

**METABOLIC EFFECT  
INSTRUCTOR NON-COMPETE AND NON-DISCLOSURE AGREEMENT**

**THIS NON-COMPETE AND NON-DISCLOSURE AGREEMENT** ("Agreement") is entered into this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between **METABOLIC EFFECT, INC.**, a Delaware Corporation ("ME™") and \_\_\_\_\_, hereafter referred to as "Instructor."

ME™ and Instructor agree as follows:

1. Training. Instructor agrees to attend and participate in the training conducted by ME™ in the Metabolic Effect™ Workout.
2. Applicant Requirements. ME™ Instructor applicants must meet the following prerequisites to attempt certification:
  - 2.1. A personal training or group instructor training from one of the following: AFAA, NASM, ACSM, NSCA, ACE; or other nationally recognized agency approved by Metabolic Effect.
  - 2.2. Hold a degree in an exercise related field; or
  - 2.3. Hold a degree in unrelated field, in addition to having at least 3 years experience in a non-high school related athletic endeavor (i.e. college level or professional athletics, bodybuilding/figure/fitness competitor); AND
  - 2.4. Maintain a current CPR and First Aid Certification.
3. Confidential Information. While involved with ME™ or attending ME™ Training courses, Instructor will be exposed to certain valuable information that ME™ deems confidential (hereafter the "Information"). This Information includes, but is not limited to, the ME™ exercise method, techniques, program, processes, unpublished materials, products, and all other information included in the scope of the confidential Information as described below, all of which are collectively referred to for convenience as the "ME™ Workout." ME™, Inc. wishes to disclose the Information only if it can do so without risk that the Information's value will be diminished. Instructor understands that ME™, has invested substantial effort into developing this Information and the ME™ Workout, and that Instructor's unauthorized disclosure of the Information would irreparably damage ME™. The Information cannot be adapted, renamed, or reengineered in any manner to create, teach, or offer a similar program, routine, or workout.
4. Scope. The scope of the confidential Information includes the ME™ fitness method, instructor program, and mobile fitness solutions including, but not limited to, the following:
  - 4.1. The Information includes the teaching techniques, instructional and other materials, and concepts in the presentation package, workbooks, and demonstrations that Metabolic Effect™ will make available to the Instructor only upon him or her signing this Agreement.
  - 4.2. The Information includes designs, text, movement techniques, workout routines, combinations, and the concept of the ME™ Workout in general including: (1) the "Rest Based Workout," (2) the "Hybrid Based Workout" using the "Metabolic Effect Exercises," and (3) the "30 minute Intermixed Cardio and Weight Workout," which themselves are among ME™'s trade secrets.

- 4.3. The confidential Information includes METM's "know-how," clients, client lists, Certified Instructor and Instructor candidate and Instructor lists, certification standards, databases, marketing, tactics and strategy, merchandising, licensing, licensees, vendors, personnel contracts and their terms, business models and plans, compilations, techniques, devices, intellectual property, methods, processes, copy, formats, packaging, brand names, formulas, patterns, products, slogans, and illustrations.
- 4.4. The Information includes all trade secrets and other information about METM's methods, programs, business, and techniques to which Instructor is exposed while involved with METM in any capacity.
  - 4.4.1. In consideration of METM disclosing this Information to Instructor, and training him or her to become a METM Instructor, Instructor hereby agrees that the Information is and shall be kept confidential, except as Instructor is authorized to disclose it by METM and only after being approved as an Instructor. Instructor also agrees that information and resources which he or she develops or obtains while reviewing the METM Information or serving as a METM Instructor automatically become the property of METM, and that Instructor will inform METM of those developments. Instructor agrees that all such Information shall be used only to benefit METM. Instructor also agrees to keep the Information secret and to hold it in confidence except as Instructor is authorized to disclose it by METM. Instructor agrees that he or she will not divulge, without consent, any of the Information to anyone who does not need to know to further METM's purposes unless: (a) the information is known to Instructor prior to obtaining it from METM; (b) the information is, at the time of disclosure by Instructor, then in the public domain; or (c) the information is obtained by Instructor from a third party who did not receive it directly or indirectly from METM.
5. Independent Contractor. In carrying out the obligations and duties under this Agreement, it is understood and agreed that Instructor is acting as an independent contractor and not as an agent, partner, or employee of METM. Neither party shall have the right to bind or obligate the other in any manner whatsoever nor shall a party be liable for the representation, act or omission of the other party, which is contrary to the provisions of this Section.
6. Best Efforts/Loyalty. The Trainer shall at all times be aware and conscious of the fine reputation enjoyed by the Corporation and shall strive in a proper, professional and ethical manner to promote and enlarge the Corporation's business and not in any way impair or adversely affect such reputation. Further, the Trainer will not directly or indirectly in any way intentionally do or engage in any activities which shall discredit, damage, hurt, or ruin the reputation and practice of the Corporation at any time.
7. Termination. On termination of this Agreement in any manner, or for any reason, Licensee shall immediately cease and desist from all instruction or performance of the METM Workout or uses of the Information in any form or manner. Instructor agrees to return to METM all materials related to the METM Workout, including all documentation, copies, notes, diagrams, computer data storage media, and other materials containing any portion of the Information within fifteen (15) days of the conclusion of Instructor providing services for METM or for a METM Licensed Facility, or when METM's Instructor License ends, whichever is earlier.
8. Tradename Protection. Whether or not confidential or already public, METM trademarks and trade names, and its written and recorded materials are protected by federal and state law,

including copyright and trademark laws, from unauthorized reproduction or use, and may not be used or reproduced in any way without ME™'s consent.

9. Authorized Disclosures by Certified ME™ Instructors. Once approved as a ME™ Instructor, he or she is authorized to support others in learning the ME™ Workout to clients using the teaching materials and techniques as presented in the workbook distributed at or in connection with the Training workshop. Instructor agrees to comply with all guidelines in the ME™ Instructor Manual that he or she will receive as part of the Instructor's training, and all other materials provided to Instructor by ME™ from time to time, including but not limited to all guidelines relating to use of all ME™ names and logos in all promotional activities associated with the Instructor's work as a ME™ Instructor. Instructor may not use or disclose the names, logos, or Information in any other manner or context without ME™'s written consent. Instructor may not teach others to teach the ME™ Workout or to be ME™ Workout Instructors, and Instructor may not certify others in the ME™ Workout without the express authorization of ME™. Instructor may not authorize any facility to represent that it is an authorized or licensed ME™ Facility. Instructor understands that the materials that will be distributed to Instructor, are copyrighted works, and that they may not be copied, reproduced, licensed, displayed, performed, or distributed in any manner except as expressly authorized.
10. Non-competition. Instructor agrees not to manufacture, sell, deal in, or otherwise use or appropriate the Information for the Instructor's own use including, but not limited to, creating derivative works, adaptation, imitation, redesign, reverse engineering, digitization, or modification. Products, services, or techniques that Instructor is currently manufacturing or marketing that are similar to those described in the Information and that are expressly listed on Schedule A attached hereto ("Preexisting Products") are exempt from this non-competition provision. The Instructor agrees that he or she will not market, or cause to be marketed any exercise or fitness method or program that is substantially similar to the ME™ Workout to anyone in the world at anytime during the time Instructor is reviewing the Information or performing services for ME™ or serving as a ME™ Instructor and for a period of one (1) year after the completion of that review or those services, or when the Instructor's certification ends. Instructor further agree that he or she will not market, or cause to be marketed any program or method using the same or a substantially similar method to persons or businesses whom are then-present clients, contractors, directors, employees, or instructors of ME™ for a period of two (2) years after review, the completion of the services Instructor performed for ME™, or the Instructor's certification ends. If the provisions contained in this non-competition provision are deemed to exceed the time, geographic, or other limits imposed by applicable law in any jurisdiction, then such provision shall be deemed reformed in such jurisdiction to the maximum extent permitted by applicable law.
11. Breach. Instructor acknowledges that ME™ will suffer immediate and irreparable harm as a result of any violation, breach or threatened breach of this Agreement by Instructor. ME™ shall be entitled, and Instructor hereby consents to the issuance in any court of competent jurisdiction, with or without notice, and in addition to any other remedy, including damages, which may be available at law or in equity, to temporary, preliminary and permanent orders and injunctions, without bond, restraining and enjoining such breach or violation by Instructor and any other person, corporation, partnership or other entity including their officers, directors, shareholders, employers, servants or agents who may be acting in concert with Instructor or to whom such confidential Information may have been disclosed.

- 12. Non-assignment. This Agreement is not assignable, and shall bind the Parties and their heirs, fiduciaries, affiliates, directors, shareholders, partners, and successors.
- 13. Prior Agreements. This is the Parties' entire Agreement. It supersedes any and all prior agreements whether written or oral, and may be amended only by a separate writing.
- 14. Authority to Bind. The persons signing below represent and warrant that each has the full power and authority to bind the party on whose behalf he or she signs, even if he or she signs on behalf of a corporation.
- 15. Governing Law. This Instructor Agreement shall be governed and interpreted by the laws of the State of North Carolina.
- 16. Severability. If any provision of this Agreement is determined to be unenforceable, that provision shall be reformed as set out above, or severed if such reformation is not applicable, and all other provisions shall remain in effect.

ACCEPTED AND AGREED AS OF THE EFFECTIVE DATE ABOVE:

**METABOLIC EFFECT, INC.**

By: \_\_\_\_\_  
[authorized signature and title]

**TRAINER/INSTRUCTOR:**

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