIS DOCUMENT**

The parties to this Agreement expressly agree that in the event a party seeks to or does transfer part or all of its assets to a separate entity, not a party to this Agreement, the party shall be liable under this Agreement as if the transfer had not occurred.

**6.13 RISK OF LOSS:**

Consultant shall bear the risk of loss for all of Consultant's, its employees, agents and sub-contractors personal or other property which may be used in the performance of this Agreement, applicable thereto.

**THANK YOU**

**6.14 TERM:**

This Agreement shall continue for [NUMBER OF YEARS] year(s) from the date the Agreement is executed, however either party may terminate this agreement, with or without cause by giving the other party [NUMBER OF DAYS] days notice of said termination. The notice shall be made to the non-terminating party. Any work in progress may be completed and any and all outstanding

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obligations, debts or warranties shall be honored and survive the termination of this agreement.

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## 6.15 WAIVER:

The failure or delay of either party in the enforcement of the rights detailed in this Agreement shall not constitute a waiver of the rights nor shall it be considered as a basis for estoppel either at equity or at law. That party may exercise its rights under this Agreement despite any delay or failure to enforce those rights at the time the cause of action or right or obligation arose.

### SIGNATORY CLAUSE

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This Agreement is signed, accepted and agreed to by all parties, either in their individual capacities or by and through their duly authorized officers, agents, trustees, attorneys-in-fact or representatives.

CLIENT

CONSULTANT

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

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

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

Tax I.D. Number: \_\_\_\_\_

# ~~THIS DOCUMENT~~

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