

NASM/AFAA Continuing Education Provider Program Terms and Conditions

These Terms and Conditions are between you and Assessment Technologies Institute, LLC d/b/a NASM and as AFAA ("NASM/AFAA"). These Terms and Conditions set forth the terms under which you may participate in the NASM/AFAA Continuing Education Provider Program. The Polices, Guidelines and Application are incorporated by reference into these Terms and Conditions (together, the "Agreement").

1. Definitions.

- a) **"Affiliate"** means any other individual, company, organization, business (including but not limited to corporations, limited liability companies, partnerships, etc.) that Approved Provider owns controls or has an interest in.
- b) **"Applicant"** shall mean you, the person or entity that applies to participate in the Program.
- c) **"Application"** shall mean to the Continuing Education Provider Application, incorporated by reference into this Agreement.
- d) **"Approved CE Offering"** shall mean CE Offering that has been approved by NASM/AFAA and can be offered to NASM and AFAA certified fitness professionals seeking to earn CEU for maintenance of their certifications.
- e) **"Approved Provider"** shall mean you, once your application has been approved by NASM/AFAA to participate in the Program and provide continuing education materials.
- f) **"CEUs"** shall mean the number of continuing education units that have been assigned by NASM/AFAA to Approved CE Offering and which may be earned by certified fitness professionals who complete the Approved CE Offering.
- g) **"CE Offering"** shall mean the continuing education course, Offeringshop, seminar and like products that are submitted by Approved Provider for NASM/AFAA's review and approval.
- h) **"Guidelines"** shall mean NASM Style Guide and Logo Usages Guideline and the AFAA Style Guide and Logo Usages Guideline, incorporated by reference into this Agreement.
- i) **"NASM/AFAA"** shall have the meaning set forth in the preamble of this Agreement and shall include NASM's and AFAA's corporate parents and their affiliates and subsidiaries, and the officers, directors, employees, agents and representatives of each entity included in this definition of NASM/AFAA.
- j) **"NASM/AFAA Provider Logos"** shall mean the "NASM APPROVED PROVIDER" and "AFAA APPROVED PROVIDER" logos, as described and depicted in the Guidelines.
- k) **"Polices"** shall mean the NASM/AFAA Continuing Education Provider Program Policies and Procedures, incorporated by reference into this Agreement.
- l) **"Program"** shall mean the NASM/AFAA Continuing Education Provider Program.

2. Term. This Agreement shall commence as of the date of final execution of the parties herein and continue through the end of the calendar year. Should the Applicant not be approved to participate in the Program as an Approved Provider, this Agreement will immediately terminate without any further notice to Provider. All rights granted herein shall terminate upon the termination of this Agreement.

Before the expiration of the Term, NASM/AFAA will offer previously Approved Providers a renewal agreement. NASM/AFAA reserves the right, in its sole discretion, to require previously approved CE Offering to undergo a review to ensure that the Approved CE Offering continues to meet the NASM/AFAA quality standards.

3. Participation Process.

3.1 **Application.** In order to participate in the Program, you must obtain approval from NASM/AFAA, such approval to be solely at the discretion of NASM/AFAA. Prior to being considered for approval as a Provider, you must:

- a) Complete the Application and provide all of the required supporting materials. NASM/AFAA will not consider an incomplete Application for approval.
- b) Review these Terms and Conditions, the Policies and Guidelines and, by checking the “I verify that I have read and agree to the **Provider Terms and Conditions**” box on the Application, acknowledge and agree to abide by these Terms and Conditions, the Policies and guidelines.
- c) Pay the Application fees, as set forth in the Application.

3.2 **Application Fees.** Applicant acknowledges and agrees that Application fees are non-refundable and are charged in consideration of the review of Application and all materials related to such application and the publicizing of Applicant and its continuing education content as an Approved Provider by NASM and AFAA, should such approval be granted.

3.3 **Provider Approval.** Upon receipt of the Application and payment of fees, NASM/AFAA will review the applicant’s qualifications to be an Approved Provider. In addition to the Application, the following is considered:

- a) Approved Provider may not offer certification programs in personal or fitness training, or any related field, unless such certification program is accredited by the National Commission for Certifying Agencies (“NCCA”) or another, equally acceptable national certification accreditor. For the purpose of clarity, a continuing education provider does not need also to be a certification company in order to be approved by NASM/AFAA, but to the extent it does offer certification programs, such programs must be accredited as described herein. As used herein, the term “certification” is defined to mean a credentialing process that implements an unbiased measure of an individual’s knowledge and competence in a given field and the term “continuing education” is defined to mean learning content intended to advance the skills and knowledge of an established professional or practitioner in a given field.
- b) An Approved Provider shall not use the term “certification” to describe or denote any continuing education content or in promotional materials concerning such continuing education content. NASM/AFAA will accept the use of the following terms in conjunction with continuing education materials: “Certificate of Advanced Qualification”, “Specialty Certificate”, “Certificate of Achievement”, or “Certificate of Completion.”
- c) Applicant agrees that it shall operate its business in a manner that reflects favorably at all times on its relationship with NASM and AFAA and the NASM/AFFA Provider Logos, described further in Section 4.1 of this Agreement.

3.4 Content Review Process. Upon approval of an Application, NASM/AFAA will review each CE Offering submitted by Approved Provider in order to allow NASM/AFAA to determine, in its sole judgment, if the proposed CE Offering is consistent with NASM/AFAA's quality standards for continuing education content.

- Approved Provider agrees that the nature and quality of the CE Offering shall be of the highest quality, provided free of defects and in full compliance with all laws and NASM/AFAA's the quality standards.
- These quality standards include, but are not limited to, the relevance of the content to health and fitness, the credibility of the content, whether the content is current and unique, whether it is at an appropriate level (designed for experienced fitness professionals), the credentials of the content developers and instructors, and whether it aligns with NASM's and/or AFAA's missions and reputations.

3.5 Assignment of CEUs. For each Approved CE Offering, NASM/AFAA will establish the number of CEUs that may be earned by certified fitness professionals who complete the Approved CE Offering. NASM/AFAA will then provide written notice to the Approved Provider that the CE Offering has been approved, the number of CEUs that have been assigned to the Approved CE Offering. Only after receipt of the approval notice may Approved Provider affix the NASM/AFAA Provider Logo to the Approved CE Offering and promote and sell the Approved CE Offering to certified fitness professionals.

3.6 Changes to CE Offering after Approval; Changes in Quality of CE Offering. After a CE Offering has been approved, all substantive modifications or changes to that CE Offering must be submitted to NASM/AFAA for review and renewed approval. Similarly, if NASM/AFAA determines that an Approved CE Offering is no longer of the quality needed to gain approval (e.g., is no longer current or is not directed to the appropriate level of professional experience), the CE Offering must be revised and resubmitted to NASM/AFAA for review and renewed approval within sixty (60) days of written notice from NASM/AFAA of a need for revision. During the review period, Approved Provider may continue to sell the former, approved version of the CE Offering to NASM/AFAA fitness professionals. NASM and AFAA will not award CEUs to fitness professionals who have taken (a) the new version of a CE Offering prior to NASM/AFAA's renewed approval of that CE Offering or (b) a version of a CE Offering for which NASM/AFAA requires revision if the sixty (60) day notice period has expired and a revised version of the CE Offering has not been approved or, at the least, submitted for review and reapproval.

4. Grant of Licenses.

4.1 Grant by NASM/AFAA. During the Term of this Agreement, and subject to these Terms and Conditions, NASM/AFAA grants to Approved Provider a non-exclusive, non-transferable limited license to use the NASM/AFAA Provider Logos in connection with the sale and distribution of only the Approved CE Offering. Approved CE Offering bearing the NASM/AFAA Provider Logos may be marketed, distributed and sold by Provider throughout the world. The following limitations to this License apply:

- This License extends only to the NASM/AFAA Provider Logos specified herein and specifically excludes all other marks, logos, trade names and trade dress owned by NASM and AFAA.

- Pursuant to this License, the Approved Provider's use of the NASM/AFAA Provider Logos must adhere to all requirements set forth in the Guidelines; noncompliance with the Guidelines is cause for termination of this License and this Agreement.
- Approved Provider may only affix the NASM/AFAA Provider Logos to Approved CE Offering, any related materials, such as handouts, quizzes or presentations, and (any promotional materials related to the Approved CE Offering. Approved Provider must obtain written approval of each CE Offering prior to any distribution or sale of such CE Offering bearing the NASM/AFAA Provider Logos.
- Approved Provider may not: (a) use the NASM/AFAA Provider Logos in any manner not specified herein, on any other products, or in any other media without the express written permission of NASM/AFAA; (b) use the NASM/AFAA Provider Logos with any descriptive qualifier other than "Approved Provider"; (c) use the NASM/AFAA Provider Logos on any promotional materials that promote the Approved Provider's other services; or (d) use the NASM/AFAA Provider Logos in conjunction with any other product or service not approved in writing by NASM/AFAA.
- At NASM/AFAA's request, Approved Provider shall provide copies of (a) the Approved CE Offering with the NASM/AFAA Provide Logo affixed, (b) any related materials, such as handouts, quizzes or presentations, and (c) any promotional materials related to the Approved CE Offering including, but not limited to, brochures, line sheets, advertisements, and webpages.
- This License is personal to the Approved Provider named in this Agreement and may not be transferred, sold, leased or rented to any other party.

Approved Provider acknowledges that NASM and AFAA are the owners of the NASM/AFAA Provider Logos and all other marks, logos, trade names and trade dress owned by NASM and AFAA, as well as all products and services offered by NASM and AFAA. This Agreement conveys no right, title, or interest in or to any NASM/AFAA Provider logos or other property of NASM and AFAA. All rights not specifically granted to Provider herein are expressly reserved by NASM/AFAA.

4.2 Grant by Approved Provider. Approved Provider hereby grants NASM/AFAA a license and right to use certain names, trademarks, trade names, trade dress, logos, and other distinctive marks of Provider ("Provider Marks"), solely in connection with NASM's and AFAA's publicizing its approved continuing education providers, the Approved CE Offering and CEUs. Except as expressly provided in this Section, this Agreement conveys no right, title, or interest in or to any Provider Marks. The Parties agree that all branding of Provider's products and services shall remain solely with Provider and NASM/AFAA shall not engage in any activity or take any measures that would in any way compromise the Provider's branding, confuse consumers, or would lead any party to reasonably believe that Provider's products or services are the property of NASM/AFAA. All publicizing activity by NASM/AFAA of approved continuing education shall clearly represent that Provider's products and services are the the property of Provider. NASM and AFAA further agree that all goodwill from use of the Provider's Marks by NASM/AFAA shall inure solely to the benefit of Provider. All rights not specifically granted to NASM/AFAA herein are expressly reserved by Provider.

4.3 Notwithstanding the foregoing, NASM/AFAA reserves the right, at its sole discretion, to publicize and promote this Provider relationship in any manner NASM/AFAA deems appropriate.

5. Termination. This Agreement shall automatically terminate at the end of the calendar year and may be terminated by written notice by either party upon the occurrence of one of the following events:

- a) Should Applicant not be approved to participate in the Program as an Approved Provider, this Agreement will immediately terminate without any further notice to Applicant;
- b) The breach of a material term of this Agreement, if such breach has not been satisfactorily cured, in the discretion of the non-breaching party, within thirty (30) days of receipt of written notice from the non-breaching party;
- c) Immediately, with written notice, upon either party's violation or misappropriation of the other party's intellectual property rights;
- d) With thirty (30) days written notice, upon a change of ownership or control of the other party, which shall mean any change which results in a new entity obtaining more than fifty percent (50%) control of the other party;
- e) Immediately upon the dissolution or bankruptcy of a party to this Agreement, or the making by a party to this Agreement of an assignment under the provisions of the bankruptcy laws of the jurisdiction in which it resides;
- f) In the case of NASM/AFAA, upon fifteen (15) days written notice to Approved Provider if NASM/AFAA determines that Approved Provider or any Affiliate has violated Sections 2.3(a) or (b) of this Agreement; or
- g) Upon thirty (30) days written notice by NASM/AFAA to Approved Provider, for any or no reason.

All rights granted herein shall terminate upon the termination of this Agreement.

6. Warranty. Applicant/Approved Provider warrant that it has all rights, privileges, licenses, and other authority necessary or required to enter into this Agreement and to provide CE Offering and Approved CE Offering to certified fitness professionals free and clear of all encumbrances or restrictions and without conflict to or with NASM/AFAA or any third party. Applicant/Approved Provider warrants that it will not include any unlawful material or material owned by a third party that is not duly licensed from such third party or violates any property rights of any person or entity in any CE Offering or Approved CE Offering.

7. Indemnification; Release. Applicant/Approved Provider shall indemnify, defend, and hold NASM/AFAA harmless from and against any loss, damage, expense or liability resulting from (a) Applicant's/Approved Provider's breach of its warranties set forth in this Agreement; (b) by reason of any infringement, or claim of infringement, of any patent, trademark, copyright or trade secret arising from the CE Offering or Approved CE Offering provided by Applicant/Approved Provider; or (c) arising from the use, application or implementation of the content of any CE Offering or the products or procedures described therein. NASM/AFAA shall notify Applicant/Approved Provider promptly of any claim for which Applicant/Approved Provider may be responsible and shall cooperate with Applicant/Approved Provider to facilitate the reasonable defense of any such claim. If Applicant/Approved Provider fails to meet its obligations hereunder to defend any such action, NASM/AFAA may take control of its own defense at Applicant's/Approved Provider's sole expense.

Applicant/Approved Provider hereby agrees to waive, release and forever discharge NASM/AFAA and NASM/AFAA's affiliates, employees, directors, instructors and all others from any and all responsibilities or liability of any nature from injuries or damages resulting from or related to the CE Offering or Approved CE Offering offered by Applicant/Approved Provider.

8. Modifications of these Terms and Conditions. NASM/AFAA reserves the right to update or modify these Terms and Conditions, the Policies, Guidelines or Application as deemed necessary by NASM/AFAA and to require compliance by Provider with such updates or modifications within ninety (90) days of notification of any updates or modifications.

9. Acceptance. By submitting an Application and checking the "I verify that I have read and agree to the **Provider Terms and Conditions**" box on the Application, you acknowledge and agree to abide by these Terms and Conditions, and the Policies and Guidelines incorporated herein.