

Confidentiality and Non-Disclosure Agreement



3485 230th St. E., Prior Lake, MN 55372
Phone: (612) 702-2679 Fax: (612) 435-9880
www.live2bhealthy.com

CONFIDENTIALITY AGREEMENT

This Non-Disclosure and Confidentiality Agreement (this "Agreement") is made effective as of _____ (date), between LIVE 2 B HEALTHY®, 3485 230th St. E., Prior Lake, MN 55372 and _____ (Trainer / Recipient).

In this Agreement, the party who owns the Confidential Information will be referred to as "LIVE 2 B HEALTHY®" and the party to whom the Confidential Information will be disclosed will be referred to as the "Recipient".

Recitations:

The parties listed above intend to enter into discussions relating to a potential business transaction (the "Transaction") during which LIVE 2 B HEALTHY® may disclose to the Recipient certain information that LIVE 2 B HEALTHY® deems confidential and proprietary.

LIVE 2 B HEALTHY® holds certain proprietary concepts and patentable products or processes, financial, business, and technical information that has commercial value and that has been kept confidential. It is necessary that recipient receive certain confidential information for the purposes relating to the Transaction.

LIVE 2 B HEALTHY® is engaged in the creation, marketing and distribution of proprietary programs, services, and products. **LIVE 2 B HEALTHY® requests that Recipient protect the confidential material and information, which may be disclosed between LIVE 2 B HEALTHY® and the Recipient.** Therefore, the parties agree as follows:

I. CONFIDENTIAL INFORMATION. The term "Confidential Information" means any information, material, or know-how that is proprietary to LIVE 2 B HEALTHY®.

A. Confidential Information includes without limitation:

- Business Plan
- Pricing information, processes, lists, toolkits, service packages
- Industry contacts or representatives information
- Exercises, web sites, printed brochures, any and all sales material
- Trainer interview materials, any and all fitness exercise materials
- Service, programs, and patentable concepts, and patent pending documentation.

II. PROTECTION OF CONFIDENTIAL INFORMATION. The Recipient understands and acknowledges that the Confidential Information has been developed or obtained by LIVE 2 B HEALTHY® through the investment of significant time, effort and expense, and that the Confidential Information is a valuable, special and unique asset of LIVE 2 B HEALTHY® which provides LIVE 2 B HEALTHY® with a significant competitive advantage, and needs to be protected from unauthorized disclosure. In consideration for the disclosure of the Confidential Information, the Recipient agrees to hold in confidence and to not disclose the Confidential Information to any person or entity without the prior written consent of LIVE 2 B HEALTHY®. With respect to each item of LIVE 2 B HEALTHY® protected information, the Recipient agrees to following for a period of three (3) years. In addition, the Recipient agrees that:

- i. No Copying/Modifying.* The Recipient will not copy or modify any Confidential Information without the prior written consent of LIVE 2 B HEALTHY®.
- ii. Unauthorized Disclosure of Information.* If it appears that Recipient has disclosed (or has threatened to disclose) Confidential Information in violation of this Agreement, LIVE 2 B HEALTHY® shall be entitled to an injunction to restrain the Recipient from disclosing, in whole or in part, the Confidential Information. LIVE 2 B HEALTHY® shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.
- iii. Use of Evaluation of Transaction.* The Recipient will not use LIVE 2 B HEALTHY® protected information for any purpose other than the purpose of evaluating the potential Transaction and/or performing the Recipient's obligations with respect to that Transaction.
- iv. Need to Know Basis.* The Recipient agrees to disclose the protected information to only those employees, affiliates, or



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outside advisors, who by role of their direct involvement have a need to know the information to render their services or evaluate this Transaction.

- v. *Transaction Personnel Confidentiality.* The Recipient agrees to disclose the protected information to Transaction Personnel only under obligation of confidentiality binding upon such Transaction Personnel.

III. RETURN OF CONFIDENTIAL INFORMATION. Upon the written request of LIVE 2 B HEALTHY[®], the Recipient shall return to LIVE 2 B HEALTHY[®] all written materials containing the Confidential Information. The Recipient shall also deliver to LIVE 2 B HEALTHY[®] written statements signed by the Recipient certifying that all materials have been returned within five (5) days of receipt of the request.

IV. RELATIONSHIP OF PARTIES. Neither party has an obligation under this Agreement to purchase any service or item from the other party, or commercially offer any products using or incorporating the Confidential Information. This Agreement does not create any agency, partnership, or joint venture.

V. NO WARRANTY. The Recipient acknowledges and agrees that the Confidential Information is provided on an AS IS basis. LIVE 2 B HEALTHY[®] MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL LIVE 2 B HEALTHY[®] BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OR USE OF ANY PORTION OF THE CONFIDENTIAL INFORMATION. LIVE 2 B HEALTHY[®] does not represent or warrant that any product or business plans disclosed to Recipient will be marketed or carried out as disclosed, or at all. Any actions taken by Recipient in response to the disclosure of the Confidential Information shall be solely at the risk of the Recipient.

VI. LIMITED LICENSE TO USE. The Recipient shall not acquire any intellectual property rights under this Agreement except the limited right to use set out above. The Recipient acknowledges that, as between LIVE 2 B HEALTHY[®] and the Recipient, the Confidential Information and all related patents and other intellectual property rights, are (and at all times will be) the property of the patent holder, even if suggestions, comments, and/or ideas made by the Recipient are incorporated into the Confidential Information or related materials during the period of this Agreement.

VII. GENERAL PROVISIONS. This Agreement sets forth the entire understanding of the parties regarding confidentiality. Any amendments must be in writing and signed by both parties. This Agreement shall be construed under the laws of the State of Minnesota. This Agreement shall not be assignable by either party, and neither party may delegate its duties under this Agreement, without the prior written consent of the other party. The confidentiality provisions of this Agreement shall remain in full force and effect after the effective date of this Agreement.

VII. Dispute Resolution. The parties agree to resolve all disputes through facilitations and final and binding arbitrations and waive trial by jury. If a dispute arises out of or relates to this contract or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration. Mediation costs shall be borne equally by the parties, and will be conducted in Minnesota. If a party fails to respond to a written request for mediation within 30 days after service or fails to participate in any scheduled mediation conference, that party shall be deemed to have waived its right to mediate the issue in dispute. If the case is not resolved through mediation, arbitration will be conducted in Minnesota by an arbitrator mutually agreed to by the parties.

Live 2 B Healthy[®]:

Recipient:

Name:

Trainer Name:

Title:

Signature: _____

Signature: _____

Address: _____

Initials: _____

Date: _____

Date: _____ Phone: (____) _____

Email: