

CLIMBING WALL ASSOCIATION
CLIMBING WALL INSTRUCTOR CERTIFICATION PROGRAM AGREEMENT

THIS CLIMBING WALL INSTRUCTOR CERTIFICATION PROGRAM AGREEMENT (“the Agreement”) has been entered into on the date specified below by and between the Climbing Wall Association (the “CWA”), a non-profit corporation, and “Company” (hereinafter collectively the “Parties”).

RECITALS

WHEREAS, the CWA is a non-profit organization that seeks to represent the interests of the recreational climbing wall industry and climbing wall operators by providing certification standards, education, and support;

WHEREAS, the CWA offers a Climbing Wall Instructor Certification Program (“Program”) designed to increase the level of technical proficiency, compliance, and professionalism in the recreational climbing industry;

WHEREAS, the Company desires to participate in the Program;

WHEREAS, the Company agrees to dedicate Company employees satisfactory to CWA (“Program Providers”) who desire to become certified as Program Providers and provide Program services to others as part of his/her employment with the Company;

THEREFORE, the Parties agree as follows:

I. CWA Responsibilities

- A. The CWA will maintain the certification standards.
- B. The CWA will actively promote the Program and liaise with other associations, organizations, and regulatory bodies for adoption of the Program as a standard.
- C. The CWA will maintain a list of Companies’ with Program Providers on its web site.
- D. The CWA will provide on-going curriculum development, quality assurance, and Program support for Program Providers.
- E. The CWA will advertise upcoming courses in CWA communications and on the CWA web site.
- F. The CWA will refer inquiries regarding courses to all Program Providers simultaneously.
- G. The CWA will provide access to electronic copies of the most recent Program documents through its web site.
- H. The CWA will maintain a formal appeals process for contested certification decisions.
- I. The CWA maintains commercial general liability insurance and errors and omissions insurance and will continue to maintain such insurance in at least the same amounts as at the inception of this Agreement.
- J. Both during and after the term of this Agreement, CWA hereby agrees to refrain from making any disparaging remarks about the Company or Program Provider and any of its employees or agents. CWA also agrees that it will do nothing to impair the Company’s or

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Program Provider's reputation and good will among its constituents, customers, or members and others in the industry.

II. Company and Program Provider(s) Representations and Responsibilities

- A. Company is responsible for enrollment of and payment by Program participants.
- B. Company through its Program Provider(s) will ensure that all Program participants have adequate climbing and work experience and meet Program pre-requisites.
- C. Company and Program Provider(s) will comply with all necessary federal, state, and local laws and regulations, including the obligation to obtain necessary business permits or licenses.
- D. Company and Program Provider(s) will comply with all facility rules regarding facility use.
- E. Company will maintain, at its/his/her own expense, liability insurance, or self-insurance, in an amount consistent with applicable federal, state, and local requirements covering Program Provider while Program Provider is employed by Company.
- F. Company through its Program Provider(s) will determine Program logistics, including pricing, scheduling, registration, and other costs.
- G. Company will ensure that its Program Provider(s) will be present for the Program.
- H. Company through its Program Provider(s) will follow current CWA standards, curricula, and recommendations, including the current CWA Climbing Wall Instructor Certification Student Manual and any revisions thereto or updates thereof.
- I. Company through its Program Provider(s) will follow current CWA policies as provided in the CWA Climbing Wall Instructor Certification Program Policy Manual.
- J. Company through its Program Provider(s) will supply Program participants with current copies of the certification standards, Student Manual, and CWA certification assessment instrument.
- K. Company through its Program Provider(s) will provide a written assessment to each Program participant at the conclusion of the course.
- L. Program Provider(s) is/are responsible for meeting continuing education requirements and participating in required updates to retain Program Provider status.
- M. Company through its Program Provider(s) will submit to CWA, within fourteen (14) days after the completion of the Program
 - 1. A Roster of candidates, including certification results;
 - 2. Candidate course evaluations of the Program Provider(s); and
 - 3. Non-refundable per candidate exam fees according to the current CWA fee schedule.

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- N. If a Program Provider does not submit the information listed in Section I. M. above within fourteen (14) days after completion of the Program, the CWA will assess a late fee according to the current CWA fee schedule after providing Company 30 days' written notice.
- O. A Program Provider's certification shall become inactive if Program Provider leaves Company's employment. Program Provider shall not render any services under the Program while certification is inactive. If Program Provider begins employment with another participating company, Program Provider shall submit a new application for certification and pay all applicable fees in order to reactivate Program Provider's certification.
- P. Both during and after the term of this Agreement, Company hereby agrees to refrain from making any disparaging remarks about the CWA and any of its officers, agents or employees. Company also agrees that it will do nothing to impair the CWA's reputation and good will among its constituents, customers, members, or others in the industry.
- Q. Company through its Program Provider(s) assumes all liability associated with the conduct of courses provided under the auspices of the Program and agree to defend, indemnify, save and hold the CWA and any of its members, affiliates, officers, agents or employees harmless from any occurrence, liability, judgment, claim, award, cost of defense (including counsel fees), and expenses and other responsibilities or costs of any nature which arise out of the conduct or instruction of courses (but excluding errors and omissions related to standard setting, program assets, and program policy).

III. Maintaining Program Provider Status

- A. In order to maintain the Agreement, Company will:
 - 1. Maintain a current CWA membership;
- B. In order to maintain Program Provider Status, Program Provider(s) will:
 - 1. Pay the provider application fee;
 - 2. Teach, co-teach or observe at least one course every three years;
 - 3. Attend a Program Provider training, refresher training, or re-examination at least once every three (3) years; and
 - 4. Actively participate in on-going professional development activities related to indoor climbing.
- C. If the requirements of Sections III.A. or III.B. above, the Program Provider will be deemed inactive.
- D. Program Providers deemed inactive will reapply prior to participating in the Program.

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IV. Compensation

- A. Company and Program Provider(s) will receive no compensation from the CWA in exchange for their participation in the Program. Company may create their own pricing for providing the Program to third parties.

V. Release, Assumption of Risk, and Covenant Not to Sue

- A. Company and Program Provider(s) are aware of and acknowledge all risk of property damage and personal injury or death arising from or in connection with its/his/her participation in the Program, including transportation to or from courses provided under the auspices of the Program.
- B. Company and Program Provider(s) expressly assume all risk of injury or damage to its/his/her person or property arising from its/his/her participation in the Program and its/his/her transportation to or from the Program and hereby discharges and releases the CWA and each and every officer, employee, agent, and representative of the CWA from any and all liabilities, claims, demands, and causes of action Company or Program Provider(s) may have now or in the future resulting from or arising in connection with the Program, including transportation to or from the Program, whether or not caused in whole or in part by the ordinary negligence of the CWA or any officer, employee, agent, or representative of the CWA or otherwise (“Released Parties”), but excepting intentionally wrongful, reckless, or grossly negligent conduct of the Released Parties, or claims against the CWA for breach of contract.
- C. Company and Program Provider(s) covenant that it/he/she has not now and will not at any time in the future, directly or indirectly, commence or prosecute any action, suit, or other proceeding against the CWA or any officer, employee, agent, or representative of the CWA concerning, arising out of, or in any way related to the Program, including the transportation to and from the Program, excepting intentionally wrongful, reckless, or grossly negligent conduct, or claims against the CWA for breach of contract.

VI. Term, Termination and Modification

- A. Term: The term of this Agreement shall be three years from the date of this Agreement below and shall automatically renew for subsequent three-year terms unless terminated as provided in this Section VI. below.
- B. Termination for Cause by the CWA: Unless otherwise specifically stated in this Agreement, this Agreement may be terminated immediately by the CWA if:
 - 1. A Program Provider fails to comply with or fulfill any of Program Provider’s obligations set forth in this Agreement (a “Breach”) and is unable to correct the Breach within thirty (30) days after receiving specific written notification of the Breach. Program Provider(s) shall be limited to one opportunity to remedy, cure or rectify a Breach during any twelve (12) month period;

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2. A Program Provider willfully refuses to comply with reasonable written directions of the CWA (so long as such directions do not involve illegal or immoral acts);
 3. A Program Provider engages in acts of fraud or dishonesty;
 4. A Program Provider takes any action or engages in any activity that is detrimental to the interests of the CWA in any material respect, and such action or activity continues after Program Provider receives written notice to cease such action or activity;
 5. A Program Provider commits a felony or other crime of moral turpitude.
- C. Termination for Cause by Company: Company may terminate this Agreement if the CWA fails to comply with or fulfill any of the CWA's obligations set forth in this Agreement (a "Breach"), and is unable to correct the Breach within thirty (30) days after receiving specific written notification of the Breach. The CWA shall be limited to one opportunity to remedy, cure or rectify a Breach during any twelve (12) month period. Unless otherwise specifically stated in this Agreement, this Agreement may be terminated immediately by the Company if:
1. CWA engages in acts of fraud or dishonesty;
 2. CWA takes any action or engages in any activity that is detrimental to the interests of the Company or Program Provider in any material respect, and such action or activity continues after CWA receives written notice to cease such action or activity;
- D. Modification and Termination. The Parties may modify any of the terms of this Agreement, including any fees payable hereunder, upon written consent by both Parties (the "Modification").
- E. Termination Upon Mutual Agreement: This Agreement may be terminated at any time by mutual written agreement between the Parties.
- F. Termination for Convenience. Either Party may terminate this Agreement at any time upon 30 days prior written notice.

VII. Independent Contractor

- A. Company and Program Providers are independent contractors in relation to the CWA, and none of the provisions of this Agreement shall be interpreted or deemed to create any relationship between the CWA and Company or Program Providers other than that of independent contractors. Nothing contained in this Agreement shall be construed to create a relationship of employer and employee, master and servant, principal and agent, or partners or co-venturers between the CWA and the Company or Program Providers, between the CWA and any officer employee or agent of the Company or

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Program Providers, or between the Company or Program Providers and any officer employee or agent of the CWA.

- B. The Program to be provided by Program Provider while they are employed by the Company is part of Program Provider's employment duties with the Company. Nothing contained in this Agreement shall act to alter or otherwise waive or amend Program Provider's employment obligations and agreements to the Company as part of his/her employment or other status as a service provider on the Company's behalf.

VIII. Miscellaneous

- A. Assignability. This Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party. Any attempted assignment in violation of the foregoing will be void.
- B. Enforceability. Should any provision of this Agreement be held invalid, unenforceable, or unconstitutional by any governmental body or court of competent jurisdiction, such holding shall not diminish the validity or enforceability of this Agreement or of any other provision hereof.
- C. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado, provided that the terms of another state's statute relating to tort claims against a government entity may apply.
- D. Binding Effect. The provisions of this Agreement shall inure to the benefit of and shall be binding on the heirs, personal representatives, successors, permitted assigns, estates and legatees of each of the Parties hereto.
- E. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties pertaining to matters covered herein between CWA and Company and supersedes all prior or contemporaneous agreements, understandings, and negotiations of the Parties. Except as otherwise set forth herein, this Agreement shall not be modified, amended, or supplemented except in a written instrument executed by both Parties.
- F. Waiver of Breach. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.
- G. Survival. The terms and conditions of Items V, VII, and VIII(B), (C), (D), (F), (G), (H) of this Agreement shall survive the expiration of this Agreement to the full extent necessary for their enforcement and for the protection of the Party in whose favor they operate.
- H. Confidentiality. The Parties acknowledge that the terms of this Agreement are regarded as confidential information. Each Party shall maintain confidentiality of all such confidential information, and shall not disclose any relevant confidential information to any third parties without express written consent of the other Party, except for information that: (a) is or will be in the public domain (other than through the receiving

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Party's unauthorized disclosure); (b) is under the obligation to be disclosed pursuant to the applicable laws or regulations, rules of any stock exchange, or orders of a court or other government authorities; or (c) is required to be disclosed by any Party to its shareholders, investors, legal counsels or financial advisors regarding the transaction contemplated hereunder; provided that such shareholders, investors, legal counsels or financial advisors shall be bound by the confidentiality obligations similar to those set forth in this Section. Other than in performance of their obligations under this Agreement or in performance of the Program, disclosure of any confidential information by the employees, contractors, or agencies hired by any Party shall be deemed disclosure of such confidential information by such Party, which Party shall be held liable for breach of this Agreement. This Section shall survive the termination of this Agreement for any reason.

Signatures begin on next page.

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SIGNATURES

The parties have executed this Agreement as of this date:

CWA REPRESENTATIVE

William Zimmermann, President & CEO

CWA Signature:

A handwritten signature in cursive script that reads "William Zimmermann". The signature is written in black ink and is positioned below the "CWA Signature:" label.

COMPANY REPRESENTATIVE

Company Name: _____

Company Representative, Name & Title: _____

Company Representative, Signature: _____