


<b>EIFS Quality Assurance Program Inc.</b> 	Ref./Title <b>EQI Manufacturer Licensing Agreement First Edition</b> Document No. <b>200-27 Rev 0</b>	
	Date Issued: March 9, 2009	Revision Date:

**THIS AGREEMENT is made with effect as of [enter date] (the "Effective Date").**

BETWEEN

**EIFS QUALITY ASSURANCE PROGRAM, INC.**

(“EQI”)

and

**MANUFACTURER** \_\_\_\_\_

**Address** \_\_\_\_\_

(“Manufacturer Licensee”)

**WHEREAS** EQI is a body dedicated to setting high standards for on-going professional practice in the exterior insulation finish system (EIFS) industry through the Quality Assurance Program (QAP) and licenses qualifying manufacturers, contractors, mechanics and auditors to use its Certification Mark. Use of the Certification Mark by a Manufacturer Licensee symbolizes that such parties have met EQI's standards of practice and regulation;

**AND WHEREAS** EQI has agreed to grant a non-exclusive license to the Manufacturer 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 **“Certification Mark”** means any trademark(s) or certification mark(s) used, applied for or registered by EQI in accordance with the provisions of the Trademarks Act of Canada (or similar or successor legislation) which EQI expressly confirms in writing to the Manufacturer Licensee as falling within the definition of Certification Mark under this Agreement. The Certification Mark includes "EIFS Quality Assurance Program Inc. & Design", Application No. TMA683,873 set forth in Schedule "A" hereto and any subsequent registration thereof, unless EQI advises the Manufacturer Licensee to the contrary.



- 1.2 **“Agreement”** All other definitions that are applicable to this agreement are found in the QAP program manual, that may be amended as directed by EQI from time to time. A copy of the QAP Manual is set forth in Schedule “B” as an exhibit to this Agreement and is incorporated by reference.
- 1.3 **"Term"** has the meaning set forth in paragraph 2.1 below.
- 1.4 1.4 **“Effective Date”** is when the Manufacturer Licensee has successfully completed the licensing process, as outlined in the Quality Assurance Program manual.

## 2. GRANT AND TERM

- 2.1 This Agreement shall commence on the effective date and shall continue until terminated by the parties in accordance with paragraph 7 hereof (the "term").
- 2.2 Subject to the provisions of this Agreement and as long as the Manufacturer Licensee is not in default hereunder, EQI hereby grants to the Manufacturer 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.
- 2.3 The Manufacturer Licensee shall not be entitled to sub-license to third parties any of its rights or obligations under this Agreement.
- 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 given to EQI (or its employees, agents or designates) under this Agreement or in connection with the QAP, is true and correct, and acknowledges and agrees that EQI is relying on such representations and warranties in entering into this Agreement.

### Adoption of QAP

- 3.2 Subject to the terms and conditions set out herein, the Manufacturer Licensee hereby agrees that it shall comply with the relevant requirements of the QAP.
- 3.3 The Manufacturer Licensee acknowledges and agrees that the QAP is a proprietary program of EQI.



### **Compliance with Obligations**

3.4 During the Term of this Agreement, the Manufacturer Licensee agrees that it shall pay a set manufacturer licensing fee on a yearly basis without pro-ration, as set by EQI, notice of same being mailed to all Manufacturer Licensee annually.

3.5 The Manufacturer Licensee shall, at all times during the Term, comply with all standards, specifications and requirements necessary to meet the then-current licensing requirements for Licensed Manufacturers under the QAP. The Manufacturer Licensee acknowledges and agrees that the QAP (including without limitation, the systems, programs, standards, requirements and methods relating thereto) may be amended from time to time, and EQI shall provide the Manufacturer Licensee with notice in writing of any such amendments. The Manufacturer Licensee shall forthwith comply with any such amendments.

### **Quality Control**

3.6 The Manufacturer Licensee shall provide EQI with a list of any and all of Manufacturer Licensee's systems, together with a declaration that such systems meet the requirements of Section 6 of the QAP program manual.

3.7 In accordance with Section 6.9 of the QAP Manual, the Manufacturer Licensee shall offer a minimum five- year warranty on the evaluated systems. EQI shall be provided with a copy of the Manufacturer Licensee's standard warranty for all of Manufacturer Licensee's evaluated systems during the Term.

3.8 In accordance with Section 6.8 of the QAP Manual, the Manufacturer Licensee shall be subject to an audit by EQI once a year. All information stemming from the audit shall remain confidential and EQI shall not disclose any information other than to the Manufacturer Licensee being audited.

3.9 The parties acknowledge that EQI will not be responsible in any way for carrying out independent testing of products or the independent verification of results or other information relating to the Manufacturer Licensee or its products.

3.10 The Manufacturer Licensee shall provide system information, system limitations and installation instructions to the Licensed Contractors, Licensed Mechanics and to EQI in accordance with the QAP Manual. The Manufacturer Licensee shall put in place policies, procedures and processes sufficient to answer questions from Licensed Contractors, Licensed Mechanics and the public concerning its Evaluated Systems, and to administer and to investigate complaints.



**4. MANUFACTURER LICENSEE’S USE OF CERTIFICATION MARK**

4.1 During the Term, the Manufacturer Licensee agrees to use, within a reasonable timeline, the Certification Mark on advertisements, promotional materials, products and packaging solely with respect to materials and/or products that are components of evaluated systems, such use to be in accordance with the terms and conditions of this Agreement. The Certification Mark shall be used solely to identify the the evaluated systems as licensed under the QAP and for no other purpose.

4.2 The Manufacturer Licensee shall provide EQI with sample copies of all materials, documents, packaging, advertisements and otherwise bearing the Certification Mark, in advance of any use or distribution of same. EQI shall provide comments, if any, within ten business days following submission by Manufacturer Licensee of such sample materials for review. If no response is received from EQI, such failure of EQI to comment shall be interpreted as consent for such use. Should EQI object to any uses of the Certification Mark, the Manufacturer Licensee shall immediately cease use of same in accordance with EQI's demand. The Manufacturer Licensee will use the Certification Mark only in the manner authorized under this Agreement and only in association with evaluated systems.

4.3 The Manufacturer Licensee agrees not to use the Certification Mark in any manner calculated to represent that the Manufacturer Licensee is the owner of such mark or that the Manufacturer Licensee is anything other than a licensed user of the mark. The Manufacturer Licensee further acknowledges that the Certification Mark is the sole and exclusive property of EQI, 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 counsel or procure or assist anyone else to do the same, directly or indirectly. The Manufacturer Licensee will use the Certification Mark only in the manner authorized under this Agreement and only in association with evaluated systems.

4.4 The Manufacturer Licensee agrees that any and all rights that may be acquired by the use of the Certification Mark by Licensee shall enure to the sole benefit of EQI as licensor.

4.5 During the term, the Manufacturer Licensee agrees to forthwith provide all necessary information and to execute all papers reasonably requested by EQI to affect the registration, maintenance or defense of the Certification Mark or to renew same. This obligation shall survive any termination or expiration of this Agreement.



4.6 The Manufacturer Licensee shall immediately notify EQI of any apparent infringement or challenge to EQI's Certification Mark. The Manufacturer Licensee shall cooperate and assist EQI upon reasonable request (not including financial) with respect to the prosecution of any litigation relating to such infringement or the challenging of the Certification Mark. EQI shall, in its discretion, make any and all decisions with respect to such litigation (or the settlement of any disputes) and EQI shall be solely entitled to any awards that may result on account of such litigation or settlement.

## **5. OWNERSHIP AND MARKING**

5.1 The Manufacturer Licensee acquires no right, title or interest in or to the Certification Marks 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 EQI may from time to time, in its sole discretion, direct and communicate to the Manufacturer Licensee. Manufacturer Licensee shall, when using the Certification Mark, so describe the Certification Mark to indicate clearly that the Certification Mark is owned by EQI and that it is being used by the Manufacturer Licensee under licence.

5.2 The Manufacturer Licensee shall ensure that no cheques, letterhead, contractual documents, or writings of any nature, directly or indirectly state that EQI is responsible or liable in any way for the obligations or responsibilities of the Manufacturer Licensee.

## **6. EQI'S OBLIGATIONS**

6.1 EQI shall fulfill all of its obligations as set forth in the QAP Manual during the Term. These include, but are not limited to providing continuing education opportunities and updates to the QAP Manual to design professionals, certifying technical representatives of the Manufacturer Licensee according to the technical representative certification scheme, conducting annual audits, reviewing requests for reinstatement following suspension or cancellation of licenses, investigating the merits of requests for review, and appointing independent commissioners upon receipt of a notice of appeal.

6.2 Provided that the Manufacturer Licensee has fulfilled all of the pre-licensing requirements set forth in Section 6.5.2.1 of the QAP Manual, EQI will provide the Manufacturer Licensee with a certificate that indicates that systems manufactured by the Manufacturer Licensee have been tested and meet all the requirements of section 6.0 of the QAP program manual and that technical representatives of the Manufacturer Licensee have been certified according to the technical representative certification scheme with EQI.

6.3 Provided that the Manufacturer Licensee continues to fulfill all of the requirements after obtaining the license set forth in Section 6.5.2.2 of the QAP Manual and all fees have been paid, EQI will annually renew the certificate



6.4 EQI shall respond to any and all inquiries from Licensed Contractors, Licensed Mechanics and the public and inform them that the Manufacturer Licensee is in good standing during the Term.

## 7. BREACH AND TERMINATION

7.1 This Agreement may be terminated by the Manufacturer Licensee at any time by providing EQI with four (4) months advance written notice of its intention to terminate its participation in the QAP.

7.2 EQI may suspend or cancel the license of a Manufacturer Licensee that ceases to meet the requirements of the QAP Manual. The reasons for suspension or cancellation shall be clearly communicated to the Manufacturer Licensee. The license may, in the sole and absolute discretion of EQI, be suspended or cancelled for not meeting the requirements of the QAP, violating this Agreement or failing to consistently produce systems that meet the requirements of the section 6.0 of the QAP program manual.

7.3 The confidentiality requirements of Section 3.9 and the obligations set forth in Section 4 shall survive termination of this Agreement.

7.4 In addition, EQI may terminate this Agreement at any time following the occurrence and continuation of an event of default as defined in this Agreement

7.5 Manufacturer Licensee shall be deemed to be in Default under this Agreement and EQI may, at its option, terminate this Agreement if:

- (a) the Manufacturer Licensee is in default of any of its obligations under this Agreement or the applicable licensing standards under the QAP;
- (b) the Manufacturer 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 Manufacturer 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 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 except to the extent that EQI's right to terminate may be limited by the Act;
- (c) the Manufacturer Licensee transfers or attempts to transfer this Agreement or any rights hereunder to any person without the prior written consent of EQI;



7.6 Should EQI in its sole and absolute discretion elect to impose a suspension rather than a termination, giving the Manufacturer Licensee an opportunity to cure the default, it shall notify the Manufacturer Licensee in writing of the default, the suspension of license, the default to be remedied and the time period granted to the Manufacturer Licensee to correct any such default, failing which EQI may, in its discretion, declare an Event of Default hereunder, and terminate this Agreement, and Manufacturer Licensee relating to the QAP. Should a suspension be imposed, any fees due and payable to EQI must be paid in full prior to the re-instatement of any suspended Manufacturer Licensee.


7.7 In the event of a suspension, or should this Agreement be terminated for any reason, the Manufacturer Licensee shall immediately:

- (a) cease to use, directly or indirectly, the Certification Mark(s) and the QAP, in any manner and for any purpose whatsoever;
- (b) remove the Certification Mark(s) and any reference to the QAP from any and all materials produced on or after the date of suspension, including without limitation packaging, signs and advertisements, promotional materials under its custody or control upon which the Certification Marks or reference to the QAP appears, and shall evidence same to EQI upon request;
- (c) immediately pay to EQI all fees, amounts and other charges as are or have become due and payable; and
- (d) immediately cease to and thereafter not, directly or indirectly, hold itself out as a licensee of EQI.

7.8 The Manufacturer Licensee agrees that the requirements set forth in this Article 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 competent jurisdiction in the province of Ontario.

## **8. INDEMNITY AND RELEASE**

8.1 The Manufacturer Licensee acknowledges that neither EQI, nor its directors, officers, agents, employees, shall be responsible to the Manufacturer Licensee 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 systems of the Manufacturer Licensee, use and delivery of the QAP in connection therewith, and the Manufacturer Licensee shall hold EQI, its directors, officers, agents, employees harmless from same.

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8.2 Without limiting the generality of the foregoing, EQI 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 systems, product instructions, or the Manufacturer Licensee's actions, omissions, failures to act, negligence or willful conduct, nor for any liability of the Manufacturer Licensee and undertakes to hold appropriate and adequate insurance to cover its liability.

**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, joint venturer or partner of EQI. No representations will be made or acts taken by the Manufacturer Licensee which could establish any apparent relationship of agency, joint venture or partnership and EQI 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 Province of Ontario applicable hereto and the parties irrevocably attorn to the jurisdiction of the Courts of Ontario 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 proper delivery of the notice by the transmitting party to the courier or Canada Post. Any Notice transmitted by facsimile with receipt confirmation shall be deemed given and received on the first business day after its transmission. Unless Manufacturer Licensee is notified of a change in writing, EQI's address for the purpose of notice is: 410 - 250 McDermot Avenue, Winnipeg, Manitoba R3B 0S5, Fax No. (204) 956-5819; for the Manufacturer Licensee, it will be the address listed at the top of this document, unless EQI 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 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 Manufacturer Licensee shall not constitute a waiver either one-time or ongoing of the terms and conditions of





this Agreement with respect to that or any other or subsequent breach thereof nor a waiver by EQI 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 Manufacturer 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 enure to the benefit of and be binding upon EQI and the Manufacturer 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.

**EIFS QUALITY ASSURANCE PROGRAM,  
INC.**

Per: \_\_\_\_\_  
Authorized Signing Officer

**MANUFACTURER**  
\_\_\_\_\_

Per: \_\_\_\_\_  
Authorized Signing Officer

# SCHEDULE "A"



**EIFS Quality Assurance Program Inc.**



Ref./Title  
**EQI Manufacturer Licensing Agreement First Edition**  
Document No.  
**200-27 Rev 0**

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# **SCHEDULE "B"**

## **EIFS Quality Assurance Program Manual**