



Building Performance Institute, Inc.

Manufacturer Licensing Agreement For Building Performance Institute, Inc. Product Listing Program

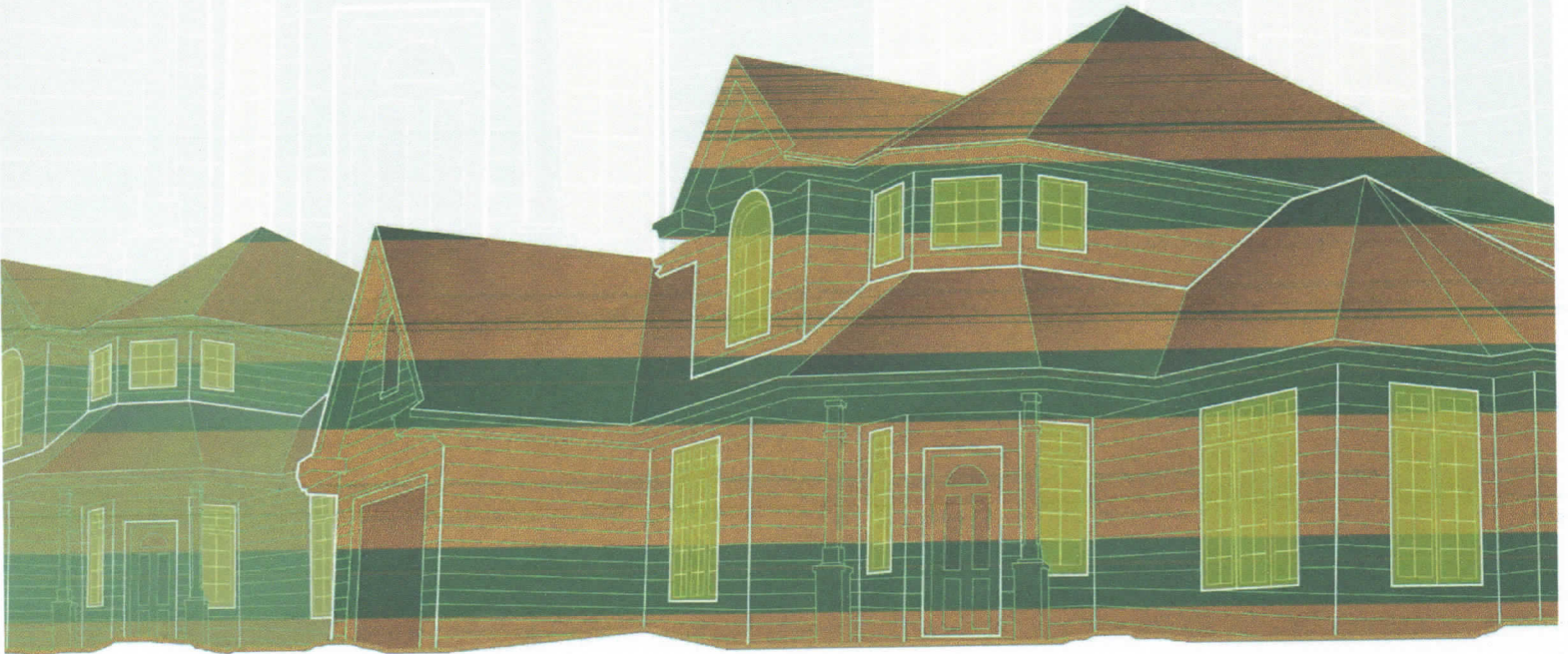


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Manufacturer Licensing Agreement

MANUFACTURER LICENSING AGREEMENT
FOR BUILDING PERFORMANCE INSTITUTE, INC. PRODUCT LISTING PROGRAM

THIS AGREEMENT is made between

Building Performance Institute, Inc.

(hereinafter "BPI")

having its principal place of business at
107 Hermes Road, Suite 210, Malta, New York, 12020

and

Southeast Energy Solutions, Inc.

(hereinafter "Manufacturer Licensee")

having its principal place of business at

100 Wyndpark Circle Lynchburg, VA 24502

WHEREAS, BPI is a body dedicated to setting high standards for on-going professional practice in the residential retrofit industry and licenses qualifying manufacturers, to use its Listing Mark; and

WHEREAS, use of the BPI Listing Mark symbolizes that parties have met BPI's standards of practice and specific product specifications; and

WHEREAS BPI has agreed to grant a non-exclusive license to the Manufacturer Licensee to use BPI's Listing Mark on the terms and conditions as set forth in this Agreement, once the Manufacturer Licensee has been approved;

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 **“Manufacturer Licensee”** is an entity that manufactures or sells products that has agreed to comply with the BPI product listing process (BPI having agreed to the manufacturer's use of same) in connection with the marketing of its products and has entered into a licensing agreement with BPI with respect to the use of the Listing Mark.

1.2 **“BPI Listing Program”** means collectively all of the documents and other products which provide the guidance and requirements for use of the Listing Mark.

1.3 **“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, being the date of signing of this Agreement by BPI, and shall continue until terminated by BPI and/or the Manufacturer Licensee in accordance with paragraph 7 hereof (the “Term”).

2.2 In consideration of the approval of Manufacturer Licensee as a Listed Manufacturer and subject to the terms and conditions of this Agreement, BPI hereby grants to the Manufacturer Licensee the non-exclusive right and license to use the Listing Mark during the Term for the materials which qualify under the BPI Product Listing Program.

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 BPI.

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 BPI (or its employees, agents or designates) under this Agreement, and for licensing purposes under or in connection with the BPI Product Listing Program, is true and correct to the best of its knowledge.

Proprietary to BPI

3.2 The Manufacturer Licensee acknowledges that it has been advised that the BPI Product Listing Program is a proprietary program of BPI, and it will not challenge such proprietary right during the Term or thereafter. The Manufacturer Licensee shall not use the BPI Product Listing Program (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 BPI Product Listing Program for any other

purposes nor may it, copy or distribute the BPI Product Listing Program documentation to third parties other than subsidiary companies, who have a need to know, without the prior, written consent of BPI. 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 BPI Product Listing Program for the duration of the Term.

3.4 The Manufacturer Licensee acknowledges and agrees that the BPI Listing (including without limitation, the materials, systems, programs, standards, requirements and methods relating thereto) may be amended from time to time by BPI, and BPI 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 manufacturer's section of the BPI Product Listing Program.

Quality Control (Products and Licensing Requirements)

3.5 The Manufacturer Licensee agrees that its license to use the Listing Mark may be suspended and/or terminated at the sole and unilateral discretion of BPI if the Manufacturer Licensee fails to maintain the quality and properties of the product as specified in the product specification for which the product has been granted listing by BPI.

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 BPI and/or the BPI Product Listing Program.

Legal and Regulatory Requirements

3.7 The Manufacturer Licensee shall be responsible for obtaining all licenses, permits, consents and approvals which are required for manufacturers of products by all applicable governmental or other regulatory authorities in any applicable jurisdiction. If and when requested by BPI, the Manufacturer Licensee shall provide BPI with copies of all such licenses, permits, consents, or approvals within a reasonable time.

3.8 The Manufacturer Licensee agrees to abide by all international, federal, state, and local laws or regulations applicable to the manufacture, transportation, storing, handling, and installation of materials and products, including without limitation all applicable health and safety regulations in all jurisdictions where product is manufactured, stored, transported, sold, or delivered.

4. Manufacturer Licensee's Use of Listing Mark

4.1 Subject to any requirements necessitated by complying with Paragraph 3.7 above, the Manufacturer Licensee agrees to use no other listing mark, icon or logo for the BPI Product Listing Program other than BPI's approved Listing Mark to identify it as a Manufacturer Licensee, or its product as listed by BPI. The Manufacturer Licensee will use the Listing Mark only in the manner expressly directed and approved by BPI and only in association with the marketing of products which have met BPI Product Listing Program requirements.

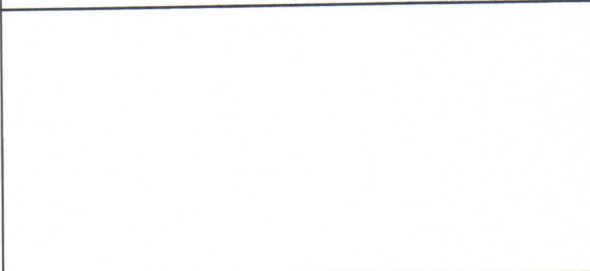
4.2 The Manufacturer Licensee may place the Listing Mark on packaging, literature, web pages and collateral materials that promote the specific product listed in BPI's product listing program. When the product appears together with other non-BPI listed products in the manufacturer's webpage, literature or collateral materials, the Listing Mark must be positioned adjacent to the specific product that is listed. It may not be positioned in a way that appears to reference any other product other than the specific product listed. The Listing Mark may not be placed on web pages, literature or other collateral material in such a way as to appear to endorse the Manufacturer's overall brand or company generally.


4.3 Specifications for Listing Mark Use

- The font to use for the text (trademark and taglines) is: Georgia, Bold
- The radius for border outlines on corner details should be ¼"
- The line thickness for graphic borders should be no less than ⅛" and no greater than ¼"
- The BPI seal should never be used separately from the text provided, except where specifically authorized by BPI in writing
- The registered trademark 'Building Performance Institute, Inc.' or 'BPI' may, however, be used separately from the Listing Mark in written material

Listing Mark Size, Colors and Sample

- The Listing Mark can be reproduced up to any maximum size. Any use of the Listing Mark on materials that will be printed or produced in a large format, such as billboards, should be reviewed by BPI, even if the item is based on a previously approved template or approval authority has been delegated.
- The Listing Mark may be reproduced down to a minimum size where the 'B' of 'BPI' inside the house in the seal should be no smaller than ⅛". See the illustration below:

Approved Listing Mark Colors		Sample BPI Listing Mark
Green	Gold	
Pantone: 3435C	Pantone: 1235C	
WEB: 004A2A	WEB: FFBA00	

R: 0	R: 255	
G: 74	G: 186	
B: 42	B: 0	

When the Listing Mark is placed next to other text or graphics, the mark should have a minimum of ¼" clearance from any object, text or edge all the way around. The Listing Mark may be placed against any background that does not interfere or reduce the quality or visibility of it.

BPI offers some variations in Listing Mark colors: black and white marks are available for use in black and white applications and full color marks are available for use with color applications.

4.4 The Manufacturer Licensee shall: (a) notify BPI in advance and in writing of its intent to use or distribute materials, documents, packaging, advertisements, and/or products that bear the Listing Mark; and (b) provide BPI with copies of same no less than 90 days prior to scheduled time of such use. BPI will respond to such submissions within 30 days from the date of submission whether the use is approved, denied, or correction is required. Should BPI reasonably object to any uses of the Listing Mark, the Manufacturer Licensee shall immediately cease use of same in accordance with BPI's demand. The Manufacturer Licensee will use the Listing Mark only in the manner authorized under this Agreement and only in association with BPI listed products.

4.5 No advertising by the Manufacturer Licensee shall contain any statement or material related to BPI which may, in the reasonable judgment of BPI, contain objectionable language, be in bad taste or be inconsistent with BPI's public presence as a professional organization that exercises high standards of safety, conduct, and professionalism in the residential energy upgrade industry.

4.6 The Manufacturer Licensee agrees not to use the Listing 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 authorized user of the Listing Mark. The Manufacturer Licensee further acknowledges that it has been advised that BPI's Listing Mark is the sole and exclusive property of BPI, 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 Listing Mark, including without limitation any amendments thereto or future marks forming part of the Listing 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 Listing Mark.

4.7 The Manufacturer Licensee agrees that any and all rights that may be acquired by the use of the Listing Mark by Manufacturer Licensee shall, where appropriate, inure to the benefit of BPI as licensor.

4.8 The Manufacturer Licensee agrees to forthwith for the term of the Agreement provide all necessary information and to execute all papers reasonably requested by BPI to affect the registration, maintenance or defense of the Listing Mark or to renew same.

4.9 The Manufacturer Licensee shall promptly notify BPI of any apparent or actual infringement or challenge to BPI's Listing Mark, and the Manufacturer Licensee will not communicate with any other person other than BPI, unless legally obliged to the contrary, in connection with any such infringement, challenge, or claim. The Manufacturer Licensee shall cooperate with BPI (and reasonably assist BPI, upon request) with respect to the prosecution of any litigation relating to such infringement or the challenging of the Listing Mark. BPI shall, in its sole discretion, make any and all decisions with respect to such litigation (or the settlement of any disputes) and BPI shall be solely entitled to any awards on account of such litigation. BPI 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 Listing 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 Listing 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 Listing Mark as BPI may from time to time, in its sole discretion, direct and communicate to the Manufacturer Licensee. The Manufacturer Licensee shall, when using the Listing Mark, so describe the Listing Mark to indicate clearly that it is owned and controlled by BPI 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 BPI is responsible or liable in any way for the obligations or responsibilities of the Manufacturer Licensee.

6. BPI's Obligations

6.1 Provided that the Manufacturer Licensee meets its obligations under this Agreement:

- a. BPI will provide the Manufacturer Licensee with a BPI Manufacturer Licensee Certificate, which will show the Manufacturer Licensee's product as meeting the requirements of the BPI Product Listing Program.
- b. Upon initial acceptance to the BPI Product Listing program, BPI will include the product/manufacture in a public announcement of new Manufacturer Licensees

- c. BPI will provide the Manufacturer Licensee with a digital version of the BPI Product Listing mark for web use, and another high resolution version for printed packaging and marketing materials
- d. BPI will list Manufacturer Licensee's product on the BPI product listing webpage
- e. BPI will promote the product listing webpage to consumers and contractors through a marketing campaign.
- f. Periodically, BPI will feature news and information in BPI's newsletter, *Performance Matters*, showcasing the product as used in a retrofit
- g. Periodically BPI will assist with promotion of a special offer from the manufacturer for BPI pros, (or feature a "behind the portal" special offer)

7. Breach and Termination

7.1 This Agreement may be terminated by the Manufacturer Licensee at any time by providing BPI with one month advance written notice of its intention to terminate this Agreement.

7.2 BPI may terminate this Agreement by providing one month advance written notice to the Manufacturer Licensee.

7.3 Without limiting the generality of the foregoing, BPI 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 product obligations under this Agreement or the applicable licensing standards under the BPI Product Listing Program and has failed to cure such product default or commences action to cure within 30 days of receipt of notice from BPI;
- 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 BPI.

7.4 Should BPI elect to suspend rather than terminate this Agreement, BPI shall give the Manufacturer Licensee an opportunity to cure its default. To that end, BPI 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, BPI may, in its sole discretion, terminate, this Agreement.

7.5 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 Listing Mark(s) and the BPI Product Listing Program, in any manner and for any purpose whatsoever;
- b. remove the Listing Mark(s) and any reference to the BPI Product Listing program from any and all materials, products, or systems including without limitation packaging, signs and advertisements, under its custody or control upon which the Listing Marks or reference to the BPI Program Listing Program appears.
- c. pay to BPI 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 BPI or the BPI Product Listing Program.

7.6 The Manufacturer Licensee agrees that the requirements set forth in paragraph 7 are reasonable and necessary to protect the integrity of the Listing 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 BPI, 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 BPI Product Listing Program in connection therewith. The Manufacturer Licensee shall defend and hold BPI, 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 Listing Mark or the use thereof by the Manufacturer Licensee.

8.2 Without limiting the generality of the foregoing, BPI shall not be obligated or liable to the Manufacturer Licensee for any injury or death of any person or damage to any property caused by or relating to the products 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 BPI, 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

BPI. 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 BPI and BPI 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 State of New York 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, BPI's address for the purpose of notice is: 107 Hermes Road, Suite 110, Malta, New York 12020; for the Manufacturer Licensee, it will be the address listed at the top of this document, unless BPI 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 The headings herein are inserted for convenience of reference only and do not affect the interpretation of any provision of this Agreement.

9.6 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.

9.7 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.

9.8 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 electronic signatures and will be binding on all parties hereto as if executed by original signature and delivered personally.

9.9 This Agreement shall inure to the benefit of and be binding upon BPI 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.

**BUILDING PERFORMANCE INSTITUTE,
INC.**

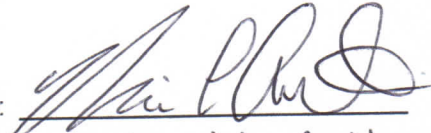
Southeast Energy Solutions, Inc.
"Manufacturer Licensee"

Signature: _____

Name: Bruce DeMaine

Title: Chief Operating Officer

Date: 4/7/17

Signature: 

Name: Michael L Arthur

Title: Owner

Date: 4/5/17