

# INSTALLER 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

**Installer Name:** \_\_\_\_\_

**Home Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_  
(*"Licensee of 3.0"*)

## 1.0 DEFINITIONS

- 1.1 "Licensed Field 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
- 1.3 "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.
- 1.4 "ABAA" is the Air Barrier Association of America Inc.
- 1.5 "Job site report" is a report filled out each day for each contract. This form is provided by the Building Envelope QAP.
- 1.6 "Licensed Contractor" is a contractor who has met the qualifications as set out by the Building Envelope QAP.
- 1.8 "On Site Testing" is any testing or inspection that is required by the Building Envelope QAP, be carried out at the job site.
- 1.10 "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.
- 1.11 "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.

## 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 its 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 QAP's 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.*
- 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.*
- 2.12 *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 INSTALLER'S OBLIGATIONS**

- 3.1 *The Licensed Installer agrees to participate in the required training programs as set out by ABAA and/or the Building Envelope QAP including any refresher course that may be required.*
- 3.2 *The Licensed Installer agrees to carry at all times on the job sites, the photo identification card issued to him/her by the Building Envelope QAP, which identifies him/her as a Licensed Installer.*
- 3.3 *The Licensed Installer agrees to perform any and all inspections and/or testing that is required by ABAA and/or the Building Envelope QAP..*
- 3.4 *The Licensed Installer agrees to permit a Licensed Auditor to audit installation practices, apparatus, materials, services, and documentation as set out from time to time by ABAA and/or the Building Envelope QAP..*
- 3.5 *The Licensed Installer 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 and/or the Building Envelope QAP..*
- 3.6 *The Licensed Installer agrees to, upon revocation of his/her license or certificate by Building Envelope QAP, surrender their photo identification card and all other documents requested by Building Envelope QAP to Building Envelope QAP and to cease the use of the Certification Mark.*
- 3.7 *The Licensed Installer agrees to pay or have the Licensed Contractor pay on his behalf the fees as outlined by ABAA and/or the Building Envelope QAP from time to time. Failure to pay the required fees will result in suspension of their certification.*
- 3.8 *The Licensed Installer agrees to install the air barrier product(s) according to the manufacturer's requirements and applicable ABAA specifications.*
- 3.9 *The Licensed Installer agrees to follow all policies and procedures for Certified Installers as set forth by ABAA and the Quality Assurance Program manual.*

**4.0 BUILDING ENVELOPE QAP'S OBLIGATIONS**

- 4.1 *The Building Envelope QAP will provide the Licensed Installer with the required documentation for the Quality Assurance Program. This documentation will be updated from time to time*
- 4.2 *The Building Envelope QAP will provide the Licensed Installer with a Certificate of License, which will show the installer is in good standing. The Building Envelope QAP will advise the Licensed Installer of any suspension of this certificate by way of a letter sent to the installer which suspends the Certificate of the Licensed Installer.*
- 4.3 *The Building Envelope QAP will provide the Licensed Installer with a photo Identification card indicating the status of the installer, the level of License and the products the installer is licensed to install.*
- 4.4 *The Building Envelope QAP will monitor the program, conduct the training sessions, conduct or have conducted on their behalf the Licensed Installer audits and maintain the required documentation.*
- 4.5 *The Building Envelope QAP will provide a directory of Licensed Installers. This directory is to be updated on a regular basis.*
- 4.6 *Subject to compliance by the licensee with the terms and conditions hereof, the Building Envelope QAP hereby grants to the licensee the right to use the Certification Mark.*

**5.0 INDEMNITY AND RELEASE**

- 5.1 *The licensee acknowledges that while ABAA and/or the Building Envelope QAP has made its best effort to carry out its certification program and related training and audits, ABAA and/or the Building Envelope QAP 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 barrier materials and/or assemblies.*
- 5.2 *The licensee covenants and agrees that in no event is ABAA and/or the Building Envelope QAP 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.*

**6.0 GENERAL**

- 6.1 *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.*
- 6.2 *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.*
- 6.3 *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.*
- 6.4 *No waiver by either party under this agreement shall affect its rights to enforce the terms hereof at a later date.*
- 6.5 *In this agreement, the masculine singular includes the feminine singular, the neuter and all plural forms thereof.*
- 6.6 *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.

**Installer Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Witness Signature** \_\_\_\_\_  
(print name)

For ABAA Office Use Only

ABAA Approval Signature \_\_\_\_\_ **Date** \_\_\_\_\_

Assigned Installer Certification # \_\_\_\_\_

Building Envelope QAP Approval Signature \_\_\_\_\_ **Date** \_\_\_\_\_