

AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, between the American Snowsports Education Association, a Colorado non-profit corporation with its principal place of business at 133 S. Van Gordon Street, #200, Lakewood, CO 80228 ("**ASEA**") and _____ ("**Affiliate**"), a _____ corporation with its principal place of business at: _____ and shall be effective as of _____, 2013 ("Effective Date")

WHEREAS, **ASEA** is a membership organization that operates and is identified by several trademarks and service marks throughout the United States and other countries, including PROFESSIONAL SKI INSTRUCTOR OF AMERICA, PROFESSIONAL SKI INSTRUCTORS OF AMERICA™, PSIA®, AMERICAN ASSOCIATION OF SNOWBOARD INSTRUCTORS®, AASI™, CENTER LINE™, 32 DEGREES: THE JOURNAL OF PROFESSIONAL SNOWSPORTS INSTRUCTION, THE PROFESSIONAL SKIER®, THE PRO RIDER®, AMERICAN TEACHING SYSTEM®, GO WITH A PRO™, ATML® (collectively, "ASEA Marks"), and owns, uses, and licenses others to use the **ASEA** Marks and certain other marks, trade names, copyrights, designs and trade dress (collectively, "**ASEA** Properties"); and

WHEREAS, the objectives of **ASEA** and **Affiliate** are to promote snowsports instruction by professional snowsports instructors; address problems of concern to the snowsports teaching profession; conduct promotional activities; and enhance the progress of the snowsports teaching profession; and

WHEREAS, the parties hereto have operated cooperatively for several decades to provide their respective services to instructors and snowsport schools throughout the United States; and

WHEREAS, the parties desire to formalize their historic relationship in order to ensure better communication, understanding, cooperation and efficiency to their members, the snowsports industry and the public;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein, it is agreed as follows:

1. **Term**. This Agreement begins on the Effective Date and ends, unless earlier terminated under the terms of this Agreement, one year after the Effective Date ("Term"). The Term will renew automatically for successive one-year periods (each a "Term") unless a party sends to the other party, at least 180 days before the end of a Term, written notice that it does not want to renew the Agreement.

2. **Common Membership**. Except as mutually agreed by **ASEA** and **Affiliate**, all members of **Affiliate** must also maintain membership in **ASEA**. There are six classes of individual memberships in the Association, which are respectively, (1) Registered members, (2) Certified

Members (Certified Level I, Certified Level II, and Certified Level III), (3) Alumni Members, (4) Honorary Members, (5) Lifetime Members, (6) Affiliate Members. **Affiliate** is primarily responsible for the recruitment of member instructors interested in professional education, certification training and testing. Members of **Affiliate** join **ASEA** for additional services and benefits including, but not limited to, a license to use certain Marks and **ASEA** Properties for certification of instructors as established and promoted by **ASEA**.

3. **Rights and Responsibilities.**

3.1. **Rights and Responsibilities of ASEA.** In addition to the benefits set forth in Schedule 1, **ASEA** agrees it shall:

3.1.1. Grant to **Affiliate** a limited, non-exclusive, revocable license to use **ASEA**-provided **ASEA** Marks or **ASEA** Properties during the Term and in compliance with the use standards provided by **ASEA** to **Affiliate**.

3.1.2. Provide to **Affiliate**, when necessary, proper forms of the **ASEA** Marks or the **ASEA** Properties for **Affiliate's** **ASEA**-pre-approved uses during the Term.

3.1.3. Promptly review each of **Affiliate's** proposed uses of the **ASEA** Marks or **ASEA** Properties ("Proposed Uses") and provide **Affiliate** with comments or written approval of those Proposed Uses, not to be unreasonably withheld. If **ASEA** does not notify **Affiliate** that **ASEA** disapproves of a Proposed Use within ten (10) business days after receiving that Proposed Use, **Affiliate** may assume that **ASEA** approves that Proposed Use.

3.1.4. Coordinate the collaboration of **Affiliates** to set and uphold all certification and credentialing standards ("National Standards"). **Affiliate** will collaborate with **ASEA** in the promulgation, maintenance and enhancement of National Standards relative to certification, specialty programs, credentialing, and education of instructors for all disciplines. **Affiliate** is solely responsible for developing the format and process to educate and examine to the National Standards.

3.1.5. Provide snowsport educational programs, which may include national teams, limited national education events, and publications

3.1.6. Coordinate regular meetings with **Affiliate** leadership.

3.1.7. Publish and distribute to members a magazine or other publications.

3.1.8. Establish and maintain industry sponsorships/partnerships with equipment manufacturers and others interested in the snowsports industry. **ASEA** encourages **Affiliate** to pursue sponsor or advertising relationships within the geographic area of **Affiliate** or its Members.

3.1.9. Establish and maintain a website. **ASEA** shall also make available to **Affiliate** an “**Affiliate** website template” that offers basic Web site functionality and is consistent with **ASEA**’s design and branding guidelines. If **Affiliate** elects to use this template, it will be required to enter into an agreement with **ASEA** and adhere to site management requirements established by **ASEA** and supplied to **Affiliate**. If **Affiliate** elects to develop and maintain its Web site on its own, it will be required to adhere to **ASEA** branding specifications.

3.1.10. Develop and maintain a working relationship with international associations and bodies dedicated to the advancement of skiing and snowboarding. **ASEA** shall be exclusively responsible for all such relationships.

3.1.11. Provide the opportunity to purchase through **ASEA** general liability insurance for **Affiliate**. If **Affiliate** elects not to purchase such insurance, it must demonstrate proof of such insurance and adequate coverage to **ASEA**.

3.1.12. Comply with all applicable laws, regulations and other requirements which affect its operations. **ASEA** has obtained and will continue to maintain at its own expense all permits, licenses, tax-exempt status, corporate filings and other governmental approvals that may be required.

3.2. **Rights and Responsibilities of Affiliate**. Affiliate agrees it shall:

3.2.1. Use and ensure the **ASEA** Marks and the **ASEA** Properties in the form that **ASEA** provides, consistent with then-current Standards or as **ASEA** pre-approves in writing.

3.2.2. Send each Proposed Use to **ASEA** for pre-approval.

3.2.3. Reproduce the **ASEA** Marks or **ASEA** Properties only on **ASEA**-approved Proposed Uses, in compliance with the then-current Standards, and only within the United States unless approved by **ASEA** consistent with section 3.1.3 of the Agreement.

3.2.4. Notify **ASEA** when **Affiliate** becomes aware of infringement of an **ASEA** Mark or **ASEA** Property, and assist **ASEA** to protect, in **ASEA**’s sole discretion and at **ASEA**’s cost, the infringed **ASEA** Mark or **ASEA** Property.

3.2.5. Acknowledge that: a) **ASEA** owns exclusively the **ASEA** Marks and **ASEA** Properties; b) **Affiliate** will not attack the validity or ownership of the **ASEA** Marks and **ASEA** Properties; c) **Affiliate** does not acquire any rights in the **ASEA** Marks and **ASEA** Properties other than as specifically provided in this Agreement; and d) **Affiliate**’s use of the **ASEA** Marks and **ASEA** Properties inures to the benefit of **ASEA**.

3.2.6. Have the right to establish, fund and conduct educational events within the geographic area described in paragraph 5 and Schedule 2.

3.2.7. Have the right to provide certification training and certification examinations within the geographic area described in paragraph 5, pursuant to the National Standards adopted and published by **ASEA** with input from its **Affiliates**;

3.2.8. Be responsible for all training clinics as well as examinations designed for educational credit or certification consistent with section **3.1.4** and **3.2.7** of this Agreement. **ASEA** will not engage in or offer local training clinics as well as examinations designed for educational credit or certification, without the prior written consent of **Affiliate**. **ASEA** shall be responsible for national education or leadership events such as the PSIA National Academy, AASI Rider Rally, Examiner's College and Fall Team Workshops."

3.2.9. Provide services and adequate resources to coordinate educational and certification events, distribute educational literature and materials, respond timely to membership questions and needs and communicate timely and effectively with members of **Affiliate** and **ASEA**;

3.2.10. Have the right to select and train clinicians and examiners to staff educational events and administer certification examinations at Levels I, II and III within the geographic area described in paragraph 5;

3.2.11. Have the right with **ASEA** to develop educational materials, specialty programs and maintain one or more technical teams to develop and enhance snowsport techniques and teaching and promote the value of professional instruction to the public in accordance with the National Standards adopted by **ASEA** and the license to use the **ASEA** Marks and Properties;

3.2.12. Comply with all applicable laws, regulations and other requirements which affect its operations. **Affiliate** has obtained and will continue to maintain at its own expense all permits, licenses, tax-exempt status, corporate filings and other governmental approvals that may be required.

4. **Dues**. Prior to raising the membership dues of either **ASEA** or **Affiliate**, the parties agree that they will consult with one another about the amount and timing of any anticipated increase at least 180 days prior to the announcement of such increase. During that period, the parties shall explore the impact of the proposed dues increase in order to ameliorate any perceived adverse consequences to either. Notwithstanding the duty to confer, the ultimate authority to set the amount of dues, and their due date, rests solely with the individual entity.

5. **Geographic Area**.

5.1. **Affiliate** provides on snow educational training, certification training, specialty training and written educational materials to snowsport instructors and snowsports schools located in the states of Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

6. **Other Services.**

6.1. **Affiliate** pays no dues to **ASEA**.

6.2. **ASEA** may provide services beyond those provided for in this Agreement at fair market value to a participating **Affiliate**.

7. **Relationship of Parties.**

7.1. Notwithstanding any understanding or representation prior to the date of this agreement to the contrary, it is agreed that **ASEA** and **Affiliate** are separate corporate entities in all respects.

7.2. Nothing in this Agreement shall be construed or interpreted to make **ASEA** or **Affiliate** partners or joint venturers, or to make one an agent or representative of the other, or to afford any rights to any third party other than as expressly provided herein. Neither is authorized to bind the other to any contract, agreement or understanding.

7.3. **ASEA** and **Affiliate** acknowledge that they have not represented to each other nor will they receive or derive any specific amount of revenue from the other party.

8. **Termination and Post-Termination.**

8.1. Except as otherwise expressly stated in this Agreement, this Agreement terminates when:

8.1.1. The parties mutually agree to terminate the Agreement; or

8.1.2. A legal authority determines that the Agreement violates a regulation or law and the parties mutually agree that they cannot amend the Agreement to comply with that regulation or law; or

8.1.3. Either party: a) defaults in an obligation under this Agreement and fails to cure that default within sixty (60) days of receiving a default notice from the non-defaulting party; b) ceases to do business; c) is dissolved, adjudged insolvent or declares or is forced into bankruptcy, receivership, liquidation or composition for the benefit of creditors; d) assigns this Agreement for the benefit of creditors; e) assigns its obligations under this Agreement, in whole or part, to a third party without the prior written consent of the other party; f) is involved in a crime or offense that the other party believes is likely to have an adverse effect on them; or g) misuses or infringes the other party's intellectual properties.

8.2. The parties shall have sixty (60) days after a notice of termination and the resolution of any arbitration relating to such termination, if any, to wind up the affairs between them.

8.3. Upon the termination or expiration of this Agreement, **Affiliate** will immediately cease to use of any of the **ASEA** Marks or **ASEA** Properties.

9. **Arbitration.** In the event of a dispute arising out of or in connection with this Agreement, both parties shall negotiate in good faith in an effort to resolve the dispute amicably. In the event the parties are unable to resolve the dispute through negotiation within sixty (60) calendar days after written notification by one party to the other as to the existence and nature of such dispute (or such longer period as the parties may agree), they agree to submit the dispute to binding arbitration. Upon the expiration of the informal resolution period, any claim or dispute of any nature between the parties hereto arising directly or indirectly from the relationship created by this Agreement shall be resolved exclusively in a location determined by the arbitrator by binding arbitration before a single arbitrator who is a member of the panel of former judges that makes up the Judicial Arbiter Group ("JAG"), any successor of JAG, or, if JAG or any successor is not in existence, any entity that can provide a former judge to serve as arbitrator. The disputing parties shall share the cost of the arbitrator equally. The decision of the arbitrator(s) shall be final and binding upon both parties. Judgment of the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This section will not prevent a party from seeking equitable, injunctive or emergency relief from a court of competent jurisdiction to preserve or protect its intellectual property including, but not limited to the **ASEA** Marks and the **ASEA** Properties.

10. **Notice**. Any and all notices or other communication required or permitted under this Agreement shall be in writing and deemed to have been duly given if: (1) delivered by hand; (2) sent by Federal Express or other commercial overnight courier, (3) sent by fax or other electronic means, subject to confirmation receipt requested, if any addressed as follows:

If to **ASEA**:

Mark Dorsey
Executive Director and CEO
American Snowsports Education Association
133 S. Van Gordon St, Ste. 200
Lakewood, CO 80228
Fax: 303-987-9489
Email: mdorsey@thesnowpros.org

If to **Affiliate**:

Name

Title

Address
Fax: _____
Email: _____

Or to such other address or addressee as shall have been communicated by notice in accordance with this Section. All such notices shall be deemed to have been received on the actual date of receipt or three (3) days after given as provided above, whichever is sooner.

11. **General Provisions**.

11.1. **Entire Agreement**. This Agreement constitutes the entire and exclusive agreement between the parties with respect to the subject hereof and supersedes and replaces any and all prior agreements, understandings, promises and representations, oral or written, made by either party to the other concerning the subject matter hereof. This Agreement may only be amended or modified in a writing duly executed by representatives of both parties.

11.2. **Assignment**. This Agreement may not be assigned or transferred, in whole or in part, by either party except with the prior written consent of the other. If either party assigns this

Agreement, this Agreement's provisions will be binding on and inure to the benefit of the parties to this Agreement and each party's respective successors and assigns.

11.3. **Governing Law.** This Agreement shall be construed and interpreted under the laws of the State of Colorado.

11.4. **Severability.** If any provision of this Agreement is found to be unenforceable or invalid by any arbitrator or a court of competent jurisdiction, such provision shall be interpreted so as to best accomplish the objectives of such provision and the remainder of this Agreement shall remain valid.

11.5. **Waiver.** No delay or failure of either Party to exercise any right under this Agreement, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the Parties' right to exercise such right or to demand strict compliance with any terms hereof. Waiver by either Party of any particular default of the other Party shall not affect or impair the Parties' rights with respect to any subsequent default of the same, similar or a different nature.

11.6. **Disclosure.** The parties will ensure that when entering into a new contract with each other provisions are contained within the contract terms and conditions which allow for the new contract to be available to other **Affiliates**.

11.7. **Force Majeure.** A party will not be liable to the other should its performance under this Agreement be prevented, restricted or interfered with by reason of any circumstance or event beyond the reasonable control of the party affected; provided, the party so affected uses its best efforts to continue, resume or substantially resume performance promptly on the end of the circumstance or event preventing performance.

11.8. **Execution in Counterparts** This Agreement may be signed in counterparts, and all such counterparts taken together will constitute one and the same instrument.

11.9. Mutual Indemnification and Damage Limitation.

11.9.1. Each party ("Indemnifying Party") will indemnify and defend the other party, and its respective officers, directors, employees, agents, heirs, successors in interest, and affiliated entities (each an "Indemnified Party") from and against any and all liabilities, losses, damages, and claims that may be incurred or suffered by one or more Indemnified Parties arising out of third party claims related to the Indemnifying Party's a) obligations under this Agreement; b) material breach of this Agreement; or c) untrue representations and warranties in this Agreement, unless such liability, loss, damage, claim or expense is attributable to the Indemnified Party's gross negligence or willful misconduct. This Section survives Agreement termination.

11.9.2. Neither party will be liable to the other for incidental, consequential or punitive damages, including, loss of profit, loss of business or business opportunity, unless such loss or liability results from the other party's intentional conduct.

The parties, intending to be legally bound, sign this Agreement below

AMERICAN SNOWSPORTS EDUCATION ASSOCIATION

By _____
Its Chairman

Date _____

AFFILIATE

By _____
Its President

Date _____

SCHEDULE 1

A Partial List of Benefits Available to ASEA Members

- Promotion of national and Affiliate membership
- Promotion of snowsports instruction and certification
- Educational programs, resources and events
- Credentialing programs
- Web site
- Member Publications
- Member purchase opportunities (i.e. member catalog, promotional and professional offers)
- International credentials as appropriate and available

Schedule 2

The Divisional associations affiliated with the American Snowsports Education Association, therefore PSIA and AASI, are as follows:

- Alaska Division (PSIA- AASI Alaska)
- Central Division (PSIA- AASI Central)
- Eastern Division (PSIA- AASI Eastern)
- Intermountain Division (PSIA- AASI Intermountain)
- Northern Intermountain Division (PSIA- AASI Northern Intermountain)
- Northern Rocky Mountain Division (PSIA- AASI Northern Rocky Mountain)
- Northwest Division (PSIA- AASI Northwest)
- Rocky Mountain Division (PSIA- AASI Rocky Mountain)
- Western Division (PSIA- AASI Western)