

MPI TESTING AND LISTING AGREEMENT

THIS MPI TESTING AND LISTING AGREEMENT (the “Agreement”) dated _____, 2018 (the “Effective Date”) is made by and between MASTER PAINTERS INSTITUTE LLC, having an office at 15835 Park Ten Place, Houston, Texas 77084, (“MPI”) and _____, having an office at _____ (“Applicant”).

1. RECITALS

WHEREAS:

A. MPI provides facilities for the testing of Applicant Products and prepares and publishes the MPI Approved Products List;

B. The Applicant wishes to engage MPI to conduct tests on its Applicant Products to determine whether such products meet or exceed the applicable MPI Standards such that they are MPI Approved Products, upon and subject to the terms and conditions of this Agreement; and

C. The Applicant wishes to have MPI list those products that are MPI Approved Products in the MPI Approved Products List, upon and subject to the terms and conditions of this Agreement:

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in herein, including the recitals above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties hereby agree as follows:

2. INTERPRETATION

2.1 Defined Terms. In this Agreement, the following terms have the following meanings:

- (a) “Applicant Product” means any product of the Applicant that is submitted for the product approval and listing process set out in this Agreement;
- (b) “Claim” means any claim, action, suit, litigation or arbitration arising out of or relating to an Applicant Product, an MPI Approved Product or an Applicant Mark;
- (c) “Digital Form” means disk, electronic display (such as on the Web Site), electronic download, compact disc or any other digital format known or unknown at this time;
- (d) “MPI Approved Products” means:
 - (i) those products of the Applicant that are listed in an MPI Approved Products List published by MPI prior to the date of this Agreement; and
 - (ii) in all other cases, those Applicant Products that, after completion of the test process in Article 3, meet or exceed the applicable MPI Standards;
- (e) “MPI Approved Products List” means MPI’s compilation publication of MPI Approved Products that is ordinarily printed and published in booklet form from time to time and that is produced and published in Digital Form, and updated from time to time, including being available on the Web Site for viewing by the general public;

- (f) “MPI Representative” means a person designated as such by MPI from time to time;
- (g) “MPI Standards” means the MPI Product Standards published and updated by MPI from time to time, being the standards used to determine whether an Applicant Product is an MPI Approved Product for the purposes of this Agreement;
- (h) “MPI Technical Committee” means the committee comprised of MPI personnel, industry representatives, and others designated by MPI from time to time; and
- (i) “Web Site” means the internet web site “www.paintinfo.com” or such other web site(s) maintained by MPI from time to time.

2.2 Headings and Division. The headings used herein and the division of this Agreement into Articles, Sections and Subsections are for convenience of reference only and will not affect the interpretation hereof.

2.3 Severability. If any provision of this Agreement is held to be unenforceable, then such provision will be deleted from this Agreement and the remaining provisions will continue in full force and effect. The parties will in good faith negotiate a mutually acceptable and enforceable substitute for the unenforceable provision, which substitute will be as consistent as possible with the original intent of the parties.

2.4 Governing Law; Jurisdiction. This Agreement will in all respects be governed exclusively by and construed solely in accordance with the laws of the State of Texas, without regard to any choice of law that would otherwise require the application of the laws of another jurisdiction. Any dispute, claim, or cause of action arising out of or related to this Agreement shall be brought in the state or federal courts located in Houston, Texas. Notwithstanding the foregoing, either party may seek judicial injunctive relief with respect to any matter relating to this Agreement in any court of competent jurisdiction. Further, either party may enforce a judgement or award in any court of competent jurisdiction.

2.5 Entire Agreement. With respect to the subject matter hereof, this Agreement and the documents and instruments referred to herein constitute the entire agreement between the parties and supersede all prior understandings and communications between the parties, oral or written.

2.6 Currency. All dollar amounts referred to in this Agreement are in United States funds.

3. TESTING PROCEDURE

3.1 Applications. For each Applicant Product that the Applicant wishes to have tested by MPI under this Agreement, the Applicant must obtain from the Web Site and complete an Intended Use Application Form, Evaluated Performance Application Form or a Detailed Performance Application Form, as applicable. For each Applicant Product, the Applicant must submit to MPI the applicable Testing Fees together with the following materials (collectively the “Application Materials”):

- (a) completed application form;
- (b) completed technical data sheet, material safety data sheet and product label;
- (c) test samples, if applicable;

- (d) name, position title, address, phone number, fax number and email address of the contact person of the Applicant;
 - (e) Manufacturer Survey, in the form posted on the Web Site from time to time;
 - (f) written confirmation that the sample(s) of the Applicant Product, if any, submitted for testing is composed of the same materials as the Applicant's product offered for sale in the commercial market; and
 - (g) any other data or information specified on the Web Site from time to time or otherwise requested by MPI in order to complete the testing of that Applicant Product pursuant to the terms of this Agreement.
- 3.2 Testing. Upon receipt of the Application Materials for an Applicant Product and the applicable Testing Fees, MPI will test that product to determine if it meets the applicable MPI Standard.
- 3.3 Test Results. Upon completion of the test on an Applicant Product, MPI will provide a written report ("Test Report") to the Applicant stating:
- (a) whether the Applicant Product is an MPI Approved Product;
 - (b) if the Applicant Product is an MPI Approved Product, the MPI product number assigned to it; and
 - (c) if the Applicant Product is not an MPI Approved Product, a reasonable description of the reason(s) why the Applicant Product failed to meet the applicable MPI Standard.
- 3.4 Appeal Process. If the Applicant disputes a failing result on a Test Report, then the Applicant will have the right to request a reconsideration of the test results in accordance with the following procedure:
- (a) within 30 days after receipt of a Test Report, the Applicant must submit to MPI a written request for reconsideration of the initial test results (a "Reconsideration Request"), including a detailed description of the reasons for the reconsideration with specific reference to the applicable provisions in the MPI Standard(s) used for that test, together with the applicable Retesting Fees;
 - (b) if the Applicant does not submit a Reconsideration Request within the 30 day period, then the Applicant will have no further right to make a Reconsideration Request with respect to that Test Report and the Applicant Product will not be an MPI Approved Product, provided that the Applicant will have the right to resubmit that product for further tests at a later date so long as the Applicant pays the applicable Testing Fees and can demonstrate to the satisfaction of MPI that the technical data or composition of that product has been modified from the technical data or composition used for the initial test of that product;
 - (c) upon receipt of a Reconsideration Request and the applicable Retesting Fees, the MPI Representative will review that request and will advise the Applicant in writing on whether the request is accepted or denied;

- (d) if the Reconsideration Request is accepted by the MPI Representative, then the relevant testing or review will be repeated and MPI will issue a report in accordance with Section 3.3 advising if the Applicant Product is now an MPI Approved Product;
- (e) if the Reconsideration Request is denied, the Applicant will have 7 days from the denial to appeal the decision of the MPI Representative to the MPI Chief Operations Officer by delivering a written notice to MPI requesting such appeal;
- (f) if the appeal of the Reconsideration Request is accepted by the MPI Chief Operations Officer, the applicable testing or review will be repeated and MPI will issue a report in accordance with Section 3.3 advising if the Applicant Product is now an MPI Approved Product;
- (g) if the appeal of the Reconsideration Request is denied by the MPI Chief Operations Officer, the Applicant will have 7 days from the denial in which to appeal that decision to the MPI Review Board (as constituted from time to time) by delivering a written notice to MPI requesting such appeal;
- (h) if the appeal is accepted by the MPI Review Board, the applicable testing or review will be repeated and MPI will issue a report in accordance with Section 3.3 advising if the Applicant Product is now an MPI Approved Product; and/or
- (i) if the appeal is denied, then the Applicant Product will not be an MPI Approved Product, and the decision of the MPI Review Board will be final and binding on the Applicant and MPI, provided that the Applicant will have the right to resubmit that product for further tests at a later date so long as the Applicant pays the applicable Testing Fees and can demonstrate to the satisfaction of MPI that the technical data or composition of that product has been modified from the technical data or composition used for the initial test of that product.

3.5 Testing Fees. From time to time MPI will set the applicable fees and expenses (“Testing Fees”) for the testing and/or re-testing of each Applicant Product and, if applicable, the applicable fees and expenses (“Retesting Fees”) for any Reconsideration Request, and any appeals therefrom, relating to an Applicant Product. The Applicant agrees to pay such fees when due and understands and agrees that MPI has no obligation to commence the testing or re-testing process or consider a Reconsideration Request or an appeal therefrom until the Applicant has paid the applicable Testing Fees and Retesting Fees in full.

3.6 Restriction. The Applicant acknowledges and agrees that:

- (a) it has no right to market, promote, distribute or otherwise publicize, make known or dispose of any MPI Approved Product as being approved or certified by MPI except pursuant to the terms of this Agreement and/or the terms of a separate Certification Mark License Agreement entered into between the Applicant and MPI; and
- (b) approval of an Applicant Product under this Agreement is based solely on the MPI Standard applicable to that product in effect at the time the testing is conducted and that if that MPI Standard changes at any time after the approval date for that Applicant Product as an MPI Approved Product, then that product may no longer meet the MPI Standard, in which case it will no longer be an MPI Approved Product.

3.7 Ownership. Upon delivery to MPI, all Application Materials become the property of MPI and will not be returned to the Applicant.

4. LISTING IN MPI APPROVED PRODUCTS LIST

4.1 Eligibility. Upon an Applicant Product becoming an MPI Approved Product, that product will be eligible for listing in the MPI Approved Products List.

4.2 Listing Requirements. If the Applicant wishes to have an MPI Approved Product listed in the MPI Approved Products List, then it must submit to MPI the applicable documents listed under the heading “Listing Procedures” on the Web Site from time to time (collectively, the “Listing Documents”) plus the VOC Reconfirmation Report required by Section 4.3, together with the applicable Listing Fee. The Listing Documents will vary depending on the type of listing being requested by the Applicant. MPI reserves the right to vary or revise the Listing Documents from time to time without advance notice.

4.3 VOC Reconfirmation Report. Upon request by MPI from time to time, the Applicant must submit to MPI a written report (the “VOC Reconfirmation Report”) specifying the Volatile Organic Compounds (“VOC”) range for that MPI Approved Product, together with any other information required to meet the requirements or standards of any regulatory agency included in the MPI Approved Products List. If the Applicant fails to provide this information to MPI for an MPI Approved Product, then MPI will not include that information for that MPI Approved Product in the next printed publication of the MPI Approved Products List and MPI will have the right to remove the VOC range information immediately from any Digital Form of the MPI Approved Products List. The Applicant acknowledges that MPI attempts to limit its requests for a VOC Reconfirmation Report for each MPI Approved Product to one in each calendar year.

4.4 Review. Upon receipt, MPI will review the Listing Documents and, if in order, MPI will include a description of that MPI Approved Product (the “Approved Product Description”) in the next printed edition of the MPI Approved Products List and, within a reasonable time after the approval date, will include that Approved Product Description in the Digital Form of the MPI Approved Products List. If MPI determines that there is a defect in the Listing Documents, then it will advise the Applicant and provide reasonable description of the defect.

4.5 Acknowledgements by Applicant. The Applicant acknowledges and agrees that:

- (a) it will ensure that all of its MPI Approved Products are and will remain in compliance with the applicable MPI Standards;
- (b) the text of the Approved Product Description will be determined by MPI in its sole discretion and MPI may amend the Approved Product Description from time to time without notice to or approval by the Applicant;
- (c) each Approved Product Description will be listed under the category (or categories) (each an “Approved Category”) relating to the MPI Standard used to test and approve that product under Article 3 of this Agreement;
- (d) the Applicant will not market, promote, distribute or otherwise publicize, make known or dispose of any Applicant Product as an MPI Approved Product other than under the applicable Approved Category;

- (e) all component materials forming part of an MPI Approved Product must remain the same as the materials forming part of that product when submitted for testing as an Applicant Product and, if requested by an MPI Representative, the Applicant will provide evidence satisfactory to MPI that the MPI Approved Product continues to meet the MPI Standard used in the applicable tests under Article 3 prior to the first delivery of that product for commercial distribution;
- (f) the MPI Approved Products List is intended only as a guide to users of that list and MPI does not make, and Applicant does not receive, any representation, warranty or condition that the listing of an Applicant Product as an MPI Approved Product in the MPI Approved Products List provides any greater validity or benefit than commercial products not listed in the MPI Approved Products List;
- (g) the MPI Approved Products List is intended for use in conjunction with chapters 2, 3 and 4 of the MPI Architectural Painting Specification Manual and of the MPI Maintenance Repainting Manual; and
- (h) for so long as an Applicant Product remains an MPI Approved Product, MPI will continue to include that product in the MPI Approved Products List upon payment of the applicable Listing Fees.

4.6 Listing Fees. The Applicant agrees to pay the applicable annual listing fees in effect from time to time (the “Listing Fees”) in accordance with Section 4.2. MPI reserves the right to increase the Listing Fees from time to time, provided that MPI will only increase the Listing Fees once in each calendar year.

4.7 Removal and Reinstatement on MPI Approved Products List.

- (a) If an Applicant Product ceases to be an MPI Approved Product for any reason, then: (i) the Applicant will not be entitled to a refund or credit of any fees paid to MPI with respect to that product, and (ii) MPI will have the right, without any requirement to give prior notice to the Applicant, to remove that product from future print versions of the MPI Approved Products List and to immediately modify any Digital Form of the MPI Approved Products List to reflect the status of that product.
- (b) If the Applicant fails to pay the applicable Listing Fees in full by the date specified by MPI from time to time, then MPI will have the right, without any requirement to give prior notice to the Applicant, to remove that product from future print versions of the MPI Approved Products List and to immediately modify any Digital Form of the MPI Approved Products List to reflect the status of that product.
- (c) If MPI takes any action under Subsection 4.7(a) or (b) to remove an Applicant Product from a print version of the MPI Approved Products List (or to modify a Digital Form of the MPI Approved Products List to change the status of that product) and if the Applicant wishes to have that product reinstated on the MPI Approved Products List (or to have a further change to the status of that product reflected in the Digital Form of the MPI Approved Products List, as applicable), then the Applicant must submit a request for reinstatement to MPI, together with any outstanding Listing Fees and any other fees then due. At the option of MPI, the Applicant must submit the product that is the subject of the reinstatement request for testing and approval pursuant to Article 3.

4.8 Confirmation Testing.

- (a) For so long as an Applicant Product is an MPI Approved Product, MPI will have the right to conduct periodic confirmation tests of that MPI Approved Product to confirm that the product continues to meet the applicable MPI Standard. Upon demand by MPI, the Applicant will immediately deliver to MPI or an MPI Representative, without charge, product samples for confirmation testing pursuant to this Section. MPI attempts to minimize the need for such samples.
- (b) The Applicant will pay for MPI's fees and expenses for each such confirmation test, which will be charged at the applicable fees then in effect.
- (c) Prior to conducting any confirmation test, MPI will notify the Applicant in writing of the name of the MPI Approved Product to be tested and the approximate test date. The Applicant will have the right to withdraw the MPI Approved Product from the MPI Approved Products List by giving notice of such withdrawal to MPI not less than 3 business days before the scheduled test date, in which event MPI will not conduct the confirmation test, the applicable product will cease to be an MPI Approved Product and the provisions of Subsection 4.7(a) and (c) will apply with respect to that product.
- (d) On or about the test date, MPI will conduct one or more confirmation tests on that product to determine if it continues to meet the applicable MPI Standard.
- (e) Upon completion of the confirmation test(s) on the MPI Approved Product, MPI will provide a written report to the Applicant stating:
 - (i) whether the product continues to be an MPI Approved Product; and
 - (ii) if the product no longer qualifies as an MPI Applicant Product, a reasonable description of the reason(s) why the Applicant Product failed to meet the applicable MPI Standard.
- (f) If the product no longer qualifies as an MPI Approved Product, then the Applicant will have the right to appeal that decision, and the provisions of Section 3.4, with all necessary changes, will apply to such appeal process.

4.9 Inspection Right.

- (a) MPI may perform unannounced inspections of the Applicant's product production facilities in order to determine the Applicant's compliance with the production of the MPI Approved Products in accordance with the applicable MPI Standard(s). Any such inspection may be conducted in conjunction with the confirmation testing of an MPI Approved Product pursuant to Section 4.8. Where advance notice is required for reasons of security or co-ordination purposes, MPI will give consideration to written requests where the Applicant has provided reasonable justification for such advance notice. The Applicant will pay for MPI's reasonable costs in conducting each inspection.
- (b) Any MPI Representative will have, at all times during normal business hours, free access to any premises of the Applicant where MPI Approved Products may be designed, manufactured, tested or stored and will receive the full co-operation of the Applicant's staff to facilitate the inspection as required by this Agreement and the MPI Standards. MPI

Representatives will not be required to sign any waiver or agreement as a condition of entry to the Applicant's facilities. Any document executed contrary to this provision will be without force or effect.

- 4.10 Grant of License. If the Approved Product Description for any MPI Approved Product contains a trade-mark or trade-name of the Applicant, whether registered or unregistered (collectively, the "Applicant Marks"), then the Applicant hereby grants to MPI a restricted, non-exclusive, non-transferable, worldwide, royalty free license to use the Applicant Marks in both printed form and Digital Form solely in connection with the MPI Approved Products List. MPI acknowledges that the Applicant is the owner of the Applicant Marks. MPI will not at any time claim any title, interest or right in or to the Applicant Marks, except for the rights expressly granted to it under this Agreement. MPI acknowledges that any and all goodwill associated with the Applicant Marks, including any goodwill arising out of MPI's use of the Applicant Marks in the MPI Approved Products List will endure exclusively to the benefit of the Applicant. MPI will not at any time directly or indirectly contest or aid in contesting the validity or ownership of the Applicant Marks.

5. CONFIDENTIALITY

- 5.1 Confidentiality. MPI shall not voluntarily disclose to third parties any of Applicant's confidential information that constitutes a "trade secret" (as defined in Sec. 134A.002(6) of the Texas Uniform Trade Secrets Act), unless such information is:

- (a) now or hereafter in the public domain;
- (b) known or in the possession of MPI prior to its receipt from the Applicant;
- (c) acquired by MPI from a third party other than the Applicant who, to the knowledge of MPI, does not thereby breach an obligation of confidence to the Applicant;
- (d) required to be disclosed or released pursuant to a valid court order or other judicial process or any applicable law or regulation; or
- (e) approved for release in writing by Applicant.

- 5.2 Exception. Notwithstanding Section 5.1, MPI may disclose to the public any information received from the Applicant if MPI determines in its sole discretion that such disclosure is necessary to prevent, mitigate, or ameliorate an injury to persons or property. In specific cases where information is requested by a government or regulatory authority or by a court order (or similar process), MPI will advise the Applicant of such request prior to any such disclosure.

6. REPRESENTATIONS, WARRANTIES AND LIMITATION ON LIABILITY

- 6.1 Representations and Warranties – Applicant. The Applicant hereby represents and warrants to MPI as follows, with the intent that MPI will rely thereon in entering into this Agreement, testing the Applicant's Applicant Products and listing the Applicant's MPI Approved Products, if any, in the MPI Approved Products List:

- (a) the Applicant has all necessary right and authority to submit its Applicant Product(s) to MPI for testing under the terms of this Agreement;

- (b) each Applicant Product submitted by the Applicant under this Agreement complies in all material respects with all applicable federal, provincial, state, municipal or district laws, statutes, regulations, ordinances, orders, authorizations, approvals, permits, directives or other requirements of any governmental authority, court, tribunal or other similar body relating to environmental or health or safety matters;
- (c) with respect to each Applicant Mark, if any, licensed to MPI under the terms of this Agreement, the Applicant has all necessary right and authority to grant such license to MPI for the uses set forth in Section 4.9;
- (d) the use of the Applicant Marks by MPI in the manner set forth in Section 4.9 does not infringe upon or violate any intellectual property or other proprietary rights of any third party;
- (e) the Applicant will use due care to ensure that any written materials submitted to MPI are complete and accurate;
- (f) the Applicant will promptly notify MPI in writing if any written materials provided to MPI are materially inaccurate or incomplete; and
- (g) the Applicant has and will have throughout the term of this Agreement the ability to access the Web Site and the Applicant has personnel that are familiar with and reasonably skilled in the navigation of Internet web sites and the retrieval of information and data therefrom.

6.2 Representations and Warranties – MPI. MPI hereby represents and warrants to the Applicant that MPI will use reasonable commercial efforts to conduct the testing of Applicant Products and any confirmation testing of MPI Approved Products in the manner set forth in this Agreement and using qualified personnel.

6.3 DISCLAIMER OF WARRANTY. The foregoing representation and warranty, together with any other representations and warranties by MPI expressly set forth in this Agreement, is exclusive and is in lieu of all other representations, warranties or conditions, express or implied, concerning the subject-matter of this Agreement, including any representation, warranty or condition in the Application Materials, the Listing Documents, or the Web Site, and MPI hereby disclaims, and the Applicant hereby releases MPI from, any other representation, warranty or condition which might be implied or incorporated herein or therein, whether by statute, regulation, common law, equity or otherwise. **MPI EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR FROM THE COURSE OF DEALING OR USAGE OF TRADE. ALL PRODUCTS AND SERVICES PROVIDED BY MPI HEREUNDER ARE PROVIDED “AS-IS”.**

6.4 Exclusion of Indirect and Similar Damages. In no event will MPI be liable to the Applicant for any incidental, indirect, special or consequential damages, or for any damages for loss of use, revenues, profits or savings for any matter whatsoever, even if MPI knew or should have known of the possibility or likelihood of such damages.

6.5 Direct Damages. The entire liability of MPI to the Applicant for any loss, liability or damage, including the reasonable professional costs and expenses and all interest charges incurred in connection therewith, whether under this Agreement or otherwise and regardless of the form of action or theory of liability will not exceed, for each MPI Approved Product, an amount equal to:

- (a) for any Claim relating to the testing process or any appeals therefrom, the Testing Fees and Restesting Fees with respect to that MPI Approved Product actually paid to MPI under this Agreement;
- (b) for any Claim relating to the MPI Approved Products List, the Listing Fees for that MPI Approved Product actually paid to MPI under this Agreement; and
- (c) for any Claim relating to any other matter, the sum of US\$100.

6.6 Indemnity by Applicant. The Applicant hereby covenants and agrees to defend, indemnify and hold harmless MPI, its shareholders, directors, officers, employees, and assigns from and against any and all claims, demands, and causes of action for any loss, liability or damage, including the reasonable attorney's fees, expenses, and court costs, and all interest charges incurred in connection therewith, **REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON THE ACTUAL OR ALLEGED NEGLIGENCE OF MPI,** resulting from or arising out of:

- (a) any breach by the Applicant of any term of this Agreement;
- (b) any misrepresentation or breach of any warranty on the part of the Applicant contained in this Agreement; or
- (c) the possession or use by MPI of any Applicant Mark.

7. TERM AND TERMINATION

7.1 Term. The term of this Agreement will commence on the Effective Date and will continue in effect until December 31 of the current calendar year (the "Term"). At the end of the Term, this Agreement will renew automatically for successive periods of one calendar year (each such renewal term is called a "Renewal Period") on the terms and conditions in effect at the end of the Term or preceding Renewal Period (as the case may be), unless terminated in accordance with this Article.

7.2 Termination by Applicant Without Cause. The Applicant will have the right to terminate this Agreement at any time upon giving not less than 30 days written notice to MPI.

7.3 Termination by MPI Without Cause. MPI will have the right to terminate this Agreement at any time upon giving not less than 30 days written notice to the Applicant in the event that MPI discontinues the testing of Applicant Products or the publication of the MPI Approved Products List, whether in printed form or Digital Form.

7.4 Termination by MPI For Cause. MPI will have the right to terminate this Agreement immediately upon written notice to the Applicant:

- (a) if the Applicant fails to pay any amount owing under this Agreement when due; or
- (b) if the Applicant commits a material breach of any representation, warranty or covenant on its part under this Agreement (other than pursuant to Subsection 7.4(a)) that is not remedied to the satisfaction of MPI acting reasonably within 20 days after written notice to the Applicant describing the breach in reasonable detail.

- 7.5 Obligations Upon Termination. In addition to any other obligations of the parties upon termination specified in this Agreement, upon any termination of this Agreement:
- (a) unless such termination was by MPI pursuant to Section 7.3 or 7.4, MPI will maintain the listing of all MPI Approved Products in the MPI Approved Products List for the period for which the Applicant has paid the applicable Listing Fees, and thereafter MPI will cease to list the MPI Approved Products in the MPI Approved Products List;
 - (b) if such termination was by MPI pursuant to Section 7.3 or 7.4, then MPI will cease to list the MPI Approved Products in the MPI Approved Products List immediately; and
 - (c) each party will other cooperate with the other in effecting an orderly wind-up under this Agreement.
- 7.6 Survival. The provisions of Articles 2, 5, 6 and of Sections 8.4, 8.5, 8.7 and 8.8 and of this Section will survive any termination of this Agreement.
8. MISCELLANEOUS PROVISIONS
- 8.1 Changes of Record. The Applicant will immediately notify MPI when any change is made in the name or address of the Applicant. If an assessment of facilities and/or personnel was a requirement for the determination of an Applicant Product as an MPI Approved Product under this Agreement, then upon any change of such facilities or personnel, MPI may require that the Applicant submit that product for confirmation testing pursuant to the terms hereof.
- 8.2 Further Assurances. Each of the parties will from time to time promptly and duly execute and deliver all documents and take such action as may be necessary or desirable in order to effectively carry out the intent and purposes of this Agreement, to protect the interests of the parties and to establish, protect and perfect the rights, remedies and interests granted or intended to be granted hereunder.
- 8.3 Time of the Essence. Time is of the essence for all payment obligations under this Agreement.
- 8.4 No Waiver. The failure of either party to insist upon strict performance of any of the terms and conditions herein will not be deemed a waiver of any rights or remedies that either party has and will not be deemed a waiver of any subsequent default of the terms and conditions hereof.
- 8.5 No Third Party Rights. Nothing contained in this Agreement will or is intended to create or will be construed to create any right in or any duty or obligation by either party to any third party. There are no third party beneficiaries of this Agreement.
- 8.6 Amendment. Except as otherwise provided herein, no provision of this Agreement may be changed, modified or amended from time to time unless with the express written agreement of the parties executed by their authorized representatives. Notwithstanding the foregoing, MPI will have the right to amend or replace the information and material provided on the Web Site, including application forms, Listing Documents and fees payable under this Agreement without the consent of the Applicant.

8.7 Assignment.

- (a) The Applicant will have no right to assign or transfer (whether directly or indirectly by way of a change of control of the Applicant) any of its interest in all or any part of this Agreement, whether gratuitously or for consideration, without the prior written consent of MPI.
- (b) MPI will have the right at any time to assign all or any part of this Agreement to any third party, provided that MPI will remain primarily responsible for the performance of all of its obligations under this Agreement.

8.8 Notices. Any notice permitted or required under this Agreement must be in writing. Any such notice will be deemed delivered: (a) on the day of delivery in person; (b) one day after deposit with an overnight courier, fully prepaid; (c) on the date sent by facsimile transmission; or (d) on the date sent by e-mail, if confirmed by first-class mail, properly posted, or by facsimile transmission; to the address or fax number to whom it is directed set forth below:

if to MPI:

Master Painters Institute LLC
15835 Park Ten Place
Houston, TX 77084 USA

Attention: Helena Seelinger
Fax no.: 281-228-6300
E-mail: contracts@mpi.net

if to the Applicant:

Attention: _____
Fax no.: _____
E-mail: _____

or at such other reasonable address or fax number at which personal delivery may be effected of which a party may from time to time give notice in accordance with this Section.

8.9 Inurement. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and assigns.

8.10 Counterparts. This Agreement may be executed in counterpart, each of which, when so executed, will be deemed to be an original copy hereof, and all such counterparts together will constitute but one single agreement. Either party may deliver a counterpart signature page by facsimile transmission.

9. AUTHORITY

9.1 Each party confirms that it has read this Agreement and that it agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

MASTER PAINTERS INSTITUTE LLC:

APPLICANT:

By: _____
Authorized Signatory

By: _____
Authorized Signatory

Printed Name: Keenan Loubser

Printed Name: _____

Title: Chief Operating Officer

Title: _____