

CLIMBING WALL ASSOCIATION
CLIMBING WALL INSTRUCTOR CERTIFICATION PROGRAM AGREEMENT

THIS CLIMBING WALL INSTRUCTOR CERTIFICATION PROGRAM AGREEMENT (“the Agreement”) has been entered into this _____ day of _____ (month), _____, (year) by and between the Climbing Wall Association (the “CWA”), a non-profit corporation, and _____ (“Company”) exclusively by and through _____ (“Program Provider”).

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 consistency in indoor climbing education, educate climbing wall instructors, and promote professionalism in climbing instruction;

WHEREAS, the Company desires to participate in the Program;

WHEREAS, the Program Provider desires to become a provider of the Program;

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 and Program Providers on its web site.
- D. The CWA will maintain a list of certificants on its web site.
- E. The CWA will add certificants to the certificant list within fourteen (14) days of receipt of payment and required documents from Program Provider.
- F. The CWA will provide on-going curriculum development, quality assurance, and Program support for Program Providers.
- G. The CWA will advertise upcoming courses in CWA literature and on the CWA web site.
- H. The CWA will refer inquiries regarding courses to all Program Providers simultaneously.
- I. The CWA will provide access to electronic copies of the most recent Program documents through its web site.
- J. The CWA will maintain a formal appeals process for contested certification decisions.
- K. 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 Program Provider's reputation and good will among its constituents, customers or members and others in the industry.

II. Company and Program Provider Representations and Responsibilities

- A. Company is responsible for enrollment of and payment by Program participants.
- B. Program Provider will ensure that all Program participants have adequate climbing experience and meet pre-requisites.
- C. Company and Program Provider will comply with all necessary federal, state, and local laws and regulations, including the obligation to obtain necessary permits or licenses.
- D. Company and Program Provider 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.
- F. Company and Program Provider will determine Program logistics, including pricing, scheduling, registration, and costs.
- G. A Program Provider will be present for the Program.
- H. Program Provider will follow current CWA curriculum and guidelines, including the current CWA Climbing Wall Instructor Certification Course Manual and any revisions thereto or updates thereof.
- I. Program Provider will supply Program participants with current copies of the certification standards, Course Manual, and certification assessment instrument.
- J. Program Provider will provide an evaluation to each Program participant at the conclusion of the course.
- K. Program Provider is responsible for meeting continuing education requirements and participating in required updates to retain Program Provider status.
- L. Program Provider 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; and
 - 3. Non-refundable per candidate exam fees as follows: \$45 per candidate.
- M. If Program Provider does not submit the information listed in Section I.L above within fourteen (14) days after completion of the Program, the CWA will assess a late fee of \$25 per day.

- N. Company represents and covenants that it has conducted a background check that has not revealed any evidence that Program Provider has ever pleaded guilty to or been convicted of a felony or a crime of moral turpitude.
- O. Both during and after the term of this Agreement, Company and Program Provider hereby agree to refrain from making any disparaging remarks about the CWA and any of its members, affiliates, officers, agents or employees. Company and Program Provider also agree that they will do nothing to impair the CWA's reputation and good will among its constituents, customers or members and others in the industry.
- P. Company and Program Provider assume 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 (not to include standard setting), or any breach of this Agreement by the Company, Program Provider or their affiliates, officers, agents or employees.

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 will:
 - 1. Pay the provider application fee of \$75;
 - 2. Teach, co-teach or observe at least one course every three years;
 - 3. Attend a Program Provider training or refresher training at least once every three (3) years; and
 - 4. Actively participate in on-going professional development activities related to climbing.
- C. If Program Provider does not satisfy the requirements of Sections III.A. or III.B. above, Program Provider will be deemed inactive.
- D. Program Providers deemed inactive will reapply prior to participating in the Program.

IV. Compensation

- A. Company and Program Provider will receive no compensation from the CWA in exchange for their participation in the Program.

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

- A. Company and Program Provider 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 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 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 negligence of the CWA or any officer, employee, agent, or representative of the CWA or otherwise.
- C. Company and Program Provider 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 commence on the date of this Agreement and expire on Program Provider's certification expiration date.
- 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. 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 shall be limited to one opportunity to remedy, cure or rectify a Breach during any twelve (12) month period;
 - 2. 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. Program Provider engages in acts of fraud or dishonesty;
 - 4. 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. 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. Termination Upon Mutual Agreement: This Agreement may be terminated at any time by mutual written agreement between the parties.
- E. Modification and Termination. The CWA may modify any of the terms of this Agreement, including any fees payable hereunder, by providing at least thirty (30) days prior written notice of any such modification to Company (the “Modification”). After receiving notice of the Modification, Company may terminate this Agreement by written notice to the CWA within such thirty (30) day period. If Company does not terminate this Agreement as provided in this Section VI.E, Company and Program Provider shall be bound by the terms of this Agreement and the Modification, subject to the provisions as set forth in Sections VI.C. or VI.D. above.
- F. Termination for Convenience. Either party may terminate this agreement at any time upon 30 days written notice.

VII. Independent Contractor

- A. Company and Program Provider are an independent contractor, and none of the provisions of this Agreement shall be interpreted or deemed to create any relationship between the CWA and Company or Program Provider other than that of independent contractor. 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 Provider, between the CWA and any officer employee or agent of the Company or Program Provider, or between the Company or Program Provider and any officer employee or agent of the CWA.

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 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 the relationship between the 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 condition of this Agreement shall survive the expiration or termination of this Agreement to the full extent necessary for their enforcement and for the protection of the party in whose favor they operate.

The parties have executed this Agreement as of the date above.

SIGNATURES:

CWA REPRESENTATIVE

Signature: _____ Title: _____

COMPANY REPRESENTATIVE:

Signature: _____ Title: _____

PROGRAM PROVIDER:

Signature: _____ Title: _____

CWA Climbing Wall Instructor Certification Program Provider Agreement – Revised July 17, 2012