



BPQI CERTIFICATION AGREEMENT

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

BETWEEN

BUILDING PROFESSIONALS QUALITY INSTITUTE INC.
("BPQI")
and

Installer Full Legal Name: *(please print clearly)* _____

Address: _____

City, Province: _____ Postal Code: _____

("Certified Installer licensee")

WHEREAS BPQI is a body dedicated to setting high standards for on-going professional practice in the spray polyurethane foam industry through the Certification program and certifies qualifying Installers to use its Certification Mark. Use of the BPQI Certification Mark symbolizes that such parties have met BPQI's standards of practice and regulation;

AND WHEREAS BPQI has agreed to grant a non-exclusive license to the Certified Installer licensee to use its Certification Mark on the terms and conditions set out in the 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 "Approved System" means a spray applied rigid polyurethane cellular plastic thermal insulation system which meets the CAN/ULC S705.01 National Standard (which includes any amendments thereto or any National Standard that replaces or succeeds this standard), there being supporting documentation (including without limitation any CCMC evaluation report and a copy of all test reports that support the evaluation).
- 1.2 "BPQI" means the Building Professionals Quality Institute Inc.
- 1.3 "CCMC" means the Canadian Construction Materials Center, operated by the National Research Council Canada, Government of Canada, or its successor or assign.
- 1.4 "SCC" means the Standard Council of Canada.
- 1.5 "Certification Mark" means any certification mark(s) used, applied for or registered by BPQI in accordance with the provisions of the Trademarks Act of Canada (or similar or successor legislation) which BPQI expressly confirms in writing to the Certified Installer licensee as falling within the definition of Certification Mark under this Agreement.
- 1.6 "Certified Field Auditor" means a person who has been certified as a Certified Field Auditor by BPQI (or its designate) in connection with the certification program or by a third party approved by BPQI, such Certified Field Auditor having also entered into, with BPQI, both a Certification agreement and an agreement that outlines professional conduct, scope of work and requirements when performing audits on behalf of BPQI.
- 1.7 "Certified Installer" means an Installer of spray polyurethane foam who, in the view of BPQI or its designate, has successfully completed the requirements for an Installer as set out in the certification scheme and who has signed a certification agreement with BPQI with respect to the use of the Certification Mark.
- 1.8 "Term" has the meaning set forth in paragraph 2.1 below.

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2. GRANT AND TERM

- 2.1 The Certified Installer licensee hereby agrees that it shall, throughout the Term, participate in and successfully complete any required recertification that BPQI, under its certification scheme, may require for Certified Installers from time to time.
- 2.2 This Agreement shall commence on the Effective Date and shall continue until terminated by the parties in accordance with paragraph 7 hereof (the "Term").
- 2.3 Subject to the provisions of this Agreement and as long as the Certified Installer licensee is not in default hereunder, BPQI hereby grants to the Certified Installer licensee the non-exclusive right, license and privilege to use the Certification Mark in Canada during the Term in the manner and for the purposes set forth in this Agreement.
- 2.4 The Certified Installer licensee shall not be entitled to sub-license to third parties any of its rights or obligations under this Agreement.
- 2.5 The parties each hereby confirm to the other that he/she/it has full power and authority to enter into this Agreement, and that in doing so (or carrying out any of its obligations hereunder) he/she/it is not violating the rights of any third party or any agreement by which it is bound.

3. CERTIFIED INSTALLER LICENSEE

True and Accurate Representations

- 3.1 The Certified Installer licensee represents and warrants that all information he/she/it has given to BPQI (or its employees, agents or designates) under this Agreement, the BPQI code of conduct, and in connection with the certification program, is true and correct, and acknowledges and agrees that BPQI is relying on such representations and warranties in entering into this Agreement.

Proprietary to BPQI

- 3.2 The Certified Installer licensee acknowledges and agrees that the certification program is a proprietary program of BPQI and that he/she/it will not challenge such proprietary right during the Term or thereafter. The Certified Installer licensee shall not use the certification program (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 Certified Installer licensee may not use the certification program for any other purpose nor may it, directly or indirectly, copy, distribute or make available the certification program to third parties, without the prior written consent of BPQI. The obligations set out in this paragraph survive the expiration or termination of this Agreement.

Certified Installer Licensee and Compliance with Obligations

- 3.3 During the Term of this Agreement, the Certified Installer licensee agrees that he/she/it shall pay an Installer Certification fee on a yearly basis, as set by BPQI, notice of same being mailed to all Certified Installers annually, and comply with the terms of this Agreement.
- 3.4 The Certified Installer licensee hereby undertakes to comply with all of the provisions of the certification program applicable to Certified Installers for the duration of the Term. Without limiting the generality of the foregoing, the Certified Installer licensee will install Approved Systems or Evaluated Systems in a professional manner.
- 3.5 Without limiting the generality of the foregoing, the Certified Installer licensee shall, all times during the Term, comply with all standards, specifications and requirements necessary to meet the then-current certification requirements for Installers under the certification program. The Certified Installer licensee acknowledges and agrees that the certification program (including without limitation, the systems, programs, standards, requirements and methods relating thereto) may be amended from time to time. BPQI shall provide the Certified Installer licensee with notice in writing of any such amendments, and the Certified Installer licensee shall forthwith comply with same.

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3.6 The Certified Installer licensee agrees to carry at all time on all job sites, the photo identification card issued to him/her by BPQI which identifies him/her as a Certified Installer.

Quality Control (Products and Licensing Requirements)

3.7 During the Term, the Certified Installer licensee agrees to install spray applied polyurethane cellular plastic thermal insulation, Approved Systems and/or Evaluated Systems according to the requirements of the applicable Manufacturer and the applicable BPQI standards and specifications forming part of then-current certification scheme. The Certified Installer licensee shall not alter an Approved System or an Evaluated System in any way, including by the addition of a coloring agent.

3.8 During the Term, the Certified Installer licensee will only install spray applied polyurethane foam materials and/or products which meet the CAN/ULC S705.1 material standard set by CCMC (or any amendment thereto or any National Standard that replaces or succeeds this standard) or products which have received a CCMC evaluation number to any building which falls under the authority of the local building code or for any project where the documents require material to meet the CAN/ULC S705.1 Material Standard.

3.9 The Certified Installer licensee shall meet all of the requirements of the CAN/ULC S705.2 Installation Standard (or any amendment thereto or any National Standard that replaces or succeeds this standard).

3.10 The Certified Installer licensee agrees to permit any audits deemed necessary by BPQI in order to ensure compliance with the certification program.

3.11 Without limiting the generality of the foregoing, the Certified Installer licensee agrees to permit a Certified Field Auditor to audit his/her/its work on any job site, as well as his/her/its installation practices, apparatus, materials, services and documentation to ensure that he/she/it meets the standards required of a Certified Installer under the certification program. The Certified Installer licensee shall cooperate fully with any such audit or inspections by a Certified Field Auditor. The Certified Installer licensee shall pay any and all costs of BPQI, the certification Organization or the Auditor associated with any such audit.

3.12 Should the Certified Installer licensee be required to provide any information to BPQI or to a Certified Field Auditor, or to complete any documentation under this Agreement or the certification program, it shall do so accurately and completely. Failure to provide accurate and complete information and documentation may, in BPQI's sole and absolute discretion, constitute a material breach of this Agreement and may lead to the suspension or termination of this license under the terms of this Agreement.

3.13 The Certified Installer licensee shall forthwith, upon request from BPQI, provide such further or other information as BPQI may require from time to time with respect to the Certified Installer licensee, its products, services, processes, procedures, or otherwise (including access to its books and records, Approved Systems, Evaluated Systems) as reasonably required to assess compliance with this Agreement. The Certified Installer licensee shall cooperate fully with BPQI, in good faith, with respect to any such assessment.

3.14 The Certified Installer licensee will not provide or otherwise communicate, directly or indirectly, to any third parties any information or make any statements which have specifically been communicated to the Certified Installer licensee by BPQI, verbally or in writing, as being incorrect or not meeting the standards of professional conduct set or determined by BPQI.

Additional Requirements – Conduct

3.15 The Certified Installer licensee agrees to pay fees due to BPQI, as outlined by BPQI from time to time. Failure to pay the required fees may result in a suspension and/or termination of certification and this license.

3.16 The Certified Installer licensee will notify BPQI of any breaches to this Agreement, which are made by him/her, or, to his/her knowledge, by other Certified Installers.

Regulatory Requirements

3.17 The Certified Installer 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 the its business, products, services or the subject matter of this Agreement. The Certified Installer licensee shall provide BPQI with copies of all such consents or approvals.



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4. CERTIFIED INSTALLER LICENSEE'S USE OF CERTIFICATION MARK

- 4.1 During the Term, the Certified Installer licensee agrees to use the Certification Mark on all advertisements, promotional materials, and otherwise to identify itself as a Certified Installer under the BPQI certification program, such use to be in accordance with the terms and conditions of this Agreement. The Certified Installer licensee shall not otherwise use the Certification Mark, for any purpose. The Certified Installer licensee shall use no trade-mark other than the Certification Mark during the Term to identify itself as a Certified Installer of spray polyurethane foam.
- 4.2 The Certified Installer licensee will use the Certification Mark (i) in a manner expressly approved by BPQI; (ii) in association with an Approved System or an Evaluated System; and (iii) in association with the general class of services comprising of contracting services carried on by the Certified Installer licensee for the installation of spray-applied rigid polyurethane cellular plastic thermal insulation.
- 4.3 The Certified Installer licensee shall provide BPQI with copies of all materials, documents, packaging, advertisements and otherwise, bearing the Certification Mark in advance of any use or distribution of same. Any failure of BPQI to comment shall not be interpreted as a consent for such use. Should BPQI advise the Certified Installer licensee of any objection to any uses of the Certification Mark, the Certified Installer licensee shall immediately cease use of same in accordance with BPQI's demand.
- 4.4 No advertising by the Certified Installer licensee shall contain any statement or material which may, in the sole judgment of BPQI, contain objectionable language, be in bad taste or be inconsistent with BPQI's public image of a first class professional organization representing high standards of safety, conduct and professionalism in the spray polyurethane foam industry.
- 4.5 The Certified Installer licensee agrees not to use the Certification Mark in any manner calculated to represent that the Certified Installer licensee is the owner of the Certification Mark or that the Certified Installer licensee is anything other than a licensed user of the mark. The Certified Installer licensee further acknowledges that BPQI's Certification Mark is the sole and exclusive property of BPQI, its successors and assigns, and agrees that during the term of this Agreement and thereafter he/she 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 council or procure or assist anyone else to do the same, directly or indirectly. The Certified 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(s).
- 4.6 The Certified Installer licensee agrees that any and all rights that may be acquired by the use of the Certification Mark by Licensee shall ensure to the sole benefit of BPQI as licensor.
- 4.7 The Certified Installer licensee agrees to forthwith provide all necessary information and to execute all papers reasonably requested by BPQI to effect the registration, maintenance or defence of the Certification Mark or to renew same. This obligation shall survive any termination or expiration of this Agreement.
- 4.8 The Certified Installer licensee shall immediately notify BPQI of any apparent or actual infringement or challenge to BPQI's Certification Mark, and the Certified Installer licensee will not communicate with any person other than BPQI in connection with any such infringement, challenge, or claim. The Certified Installer licensee shall cooperate with BPQI (and assist BPQI, upon reasonable request) with respect to the prosecution of any litigation relating to such infringement or the challenging of the Certification Mark. BPQI shall, in its discretion, make any and all decisions with respect to such litigation (or the settlement of any disputes) and BPQI shall be solely entitled to any awards may on account of such litigation.

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5.0 OWNERSHIP AND MARKING

5.1 The Certified Installer licensee acquires no right, title or interest in or to the Certification Marks except as expressly provided in this Agreement. The Certified 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 BPQI may from time to time, in its sole discretion, direct and communicate to the Certified Installer licensee. Licensee shall, when using the Certification Mark, so describe the Certification Mark to indicate clearly that the mark is owned by BPQI and that it is being used by the Certified Installer licensee under license.

5.2 The Certified Installer licensee shall ensure that any and all cheques, letterhead, contractual documents, or writings of any nature, will not directly or indirectly state that BPQI or the certification organization is responsible or liable in any way for the obligations or responsibilities of the Certified Installer licensee.

6. BPQI'S OBLIGATIONS

6.1 BPQI will provide a directory of Certified Installers for use by SCC Standards Council of Canada solely in connection with its obligations under this Agreement. Any other use is strictly prohibited. This directory may be updated by BPQI from time to time.

7. BREACH AND TERMINATION

7.1 This Agreement may be terminated by the Certified Installer licensee on any anniversary date of this Agreement by providing BPQI with four (4) months advance written notice of its intention to terminate its BPQI membership and this Agreement.

7.2 BPQI may terminate this Agreement at anytime by providing four (4) months advance written notice to the Certified Installer licensee.

7.3 The Certified Installer licensee agrees that his/her certification can be suspended or terminated by BPQI immediately, in its discretion, if the Certified Installer licensee is found, by BPQI, acting reasonably, to be in default or breach of any of its obligations under this Agreement, the BPQI code of conduct or of any requirements under the certification program.

7.4 Without limiting the generality of the foregoing, the Certified Installer licensee shall be deemed to be in default under this Agreement where:

- (a) the Certified Installer licensee fails to participate in or successfully complete any certification scheme requirements of Certified Installers under the certification program, if any, or fails to complete any recertification requirements for Installers under the certification scheme;
- (b) the Certified Installer licensee is found to have provided BPQI, the Certification organization or a Certified Field Auditor with inaccurate or incomplete information;
- (c) the Certified Installer licensee is in default of any of its obligations under this Agreement, the BPQI code of conduct, or the applicable Certification standards under the certification program;
- (d) the Certified Installer licensee makes a general assignment for the benefit of creditors or a proposal arrangement under the Bankruptcy and Insolvency Act (Canada) or any successor legislation (the "Act"), if a petition is filed against the Certified Installer licensee under the Act, if 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 Certified Installer licensee or if the Certified Installer 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 except to the extent that BPQI's right to terminate may be limited by the Act;

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- 7.5 Should BPQI elect to impose a suspension rather than a termination, giving the Certified Installer an opportunity to cure the default, it shall notify the Certified Installer licensee in writing of the default, the suspension of certification, the default to be remedied and the period granted to the Certified Installer licensee to correct any such default, failing which BPQI may, in its discretion, terminate this Agreement and the certification program. Should a suspension be imposed, any fees due and payable to BPQI must be paid in full prior to the re-instatement of any suspended Certified Installer licensee.
- 7.6 In the event of a suspension, or should this Agreement be terminated for any reason, the Certified Installer licensee shall immediately:
 - (a) cease to use, directly or indirectly, the Certification Mark(s) and the certification program, in any manner and for any purpose whatsoever;
 - (b) surrender to BPQI his/her photo identification card and all other documents requested by BPQI;
 - (c) remove the Certification Mark(s) and any reference to the certification program 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 certification program appears, and shall deliver up same to BPQI upon request;
 - (d) immediately pay to BPQI all fees, amounts and other charges as are or have become due and payable; and
 - (e) immediately cease to and thereafter not, directly or indirectly, hold itself out as a licensee of BPQI or the Certification organization.
- 7.7 The Certified Installer licensee agrees that the requirements set forth in paragraph 7.6 are reasonable and necessary to protect the integrity of the Certification Mark and that these requirements are enforceable by injunction, including without limitation by interlocutory injunction, by any court of component jurisdiction.

8. INDEMNITY AND RELEASE

- 8.1 The Certified Installer licensee acknowledges that while BPQI has made its best effort to carry out its certification program, neither BPQI, nor its directors, officers, agents, employees, shall be responsible to the Certified 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 Certified Installer licensee, or the use and delivery of the BPQI certification program in connection therewith. The Certified Installer licensee shall hold BPQI, its directors, officers, agents, employees and the Certification organization harmless from any claims relating thereto.
- 8.2 Without limiting the generality of the foregoing, BPQI shall not be obligated or liable 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 Certified Installer licensee. The Certified Installer licensee undertakes to hold appropriate and adequate insurance to cover its liability.
- 8.3 The Certified Installer licensee covenants and agrees that in no event is BPQI or any authorized representative, liable for any loss, cost or damage that may be suffered by the Certified Installer licensee by virtue of his/her/its certification or the suspension or termination of his/her certification.

9. GENERAL

- 9.1 The Certified Installer licensee is and will at all times remain an independent contractor and is not and shall not represent itself to be the agent, joint venture or partner of BPQI. No representations will be made or acts taken by the Certified Installer licensee which could establish any apparent relationship of agency, joint venture or partnership and BPQI shall not be bound in any manner whatsoever by any agreements, warranties or representations made by the Certified Installer licensee to any other person or with respect to any other action of the Certified Installer licensee.

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- 9.2 This Agreement shall be interpreted and construed in accordance with the laws of the Province of Manitoba and Canada applicable hereto and the parties irrevocably attorn to the jurisdiction of the Courts of Manitoba 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, certified post, facsimile 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. Any Notice transmitted by facsimile shall be deemed given and received on the first business day after its transmission. Unless changed in writing, BPQI's address for the purpose of notice is: 410 - 250 McDermot Avenue, Winnipeg, Manitoba R3B 0S5, Fax No. (204) 956-5819; for the licensee, it will be the address listed at the top of this document, unless BPQI is otherwise notified in writing.
- 9.4 This Agreement represents the entire Agreement between the parties and no representation, warrant 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 BPQI to exercise any right, power or option given hereunder or to insist upon the strict compliance with the terms and conditions hereof by the Certified Installer licensee shall not constitute a waiver of the terms and conditions of this Agreement with respect to that or any other or subsequent breach thereof nor a waiver by BPQI 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 Certified 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 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 ensure to the benefit of and be binding upon BPQI and the Certified Installer licensee and their respective successors and permitted assigns. 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.

Installer Full Legal Name: *(please print clearly)* _____

Installer Signature: _____ Date: _____



FOR BPQI OFFICE USE ONLY

Date Received: _____ Ryan Dalglish *(Authorized Signing Officer)* Signature: _____