

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

between

Air Barrier Association of America, Inc.

(hereinafter "ABAA")

having its principal place of business at
1600 Boston-Providence Hwy, Walpole, MA, 02081

and

(hereinafter "Manufacturer Licensee")

having its principal place of business at

WHEREAS, ABAA is a body dedicated to setting high standards for on-going professional practice in the air barrier system industry through the ABAA Quality Assurance Program ("Air Barrier 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 Manufacturer Licensee to use its Certification Mark on the terms and conditions as set forth in this Agreement, once the Manufacturer Licensee has been approved as an Evaluated Manufacturer;

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. **"Evaluated Manufacturer"** is a corporation that manufactures or sells air barrier materials who has agreed to comply with the ABAA Air Barrier material approval process (ABAA having agreed to the manufacturer's use of same) in connection with the manufacture of its materials. In order to be an Evaluated

Manufacturer Licensee initials: _____

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Manufacturer, such person must also have entered into a licensing agreement with ABAA with respect to the use of the Certification Mark.

- 1.2. **“Air Barrier QAP”** is the Commercial Air Barrier Systems Professional Contractor Quality Assurance Program Manual.
- 1.3. **“Certification Mark”** means collectively AIR BARRIER ASSOCIATION OF AMERICA ABAA ACCREDITED (and design), Registration No 4206480, AIR BARRIER ASSOCIATION OF AMERICA ABAA CERTIFIED (and design), Registration No 4354304, and AIR BARRIER ASSOCIATION OF AMERICA ABAA EVALUATED (and design), Registration No. 4335209 set forth in Schedule "A" hereto and any related marks that ABAA informs Manufacturer Licensee of and which Manufacturer Licensee is authorised to use as an Evaluated Manufacturer.
- 1.4. **"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/or the Manufacturer Licensee in accordance with paragraph 7 hereof (the "Term").
- 2.2. In consideration of the approval of Manufacturer Licensee as an Evaluated Manufacturer and subject to the terms and conditions of this Agreement, ABAA hereby grants to the Manufacturer Licensee the non-exclusive right and license to use the Certification Mark in the United States of America during the Term for the materials which qualify under the Air Barrier QAP.
- 2.3. Excepting its subsidiary companies, the Manufacturer 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. MANUFACTURER LICENSEE

True and Accurate Representations

- 3.1. The Manufacturer Licensee represents and warrants that all information it has given to ABAA (or its employees, agents or designates) under this Agreement, and for licensing purposes under or in connection with the Air Barrier QAP, is believed to be true and correct.

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Proprietary to ABAA

- 3.2. The Manufacturer Licensee acknowledges that it has been advised that the Air Barrier QAP is a proprietary program of ABAA, and it will not challenge such proprietary right during the Term or thereafter. The Manufacturer Licensee shall not use the Air Barrier QAP (including without limitation any documents or materials relating thereto) for any purpose other than to carry out the terms of this Agreement. The Manufacturer Licensee may not use the Air Barrier QAP for any other purposes nor may it, copy or distribute the Air Barrier QAP documentation to third parties other than subsidiary companies, who have a need to know, 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 Manufacturer Licensee shall comply with the manufacturer's obligation in the Air Barrier QAP for the duration of the Term.
- 3.4. The Manufacturer Licensee acknowledges and agrees that the Air Barrier QAP (including without limitation, the materials, systems, programs, standards, requirements and methods relating thereto) may be amended from time to time by ABAA, and ABAA shall provide the Manufacturer Licensee with reasonable notice in writing of any such amendments. The Manufacturer Licensee shall use reasonable commercial efforts to comply with any new obligation for manufacturers section of the Air Barrier QAP.

Quality Control (Products and Licensing Requirements)

- 3.5. The Manufacturer Licensee agrees to maintain itself as a member in good standing with the ABAA. The Manufacturer Licensee agrees that its license to use the Certification Mark may be suspended and/or terminated at the sole and unilateral discretion of the ABAA if the Manufacturer Licensee fails to maintain the membership in good standing with ABAA.

Additional Requirements - Conduct

- 3.6. The Manufacturer Licensee will not provide or otherwise communicate, directly or indirectly, to any third parties any information that it knows to be incorrect or disparaging information concerning ABAA and/or the Air Barrier QAP.

Regulatory Requirements

- 3.7. The Manufacturer Licensee shall be responsible for obtaining all licenses, permits, consents and approvals which are required for manufacturers of materials by all applicable governmental or other regulatory authorities. If and when requested by ABAA, the Manufacturer Licensee shall provide ABAA with

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copies of all such licenses, permits, consents, or approvals within a reasonable time.

- 3.8. The Manufacturer Licensee agrees to abide by all federal, state, and local regulations applicable to the manufacture, transportation, storing, handling, and installation of air barrier materials, including without limitation all applicable health and safety regulations.

4. MANUFACTURER LICENSEE'S USE OF CERTIFICATION MARK

- 4.1. Subject to any requirements necessitated by complying to 3.7 above, the Manufacturer Licensee agrees to use no other Certification Mark for air barriers other than the Certification Mark to identify it as an Evaluated Manufacturer or its product as an evaluated material, assembly, or system. The Manufacturer Licensee will use the Certification Mark only in the manner expressly directed and approved by ABAA and only in association with the manufacture of barrier materials, assemblies, or systems.
- 4.2. The Manufacturer Licensee shall timely: (a) notify ABAA in advance and in writing of its intent to use or distribute materials, documents, packaging, advertisements, and/or products that bear the Certification Mark; and (b) provide ABAA with copies of same. ABAA will respond to such submissions within 30 days from the date of submission. Should ABAA reasonably object to any uses of the Certification Mark, the Manufacturer Licensee shall promptly cease use of same in accordance with ABAA's demand. The Manufacturer Licensee will use the Certification Mark only in the manner authorized under this Agreement and only in association with evaluated products in the air barrier industry.
- 4.3. No advertising by the Manufacturer Licensee shall contain any statement or material related to ABAA which may, in the reasonable judgment of ABAA, contain objectionable language, be in bad taste or be inconsistent with ABAA's public image as a first class, professional organization that exercises high standards of safety, conduct, and professionalism in the air barrier industry.
- 4.4. The Manufacturer Licensee agrees not to use the Certification Mark in a manner calculated to represent that the Manufacturer Licensee is the owner of such mark or that the Manufacturer Licensee is something other than an accredited user of the Certification Mark. The Manufacturer Licensee further acknowledges that it has been advised 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 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 will the Manufacturer Licensee counsel, procure, or assist any third party in doing the same, directly or indirectly. The Manufacturer 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.

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- 4.5. The Manufacturer Licensee agrees that any and all rights that may be acquired by the use of the Certification Mark by Licensee shall, where appropriate, inure to the benefit of ABAA as licensor.
- 4.6. The Manufacturer Licensee agrees to forthwith for the term of the agreement provide all necessary information and to execute all papers reasonably requested by ABAA to affect the registration, maintenance or defense of the Certification Mark or to renew same.
- 4.7. The Manufacturer Licensee shall promptly notify ABAA of any apparent or actual infringement or challenge to ABAA's Certification Mark, and the Manufacturer Licensee will not communicate with any other person other than ABAA, unless legally obliged to the contrary, in connection with any such infringement, challenge, or claim. The Manufacturer Licensee shall cooperate with ABAA (and reasonably assist ABAA, upon 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. ABAA shall indemnify and hold Manufacturer Licensee harmless from and against all claims, losses, judgments, liabilities, decrees, costs and reasonable expenses arising out of, related to, or resulting from, any actual infringement of the Certification Mark and the use thereof by the Manufacturer Licensee.

5. OWNERSHIP AND MARKING

- 5.1 The Manufacturer Licensee acquires no right, title or interest in or to the Certification Mark except as expressly provided in this Agreement. The Manufacturer 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 Manufacturer Licensee. The Manufacturer Licensee shall, when using the Certification Mark, so describe the Certification Mark to indicate clearly that it is owned and controlled by ABAA and that it is being used by the Manufacturer Licensee under license.
- 5.2 The Manufacturer Licensee shall ensure that any and all checks, letterhead, contractual documents, or writings of any nature, will not directly or indirectly state or suggest that ABAA is responsible or liable in any way for the obligations or responsibilities of the Manufacturer Licensee.

6. ABAA'S OBLIGATIONS

- 6.1. Provided that the Manufacturer Licensee meets its obligations under this Agreement, upon written request, ABAA will provide the Manufacturer Licensee

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with an ABAA Certificate, which will show the Manufacturer Licensee as being in good standing.

7. BREACH AND TERMINATION

- 7.1. This Agreement may be terminated by the Manufacturer Licensee at any time by providing ABAA with one month advance written notice of its intention to terminate this Agreement.
- 7.2. ABAA may terminate this Agreement by providing three months advance written notice to the Manufacturer Licensee.
- 7.3. ABAA can suspend or terminate Manufacturer Licensee's rights granted hereunder if the Manufacturer Licensee fails to cure or commence action to cure any material breach of its obligations under this Agreement, or of any requirements of the Air Barrier QAP with deliberate speed (and in no event later than 30 days after receiving notice of such material breach).
- 7.4. Without limiting the generality of the foregoing, the ABAA can deem the Manufacturer Licensee to be in default under this Agreement in the event that:
 - a. the Manufacturer Licensee is in default of any of its material obligations under this Agreement or the applicable licensing standards under the Air Barrier QAP and has failed to cure such material default or commences action to cure within 30 days of receipt of notice from ABAA;
 - b. the Manufacturer 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 Manufacturer Licensee, if Manufacturer 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 Manufacturer Licensee, or if the Manufacturer 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 Manufacturer Licensee transfers or attempts to transfer this Agreement or any rights hereunder to any person other than a subsidiary company without the prior written consent of ABAA.
- 7.5. Should ABAA elect to suspend rather than terminate this Agreement, ABAA shall give the Manufacturer Licensee an opportunity to cure its default. To that end, ABAA shall notify the Manufacturer Licensee in writing of the suspension of this Agreement, identify the default to be remedied, and specify the time granted to the Manufacturer Licensee to correct said default. If the Manufacturer Licensee fails to correct said default within the specified time, ABAA may, in its sole discretion, terminate, this Agreement.

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- 7.6. In the event of a suspension, or should this Agreement be terminated for any reason, the Manufacturer Licensee shall promptly:
- a. Except as provided in subparagraph (b) below, cease to use the Certification Mark(s) and the Air Barrier QAP, in any manner and for any purpose whatsoever;
 - b. remove the Certification Mark(s) and any reference to the Air Barrier QAP from any and all materials, products, or systems including without limitation packaging, signs and advertisements, under its custody or control upon which the Certification Marks or reference to the Air Barrier QAP appears, provided, however manufacturer, for a period of twelve (12) months following termination, may (i) sell pre-existing inventory bearing the Certification Mark, and (ii) use and distribute all pre-existing brochures packaging, product data sheets, marketing bulletins and other product literature and marketing materials in connection with the sale, marketing and promotion of Manufacturer Licensee's products.
 - c. pay to ABAA all fees due and payable prior to receipt of the notice of termination or suspension; and
 - d. cease to and thereafter not hold itself out, directly or indirectly, as a licensee of ABAA or the Air Barrier QAP Licensing Organization.
- 7.7. The Manufacturer Licensee agrees that the requirements set forth in paragraph 7 are reasonable and necessary to protect the integrity of the Certification Mark and those requirements are enforceable by injunction, including without limitation interlocutory injunction, by any court of competent jurisdiction.

8. INDEMNITY AND RELEASE

- 8.1. Other than the indemnity and defense in Section 4.7, the Manufacturer Licensee acknowledges that neither ABAA, nor its directors, officers, agents, or employees shall be responsible to the Manufacturer 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 Manufacturer Licensee, or the use and delivery of the Air Barrier QAP in connection therewith. The Manufacturer Licensee shall defend and hold ABAA, its directors, officers, agents, and employees harmless from and indemnify them for any claims or damages resulting from Manufacturer Licensee's materials except to the extent such claims or damages result from, relate to, or arise out of the Certification Mark or the use thereof by the Manufacturer Licensee.
- 8.2. Without limiting the generality of the foregoing, ABAA shall not be obligated or liable to the Manufacturer Licensee for any injury or death of any person or

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damage to any property caused by or relating to the materials, products or systems manufactured, used, or provided by the Manufacturer Licensee.

- 8.3. The Manufacturer Licensee covenants and agrees that, except for the indemnity set forth in Section 4.7 above of this Agreement, in no event shall ABAA, or any authorized representative, be liable for any loss, cost or damage that may be suffered by the Manufacturer Licensee by virtue of its license or the suspension or termination of its license.
- 8.4. Neither party will be liable to the other party under any cause of action, whether in contract, tort, or otherwise, for any indirect, special, incidental, consequential, or punitive damages, even if the party has been advised of the possibility of such damages.

9. GENERAL

- 9.1. The Manufacturer Licensee is and will at all times remain an independent contractor and is not and shall not represent itself to be the agent, employee, joint venturer, or partner of ABAA. The Manufacturer Licensee shall neither represent nor engage in any act that could establish an apparent relationship of agency, employment, 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 Manufacturer Licensee to any other person or with respect to any other action of the Manufacturer Licensee.
- 9.2. This Agreement shall be interpreted and construed in accordance with the laws of the United States and Commonwealth of Massachusetts to the extent applicable 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 Manufacturer Licensee, it will be the address listed at the top of this document, unless ABAA is otherwise notified in writing during the term of this Agreement.
- 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.

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- 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 either party to exercise any right, power or option given hereunder or to insist upon the strict compliance with the terms and conditions hereof by the other party 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 such party of its rights at any time thereafter to require compliance with all terms and conditions hereof including the terms or conditions with respect to which the other party 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. 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.
- 9.10. This Agreement shall inure to the benefit of and be binding upon the ABAA and the Manufacturer 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.

“Manufacturer Licensee”

Per: _____

Per: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Manufacturer Licensee initials: _____

Air Barrier Association of America, Inc. initials: _____

SCHEDULE "A"



Manufacturer Licensee initials: _____

Air Barrier Association of America, Inc. initials: _____