

National Concrete Masonry Association
NCMA Certified SRW Installer™
Logo Use and Reproduction Agreement

THIS IS A LEGALLY ENFORCEABLE AGREEMENT BETWEEN NATIONAL CONCRETE MASONRY ASSOCIATION™ (NCMA™) AND NCMA CERTIFIED SRW INSTALLER™ (CSRWI™).

BY USING THE NCMA CERTIFIED SRW INSTALLER LOGO, THE CSRWI ACCEPTS AND AGREES TO THIS AGREEMENT AND IS BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF THE CSRWI HAS RECEIVED THE NCMA CERTIFIED SRW INSTALLER LOGO IN ERROR, OR IF THE CSRWI DOES NOT WISH TO BE BOUND BY THIS AGREEMENT FOR ANY REASON, THE CSRWI MAY RESCIND THE CSRWI'S ACCEPTANCE OF THIS AGREEMENT BY RETURNING THIS AGREEMENT AND A SIGNED, WRITTEN STATEMENT OF THE CSRWI'S DESIRE TO RESCIND THIS AGREEMENT, TO:

NATIONAL CONCRETE MASONRY ASSOCIATION
ATTENTION: CERTIFIED SRW INSTALLER CERTIFICATION PROGRAM
13750 SUNRISE VALLEY DRIVE
HERNDON, VIRGINIA 20171

UPON RESCISSION OF THIS AGREEMENT, THE CSRWI MUST IMMEDIATELY CEASE USE OF THE NCMA CERTIFIED SRW INSTALLER LOGO, AND ALL RIGHTS GRANTED UNDER THIS AGREEMENT SHALL TERMINATE IMMEDIATELY.

1. Definitions.

“Installer LOGO” means the most current version of the NCMA Certified SRW Installer certification mark made available by NCMA on the NCMA CSRWI Resources Website.

“Use” or “Using” means to access, install, print, display, copy, reproduce, or otherwise benefit from the Installer LOGO, in accordance with the documentation that accompanies the Installer LOGO.

“SRW” means segmental retaining wall.

“NCMA” means National Concrete Masonry Association, a non-profit association, with headquarters located at 13750 Sunrise Valley Drive, Herndon, Virginia 20171.

2. Reproduction and Distribution License.

2.1 License. Subject to the terms of this Agreement, NCMA grants the CSRWI a non-exclusive, non-transferable, worldwide, royalty-free license to reproduce and distribute the Installer LOGO as set forth below:

2.1.1 Distribution. Subject to the restrictions and limitations set forth herein, the CSRWI may

(a) install one copy of the Installer LOGO on the individual CSRWI's business print and electronic media for the purpose of designating that the CSRWI has successfully passed (grade of 80% or higher) the NCMA Certified SRW Installer certification exam, and

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(b) reproduce and distribute unlimited copies of the Installer LOGO as marketing elements of the individual CSRWI's business print and electronic media for the purpose of designating that the CSRWI has successfully passed (grade of 80% or higher) the NCMA Certified SRW Installer certification exam.

2.1.2 Restrictions. The CSRWI may not combine the Installer LOGO with any

(a) other logo or print or

(b) other print media or graphics that is reasonably likely to mislead or misrepresent the context of the Installer LOGO.

The CSRWI may not sell, lend, lease, or otherwise directly receive compensation for the Installer LOGO.

The CSRWI may not use the Installer LOGO if the CSRWI has not received an 80% or higher grade on the NCMA Certified SRW Installer certification exam.

The CSRWI may not use the Installer LOGO if the CSRWI's certification as a NCMA Certified SRW Installer is revoked, suspended, or expired, or if the CSRWI breaches the provisions of this Agreement, as defined herein.

The Installer LOGO and the NCMA Certified SRW Installer credential designated by the Installer LOGO certify only that the CSRWI has by examination demonstrated the CSRWI's knowledge of fundamental SRW structural performance principles and installation practices. The Installer LOGO and the NCMA Certified SRW Installer credential designated by the Installer LOGO do not certify the CSRWI's capacity, competence, ability, performance capability, ethical or professional conduct, or experience in SRW construction. Therefore, the CSRWI may not use the Installer LOGO in any manner to advertise, market, promote, or imply NCMA's certification of the CSRWI's capacity, competence, ability, performance capability, ethical or professional conduct, or experience in SRW construction.

The CSRWI may not use the Installer LOGO or NCMA SRW Installer Certification Program as the sole basis for contractor acceptance or performance documentation criteria on any project, specification, or construction documents.

The NCMA Certified SRW Installer certification program is an individual certification program, not a company accreditation program. Thus, the CSRWI may not use the Installer LOGO in conjunction with company letterhead, company websites, company advertisements, or other company literature and marketing material, unless the text "This Company Employs A" appears immediately above the Installer LOGO, in a font size at least as large as the "SRW" text in the Installer LOGO.

The CSRWI may not use the Installer LOGO in conjunction, connection, or association with SRW installation practices that are not consistent with the recommendations in the most recent edition and printing of the NCMA Segmental Retaining Wall Installation Guide, National Concrete Masonry Association, TR146.

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2.1.3 The CSRWI may direct others to obtain the NCMA Certified SRW Installer credential by meeting the eligibility requirements and successfully passing the certification examination of the NCMA SRW Installer Certification Program. The NCMA Certified SRW Installer examination is typically offered immediately following each session of the NCMA SRW Installer Education course provided by NCMA and by NCMA-authorized SRW Installer Education instructors.

Any print or electronic media distributed with the Installer LOGO, or any website containing the Installer Logo, must not contain any: (a) Installer LOGO or NCMA logos in stylized form unless under separate, prior, written license (except as permitted under Section 3, below); (b) materials that are illegal, pornographic, defamatory, infringing, threatening, invasive of another’s privacy, or racially, ethnically, or otherwise discriminatory; or (c) viruses, Trojan horses, worms, time bombs, cancel bots, or other computer programming routines which damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or personal information.

2.1.4 New Versions. Upon release of a new version of the Installer LOGO by NCMA, the CSRWI will cease all reproduction and distribution of previous versions of the Installer LOGO upon the earlier of: (a) the next release of any print or electronic media containing the Installer LOGO; or (b) six (6) months from the date NCMA makes such new version of the Installer LOGO available.

2.2 No Modification. The CSRWI may not customize the Installer LOGO. The CSRWI may not otherwise adapt, translate, alter, or modify the Installer LOGO in any way—including, without limitation, the NCMA reference, the text components of the Installer LOGO, and the graphical components of the Installer LOGO. The CSRWI may not integrate or use the Installer LOGO with any other logo. The CSRWI may not subject the Installer LOGO to any license terms that require or purport to require any product, technology, or service to be subject to another license or otherwise share such property with any other parties.

2.3 Transfer. The CSRWI may not rent, lease, sublicense, assign, or transfer the CSRWI’s rights under this Agreement, or authorize all or any portion of the Installer LOGO to be reproduced except as may be expressly permitted herein.

3. NCMA Certified SRW Installer Logo Use.

3.1 Installer Logo License Grant. NCMA hereby grants to the CSRWI, and the CSRWI accepts, a worldwide, non-exclusive, non-transferable, personal right to use and reproduce, under the terms of this Agreement, “NCMA Certified SRW Installer” logo for print and electronic media, or such additional or replacement logo(s) as NCMA may provide under this Agreement (the “Installer LOGO”).

The CSRWI may use the Installer LOGO solely in conjunction with the permitted forms of distribution of the Installer LOGO specified in Section 2 of this Agreement, so long as such use also complies with the “NCMA Certified SRW Installer Logo Use Guidelines”.

Use of the Installer LOGO does not give the CSRWI any right, title, or interest in the Installer LOGO, NCMA Certified SRW Installer Certification Program, or NCMA, other than the license rights granted herein.

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The CSRWI may not assign, transfer, or sublicense any Installer LOGO right granted herein without the prior, written consent of NCMA.

The CSRWI agree not to use the Installer LOGO in any manner that will disparage NCMA or its members, injure NCMA's reputation for high quality, or otherwise diminish or damage NCMA's goodwill in the Installer LOGO or infringe on NCMA's intellectual property. The CSRWI acknowledges the validity of the Installer LOGO and NCMA's sole ownership of the Installer LOGO, and that NCMA retains all right, title, and interest in and to the Installer LOGO. The CSRWI recognizes the value of the goodwill associated with the Installer LOGO, and acknowledges that such goodwill inures exclusively to the benefit of and belongs to NCMA. The CSRWI shall employ best efforts to use the Installer LOGO in a manner that does not derogate from NCMA's rights in the Installer LOGO and will take no action that will interfere with or diminish NCMA's rights in the Installer LOGO.

The CSRWI may not use the Installer LOGO in any way as an endorsement or sponsorship by NCMA of any product or service.

The Installer LOGO only attests to the CSRWI having successfully passed, with a grade of 80% or higher, the NCMA Certified SRW Installer certification examination. The CSRWI may not use the Installer LOGO in any manner to advertise, market, promote, or imply NCMA's certification of the CSRWI's capacity, competence, ability, performance capability, ethical or professional conduct, or experience in SRW construction.

The CSRWI may not use the Installer LOGO in conjunction with company letterhead, company websites, company advertisements, or other company literature and marketing material, unless the text "This Company Employs A" appears immediately above the Installer LOGO, in a font size at least as large as the "SRW" text in the Installer LOGO.

The CSRWI agrees not to adopt or use a trademark, service mark, certification mark, or any other designation confusingly similar to the Installer LOGO.

The CSRWI agrees to use the Installer LOGO only in connection with products that: (a) support SRW-installation-related print or electronic media; (b) comply with all applicable U.S. and foreign fair advertising laws and regulations; (c) comply with all applicable U.S. and foreign laws and regulations; (d) support NCMA or NCMA member products if so indicated on packaging or advertising materials of the CSRWI's products; and (e) are advertised in a manner consistent with industry standards.

Upon reasonable request from NCMA, the CSRWI will notify NCMA of the locations of the CSRWI's use of the Installer LOGO and furnish NCMA with suitable specimens of such use.

If NCMA so requests, the CSRWI agrees to submit to NCMA any uses of the Installer LOGO for NCMA's approval prior to the dissemination of these materials, such approval not to be unreasonably withheld.

The CSRWI agrees to undertake such steps as NCMA may reasonably request to assist in monitoring and maintaining the quality and form of use of the Installer LOGO. NCMA may review the CSRWI's use of the Installer LOGO at any time to evaluate the CSRWI's compliance with the standards described in this Agreement. If at any time NCMA determines that the

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CSRWI is not maintaining adequate standards, including but not limited to proper display of the Installer LOGO, compliance with or consistency with NCMA-recommended installation guidelines for SRWs, or quality workmanship in SRW installation, the CSRWI shall be considered in breach of this Agreement and subject to the termination provisions of Section 8. The CSRWI must immediately remedy any material deficiencies in the CSRWI's use of the Installer LOGO upon reasonable notice from NCMA.

NCMA MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE INSTALLER LOGO.

NCMA WILL NOT BE LIABLE TO THE CSRWI FOR ANY CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES (INCLUDING LOSS OF BUSINESS PROFITS) ARISING FROM OR RELATED TO THE CSRWI'S USE OF THE INSTALLER LOGO OR RECOGNITION AS AN NCMA CERTIFIED SRW INSTALLER, EVEN IF NCMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IF NCMA PROVIDES THE CSRWI WITH A SUBSTITUTE INSTALLER LOGO, THE CSRWI SHALL BEAR ALL LIABILITY FOR CONTINUED USE OF THE PREVIOUS INSTALLER LOGO.

3.2 Indemnification. The CSRWI agrees to indemnify, hold harmless, and defend NCMA from and against any claims, lawsuits, damages, expenses, and costs, including attorneys' fees, that arise or result from the CSRWI's use, reproduction, or distribution of the Installer LOGO, provided, however, that the CSRWI's indemnification obligation will not apply to claims or lawsuits arising out of a claim that the Installer LOGO infringes any third party patent, copyright, trademark, or other intellectual property right. The foregoing exception will not apply to claims arising out of the combination of the Installer LOGO with other trademarks or graphics provided by the CSRWI. NCMA will give the CSRWI prompt, written notice of any claim or lawsuit to which the CSRWI's indemnification obligation applies.

3.3 Contact Information. To ensure that recertification notices and other important communications relating to the CSRWI's authorization to use the Installer LOGO are received promptly by the CSRWI, the CSRWI agrees to provide NCMA with the CSRWI's accurate, current contact information, including the CSRWI's name, company name, email address, mailing address, telephone number, and FAX number, for as long as the CSRWI's credential remains valid.

4. **NO WARRANTY.** The Installer LOGO is made available to the CSRWI for use, reproduction, and distribution "AS IS" and NCMA makes no warranty regarding its use, utility, benefit, or performance.

NCMA AND ITS MEMBERS DO NOT AND CANNOT WARRANTY THE PERFORMANCE AND RESULTS OBTAINED BY USING THE INSTALLER LOGO, BECOMING CERTIFIED AS AN NCMA CERTIFIED SRW INSTALLER, OR SUCCESSFULLY COMPLETING THE NCMA SRW INSTALLER EDUCATION COURSE.

EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION, OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO THE CSRWI IN THE CSRWI'S JURISDICTION, NCMA AND

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ITS MEMBERS MAKE NO WARRANTIES, CONDITIONS, REPRESENTATIONS, OR TERMS (EXPRESS OR IMPLIED, WHETHER STATUTE, COMMON LAW, CUSTOM, USAGE, OR OTHERWISE) AS TO ANY MATTER, INCLUDING WITHOUT LIMITATION NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, INTEGRATION, SATISFACTORY QUALITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

The CSRWI agrees that the CSRWI shall not make any warranty, express or implied, on behalf of NCMA and its members. The provisions of Section 4 and Section 5 shall survive the termination of this Agreement, howsoever caused, but this shall not imply or create any continued right to use the Installer LOGO after termination of this Agreement.

5. LIMITATION OF LIABILITY. IN NO EVENT WILL NCMA OR ITS MEMBERS BE LIABLE TO THE CSRWI FOR ANY DAMAGES, CLAIMS, OR COSTS WHATSOEVER OR ANY CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES, OR ANY LOST PROFITS OR LOST SAVINGS, EVEN IF AN NCMA REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS, OR COSTS, OR FOR ANY CLAIM BY ANY THIRD PARTY.

THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAWS IN THE CSRWI'S JURISDICTION. NCMA'S AGGREGATE LIABILITY AND THAT OF ITS MEMBERS UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID FOR THE INSTALLER LOGO, IF ANY.

Nothing contained in this Agreement limits NCMA's liability to the CSRWI in the event of death or personal injury resulting from NCMA's negligence or for the tort of deceit (fraud). NCMA is acting on the behalf of its members for the purpose of disclaiming, excluding, or limiting obligations, warranties, and liability as provided in this Agreement, but in no other respects and for no other purpose.

6. Export Rules. The CSRWI agrees that the Installer LOGO will not be shipped, transferred, or exported to any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions, or regulations (collectively the "Export Laws"). In addition, if the Installer LOGO or electronic or print media containing the Installer LOGO is identified as an export controlled item under the Export Laws, the CSRWI represents and warrants that the CSRWI is not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Iraq, Syria, Sudan, Libya, Cuba, North Korea, and Serbia) and that the CSRWI is not otherwise prohibited under the Export Laws from distributing the Installer LOGO or electronic and print media containing the Installer LOGO. All rights granted under this Agreement are granted on the condition that such rights are forfeited if the CSRWI fails to comply with the terms of this Agreement.

7. Governing Law. This Agreement will be governed by and construed in accordance with the substantive laws in force in the Commonwealth of Virginia. The respective courts of the Commonwealth of Virginia shall each have non-exclusive jurisdiction over all disputes relating to this Agreement.

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8. **Term.** This Agreement is effective until terminated. NCMA has the right to terminate this agreement: (a) without cause upon ninety (90) days written notice; or (b) immediately upon written notice if the CSRWI fails to comply with any term of this Agreement. Upon any such termination, the CSRWI must cease all reproduction, distribution, and any use of the Installer LOGO, and, upon request from NCMA, destroy all copies of electronic and print media containing the Installer LOGO in the CSRWI's possession and provide independent, third-party certification of such destruction.

9. **Notice.** All requests and notices given under this Agreement will be in writing and will be by personal delivery, facsimile transmissions, or by certified or registered mail, return-receipt requested (or, in the case of notice from NCMA to the CSRWI, by e-mail) and will be deemed given upon personal delivery five (5) days after deposit in the mail, or upon acknowledgement of delivery of electronic transmission.

Notices from the CSRWI to NCMA will be sent to the following address:

National Concrete Masonry Association
Attention: Certified SRW Installer Certification Program
13750 Sunrise Valley Drive
Herndon, Virginia 20171

Notices from NCMA to the CSRWI will be sent to the address that the CSRWI provides to NCMA with this Agreement or on the CSRWI's NCMA Certified SRW Installer certification exam. The CSRWI warrants that the personal information the CSRWI provided with this Agreement or NCMA Certified SRW Installer certification exam is accurate and current as of the date the CSRWI provided such information.

10. **General Provisions.** This Agreement is fully severable; if any part of this Agreement is found illegal, void, voidable, invalid, or unenforceable, that finding will not affect the validity or enforceability of the balance of this Agreement, which shall remain valid and enforceable according to its terms.

This Agreement shall not prejudice the statutory rights of any party dealing as a consumer.

This Agreement may only be modified by a writing signed by an authorized officer of NCMA.

Updated versions of the Installer LOGO may be licensed to the CSRWI by NCMA with additional or different terms.

This Agreement is the entire agreement between NCMA and the CSRWI relating to the reproduction, distribution, and use of the Installer LOGO, and this Agreement supersedes any prior representations, discussions, undertakings, communications, or advertisements relating to the Installer LOGO, NCMA Certified SRW Installer Certification Program, or NCMA SRW Installer Education Course.

11. **Audit Right.** The CSRWI agrees that, upon request from NCMA or NCMA's authorized representative, the CSRWI will within thirty (30) days fully document and certify that the CSRWI is in conformity with the terms and conditions of this Agreement.

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During the term of this Agreement, the CSRWI will use reasonable efforts to maintain a complete, clear, and accurate record of the number of copies of the Installer LOGO the CSRWI distributes during each year in a manner sufficient to allow NCMA to verify compliance with the terms and conditions of this Agreement.

NCMA shall have the right to inspect and audit all the CSRWI's relevant books and records relating to the reproduction, distribution, and use of the Installer LOGO. Information obtained in connection with the audit will only be used to enforce NCMA's rights and to determine whether the CSRWI is in compliance with the terms and conditions of this Agreement. Any such audit shall be conducted upon not less than seven (7) days' notice to the CSRWI's offices, and shall be conducted during regular business hours and in such manner as not to unreasonably interfere with the CSRWI's normal business activities.

If the CSRWI has any questions regarding this Agreement or if the CSRWI wishes to request any information from NCMA, please contact NCMA at <http://www.ncma.org>.

NCMA, National Concrete Masonry Association, the NCMA logo, Certified Segmental Retaining Wall Installer, CSRWI, and the NCMA Certified SRW Installer logo are either trademarks or registered trademarks of the National Concrete Masonry Association in the United States and/or other countries.

Installer Logo Distribution – 20060327