

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

BETWEEN

AIR BARRIER ASSOCIATION OF AMERICA INC.

(“ABAA”)

and

(“Installer Licensee”)

Name: _____
Address: _____
City, State, ZIP Code: _____

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 Installer 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.

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 “**Certified 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.

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 Installer Licensee in accordance with paragraph 7 hereof (the "Term").

2.2 Subject to the provisions of this Agreement and as long as the Installer Licensee is not in default hereunder, ABAA hereby grants to the Installer 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 Installer 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. INSTALLER LICENSEE

True and Accurate Representations

3.1 The Installer 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 Installer 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 Installer 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 Installer 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 Installer 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 Installer Licensee hereby confirms that it shall comply with all applicable obligations and requirements set forth in the QAP.

3.4 The Installer 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 Installer Licensee with notice in writing of any such amendments. The Installer Licensee shall forthwith comply with any such amendments.

Quality Control (Products and Licensing Requirements)

Calculation of Fees

3.5 The Installer Licensee agrees to pay or have the Accredited Contractor pay on his behalf the fees as outlined by ABAA from time to time. Failure to pay the required fees will result in suspension of their certification.

Additional Requirements - Conduct

3.6 The Installer 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 Certified Installer.

3.7 The Installer 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.

3.8 The Installer Licensee agrees to participate in the required training programs as set out by ABAA including any refresher course that may be required.

3.9 The Installer Licensee agrees to carry at all times on the job sites, the photo identification card issued to him/her ABAA, which identifies him/her as a Installer Licensee.

3.10 The Installer Licensee agrees to perform any and all inspections and/or testing that is required by ABAA.

3.11 The Installer Licensee agrees to permit a Licensed Auditor to audit installation practices, apparatus, materials, services, and documentation as set out from time to time by ABAA.

3.12 The Installer Licensee agrees to complete all required documentation accurately and completely. Failure to complete the documentation can result in suspension of the installers license at the sole discretion of ABAA.

3.13 The Licensed Installer agrees to, upon revocation of his/her license or certificate by ABAA, surrender their photo identification card and all other documents requested by ABAA and to cease the use of the Certification Mark.

3.14 The Installer Licensee agrees to install the air barrier product(s) according to the manufacturer's requirements and applicable ABAA specifications.

3.15 The Installer Licensee agrees to follow all policies and procedures for Installer Licensee as set forth by ABAA and the Quality Assurance Program manual.

Regulatory Requirements

3.16 The Installer 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.

4. INSTALLER LICENSEE'S USE OF CERTIFICATION MARK

4.1 The Installer Licensee agrees to use no other certification mark other than the Certification Mark to identify it as a Certified Installer. The Installer 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 Installer 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 Installer Licensee shall immediately cease use of same in accordance with ABAA's demand. The Installer 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 Installer 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 Installer Licensee agrees not to use the Certification Mark in any manner calculated to represent that the Installer Licensee is the owner of such mark or that the Installer Licensee is anything other than an accredited user of the mark. The Installer 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 Installer 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 Installer 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 Installer 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.

4.7 The Installer Licensee shall immediately notify ABAA of any apparent or actual infringement or challenge to ABAA's Certification Mark, and the Installer Licensee will not communicate with any other person other than ABAA in connection with any such infringement, challenge, or claim. The Installer 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 Installer Licensee acquires no right, title or interest in or to the Certification Marks except as expressly provided in this Agreement. The Installer 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 Installer Licensee. The Installer 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 Installer Licensee under license.

5.2 The Installer 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 Installer Licensee.

6. ABAA'S OBLIGATIONS

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

7. BREACH AND TERMINATION

7.1 This Agreement may be terminated by the Installer 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 certification and this Agreement.

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

7.3 The Installer Licensee agrees that his/her/its license can be suspended or terminated by ABAA immediately, in its discretion, if the Installer Licensee is found, in ABAA's reasonable

determination to be in default or in breach of any of its obligations under this Agreement, or of any requirements of the QAP.

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

- (a) the Installer Licensee is in default of any of its obligations under this Agreement or the applicable licensing standards under the QAP;
- (b) the Installer Licensee transfers or attempts to transfer this Agreement or any rights hereunder to any person without the prior written consent of ABAA; or

7.5 Should ABAA elect to suspend rather than terminate a Installer Licensee, ABAA shall give the Installer Licensee an opportunity to cure its default. To that end, ABAA shall notify the Installer Licensee in writing of the suspension of license, identify the default to be remedied, and specify the time granted to the Installer Licensee to correct said default. If the Installer Licensee fails to correct said default within the specified time, ABAA may, in its sole discretion, terminate, this Agreement. Should ABAA suspend a Installer Licensee, the Installer 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 Installer 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.

7.7 The Installer 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 Installer Licensee acknowledges that neither ABAA, nor its directors, officers, agents, employees, shall be responsible to the Installer 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 Installer Licensee, or the use and delivery of the ABAA Quality Assurance Program in connection therewith. The Installer 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 Installer 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 Installer Licensee. The Installer Licensee undertakes either to hold appropriate and adequate insurance or to ensure that the entity under whom the Installer Licensee is performing work holds adequate insurance to cover the Installer Licensee's liability as well as any liability attempted to be imposed on ABAA, its directors, officers, agents, and employees.

8.3 The Installer 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 Installer Licensee by virtue of his/her/its license or the suspension or termination of his/her/its license.

9. GENERAL

9.1 The Installer Licensee is and will at all times remain an independent Installer and is not and shall not represent itself to be the agent, joint venturer or partner of ABAA. The Installer 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 Installer Licensee to any other person or with respect to any other action of the Installer 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.

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 Installer 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 Installer 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 Installer 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 Installer 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.

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

**AIR BARRIER ASSOCIATION
OF AMERICA INC.**

INSTALLER LICENSEE

Per: _____
Authorized Signing Officer

Per: _____
Installer Signature

SCHEDULE "A"

