

NASCLA ELECTRICAL EXAMINATION ADMINISTRATION SERVICES AGREEMENT

THIS NASCLA ELECTRICAL EXAMINATION ADMINISTRATION SERVICES AGREEMENT (this “Agreement”) is made as of this ___ day of _____, 20___ by and between the NATIONAL ASSOCIATION OF STATE CONTRACTORS’ LICENSING AGENCIES, an Arizona nonprofit corporation (“NASCLA”), having its principal place of business at 23309 N. 17th Drive, Building 1, Unit 110, Phoenix, Arizona 85027, and the _____ (“Agency”), located at _____ . NASCLA and Agency may hereinafter be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. NASCLA is a non-profit corporation and has been in existence since 1962. NASCLA’s regular membership is comprised of state and local contractor licensing agencies. NASCLA is dedicated to protecting the health, safety and welfare of the general public through better regulation of the construction industry and the education of the public and contractors;

B. Agency, is a _____ of the State of _____, and charged with _____;

C. As part of its efforts, NASCLA has created the Accredited Electrical Examination Program to assist its member agencies with their responsibility to license qualified electrical contractors. As part of the foregoing program, NASCLA has produced three (3) examinations for electricians, which are as follows:

(i) NASCLA Accredited Trade Examination for Electrical Contractors (Master Electricians / Unlimited Electricians / Electrical Administrators),

(ii) NASCLA Accredited Examination for Journeyman Electricians (Journeyman Electricians), and

(iii) NASCLA Accredited Trade Examination for Residential Electrical Contractors (Residential Electricians).

D. Of the foregoing examinations the Agency has chosen the exam(s) listed in Exhibit “A” attached hereto (the “Exams”), which for ease of reference, may be referred to herein in either the singular or plural, as part of its efforts to license qualified electricians within its jurisdiction and to have such Exams serviced by NASCLA.

E. The Exams are computer based and hosted on a secure server of NASCLA’s choosing and at a location determined by NASCLA based on its Psychometric Criteria.

F. The Exams will be administered to “Candidates” (as defined in Section 2(c)) through the Agency or a third party “Exam Administrator” (as defined in Section 2(g)).

G. NASCLA desires to provide such Exams to the Agency for its use with Candidates and will also provide to the Agency the other ancillary and necessary services set forth in this Agreement, and provide a license to Agency to use the Exam software, subject to the terms and conditions hereinafter set forth in this Agreement;

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and undertakings hereinafter set forth, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are incorporated herein and made a part hereof by this reference.

2. Definitions. As used throughout this Agreement, the following terms shall have the meanings specified below:

(a) “*Agency Material*” means any data or information provided by the Agency, its Authorized Users or Exam Candidates as part of the Examination process, or created through the Agency’s utilization of the NASCLA Software, and includes all Candidate personal data and Exam Results or other materials proprietary to the Agency provided to NASCLA.

(b) “*Authorized Users*” means those authorized employee(s) of the Agency (or an Exam Administrator) whose responsibilities require such employee to have access to and use of the NASCLA Software.

(c) “*Candidate*” means an individual who has registered to take an Exam or who has taken an Exam. The term Candidate also includes those individuals who have been authorized by the Agency, after properly registering to take an Exam and/or those who have commenced taking an Exam.

(d) “*Deliverable*” means the results of the Services that are provided by NASCLA to the Agency in tangible or electronic form, such as Exams, Exam Results, customized NASCLA Software and consulting reports. Deliverables may contain both Agency Materials and NASCLA Materials.

(e) “*Exam or Examination*” means the Exams described in Exhibit “A”, which are a set of instructions, questions, problems and/or procedures with associated organizational and scoring parameters meant to test a Candidate’s knowledge and proficiency in the area of that particular Exam. For security purposes, any Exam may exist in more than one (1) form with each form being distinct in some or all of its content from other forms of the same Exam. The Exams are compliant with all appropriate psychometric standards applicable to such tests.

(f) “*Exam Administration*” means the process of the Agency or an Exam Administrator administering an Exam to a Candidate through the use of the NASCLA Software. A single Exam Administration occurs each time a Candidate completes an Exam; and multiple Exam Administrations occur if a Candidate completes multiple Exams for which Exam Results are separately reportable; provided however that a Candidate follows the retake policy permitted by the Agency.

(g) “*Exam Administrator*” means the person or entity that administers the Exam to a Candidate. If the Agency has one or more third-party Exam Administrators, then the Agency shall ensure through its agreement(s) with such third party Exam Administrators that: (i) they are properly accredited by NASCLA, and (ii) they are subject to and follow the same rules, duties, obligations and security measures that are applicable to the Agency as set forth in this Agreement. For the avoidance of doubt, if the Agency is the Exam Administrator, and not a NASCLA State Member, the Agency must also be properly accredited by NASCLA prior to an Exam Administration. If the Agency is a State Member of NASCLA, the Agency must be approved by the NASCLA Board of Directors as an Exam Administrator. For the further avoidance of doubt, an Exam Administrator does not have to be the Agency and it is permissible for an Agency or an Exam Administrator to hire additional subcontractors provided such Exam Administrator is ultimately responsible for compliance with all of the applicable rules set forth in this Agreement.

(h) “*Exam Center or Testing Location*” means the physical location where Exams are administered to Candidates. Exam Centers do not need to be owned and/or operated by the Agency, but can be managed by a third party Exam Administrator or a subcontractor to an Exam Administrator. In either case, each Exam Center shall be subject to and comply with the terms of this Agreement relating to Exam Centers and the rules and policies applicable to NASCLA accredited testing centers.

(i) “*Exam Fee*” means the fee set forth in this Agreement payable by the Agency to NASCLA each time there is an Exam Administration to a Candidate, which also includes the other services of NASCLA set forth in this Agreement.

(j) “*Initial Exam Results*” means a Candidate’s pass/fail score given to the Candidate by NASCLA immediately after completing an Exam Administration.

(k) “*NASCLA Materials*” means any materials owned or licensed by NASCLA provided to the Agency, whether or not such materials were developed expressly for the Agency under this Agreement, including without limitation the Exams, all NASCLA Software and related documentation, enhancements or revisions thereof.

(l) “*NASCLA Software*” means the software developed by NASCLA’s 3rd Party Server Hosting Company to allow a Candidate to sit for an Exam Administration at either the Agency’s or a third party’s Exam Center and perform all scoring and analyses of the Exam results, both individually, and over time.

(m) “*Services*” means those Services and Deliverables provided by NASCLA to the Agency in support of an Exam Administration and pursuant to Section (n) of this Agreement, including without limitation Authorized User training, consulting and program management.

(n) “*Supplemental Exam Results*” means a Candidate’s rough score, percentage answered correctly, and a strengths/weaknesses analysis relative to the various topics addressed in the Exam, which will be provide by NASCLA to the Agency, who thereafter can share with the Candidate.

3. Services. NASCLA agrees to provide the following Services and Deliverables to Agency:

(a) *Examinations*.

(i) NASCLA will provide to Agency and service the Exams listed on Exhibit "A", which Exams will be developed, maintained and made available upon demand, through the internet, to those qualified Candidates which have previously been approved by the Agency for an Exam Administration.

(b) *Software Development*. NASCLA will develop and prepare the NASCLA Software to provide the Services and Deliverables set forth in this Agreement as well as analysis and other data reporting tools related to this Agreement. Authorized Users of the NASCLA Software may utilize and access it pursuant to the license granted in Section 7, below.

(c) *Other Services & Deliverables*. NASCLA will perform the following Services and provide the following Deliverables related to the delivery of the Exams:

(i) Except for the actual physical administration of the Exams at each Exam Center, for which Exam security is the responsibility of the Agency (or its approved Exam Administrator), NASCLA will use its best commercial efforts through the NASCLA Software to secure and preserve the integrity of the Exam(s) and prevent cheating, mining of questions, or other similar methods of electronically compromising or defeating the Exam or the NASCLA Software. Agencies (or its approved Exam Administrator) administering the exam will be responsible for full examination replacement costs should the actions of the Agency lead to the test being compromised.

(ii) Immediately upon discovery, NASCLA will notify the Agency (and any involved Exam Administrator) of (A) any adverse event(s) (e.g., a possible episode of cheating) which occurred during an Exam Administration, or (B) of any other type of similar Exam breach at the Exam Center or elsewhere that is discovered by NASCLA or made known to it by others.

(iii) Through the NASCLA Software, and upon the completion of an Exam by a Candidate, NASCLA will immediately provide each Candidate their Initial Exam Results, which will be reported as either "Pass" or "Fail". Actual results may be provided to the Candidate by the Agency at a later time and/or date, which shall be the choosing of the Agency.

(iv) The Pass/Fail threshold for the Exams shall be based on of the number of questions answered correctly as follows:

1. Master Electrician = 75%
2. Journeyman Electrician = 70%
3. Residential Electrician = 70%

(v) Through the NASCLA Software, and no later than two (2) hours after the completion of an Exam by a Candidate, NASCLA will provide to Agency the Supplemental Exam

Results. Subsequently, it shall be the option of the Agency to provide all or part of the Supplemental Exam Results to a Candidate.

(vi) NASCLA will ensure that the scoring method for the Exams meets appropriate psychometric standards.

(vii) If a Candidate fails the exam, such Candidate must apply for re-examination directly with the Agency.

(d) *Reports.* Upon request, NASCLA shall provide reports to Agency, which may include a roster of passing and failing Candidates. The format of any supplemental Exam score report will be determined by NASCLA; provided however, that Candidates must obtain their supplemental Exam score from the Agency.

(e) *Training.* NASCLA shall provide training to Authorized Users of the NASCLA Software through: (i) providing training materials and (ii) telephonic and/or online training sessions. Up to eight (8) hours of training each year are included in the cost of the Services. Additional training shall be billed separately from this Agreement at an agreed upon rate.

(f) *Storage of Records.* NASCLA will electronically store Candidate records and score reports for at least seven (7) years after each Exam Administration. NASCLA will back-up such data at an off-site storage facility. NASCLA must provide such data to the Agency upon request or termination of this Agreement.

(g) *Challenge by Candidate.*

(i) If a Candidate challenges an Exam (whether in whole or in part), NASCLA shall defend the Exam, as necessary, including the duty to defend such Exam in state and/or federal court or administrative agency. This obligation to defend includes the providing of expert witnesses and opinions, as necessary. To the extent necessary, the Agency shall be provided access to the Exam items or other relevant aspects of the Exam as part of the defense to a legal challenge by a Candidate.

(ii) Each Exam shall have as part of its Administration, the ability of a Candidate to challenge a question, through the use of electronic comments either during the exam, or immediately following the completion of the Exam. Such ability will be part of the NASCLA Software as further discussed below.

(iii) Upon request from the Agency, NASCLA will rescore an Exam if a Candidate has failed an Exam and has challenged the Exam. NASCLA will not charge any additional fees for a legitimate, good faith Challenge.

(iv) Upon request from a Candidate, NASCLA will rescore an Exam if a Candidate has failed an Exam and, has challenged the Exam and NASCLA has found that one (1) or more of the questions challenged are found to be faulty. NASCLA will not charge any additional fees for a legitimate, good faith Challenge.

(h) *Confidentiality.* NASCLA will take commercially reasonable steps to maintain the confidentiality of all Candidate data and Exam scores included in the NASCLA Software.

(i) *References to Training Materials.* NASCLA will provide Agency with timely updates for the Agency's or the Exam Administrator's Examination Candidate Handbook whenever changes are made to the Exam references.

(j) *Additional NASCLA Services.* Agency may, from time-to-time, request that NASCLA perform additional services ("Additional Services") not set forth in this Agreement. Such requests are subject to NASCLA's acceptance and shall be memorialized on a written addendum (each an "Addendum") to this Agreement specifying at minimum the Additional Services to be performed and the compensation to be paid to NASCLA and signed by authorized representatives of NASCLA and Agency. Unless otherwise expressly stated in the applicable Addendum, all Additional Services shall be deemed to be Services hereunder, and the other terms and conditions of this Agreement shall apply to all Additional Services.

(k) *Comments / Feedback.* NASCLA will provide Candidates an opportunity to comment and provide feedback on the Exam, the Administration thereof, the application procedures, and any matters related thereto as part of the Exam Administration process. All comments received will be provided to Agency at a frequency no less than quarterly.

4. Rights, Duties and Responsibilities of the Agency.

(a) *Exam Administration.* Agency will be responsible to administer each Exam to a Candidate either through its own staff, through an approved proctoring center under its supervision, or through a third-party Exam Administrator in accordance with the provisions of Section 5. Agency will conduct supervised Exam reviews for Candidates that failed the Exam.

(b) *Establish Exam Procedures.* Agency will consult with NASCLA and establish written Exam Administration procedures, which shall be jointly approved by the Parties, as well as any subsequent changes to the agreed upon procedures. A summary of the Exam Administration Procedures and the Agency's no cheating policy shall be provided to each Candidate prior to taking an Exam and the no cheating policy will be strictly enforced at all times. The minimum Exam Administration Procedures and a sample No Cheating Policy are attached hereto behind Exhibits "B" and "C", respectively.

(c) *Final Determination of Exam Passage.* Unless set forth in the laws and rules applicable to Agency, the pass / fail threshold for the Exams shall be no less than that set forth in Section 3(c)(iv). Notwithstanding the foregoing, Agency shall have and maintain its statutory obligation to make final determination on licensure, including the authority to rectify any errors occurring in the Exam process.

(d) *Pay Exam Fees.* Agency agrees to timely pay the Exam Fees set forth in Section 6, regardless of who is the Exam Administrator.

(e) *Candidate Registration.*

(i) Agency will be solely responsible for the registration, approval and clearance of Candidates which shall be eligible to take an Exam, and shall take all steps required using the NASCLA Software to register such Candidate with NASCLA so that such candidate may then take the Exam. Provided however, if NASCLA has evidence, from any source, that such Candidate has previously cheated on any exam or test, is on a cheating watch list or has a history of cheating, NASCLA shall provide such information to Agency. NASCLA reserves in its sole and unfettered discretion the right to refuse Exam Administration to any individual for any reason. If a Candidate is not allowed to take an Exam due to a prior instance of cheating, it will be at least one (1) year before such Candidate is eligible again for consideration.

(ii) Agency/and or third-party Exam Administrator will develop a system for scheduling and rescheduling Candidates for Exams. The system must include establishing a means to allow Candidates to cancel or re-schedule Exams and a means to provide information on Exam Center closings due to inclement weather or other cause.

(iii) Agency will create as necessary, an electronic authorization file in a mutually agreeable electronic format of newly approved Candidates and upload to NASCLA and any third-party Exam Administrator.

(f) *Informational Bulletin.* In consultation with and assistance from NASCLA, the Agency will create and provide a Licensing Information Bulletin for Exam Candidates. The Bulletin must contain information providing the location of all information and forms (or weblinks to such forms) necessary to apply for the relevant license and schedule an Exam. The content and format of the Bulletin must be provided to NASCLA prior to publication, wherein NASCLA may provide its comments. The Bulletin shall provide the address of and driving instructions to the Exam Center(s). The Bulletin should specify an estimated time line from the point of receiving a registration form to the candidate being able to take the Exam. NASCLA will provide a prototype bulletin for the Agency/Exam Administrator to work with in providing information regarding suggested Exam study references, Exam outlines, and basic instructions on test-taking formats, time limits, number of items, what references may be used, etc.

(g) *Comments/Feedback.* To the extent that the Agency receives comments or feedback from a Candidate on the Exam, the Administration thereof, or any matters related thereto, Agency shall provide such comments to NASCLA at a frequency no less than quarterly.

(h) *Supplemental Exam Score.* Agency will provide to each failing candidate information whereby each Candidate may receive a diagnostic profile of their Exam performance, strengths, and weaknesses from a report provided to the Agency by NASCLA. The information may be provided through a weblink.

(i) *Participation by Agency Employees.* Agency will ensure that all of Agency's personnel who may be reasonably necessary or appropriate for the successful implementation of the Services will, on reasonable notice: (i) be available to assist NASCLA's personnel by answering business, technical and operational questions and providing requested documents, guidelines and procedures in a timely manner and participating in progress and Deliverable reviews, and (ii) participate in the Services as outlined in this Agreement.

5. Exam Administration. For each Exam Administration, the Exam Administrator shall comply with the following (for purpose of this Section 5, and as defined in Section 2(f), the phrase Exam Administrator includes the Agency where the Agency is the one administering an Exam to a Candidate, and third party Exam Administrator and any subcontractor to an Exam Administrator.):

(a) Maintain one (1) or more Exam Centers and provide trained employee proctors at each location who shall conduct themselves in a courteous and professional manner at all times;

(b) All Exam Centers must be approved by NASCLA and be compliant with the requirements set forth in this Agreement prior to commencing Exam Administration. In addition to the pre-opening inspection, NASCLA employees and/or agents will be allowed to inspect each Exam Center during regular business schedule without notice. The number and location of Examination centers and the frequency, dates and times of actual Exam Administration shall be established by the Agency.

(c) Each Exam Center will comply with all applicable rules of the Americans with Disabilities Act (ADA) and any corresponding State enacted equivalents laws, and each Exam Administrator (including the Agency if applicable) shall make reasonable accommodations in the taking of the Exam by qualified disabled Candidates.

(d) Ensure that the established procedures for screening and identification of Candidates are properly followed to ensure that each Exam is only taken by the approved Candidate.

(e) Take commercially reasonable measures to prevent cheating by Candidates and preserve the integrity of the Exam content and process consistent with the established no cheating policy of the Agency.

(f) Notify NASCLA (and the Agency in the case of a third-party Exam Administrator) of any real or perceived cheating or breach in the integrity of the Exam, or other adverse, irregular or extraordinary event at an examination center or elsewhere and provide a copy of any video, audio and/or written paperwork involving such event.

6. Exam Fees.

(a) For each Exam taken or commenced or by a Candidate, Agency shall pay to NASCLA \$25. Payment will be made no later than thirty (30) days after receipt of an invoice from NASCLA.

(b) Agency will pay NASCLA for incurred Exam Fees upon receipt of NASCLA's corresponding invoice. Any invoices not paid within thirty (30) days will be subject to interest at the rate of 1.5% per month, or the highest rate permitted by law, whichever is lower.

7. License to use NASCLA Software. NASCLA hereby grants Agency a license to use the NASCLA Software subject to the terms, conditions and duration of this Agreement.

8. Term, Renewal, and Termination.

(a) The initial term of this Agreement shall commence on _____ and shall continue for a period of five (5) years thereafter. At the end of the initial term, and at the end of each renewal term thereafter, the parties will agree on the new Exam Fee for the upcoming renewal term. Failure to agree on a new Exam Fee, will result in a termination of this Agreement.

(b) This Agreement will automatically renew for two (2) additional, two (2) year terms, and thereafter, will automatically renew for an unlimited number of additional one-year renewal terms on the expiration date (and on the anniversary of said date every year thereafter), unless either Party notifies the other, at least ninety (90) days before the expiration date of the initial or renewal term, that this Agreement will not be renewed.

(c) Notwithstanding the foregoing, either Party may terminate this Agreement at any time in the event of a material breach hereof by the other Party, which breach is not cured within thirty (30) days after written notice thereof by the non-breaching Party. Any breach by Agency of a NASCLA Software license shall be considered a material breach of this Agreement. Any material breach by NASCLA of its warranty of professional and workmanlike services or material failure to meet the contract specifications as to exam administration and sites shall be considered a material breach of this Agreement.

(d) Upon the expiration or termination of this Agreement: (i) Agency shall, within ten (10) days, return to NASCLA any NASCLA Software provided directly to Agency and any copies thereof, and (ii) NASCLA shall, within ten (10) days, deliver to Agency all Agency Materials.

9. Ownership.

(a) *NASCLA Materials.* Agency acknowledges and agrees that NASCLA holds all proprietary rights, including, but not limited to, copyrights, trade secrets, and patents, in NASCLA Materials and the Exams, regardless of whether such Exam was created specifically for Agency. Agency agrees that, except for the right to use NASCLA Materials included in Deliverables in the course of using such Deliverables for its internal business purposes (and not for license or resale to third parties) as contemplated by this Agreement, no proprietary rights in the NASCLA Materials, Exams or the Deliverables are granted to Agency.

(b) *Agency Materials.* Agency acknowledges and agrees that Agency holds all proprietary rights, including, but not limited to, copyrights, trade secrets, and patents, in the Agency Materials. NASCLA agrees that, except for the right of NASCLA employees and agents to use the Agency Materials for the sole purpose of performing NASCLA's responsibilities under this Agreement, no proprietary rights in the Agency Materials are granted to NASCLA. Agency may at any time request in writing that the Agency Materials be returned, and NASCLA shall, within ten (10) days, deliver to Agency all such Agency Materials.

(c) *Trademarks, Logos, Etc.* Unless otherwise allowed in writing, neither Party may use the trade name, trademark, service mark, logo or other designation of the other Party for promotional or marketing activities.

10. Confidentiality.

(a) *Confidential Information.* Agency Materials, NASCLA Materials, the Exams, and to the permit allowed by applicable law, the terms of this Agreement, and all other data or information which is submitted by one Party to the other that is maintained as confidential by that Party and is so designated when submitted (collectively, the “Confidential Information”) will be kept in confidence by the other. Unless required by law, the receiving Party shall not use, disclose, copy or publish any such Confidential Information to any third party without the prior written approval of the disclosing Party. The receiving Party shall safeguard such Confidential Information to the same extent, and in no event to a less than a reasonable extent, it safeguards its like information.

(b) *Exceptions.* The foregoing obligations and responsibilities shall not apply to Confidential Information that:

(i) is publicly known at the time of its disclosure or becomes publicly known after its disclosure other than by breach hereof by the receiving Party;

(ii) is lawfully received by the receiving Party from a third party not under an obligation of confidentiality to the disclosing Party;

(iii) is published or otherwise made known to the public by the disclosing Party;

(iv) was generated by the receiving Party independently without use of or reliance on Confidential Information, or

(v) is the subject of a court order or other legal obligation requiring disclosure, provided the receiving Party promptly notifies the disclosing Party of such court order or other obligation.

11. Indemnification.

(a) *NASCLA’s Indemnity.* NASCLA agrees to indemnify, defend and hold harmless Agency, its officers, directors, employees, agents, successors and permitted assigns, for, from and against any and all loss, damage, liability, and expense (including reasonable attorneys’ fees and costs) arising out of any third-party claim, action, or proceeding (“Claims”) alleging:

(i) infringement of any patent, copyright, trademark or other intellectual property right by or through the NASCLA Materials or Deliverables,

(ii) any negligent or wrongful act or omission of NASCLA or its agents or employees directly resulting in bodily injury or physical damage to a third party’s or Agency’s property (not including data, software, or other intangible items), or

(iii) arising out of or relating to any use of the Exams by NASCLA contemplated by this Agreement, including without limitation the content of any Test, Test performance criteria, and analysis or use of Test results.

(b) *Agency's Indemnity.* Agency agrees to indemnify, defend and hold harmless NASCLA, its officers, directors, employees, agents, successors and assigns, for, from and against any and all loss, damage, liability, and expense (including reasonable attorneys' fees and costs) arising out of any Claims:

(i) alleging infringement of any patent, copyright, trademark or other intellectual property right by or through the Agency Materials,

(ii) any negligent or wrongful act or omission of Agency or its agents or employees directly resulting in bodily injury or physical damage to a third party's or NASCLA's property (including data, software, or other intangible items), or

(iii) any negligent or wrongful act or omission of Agency or its agents or employees directly resulting in bodily injury or physical damage to a third party's or NASCLA's property (not including data, software, or other intangible items).

(c) *Procedures.* The indemnification provided for above in Sections 11(a) and 11(b) shall be subject to the following terms and conditions:

(i) the Party claiming indemnification ("Indemnified Party") must notify the other Party ("Indemnifying Party") promptly in writing of any notice of the claim subject to indemnification;

(ii) provided the Indemnifying Party provides reasonable assurance to the Indemnified Party of its financial capacity to defend the claim and provide indemnification with respect to the claim, the Indemnifying Party shall have sole control over such defense and all negotiations for the settlement and compromise of such claim;

(iii) for so long as the Indemnifying Party is diligently conducting such defense, it shall not be liable for any attorneys' fees of the Indemnified Party; and

(iv) the Indemnified Party shall cooperate with the Indemnifying Party in the defense and settlement of any such claim provided that the Indemnifying Party shall not be liable hereunder for any settlement or compromise negotiated by the Indemnified Party unless the Indemnifying Party agrees in writing to be so bound.

If the Indemnified Party provides notice of a claim in accordance with subsection (i) and is not notified within ten (10) days thereafter that the Indemnifying Party intends to defend the claim, the Indemnified Party shall be entitled to defend such claim, and settle or compromise such claim, subject to indemnification by the Indemnifying Party as provided for herein.

(d) *Exclusions; Limitations.* NASCLA shall have no liability under Section 11(a) to the extent it arises from NASCLA's adherence to specifications or requirements provided by Agency or from Agency's use of a superseded version of NASCLA Software after provision by NASCLA of a new version. In the event that any NASCLA Software or Deliverable is subject to, or in NASCLA's reasonable judgment may become subject to, a claim of intellectual property rights infringement, NASCLA may elect to

(i) obtain at no expense to Agency a license permitting Agency's continued use of the affected material, or

(ii) modify the affected material so that it no longer infringes and substantially meets its existing specifications.

(iii) In the event that neither 11(d)(i) nor 11(d)(ii) is commercially practicable, NASCLA may terminate Agency's right to use the affected material and refund the price (if any) paid by Agency for such material, depreciated on a straight-line basis with a three year useful life. Section 11 states NASCLA's exclusive liability, and Agency's sole remedy, for any claim of intellectual property rights infringement.

12. Limited Warranty; Limitation of Liability

(a) *Limited Warranty.* NASCLA warrants that the Services will be performed in a professional and workmanlike manner. In the event that Agency reports a breach of this warranty within ninety (90) days of the performance of the affected Service that is verified by NASCLA, NASCLA shall, at no additional expense to Agency, re-perform the affected Service.

(b) *Disclaimer of Warranty.* Except as expressly provided in Section 12(a) or any applicable software license, NASCLA and its licensors make no warranties, whether express or implied, regarding or relating to any software licensed or sublicensed to sponsor, materials provided to sponsor, or NASCLA's services hereunder. Without limiting the foregoing, NASCLA specifically disclaims all implied warranties of non-infringement, merchantability and fitness for a particular purpose.

(c) *Limitation of Liability.* Except with regard to liabilities for indemnification under section 9, neither Party's liability under this agreement shall exceed the fees incurred by sponsor hereunder during the twelve (12) month period preceding the event giving rise to liability. In no event shall NASCLA or its licensors be liable for any lost profits, or any exemplary, incidental, special or consequential damages, including attorney's fees, resulting from, relating to or arising out of this agreement, NASCLA's services or otherwise relating to the business relationship between the parties, even if advised of the possibility of such damage.

13. Survival Beyond Termination or Expiration. It is mutually agreed that any and all obligations arising under Sections 9, 10, 11, 12, 13 and 14 shall survive any termination or expiration of this Agreement.

14. General Provisions.

(a) Assignment. Agency may not assign (including assignment by operation of law) or otherwise transfer its rights or obligations under this Agreement without the prior written consent of NASCLA. Subject to these restrictions, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

(b) Applicable Law, Forum Selection and Consent to Jurisdiction. This Agreement shall be governed by, construed and enforced in and in accordance with the internal laws of the State of Arizona, without regard to its conflicts of law principles. However, no Court or jury shall

have the power to award punitive or multiple damages. Each Party shall pay its own expenses of mediation or litigation and the expenses of the mediator shall be equally shared. Notwithstanding the foregoing, the Parties hereby acknowledge and agree that damages may not be a sufficient remedy for a breach by any of Exam security provisions, and that a non-breaching Party would be irreparably harmed thereby. Any such non-breaching Party may apply to any court having jurisdiction to require the specific performance of the foregoing Sections and for injunctive relief against any act violative of such Sections.

(c) Entire Agreement. This Agreement, and all Exhibits and Addenda hereto, constitute the entire Agreement between the parties hereto pertaining in any manner to the subject matter hereof, and contains all of the covenants and undertakings between the parties with respect to said subject matter. Each Party to this Agreement acknowledges that no written or oral representations, inducements or promises have been made, which are not embodied herein. Any and all prior or contemporaneous written or oral agreements between the parties pertaining in any manner to the subject matter of this Agreement expressly are superseded and canceled by this Agreement. Except as otherwise provided in this Agreement, this Agreement may not be supplemented, amended, or otherwise changed, except by an instrument executed by both parties.

(d) Notices. All notices and demands of any kind which either NASCLA or Agency may be required or desire to serve upon the other under the terms of this Agreement shall be in writing and shall be served in person or by express courier service, by facsimile transmission, or by certified or registered mail, return receipt requested, at the addresses set forth herein or at such other addresses as may be designated hereafter by the parties in writing. If by mail or courier, service shall be deemed complete upon the date of receipt as confirmed by the post office or courier service. If by facsimile transmission, service shall be deemed complete upon electronic confirmation from the receiving facsimile device. Notices should be addressed as follows:

To NASCLA: NASCLA
 c/o Angie Whitaker
 23309 N. 17th Drive, Building 1, Unit 110
 Phoenix, Arizona 85027
 Phone: (623) 587-9354
 Fax: (623) 587-9625
 Email: angiewhitaker@nascla.org
 www.nascla.org

With a Copy to: Reese L. Anderson
 Pew & Lake, PLC
 1744 S. Val Vista, #217
 Mesa, AZ 85201
 Phone: (480) 461-4670
 Facsimile: (480) 461-4676
 Email: reese.anderson@pewandlake.com

To Agency: _____

Phone: (_____) _____
Fax: (_____) _____
Email: (_____) _____
Web: (_____) _____

With a Copy to: _____

Phone: (_____) _____
Fax: (_____) _____
Email: (_____) _____
Web: (_____) _____

(e) Relationship of Parties. NASCLA is an independent contractor under this Agreement and is not a partner, employee, agent, joint venturer or franchisee of Agency. Except to the extent expressly provided in this Agreement, neither of the parties is authorized to enter into any agreement on the other's behalf or otherwise commit the other Party to any agreement.

(f) Waiver; Remedies Cumulative. The waiver by either Party of any of its rights or any breaches of the other Party under this Agreement in a particular instance shall not be construed as a waiver of the same or different rights or breaches in subsequent instances. All remedies, rights, undertakings and obligations hereunder shall be cumulative, and none shall operate as a limitation of any other.

(g) Severability. In the event that any of the provisions of this Agreement or the application of any such provisions to the parties hereto with respect to their obligations hereunder shall be held by a court of competent jurisdiction to be unlawful or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

(h) Force Majeure. Neither Party is responsible for failure to fulfill its obligations, other than the obligation to make payments when due, under this Agreement due to causes beyond its reasonable control, including without limitation natural disaster, failures of suppliers, war, acts of terrorism or government action.

IN WITNESS WHEREOF, the parties have executed this Examination Provider and Services Agreement as of the date and year herein above written.

NASCLA

NATIONAL ASSOCIATION OF STATE
CONTRACTORS' LICENSING AGENCIES,
an Arizona nonprofit corporation

By: _____

Its: _____

AGENCY

By: _____

Its: _____

EXHIBIT “A”
(List of Exams)

1. NASCLA Accredited Trade Examination for Electrical Contractors (Master Electricians / Unlimited Electricians / Electrical Administrators).
2. NASCLA Accredited Examination for Journeyman Electricians (Journeyman Electricians).
3. NASCLA Accredited Trade Examination for Residential Electrical Contractors (Residential Electricians).

EXHIBIT “B”
(Exam Administration Procedures)

[to be attached]

EXHIBIT “C”
(Sample No Cheating Policy)

Candidates who cheat (i.e., those who act dishonestly or unfairly in order to gain an advantage), or attempt to cheat on the NASCLA Accredited Electrical Examination Program or who otherwise breach the Agency’s security policies and procedures, will have their examination scores invalidated, will forfeit all fees, be barred from reapplying to take the examination for a period of twelve (12) months, may be subject to legal action and will be further subject to all examination and fee requirements in place at the time of re-application. If a candidate cheats or attempts to cheat on the Examination which is administered by an entity other than the Agency, the candidate will also need to follow the re-take policy set in place by that entity, with the stricter of the two policies being applicable. Candidates who attempt to steal Examination information could face a range of administrative, civil and criminal charges.