

## CONFIDENTIALITY & NONDISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (this "**Agreement**"), with an effective date of April 25, 2018 (the "**Effective Date**"), is entered into by and between the National Roofing Contractors Association (hereinafter, "**NRCA**"), with its principal place of business located at 10255 W. Higgins Road, Suite 600, Rosemont, Illinois 60018, and the Qualified Assessor, and between them agree as follows:

### RECITALS

WHEREAS, the Qualified Assessor understands that as part of the Qualified Assessor's involvement in one or more aspects or functions of NRCA ProCertification, the Qualified Assessor may be provided, allowed access to, or otherwise exposed to certain confidential information, documents, and/or records relating to NRCA ProCertification, including but not limited to, confidential, private information regarding NRCA ProCertification applicants, candidates or certificants, as well as confidential, proprietary information regarding NRCA ProCertification exams, exam items/questions, exam item banks, exam scoring, and exam administration information, and NRCA ProCertification training materials, course content, contracts, handbooks, manuals, policies, and procedures.

WHEREAS, pursuant to and in accordance with the requirements set forth by international standard ISO/IEC 17024:2012: Conformity assessment – General requirements for bodies operating certification programs, by NCCA Standard 10: Confidentiality, and by other applicable credentialing standards, the Qualified Assessor expressly agrees to protect and maintain the confidentiality of all confidential information he/she is provided, allowed access, or otherwise exposed to through his/her participation in NRCA ProCertification and expressly agrees to refrain from any and all unauthorized disclosure of such confidential information.

NOW, THEREFORE, to protect the confidentiality and ensure the nondisclosure of all NRCA ProCertification-related information and in consideration of the Qualified Assessor's designation and performance as an NRCA ProCertification Qualified Assessor and the mutual covenants contained herein, NRCA and the Qualified Assessor agree as follows:

**I. CONFIDENTIAL INFORMATION.** For purposes of this Agreement, the term "Confidential Information" means any information, document, record, or material relating to NRCA ProCertification, including but not limited to, confidential, private information about NRCA ProCertification applicants, candidates, certificants, qualified trainers, qualified assessors, and all other affiliated individuals, as well as NRCA ProCertification information that is confidential and proprietary to NRCA, or not readily available to the general public, whether or not owned or developed by NRCA, whenever and however acquired, whether before or after the date of this Agreement, whether provided in writing, through inspection of documents, through video or other audio-visual means, through electronic delivery or storage, or through spoken communication in meetings, presentations, and conversations, and whether or not marked or designated "secret," "proprietary," or "confidential." Confidential Information shall include, without limitation, the following:

- Information concerning ProCertification applicants, candidates, and certificants, qualified trainers, applicants or candidates for the qualified trainer credential, qualified assessors, applicants or candidates for the qualified assessor credential, and any other NRCA ProCertification-affiliated individuals
- NRCA ProCertification exams, exam administration, exam content, exam items/questions, proposed exam items/questions, exam item banks, exam scores and scoring methods, rubrics, policies, procedures, and projections
- NRCA ProCertification training materials, course content, handbooks, manuals, policies, and procedures
- Proprietary information concerning the operation of NRCA ProCertification including business records, plans, and projections, marketing information, such as research, strategies, plans, programs, services, contracts, leads, reports, studies, goals, and techniques, advertising information and sources, financial and accounting information, such as cost, pricing and billing information, revenues and profit margins, pricing structure, discounts, financial data, reports, forecasts, schedules, statements, models, and projections
- Confidential information concerning NRCA ProCertification vendors and suppliers
- Technical data, product ideas, computer programs, source code and/or object code
- Trade secrets and confidential information believed by NRCA to be a trade secret as defined under Illinois or applicable state law, whether or not such information ultimately qualifies as a trade secret under Illinois or applicable state law but nonetheless was maintained by NRCA as confidential
- All intellectual property of NRCA relating to NRCA ProCertification, including any and all trademarks, trade names, service marks, copyrighted materials, all copy, ideas, inventions, designs, scripts, concepts, renderings, recordings, and advertising and promotional materials, and all computer programs and software developed by or for the benefit of NRCA ProCertification and related data source code, specifications, and programming information (whether or not patentable or registered under copyright or similar statutes)
- And any other information relating to NRCA ProCertification that is not publicly available and the nature and manner of disclosure of which are such that a reasonable person would understand it to be confidential

For avoidance of doubt, Confidential Information do not include any information that:

- is already in the public domain or becomes available to the public through no breach by the Qualified Assessor of this Agreement
- was lawfully in the Qualified Assessor's possession prior to disclosure to the Qualified Assessor by NRCA
- is lawfully disclosed to the Qualified Assessor by a third party without any

obligations of confidentiality attaching to such disclosure

- is developed by the Qualified Assessor entirely on his/her own time without NRCA's equipment, supplies or facilities and does not relate at the time of conception to the NRCA's business, the ProCertification program, or actual or demonstrably anticipated research or development of NRCA
- is disclosed by operation of law
- is disclosed by the Qualified Assessor with the prior consent of NRCA and
- any other information that both parties agree is not confidential.

Nothing in this Agreement is intended to affect the application of the Illinois Trade Secrets Act, 765 ILCS 1065/1, *et. seq.*, or the Defend Trade Secrets Act of 2016, Pub. Law 114-153, to the NRCA's Confidential Information and trade secrets.

**II. PROTECTION OF CONFIDENTIAL INFORMATION.** The Qualified Assessor understands and acknowledges that the Confidential Information has been developed or obtained by NRCA by the investment of significant time, effort and expense, and that the Confidential Information is an important, material, valuable, special and unique asset of NRCA which provides NRCA with a significant competitive advantage and needs to be protected from improper disclosure.

The Qualified Assessor expressly agrees to hold the Confidential Information in strict confidence and will not at any time or in any manner, during or after the term of the Qualified Assessor's participation in NRCA ProCertification, whether voluntary or involuntary, either directly or indirectly, use, divulge, disclose, publish, or communicate any Confidential Information to any person, firm or corporation outside NRCA, except as required to perform the Qualified Assessor's duties or functions related to the ProCertification program or as otherwise authorized by NRCA. The Qualified Assessor further agrees that, except as required to perform the Qualified Assessor's duties or functions related to the ProCertification program or as otherwise authorized by NRCA, the Qualified Assessor will not copy or modify any Confidential Information without the prior consent of NRCA. The Qualified Assessor shall promptly advise NRCA if the Qualified Assessor becomes aware of any possible unauthorized disclosure or use of any Confidential Information.

The Qualified Assessor acknowledges and agrees that every writing, conception, invention, discovery, know-how, plan, program, idea, information, and tangible expression of idea relating to NRCA ProCertification or which arises out of the Qualified Assessor's use of NRCA's time, facilities, or money is the property of NRCA and that the Qualified Assessor shall cooperate with NRCA in registering any copyright, trademark, patent, or other protection in the name and for the benefit of NRCA. The Qualified Assessor hereby assigns any and all rights, title, and interest in any such inventions to NRCA.

NRCA and the Qualified Assessor understand and acknowledge that, pursuant to the Defend Trade Secrets Act of 2016, an individual may not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. Further, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the employer's trade secrets to the attorney and use the trade secret information in the court proceeding if the individual: (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order.

**III. UNAUTHORIZED DISCLOSURE OF INFORMATION - INJUNCTION.** The Qualified Assessor understands and acknowledges that his/her obligations under this Agreement are necessary and reasonable to protect NRCA's legitimate business interests and that monetary damages would be inadequate to compensate for any breach of this Agreement. Accordingly, the Qualified Assessor agrees that any such breach will cause immediate and irreparable injury to the NRCA for which there would be no adequate remedy at law. As such, the Qualified Assessor agrees that if he/she breaches any provision of this Agreement, NRCA shall be entitled to any proper injunction, including but not limited to temporary, preliminary, and final injunctions, temporary restraining orders, and temporary protective orders, without bond or security, to enforce this Agreement, in addition to any other remedies available to NRCA at law or in equity.

The Qualified Assessor further acknowledges that the Qualified Assessor is hereby estopped from subsequently asserting in any action to enforce the Agreement that NRCA has an adequate remedy at law and therefore is not entitled to injunctive relief. The covenants contained in this Agreement are independent of any other existing or future obligations between the parties, and the existence of any other claim or cause of action against NRCA is not a defense to enforcement of said covenants by injunction.

**IV. RETURN OF CONFIDENTIAL INFORMATION.** Upon the request of NRCA, the Qualified Assessor shall, within five (5) business days, return to NRCA all Confidential Information in the Qualified Assessor's possession, custody, or control. The Qualified Assessor shall also deliver to NRCA a written statement signed by the Qualified Assessor certifying that all materials have been returned within five (5) business days of receipt of the request. Upon termination of the Qualified Assessor's relationship with NRCA, the Qualified Assessor shall immediately deliver to NRCA or its authorized representative all such Confidential Information in the Qualified Assessor's possession, custody, or control, including all copies. The Qualified Assessor shall not retain any copy, version, or rendition of such Confidential Information nor cause or permit any third party to retain the same.

**V. RELATIONSHIP OF PARTIES.** Neither party has an obligation under this Agreement to purchase any service or item from the other party, or commercially offer any products using or incorporating the Confidential Information. This Agreement does not create any agency, partnership, or joint venture.

**VI. NO WARRANTY.** The Qualified Assessor acknowledges and agrees that the Confidential Information is provided on an "AS IS" basis. NRCA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE NRCA BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OR USE OF ANY PORTION OF THE CONFIDENTIAL INFORMATION. NRCA does not represent or warrant that any product or business plans disclosed to the Qualified Assessor will be marketed or carried out as disclosed, or at all. Any actions taken by the Qualified Assessor in response to the disclosure of the Confidential Information shall be solely at the risk of the Qualified Assessor.

**VII. ATTORNEY'S FEES.** In any legal action between the parties concerning or arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred by the prevailing party in connection with the litigation or proceeding including reasonable attorney's fees, experts' fees, and costs, whether incurred before, during, and after suit, trial, arbitration proceedings, mediation, and appeals.

**VIII. TERM.** Termination of the Qualified Assessor's relationship with NRCA shall not release the Qualified Assessor from any of his/her obligations under this Agreement, which shall survive and remain in full force and effect in perpetuity or until NRCA sends the Qualified Assessor written notice releasing the Qualified Assessor from this Agreement. Absent a written release, the Qualified Assessor must continue to protect the Confidential Information that was received during the term of this Agreement from unauthorized use or disclosure indefinitely. Notwithstanding the foregoing, to the extent any Confidential Information constitutes a trade secret, this Agreement shall remain in full effect with respect to such Confidential Information, and the Qualified Assessor must safeguard such Confidential Information, for as long as it remains a trade secret.

**IX. WAIVER.** No waiver by NRCA of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by NRCA of any right under this Agreement shall be construed as a waiver of any other right. No waiver by NRCA of any breach or threatened breach by any other signatory to a similar or identical non-disclosure agreement signed by that signatory shall be construed as a waiver by NRCA of any breach, threatened breach, or right against the Qualified Assessor under this Agreement.

**X. BINDING EFFECT; NO ASSIGNMENT.** This Agreement shall not be assignable by either party. Neither party may delegate its duties under this Agreement without the prior written consent of the other party. The rights, specifically including those of NRCA regarding the obligations of the Qualified Assessor under this Agreement, shall be binding upon the Qualified Assessor's heirs, executors and administrators.

**XI. GOVERNING LAW; VENUE.** The provisions of this Agreement, including the validity, interpretation, construction, and enforcement thereof, shall be governed by and construed in accordance with the laws of the State of Illinois without giving effect to the principles of conflict of laws. The parties consent and agree that the proper venue for any legal proceeding relating directly or indirectly to this Agreement shall be in the federal district court or state court for Cook County, Illinois, and each party waives any defense, whether asserted by motion or pleading, that Cook County, Illinois, is an improper or inconvenient venue.

**XII. SEVERABILITY.** Each provision of this Agreement is intended to be severable. If any court of competent jurisdiction determines that one or more of the provisions of this Agreement, or any part thereof, is or are invalid, illegal or unenforceable, only that provision, term or clause shall be affected, and such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Agreement, and this Agreement shall be given full force and effect while being construed as if such invalid, illegal or unenforceable provision had not been contained within it. If the scope of any provision in this Agreement is found to be too broad to permit enforcement of such provision to its full extent, the Parties consent to judicial modification of such provision and enforcement to the maximum extent permitted by law.

**XIII. MODIFICATION.** No waiver, amendment, or modification of this Agreement or of any covenant, condition, or limitation contained in this Agreement shall be valid unless in writing and signed by both parties. No evidence of any waiver, amendment, or modification shall be offered or received in evidence in any legal proceeding between the parties arising out of this Agreement, unless such waiver, amendment, or modification is in writing and signed by both parties.

**XIV. ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements of the parties whether oral or written.

**XV. ACKNOWLEDGEMENTS.** The Qualified Assessor hereby acknowledges that he/she has been provided with a copy of this Agreement for review prior to signing it, that he/she understands the purposes and effects of this Agreement, that he/she is fully aware that this Agreement creates, imposes, and/or alters the Qualified Assessor's legal rights and obligations, and that if the Qualified Assessor so requests, he/she will be given a signed copy of this Agreement for his/her own records. The Qualified Assessor acknowledges that NRCA has provided the Qualified Assessor adequate opportunity to have this Agreement reviewed by an attorney at the Qualified Assessor's sole discretion. By executing this Agreement as indicated below, the Qualified Assessor hereby acknowledges that the Qualified Assessor has either chosen to have this Agreement reviewed by an attorney or has voluntarily chosen not to do so prior to executing this Agreement.

**XVI. CONSTRUCTION.** The parties acknowledge that each party has reviewed this Agreement and, thus, agree that the language of this Agreement shall be construed as a whole, according to its fair meaning, and without regard as to which party drafted this Agreement. The parties agree that the Agreement shall be construed as if the parties jointly prepared and drafted it so that the

language of this Agreement, including any uncertainty or ambiguity, shall not be construed strictly for or against either party.

**XVII. KNOWING AND VOLUNTARY ACCEPTANCE.** By executing this Agreement as indicated below, the Qualified Assessor hereby acknowledges that the Qualified Assessor has received and read this Agreement in its entirety and that the Qualified Assessor fully understands and agrees to be bound by it. The Qualified Assessor acknowledges that this Agreement was executed prior to any termination or separation from NRCA and shall be effective after termination/separation per the terms contained herein. The Qualified Assessor further acknowledges that he/she is not executing this Agreement under any duress, force, threat, or undue manipulation, and the Qualified Assessor, at the time of his/her review and execution of this Agreement, is of sound mind and not under the influence of any medicine, substance, illness, or disability that would limit or reduce his/her mental capacity.