



CONTRACTOR LICENSING AGREEMENT

THIS AGREEMENT is made with effect as of January 1, 2009 (the "Effective Date").

BETWEEN:

BUILDING ENVELOPE QUALITY ASSURANCE PROGRAM INC.
(“Building Envelope QAP”)
of the first part

and

AIR BARRIER ASSOCIATION OF AMERICA
(“ABAA”)
of the second part

and

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

(“Licensee”)
of the third part

1. DEFINITIONS

- 1.1 “Certificate of Licensed Contractor” is a certificate to which the ABAA and / or Building Envelope QAP logo and trademark has been attached to indicate that the Licensed Contractor has met the qualifications set forth by the Air Barrier of America in conjunction with the Building Envelope QAP.
- 1.2 “Licensed Auditor” is a person who has been licensed by the Building Envelope QAP.
- 1.3 “Licensed Installer” is an installer who has successfully completed Building Envelope QAP approved training and has met the requirements set forth by the Building Envelope QAP.
- 1.4 “Certification Mark” is any certification mark used or registered by ABAA and/or the Building Envelope QAP in accordance with the provisions of the Trademarks Act.
- 1.5 “ABAA” is the Air Barrier Association of America Inc.
- 1.6 "Building Envelope QAP" is the Building Envelope Quality Assurance Program Inc.
- 1.7 “Job site report” is a report filled out each day for each contract. This form is provided by the Building Envelope QAP.
- 1.8 “Approved Assembly” is an air barrier assembly, which has been evaluated by a recognized testing agency as meeting the criteria for air barrier material and assemblies as set out by ABAA.
- 1.9 “Licensed Contractor” is a contractor who has met the qualifications as set out by the Building Envelope QAP.

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- 1.10 “Licensed Supplier” is a supplier who has met the criteria as set forth by the Building Envelope QAP, has signed an agreement with the Building Envelope QAP and has carried out their obligations under the Licensed Supplier Licensing agreement.
- 1.11 “On Site Testing” is any testing or inspection that is required by the Building Envelope QAP, be carried out at the job site.
- 1.12 “ABAA Specified” is any specification or amendment of specification that specifies ABAA Certified Installer(s), ABAA Licensed Contractor(s), the ABAA Quality Assurance Program, or any other reference to ABAA standards, specifications, or requirements.
- 1.13 "Contract Value" is the total dollar amount attributable to the air barrier contract for a specific project. For example, this value would be the bid price made by the air barrier contractor to the prime sub-contractor or general contractor. Contract value includes, but is not limited to, air barrier material, mastics, component materials, labor for preparation, installation, testing, overhead and profit.

2.0 LICENSEE’S OBLIGATIONS GENERALLY

- 2.1 *The Licensee represents and warrants to ABAA and the Building Envelope QAP that all information he/she has given to ABAA and the Building Envelope QAP is true and accurate.*
- 2.2 *The Licensee agrees to use no other Certification Mark to identify a Licensed Contractor, Licensed Installer, or Approved Material or Assembly other than what is provided by ABAA and the Building Envelope QAP for the identification, use or promotion with the Building Envelope quality assurance program.*
- 2.3 *The Licensee will use the Certification Mark only in a manner expressly approved by ABAA and only in association with the general class of services comprising of contracting services carried on by the Licensee for the installation of air barrier materials and / or assemblies.*
- 2.4 *The Licensee agrees not to use the Certification Mark in any manner calculated to represent that the Licensee is the owner of such mark. The Licensee further acknowledges that ABAA’s and/or Building Envelope QAP Certification Mark(s) is the sole and exclusive property of ABAA and/or Building Envelope QAP, including it’s successors, and assigns and agrees that during the term of this agreement and thereafter he will not dispute or contest directly or indirectly the validity of enforceability of the Certification Mark, nor counsel or procure or assist anyone else to do the same.*
- 2.5 *The Licensee will adopt, and follow in good faith, the systems, programs, and methods prescribed by ABAA and the Building Envelope QAP in respect to the application, administration, management, inspection, and documentation required for the air barrier systems.*
- 2.6 *The Licensee will ensure that any and all checks, letterhead, contractual documents, or writings of any nature, will not directly or indirectly state that ABAA and/or Building Envelope QAP is responsible or liable in any way for the obligations or responsibilities of the Licensee.*
- 2.7 *No advertising by the Licensee shall contain any statement or material which may, in the sole judgment of ABAA and/or the Building Envelope QAP, be in bad taste or inconsistent with ABAA’s and/or Building Envelope QAP’s public image. The Licensee shall not use any advertising which has been disapproved by ABAA and/or Building Envelope QAP by virtue of any of ABAA’s and/or Building Envelope QAP’s rights under this agreement.*
- 2.8 *The Licensee shall immediately notify ABAA and/or the Building Envelope QAP of any apparent infringement or challenge to ABAA and/or Building Envelope QAPs’ Certification Mark, and the Licensee will not communicate with any other person other than ABAA and/or Building Envelope QAP in connection with any such infringement, challenge, or claim.*

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- 2.9 *The Licensee will not communicate directly or indirectly any information or make any statement which has specifically been communicated to the Licensee by ABAA and/or Building Envelope QAP as being incorrect or not meeting the professional conduct required by ABAA and/or Building Envelope QAP.*
- 2.10 *The Licensee agrees to conduct any and all dealings involving an approved materials or assemblies within the guidelines for ethical conduct as set forth by ABAA and/or Building Envelope QAP.*
- 2.11 *The Licensee agrees that their status can be suspended when the Licensee is found in breach of this agreement or of any requirements of ABAA and/or the Building Envelope QAP and that the Licensee will comply to all the requirements set forth by ABAA and/or Building Envelope QAP including the payment of any or all fees before the Licensee status is reinstated.*
- 2.12 *Forthwith upon termination of this agreement, the Licensee will cease all use of any certification mark including any colorable imitation thereof in connection with any goods, services, or business. The Licensee agrees that this covenant is reasonable and necessary to protect the integrity of the certification mark and that this covenant is enforceable by injunction including interlocutory injunction by any court of competent jurisdiction.*
- 2.13 *The Licensee agrees and consents to ABAA and/or Building Envelope QAP conducting any reasonable investigation to determine eligibility of the contractor and for investigating, contractors compliance with this agreement. The Licensee agrees to make air barrier material or assembly purchase and installation records available to ABAA and/or Building Envelope QAP within normal business hours and within five days written notice by ABAA and/or Building Envelope QAP.*

3.0 LICENSED CONTRACTOR’S OBLIGATIONS

- 3.1 *The Licensed Contractor agrees to have as a worker, at all times, at least one Level III Licensed Installer. Failure to have a Level III Licensed Installer employed will mean automatic suspension of this agreement and the status of being a Licensed Contractor.*
- 3.2 *The Licensed Contractor agrees to have in his possession at all times the required equipment to properly install air barrier material and/or assemblies. The list of required equipment will be provided by and updated from time to time by ABAA and/or Building Envelope QAP.*
- 3.4 *The Licensed Contractor agrees to have at least one Level II or III Licensed Installer at each job site at all times. The Level II or III Licensed Installer may have a registered installer or a number of registered installers to assist him. All registered installers must be registered with ABAA and approved to assist the Level II or III Licensed Installer.*
- 3.5 *The Licensed Contractor agrees to abide by all federal, state, and local regulations dealing with the transportation, storing, handling, and installation of the air barrier materials and/or assemblies, including all health and safety regulations for all installers.*
- 3.6 *The Licensed Contractor agrees to conduct any and all job site inspections and/or testing that is required by ABAA and/or the Building Envelope QAP.*
- 3.7 *The Licensed Contractor agrees to accurately complete the Job site reports and to submit to the Building Envelope QAP the Job site reports at the Building Envelope QAP office as prescribed in the Building Envelope quality assurance program manual.*
- 3.8 *The Licensed Contractor agrees to become a member of, and maintain good standing with, ABAA.*
- 3.9 *The Licensed Contractor agrees to pay the required fees to ABAA as outlined by ABAA from time to time. The Licensed Contractor agrees that their license can be suspended if any invoices are outstanding past 90 days from the date of the invoice.*

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- 3.10 *The Licensed Contractor agrees to report the contract value for all ABAA specified projects prior to the start of the air barrier application.*
- 3.11 *The Licensed Contractor agrees to remit payment based upon \$0.085 per square foot of the air barrier material being installed for all ABAA specified projects prior to the start of the air/vapor barrier application.*
- 3.12 *The Licensed Contractor agrees to remit payment based upon a predetermined value per square foot of air/vapor barrier project in the case where the contractor cannot provide supporting documentation for the contract value of the project. The predetermined value is outlined in the Quality Assurance Program Manual.*
- 3.13 *The Licensed Contractor agrees to provide the Licensed Installers with the appropriate testing equipment, as prescribed in the Building Envelope quality assurance program manual, on-site on a daily basis.*
- 3.14 *The Licensed Contractor agrees to identify one individual as the Quality Assurance Program administrator and have that individual attend an orientation session on the Quality Assurance Program requirements.*
- 3.15 *The Licensed Contractor agrees to have at least one Quality Assurance Program administrator on staff at all times.*
- 3.16 *The Licensed Contractor agrees to notify the Building Envelope QAP when they are the successful bidder on a ABAA specified project forthwith after award of the contract and, in any event, prior to the start date of the project.*
- 3.17 *The Licensed Contractor agrees to notify the Building Envelope QAP of the project schedule and details on any and all ABAA specified projects prior to the start date of the project.*
- 3.18 *The Licensed Contractor agrees to install the product(s) listed in the specifications or in the contract documents on any and all ABAA specified projects.*
- 3.19 *The Licensed Contractor agrees to install the product(s) according to the manufacturer's requirements and applicable ABAA specifications.*
- 3.20 *The Licensed Contractor agrees to correct all deficiencies as outlined by the ABAA licensed auditor.*
- 3.21 *The Licensed Contractor agrees upon revocation of his license, to immediately terminate use of the certification mark upon notification from the Building Envelope QAP and to surrender his Certificate of Licensed Contractor and all other documents requested by the Building Envelope QAP to the Building Envelope QAP.*
- 3.22 *The Licensed Contractor agrees to maintain the equipment properly and to make necessary repairs from time to time to ensure that the air barrier material(s) and/or assemblies can be installed properly.*
- 3.23 *The Licensed Contractor agrees to pay lf the fees as outlined by ABAA and/or Building Envelope QAP from time to time. Failure to pay the required fees will result in suspension of their license or membership.*

4.0 INDEMNITY AND RELEASE

- 4.1 *The licensee acknowledges that while ABAA has made its best effort to carry out its certification program and related training and audits, ABAA is not responsible to any licensee for any loss, cost or damage however occasioned, whether by act of commission or omission, in respect of the production, supply and installation of the air / vapor barrier system.*
- 4.2 *The licensee covenants and agrees that in no event is ABAA or any authorized representative liable for any loss, cost or damage that may be suffered by the licensee by virtue of his license or the suspension of his license.*

5.0 GENERAL

- 5.1 *The proper law of this agreement shall be the law of the Commonwealth of Massachusetts and the proper forum for any dispute concerning this agreement shall be the Commonwealth of Massachusetts.*

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- 5.2 *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 Canada Post. Unless changed in writing, ABAA's address for the purpose of notice is: 1600 Boston-Providence Hwy, Walpole, MA 02081; for the licensee, it will be the address listed at the top of this document, unless ABAA is notified in writing that a different address is to be used.*
- 5.3 *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.*
- 5.4 *No waiver by either party under this agreement shall affect its rights to enforce the terms hereof at a later date.*
- 5.5 *In this agreement, the masculine singular includes the feminine singular, the neuter and all plural forms thereof.*
- 5.6 *The headings herein are inserted for convenience of reference only and do not affect the interpretation hereof.*

IN WITNESS WHEREOF the parties have hereunder affixed their hands and seals.

Date _____

(witness signature)

PER _____
Signature of company's authorize representative

ABAA Office Use Only

AIR BARRIER ASSOCIATION OF AMERICA INC.

Date _____ **PER** _____

BUILDING ENVELOPE QUALITY ASSURANCE PROGRAM INC.

Date _____ **PER** _____