



Certification Activities Agreement
Confidentiality, Conflict of Interest, and Exam Eligibility

Recipient Information			
Name (Exact Legal Name):			
Street Address:	City:	State:	Zip Code:
Telephone:	Email:		

This Unilateral Confidentiality and Non-Disclosure Agreement (the “**Agreement**”), effective on the date signed by the Recipient (the “**Effective Date**”), is by and between the National Council for Certified Personal Trainers (NCCPT), a division of ISSA, LLC (the “**Disclosing Party**”), a Missouri limited liability company located at 11201 N. Tatum Blvd., Ste, 300 PMB 28058, Phoenix, AZ 85028-6039 and the party identified above (the “**Recipient**”). NCCPT and the Recipient may be referred to collectively as the “**Parties**,” and each, a “**Party**”.

WHEREAS, NCCPT desires to utilize the services, talents and expertise of Recipient in one or more of the following activities related to persons involved in any NCCPT certification program(s): i) NCCPT certification training and/or education; ii) NCCPT examination and/or test development; iii) NCCPT examination preparation and/or review (separately or collectively considered the “**Purpose**”), whether as an employee or a contractor;

WHEREAS, in connection with the Purpose, the Recipient may have access to certain information concerning NCCPT which is non-public, confidential, or proprietary in nature;

WHEREAS, NCCPT wishes to protect and preserve the confidentiality of such information; and

WHEREAS, the Parties desire to set forth in writing the terms and conditions of their agreements and understanding with respect to the Confidential Information (as defined below).

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Recitals. The foregoing Recitals are incorporated into this Agreement as if set forth fully herein.

Definitions. For purposes of this Agreement, the following terms have the following meanings:

“**Affiliate**” means, with respect to any Person, any other Person that is directly or indirectly Controlling, Controlled by, or under common Control with such Person, where “Control” and derivative terms mean the possession, directly or indirectly, of the

power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“Confidential Information” means all information, data, documents, agreements, files, and other materials, whether disclosed orally, in written, electronic, or other form or media, which is obtained from or disclosed by NCCPT, its Representatives, or otherwise, and whether obtained before or on or after the date hereof regarding NCCPT, including without limitation, [all information relating to its trade secrets (including all information that applicable law defines as a “trade secret”), all information covering topics such as: NCCPT certification examination questions or testing preparation materials, training activities or materials, actual or prospective customers, suppliers, advertising, marketing and development, business plans, financial reports or data, pricing, projections and forecasts, research, strategies, ideas, concepts, training/testing or certification materials and/or techniques, know-how, formulas, analytics, current or future product offerings, unpublished content, surveys, competitive intelligence, business opportunities, actual or potential shareholders, intellectual property, investment opportunities, software or computer code, studies, reports and/or other information of a business or technical nature, samples, inventions, discoveries, ideas, know-how, intellectual property strategies, current and anticipated client or customer requirements, capital spending, any other information of any kind, nature, or description, and/or any other aspect of NCCPT’s operations, activities or business that may allow a competitor to discern information that the competitor would not typically know and could be used to gain a competitive advantage over NCCPT]. The term “Confidential Information” as used herein includes, without limitation, all notes, analyses, compilations, reports, forecasts, studies, samples, and other documents prepared by or for the Recipient which contain or otherwise reflect or are derived or based in whole or in part on such Confidential Information. The term “Confidential Information” as used herein does not include information that: (i) at the time of disclosure or thereafter is generally available to and known by the public (other than as a result of its disclosure directly or indirectly by the Recipient or its Representatives in violation of this Agreement); (ii) was available to the Recipient on a non-confidential basis from a source other than NCCPT or its Representatives, provided that such source is not and was not bound by a confidentiality agreement with respect to such information or otherwise prohibited from transmitting such information by a contractual, legal, or fiduciary obligation; or (iii) has been independently acquired or developed by the Recipient prior to the received of NCCPT’s Confidential Information and without reference to the Confidential Information, as Recipient can prove by clear and convincing evidence.

“Person” means any individual, corporation, limited or general partnership, limited liability company, limited liability partnership, trust, association, joint venture, governmental entity, or other entity.

“Representatives” means, as to any Person, such Person’s Affiliates, and its and their respective directors, officers, managers, employees, consultants, members, general partners, shareholders, parents, subsidiaries, affiliated entities, successors, assignees, nominees, volunteers and agents or advisors (including attorneys, bankers and financial advisors, and accountants), or any Person performing a similar function for any such Person or Such Person’s Affiliates.

Other terms not specifically defined in this Section shall have the meanings given them elsewhere in this Agreement.

Use of Confidential Information and Confidentiality.

The Recipient shall (i) keep the Confidential Information strictly confidential; (ii) take such steps as may be reasonably necessary to prevent the disclosure of Confidential Information to others with not less than the same degree of care that the Recipient uses to prevent the unauthorized use, dissemination or publication of its own confidential and proprietary information (but with at least the same degree of care used by a reasonably prudent business person); and (iii) shall not use the Confidential Information for any purpose other than the Purpose, and not otherwise use or exploit the Confidential Information for Recipient’s own benefit or the benefit of another.

The Recipient shall not disclose or permit its Representatives to disclose any Confidential Information except: (i) if required by law, regulation, or legal or regulatory process, and then only in accordance with Section 6; or (ii) to its Representatives, to the extent necessary to permit such Representatives to assist the Recipient in evaluating and negotiating the Purpose, provided such Representatives are informed by the Recipient of the confidential nature of the Confidential Information; provided, that

the Recipient shall require each such Representative to be bound by the terms of this Agreement to the same extent as if they were parties hereto.

Notwithstanding anything to the contrary, the Recipient shall be obligated to ensure that any party given access to Confidential Information complies with the terms of this Agreement. Recipient shall be responsible for any breach of this Agreement by any of its Representatives except for breaches committed by any such Representative that has executed its own confidentiality agreement with NCCPT with respect to the Purpose. In no event shall the Recipient or its Representatives replicate, reverse engineer, decompile or duplicate all or any part of the Confidential Information.

No Representations or Warranties; No Other Obligation. The Recipient understands and agrees that neither NCCPT, nor any of its Representatives: (a) have made or make any representation or warranty hereunder, express or implied, as to the accuracy or completeness of the Confidential Information; or (b) shall have any liability hereunder to the Recipient or its Representatives relating to or resulting from the use of the Confidential Information or any errors therein or omissions therefrom. The Parties agree that unless and until a definitive agreement between NCCPT and Recipient has been executed and delivered with respect to the Purpose, NCCPT will not be under any legal obligation of any kind whatsoever with respect to the Purpose, including any obligation to: (i) enter into or negotiate a business relationship; or (ii) conduct or continue discussions or negotiations. NCCPT reserves the right, in its sole discretion, at any time and for any reason or no reason, to reject any and all proposals made by the Recipient or on its behalf with regard to the Purpose and a business relationship, to terminate discussions and negotiations with the Recipient at any time, and to enter into any agreement with any other Person without notice to the Recipient or any of its Representatives.

Required Disclosure. If the Recipient or any of its Representatives is required, in the written opinion of the Recipient's counsel, to disclose any Confidential Information, by law, regulation, or legal or regulatory process, the Recipient shall: (a) take all reasonable steps to preserve the privileged and confidential nature of the Confidential Information, including requesting that the Confidential Information not be disclosed to non-parties or the public; (b) give NCCPT prompt prior written notice of such requirement so that NCCPT may seek an appropriate protective order or other remedy; and (c) cooperate with NCCPT to obtain such protective order. In the event that such protective order or other remedy is not obtained, the Recipient (or such other Persons to whom such requirement is directed) will furnish only that portion of the Confidential Information which, on the advice of the Recipient's counsel, is legally required to be disclosed and, upon NCCPT's request, use its best efforts to obtain assurances that confidential treatment will be accorded to such information.

Ownership and Return or Destruction of Confidential Information. Recipient agrees that all Confidential Information, and copies, extractions or reproductions thereof, that are or relate to the Confidential Information or any other aspect of NCCPT's operations, activities or business, made or received by Recipient during any period prior to or following the Effective Date, are and shall be NCCPT's exclusive property, and such property, regardless of where located, will be protected and subject at all times to NCCPT's control. At any time upon NCCPT's request, the Recipient shall promptly, and in any event no later than five days after the request, destroy or return all Confidential Information (including all copies, extracts, or other reproductions) to NCCPT and, to the extent Confidential Information is destroyed, certify in writing to NCCPT that such Confidential Information (including any Confidential Information held electronically) has been destroyed. Notwithstanding the return or destruction of Confidential Information, the Recipient and its Representatives shall continue to be bound by their obligations of confidentiality and other obligations hereunder.

No Solicitation. Except with the express permission of NCCPT, the Recipient agrees that during the term of this Agreement and for a period of twenty four (24) months after its termination, neither the Recipient nor its Representatives will directly or indirectly solicit or hire any officer, director, manager independent contractor or employee (each a "Restricted Person") of NCCPT or any of its subsidiaries, except pursuant to a general solicitation that is not directed specifically to any such Restricted Person.

Remedies. The Parties agree that money damages would not be a sufficient remedy for any breach of this Agreement by the Recipient and that in addition to all other remedies it may be entitled to, NCCPT shall be entitled to seek specific performance and injunctive or other equitable relief without the necessity of posting any bond or other security as a remedy for any such breach. In the event that NCCPT institutes any legal suit, action, or proceeding against the Receiving Party arising out of or

relating to this Agreement, NCCPT shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by NCCPT in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.

No Waiver of Privilege. To the extent that any Confidential Information includes materials subject to the attorney-client privilege, NCCPT is not waiving, and shall not be deemed to have waived or diminished, its attorney work-product protections, attorney-client privileges, or similar protections and privileges as a result of disclosing any Confidential Information (including Confidential Information related to pending or threatened litigation) to the Recipient or any of its Representatives.

Term. This Agreement shall continue for the duration of Recipient's association with NCCPT (even if interrupted by a period of inactivity) unless expressly terminated in writing, and thereafter for a period of twenty four (24) months after termination.

Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Arizona. Any legal suit, action, or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted in the federal courts of the United States or in the courts of the State of Arizona with a situs in Maricopa County, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or forum non conveniens. Service of process, summons, notice, or other document by mail to such Party's address set out herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

IP Ownership. Any and all intellectual property rights resulting from or relating to the Subject Matter referenced above, to improvements thereon, or to this disclosure of Confidential Information shall belong to DISCLOSER and RECIPIENT agrees to execute all necessary documents to evidence the same.

Conflict of Interest. Recipient acknowledges that it has received, read, understands and agrees to be bound by NCCPT's then current Conflict of Interest Policy (current copy attached. Signature required).

Exam Eligibility. Recipient understands and acknowledges that by virtue of Recipient's work with NCCPT on the Purpose, Recipient is NOT eligible to take the NCCPT CPT examination during Recipient's involvement with NCCPT, and for a period of twenty-four (24) months following the date of Recipient's last involvement with NCCPT on the Purpose of this Agreement.

Exam Preparation Activities Restriction. Among other NCCPT policy requirements related to the development of the certification programs/exams, a Recipient involved in any way in the development of NCCPT certification programs/exams is prohibited from participating in the preparation, presentation, sponsorship, or ownership of any program, training, event, course, or publication having as a primary purpose the preparation of an individual for an NCCPT certification exam. This prohibition is effective during the term of this Agreement and for a period of twenty-four (24) months following Recipient's last participation in NCCPT certification development activities.

Severability. If any provision of this Agreement, or the application thereof to any Person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provision as applied to other Persons, places, or circumstances shall remain in full force and effect.

Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile, email, or other means of electronic delivery (with written confirmation of receipt) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses set out in this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section 14).

Assignment. Neither Party may assign or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the other Party in each instance, such consent not to be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, NCCPT may assign this Agreement in its entirety to any (a) Affiliate of NCCPT; or (b) successor entity of NCCPT that assumes all, or a majority of, NCCPT's assets in writing. Any assignment in violation of this clause shall be null and void.

Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set out in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Entire Agreement; Amendments. This Agreement sets forth the entire agreement regarding the Confidential Information, and supersedes all prior negotiations, understandings, and agreements. No provision of this Agreement may be modified, amended, or changed except by a writing signed by the Parties hereto.

Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Signature: _____

Printed Name: _____

Title: _____

Date: _____