

THIS AGREEMENT is made with effect as of _____, 20__ (the "Effective Date")

BETWEEN

AIR BARRIER ASSOCIATION OF AMERICA INC.

(“ABAA”)

and

(“Contractor Licensee”)

Company Name: _____
Address: _____
City, State, ZIP Code: _____
Attn: Main Contact: _____

WHEREAS, ABAA is a body dedicated to setting high standards for on-going professional practice in the air/vapor barrier system industry through the ABAA Quality Assurance Program (“QAP”) and licenses qualifying manufacturers, contractors and installers to use its Certification Mark; and

WHEREAS, use of the ABAA Certification Mark symbolizes that parties have met ABAA's standards of practice and specifications; and

WHEREAS ABAA has agreed to grant a non-exclusive license to the Contractor Licensee to use its Certification Mark on the terms and conditions as set forth in this Agreement;

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. DEFINITIONS

The following terms shall have the meanings set forth below:

1.1 “**ABAA**” is the Air Barrier Association of America Inc.

1.2 “**ABAA Specified**” is when an architect or building owner includes ABAA contractors, installers, the ABAA QAP or other any specifications or amendment of specifications set by ABAA or the Air Barrier QAP affecting Accredited Installer(s), Accredited Contractor(s), and Accredited Manufacturer(s) and includes ABAA standards, in their contract specifications for a building project., or requirements

1.3 “**Accredited Auditor**” is an individual who has been trained and accredited as an auditor by ABAA (or the QAP Licensing Organization at ABAA's request) in connection with the QAP.

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1.4 “**Accredited Contractor**” is an individual, partnership, corporation or other legal person who has met all the requirements of the “ABAA Quality Assurance Program” and signed a licensing agreement with ABAA with respect to the use of the Certification Mark.

1.5 “**Accredited Installer**” is an installer of air barrier materials and/or systems who, in the view of ABAA or its designate, has successfully completed the requirements for an installer as set out in the QAP and has signed a license agreement with ABAA with respect to the use of the Certification Mark.

1.6 “**Accredited Manufacturer**” is a corporation that manufactures air barrier materials and/or systems who has agreed to comply with the ABAA QAP (ABAA having agreed to the manufacturer's use of same) in connection with its manufacturing practices and with respect to its materials and/or products. In order to be an Accredited Manufacturer, such person must also have entered into a licensing agreement with ABAA with respect to the use of the Certification Mark.

1.7 “**Building Envelope QAP**” is the ABAA Building Envelope Quality Assurance Program.

1.8 “**Certificate of Accredited Contractor**” is a certificate indicating that a contractor has met the qualifications set forth by ABAA under the ABAA QAP.

1.9 “**Certification Mark**” means any certification mark(s) used, applied for or registered by ABAA in accordance with the provisions of the Trademarks Act of 1946 (or similar or successor legislation) which ABAA expressly confirms in writing to the Contractor Licensee as falling within the definition of Certification Mark under this Agreement. The Certification Mark collectively includes AIR BARRIER ASSOCIATION OF AMERICA ABAA ACCREDITED (and design), Application No. 85057597, AIR BARRIER ASSOCIATION OF AMERICA ABAA CERTIFIED (and design), Application No. 85058151, and AIR BARRIER ASSOCIATION OF AMERICA ABAA EVALUATED (and design), Application No. 85058746 set forth in Schedule "A" hereto and any subsequent registration thereof, unless ABAA advises the licensee to the contrary.

1.10 “**Daily Work Sheets**” is a report filled out each day by contractors and/or installers for each contract. The form of the Daily Work Sheets is established and provided by ABAA, which form may be amended by ABAA from time to time.

1.11 “**Level 3 Accredited Installer**” is an installer that meets the QAP requirements for certification as a lead installer.

1.12 “**Term**” has the meaning set forth in paragraph 2.1 below.

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2. GRANT AND TERM

2.1 This Agreement shall commence on the Effective Date indicated above and shall continue until terminated by ABAA and the Contractor Licensee in accordance with paragraph 7 hereof (the "Term").

2.2 Subject to the provisions of this Agreement and as long as the Contractor Licensee is not in default hereunder, ABAA hereby grants to the Contractor Licensee the non-exclusive right, license, and privilege to use the Certification Mark in the United States of America during the Term in the manner and for the purposes set forth in this Agreement.

2.3 The Contractor Licensee shall not be entitled to sub-license to third parties any of its rights or obligations under this Agreement without the prior, written consent of ABAA.

2.4 The parties each hereby confirm to the other that it has full power and authority to enter into this Agreement, and that in doing so (or carrying out any of its obligations hereunder) it is not violating the rights of any third party or any agreement by which it is bound.

3. CONTRACTOR LICENSEE

True and Accurate Representations

3.1 The Contractor Licensee represents and warrants that all information he/she/it has given to ABAA (or its employees, agents or designates) under this Agreement, and for licensing purposes under or in connection with the QAP, is true and correct, and acknowledges and agrees that ABAA is relying on such representations and warranties in entering into this Agreement.

Proprietary to Air Barrier QAP and ABAA

3.2 The Contractor Licensee acknowledges and agrees that the QAP is a proprietary program of ABAA, and he/she/it will not challenge such proprietary right during the Term or thereafter. The Contractor Licensee shall not use the QAP (including without limitation any documents or materials relating thereto) for any purpose other than to carry out the terms of this Agreement. For greater certainty, and without limiting the generality of the foregoing, the Contractor Licensee may not use the QAP for any other purpose nor may it, directly or indirectly, copy, distribute or make available the QAP to third parties, without the prior, written consent of ABAA. The obligations set out in this paragraph survive the expiration or termination of this Agreement.

Compliance with Obligations

3.3 The Contractor Licensee hereby undertakes to comply with all applicable provisions of the QAP for the duration of the Term. Without limiting the generality of the foregoing, the Contractor Licensee hereby confirms that it shall comply with all applicable obligations and requirements set forth in the QAP.

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3.4 The Contractor Licensee acknowledges and agrees that the QAP (including without limitation, the materials, systems, programs, standards, requirements and methods relating thereto) may be amended from time to time, and ABAA shall provide the Contractor Licensee with notice in writing of any such amendments. The Contractor Licensee shall forthwith comply with any such amendments.

Quality Control (Products and Licensing Requirements)

Calculation of Fees

3.5 The Contractor Licensee agrees that prior to the installation of an air barrier system, it will report in writing to the ABAA the square footage of air barrier material(s) to be installed together with a copy of the Contractor Licensee's contract and project specification.

3.6 The Accredited Contractor agrees to pay all required fees to ABAA as outlined by ABAA from time to time, including those under the QAP. The Accredited Contractor agrees that his/her/its license can be suspended and/or terminated at the sole and unilateral discretion of the ABAA if the Contractor Licensee fails to pay said fees within 90 days of the date of the invoice.

3.7 The Contractor Licensee shall permit ABAA to visit its job sites and audit its books and records to confirm the square footage of air/vapor barrier materials installed on any project in which the Contractor Licensee is involved, and the Contractor Licensee shall in good faith provide to ABAA all information and assistance reasonably necessary in connection therewith.

Additional Requirements - Conduct

3.8 The Contractor Licensee will notify ABAA of any breaches to this Agreement, which are made by him/her/it, or by an Accredited Manufacturer, other Accredited Contractors, or an Accredited Installer.

3.9 The Contractor Licensee will not provide or otherwise communicate, directly or indirectly, to any third parties any incorrect or disparaging information concerning ABAA and/or the QAP.

Regulatory Requirements

3.10 The Contractor Licensee shall be responsible for obtaining all licenses, permits, consents and approvals which are required by all applicable governmental or other regulatory authorities with respect to its business, products or the subject matter of this Agreement, including without limitation the operation of its business or in connection with the development, manufacture, distribution or sale of its materials, products or services as may be applicable. The Contractor Licensee shall timely provide ABAA with copies of all such consents or approvals.

3.11 The Contractor Licensee agrees to abide by all federal, state, and local regulations applicable to the transportation, storing, handling, and installation of air barrier materials and/or systems, including without limitation all applicable health and safety regulations.

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4. CONTRACTOR LICENSEE'S USE OF CERTIFICATION MARK

4.1 The Contractor Licensee agrees to use no other certification mark other than the Certification Mark to identify it as an Accredited Contractor or his/her/its product as an Approved System or Evaluated System. The Contractor Licensee will use the Certification Mark only in the manner expressly directed and approved by ABAA and only in association with contracting services with respect to air barrier materials and/or systems.

4.2 The Contractor Licensee shall timely provide ABAA in advance of any use or distribution with copies of all materials, documents, packaging, advertisements and otherwise bearing the Certification Mark. ABAA will respond to such submissions with reasonable speed. Failure of ABAA to comment on such submission, however, shall not constitute consent for such use or distribution. Should ABAA object to any uses of the Certification Mark, the Contractor Licensee shall immediately cease use of same in accordance with ABAA's demand. The Contractor Licensee will use the Certification Mark only in the manner authorized under this Agreement and only in association with contracting services in the air/vapor barrier industry.

4.3 No advertising by the Contractor Licensee shall contain any statement or material which may, in the sole judgment of ABAA, contain objectionable language, be in bad taste or be inconsistent with ABAA's public image of a first class professional organization representing high standards of safety, conduct and professionalism in the air barrier industry.

4.4 The Contractor Licensee agrees not to use the Certification Mark in any manner calculated to represent that the Contractor Licensee is the owner of such mark or that the Contractor Licensee is anything other than an accredited user of the mark. The Contractor Licensee further acknowledges that ABAA's Certification Mark is the sole and exclusive property of ABAA, its successors and assigns, and agrees that during the term of this Agreement and thereafter he/she/it will not dispute or contest the validity or enforceability of the Certification Mark, including without limitation any amendments thereto or future marks forming part of the Certification Mark, nor counsel, procure, or assist any third party from doing the same, directly or indirectly. The Contractor Licensee shall not during the Term of this Agreement or thereafter register or attempt to register, directly or indirectly, any business or trade name or trade-mark that is confusingly similar with the Certification Mark.

4.5 The Contractor Licensee agrees that any and all rights that may be acquired by the use of the Certification Mark by Licensee shall inure to the sole benefit of ABAA as licensor.

4.6 The Contractor Licensee agrees to forthwith provide all necessary information and to execute all papers reasonably requested by ABAA to effect the registration, maintenance or defense of the Certification Mark or to renew same. This obligation shall survive any termination or expiration of this Agreement, for any reason.

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4.7 The Contractor Licensee shall immediately notify ABAA of any apparent or actual infringement or challenge to ABAA's Certification Mark, and the Contractor Licensee will not communicate with any other person other than ABAA in connection with any such infringement, challenge, or claim. The Contractor Licensee shall cooperate with ABAA (and assist ABAA, upon reasonable request) with respect to the prosecution of any litigation relating to such infringement or the challenging of the Certification Mark. ABAA shall, in its sole discretion, make any and all decisions with respect to such litigation (or the settlement of any disputes) and ABAA shall be solely entitled to any awards on account of such litigation.

5.0 OWNERSHIP AND MARKING

5.1 The Contractor Licensee acquires no right, title or interest in or to the Certification Marks except as expressly provided in this Agreement. The Contractor Licensee shall at all times observe the requirements with respect to trade-mark notices and other forms of marking with respect to the Certification Mark as ABAA may from time to time, in its sole discretion, direct and communicate to the Contractor Licensee. The Contractor Licensee shall, when using the Certification Mark, so describe the Certification Mark to indicate clearly that the mark is owned by ABAA and that it is being used by the Contractor Licensee under license.

5.2 The Contractor Licensee shall ensure that any and all checks, letterhead, contractual documents, or writings of any nature, will not directly or indirectly state that ABAA is responsible or liable in any way for the obligations or responsibilities of the Contractor Licensee.

6. ABAA'S OBLIGATIONS

6.1 Provided that the Contractor Licensee meets its obligations under this Agreement, upon request, ABAA will provide the Contractor Licensee with an ABAA Certificate, which will show the contractor as being in good standing.

7. BREACH AND TERMINATION

7.1 This Agreement may be terminated by the Contractor Licensee on any anniversary date of this Agreement by providing ABAA with two (2) months advance written notice of its intention to terminate its ABAA membership and this Agreement.

7.2 ABAA may terminate this Agreement at anytime by providing two (2) months advance written notice to the Contractor Licensee.

7.3 The Contractor Licensee agrees that his/her/its license can be suspended or terminated by ABAA immediately, in its discretion, if the Contractor Licensee is found, in ABAA's reasonable determination to be in default or in breach of any of its obligations under this Agreement, the Membership Agreement, or of any requirements of the QAP.

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7.4 Without limiting the generality of the foregoing, the ABAA can deem the Contractor Licensee to be in default under this Agreement in the event that:

- (a) the Contractor Licensee is in default of any of its obligations under this Agreement or the applicable licensing standards under the QAP;
- (b) the Contractor Licensee files a petition in bankruptcy in any jurisdiction, becomes a debtor in a bankruptcy proceeding, makes a general assignment for the benefit of creditors, if a bankruptcy petition is filed against the Contractor Licensee, if Contractor Licensee shall be declared or adjudicated bankrupt, if a liquidator, trustee in bankruptcy, custodian, receiver, receiver and manager or any other officer with similar powers shall be appointed of or for the Contractor Licensee, or if the Contractor Licensee shall commit any act of bankruptcy or insolvency or consents to the institution of such appointment or proceedings or admits in writing its inability to pay debts as they become due;
- (c) the Contractor Licensee transfers or attempts to transfer this Agreement or any rights hereunder to any person without the prior written consent of ABAA; or
- (d) if there is any change in the registered or beneficial ownership of the issued capital stock of the Contractor Licensee, or the sale of substantially all of the assets of the Contractor Licensee, without ABAA having first given its written consent thereto (where the Contractor Licensee is a corporation).

7.5 Should ABAA elect to suspend rather than terminate a Contractor Licensee, ABAA shall give the Accredited Contractor an opportunity to cure its default. To that end, ABAA shall notify the Contractor Licensee in writing of the suspension of license and membership, identify the default to be remedied, and specify the time granted to the Contractor Licensee to correct said default. If the Contractor Licensee fails to correct said default within the specified time, ABAA may, in its sole discretion, terminate, this Agreement. Should ABAA suspend a Contractor Licensee, the Contractor Licensee shall pay in full any fees due and payable to ABAA prior to re-instatement.

7.6 In the event of a suspension, or should this Agreement be terminated for any reason, the Contractor Licensee shall immediately:

- (a) cease to use, directly or indirectly, the Certification Mark(s) and the QAP, in any manner and for any purpose whatsoever;
- (b) remove the Certification Mark(s) and any reference to the QAP from any and all materials, including without limitation packaging, signs and advertisements, under its custody or control upon which the Certification Marks or reference to the QAP appears, and shall deliver up same to ABAA upon request;
- (c) immediately pay to ABAA all fees, amounts and other charges then due and payable; and
- (d) immediately cease to and thereafter not hold itself out, directly or indirectly, as a licensee of ABAA or the QAP Licensing Organization.

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7.7 The Contractor Licensee agrees that the requirements set forth in paragraph 7 are reasonable and necessary to protect the integrity of the Certification Mark and that these requirements are enforceable by injunction, including without limitation interlocutory injunction, by any court of competent jurisdiction.

8. INDEMNITY AND RELEASE

8.1 The Contractor Licensee acknowledges that neither ABAA, nor its directors, officers, agents, employees, shall be responsible to the Contractor Licensee or any third party for any loss, cost, damage, liability or claim howsoever occasioned, whether by act, omission, failure to act, negligence, or willful conduct, in respect of the services, materials or products of the Contractor Licensee, or the use and delivery of the ABAA Quality Assurance Program in connection therewith. The Contractor Licensee shall defend and hold ABAA, its directors, officers, agents, employees harmless from and indemnify them for any claims or damages resulting therefrom or relating thereto.

8.2 Without limiting the generality of the foregoing, ABAA shall not be obligated or liable to the Contractor Licensee for any injury or death of any person or damage to any property caused by or relating to the services, materials, or products used or provided by the Contractor Licensee. The Contractor Licensee undertakes to hold appropriate and adequate insurance to cover its liability as well as any liability attempted to be imposed on ABAA, its directors, officers, agents, and employees

8.3 The Contractor Licensee covenants and agrees that in no event shall ABAA, or any authorized representative, be liable for any loss, cost or damage that may be suffered by the Contractor Licensee by virtue of his/her/its license or the suspension or termination of his/her/its license.

9. GENERAL

9.1 The Contractor Licensee is and will at all times remain an independent contractor and is not and shall not represent itself to be the agent, joint venturer or partner of ABAA. The Contractor Licensee shall neither make any representation nor engage in any act that could establish any apparent relationship of agency, joint venture or partnership with ABAA and ABAA shall not be bound in any manner whatsoever by any agreements, warranties or representations made by the Contractor Licensee to any other person or with respect to any other action of the Contractor Licensee.

9.2 This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts applicable hereto and the parties irrevocably agree and accept the jurisdiction of the Courts of Massachusetts with respect to any dispute relating hereto.

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9.3 All notices under this Agreement shall be in writing and shall be sent by prepaid courier or certified post or served personally. If sent by courier or certified post, service shall be deemed to have been made on the second day following delivery of the notice by the transmitting party to the courier or U.S. Post. Unless changed in writing, ABAA's address for the purpose of notice is: 1600 Boston-Providence Hwy, Walpole, MA 02081; for the Contractor Licensee, it will be the address listed at the top of this document, unless ABAA is otherwise notified in writing.

9.4 This Agreement represents the entire agreement between the parties and no representation, warranty or condition shall apply hereto unless expressed herein in writing. This Agreement may not be amended except by written agreement executed by the parties.

9.5 In this Agreement, the masculine singular includes the feminine singular, the neuter and all plural forms thereof.

9.6 The headings herein are inserted for convenience of reference only and do not affect the interpretation of any provision of this Agreement.

9.7 The failure of ABAA to exercise any right, power or option given hereunder or to insist upon the strict compliance with the terms and conditions hereof by the Contractor Licensee shall not constitute a waiver: (a) of the terms and conditions of this Agreement with respect to that or any other or subsequent breach thereof; or (b) by ABAA of its rights at any time thereafter to require strict compliance with all terms and conditions hereof including the terms or conditions with respect to which the Contractor Licensee has failed to exercise such right, power or option.

9.8 If any provision of this Agreement is declared invalid, illegal, or unenforceable by a court of competent jurisdiction such provision shall be deemed severed from the Agreement and all other provisions of the Agreement shall remain in full force and effect.

9.9 Time is of the essence of this Agreement

9.10 This Agreement may be executed by the parties in separate counterparts, each of which will be deemed to constitute an original, but all of which together will constitute one and the same Agreement. This Agreement will be considered to be fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart. This Agreement and those contemplated herein may be executed and delivered by facsimile signatures and will be binding on all parties hereto as if executed by original signature and delivered personally.

9.11 This Agreement shall inure to the benefit of and be binding upon the ABAA and the Contractor Licensee and their respective successors and permitted assigns, if any. This Agreement contains the entire Agreement between the parties in respect of its subject matter and supersedes all earlier agreements, understandings, negotiations and discussions, whether verbal or written. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.

Licensee Initials: _____

THE PARTIES HAVE DULY EXECUTED THIS AGREEMENT on the date first written above.

**AIR BARRIER ASSOCIATION
OF AMERICA INC.**

CONTRACTOR LICENSEE

Per: _____
Authorized Signing Officer

Per: _____
Authorized Signing Officer

SCHEDULE "A"



Licensee Initials: _____