



CONTRACTOR VALIDATION PROGRAM AGREEMENT

SECTION 07920 SEALANTS

Company: _____ Company Contact _____

Address _____

City/State/ZIP _____

Phone _____ Facsimile _____

Email _____ Website _____

This Agreement is made as of the _____ day of _____, between the Sealant Waterproofing & Restoration Institute, a not-for-profit corporation, having its office at 400 Admiral Blvd., Kansas City, Missouri 64106 ("SWR Institute") and _____ ("Company") a(n) _____ corporation, partnership or limited liability company, having an address of _____.

WHEREAS, Company desires to apply for the SWR Institute Contractor Seal of Validation; and

WHEREAS, upon satisfaction of the conditions outlined herein, the SWR Institute desires to allow Company to use SWR Institute's Contractor Validation Seal for a limited period.

Now therefore, in consideration of the Agreements herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Company and SWR Institute agree as follows:

- 1. **Validation.** The term "validation" as used herein shall mean a determination that the Company has met the requirements of the SWR Institute Contractor Validation Program listed below. The SWR Institute certificate evidencing that the Company has been validated shall be called a "Certificate of Validation."
- 2. **Program Profile.** Validation of the Company pursuant to the SWR Institute Contractor Validation Program shall include the following components:
 - a. Company shall complete the required Validation Application which is attached hereto and incorporated herein by reference. Company shall return the Validation Application with required exhibits in triplicate to SWR Institute all as required by the Program Overview that accompanies the Validation Application.
 - b. Company's completed Validation Application shall be reviewed by a committee of SWR Institute consisting of one contractor member, one manufacturer member and one associate member. Each committee member will provide his/her own review analysis. Upon completion, any discrepancies will be discussed and a

unified result established, known as the Administrative Version. Committee members are subject to confidentiality and non-disclosure restrictions and may not disclose information contained in Company's Validation Application. In its sole discretion, SWR Institute may elect to have an outside firm approved by SWR Institute review the Company's Validation Application instead of using its committee to review Company's Validation Application.

- c. In its sole discretion and without any obligation, SWR Institute may take any and all action necessary to verify any information submitted with the Validation Application.
- d. Once obtained, the Company's Validation will be valid for three (3) years from the grant date after which the Company will need to re-apply for renewal of said Validation.
- e. Upon completion of the review process, only the Administrative Version form will be scanned for three year electronic storage. All other documents will be shredded for proper disposal. A copy of the Administrative Version will be mailed back to the Company for the Company's files.
- f. Company agrees that SWR Institute shall be allowed to publish Company's rating provided that Company's rating is Bronze or better.
- g. Points shall be accumulated by the Company for answers to the questions posed on the Validation Application. Results shall be converted to a recognition level based on the following point schedule: Platinum (91-100); Gold (81-90); Silver (71-80); and Bronze (61-70).

- h. Any appeal shall be submitted in writing to the validation committee chair person who will then review the appeal with SWR Institute's Executive Committee for an unbiased decision. Any appeal must include all relevant material and clearly identify the issue(s) that are being appealed. Results of the appeal by the SWR Institute Executive Committee will be forwarded to the applicant.
- 3. Duration.** . Once obtained, the Company's Validation shall remain in effect for a period not to exceed three (3) years from the date of which the Validation is granted unless earlier terminated as provided herein
- a. Company's Validation shall terminate immediately upon any of the following events:
- Company fails to comply with any term, provision, condition or covenant of this Agreement.
 - Company stops performing the specific job task validated in this Agreement.
 - Cancellation of any insurance coverage identified in the Validation Application without comparable replacement insurance coverage.
 - Company ceases business operations.
 - Any petition is filed by or against Company under any section or chapter of the Federal Bankruptcy Act, as amended, or under any similar law or statute of the United States, any state thereof or similar laws of any other country.
 - Company becomes insolvent or makes a transfer or assignment in fraud of creditors.
 - A receiver is appointed for Company or any of the assets of Company.
 - Any defacing or alteration of the Seal (as defined herein) or the Certificate of Validation by Company.
- b. Company's Validation shall terminate within ninety (90) days after any of the following events unless rectified as provided herein:
- Any job related fatality involving Company's personnel.
 - The loss of any of the "key management personnel" identified in the Validation Application and Company fails to employ other key management personnel with similar qualifications.
 - Any material change to the financial and/or insurance information contained in the Validation Application.
 - Loss or termination of the validated training program identified in the Validation Application.
 - Any other material change to the information contained in the Validation Application.
- 4. Company's Obligation to Notify SWR Institute of any Material Change in Company's Validation Application; Resubmission of Validation Application and Penalty for Failure to Notify of Material Change**
- It will be the responsibility of the Company to continuously monitor and immediately notify SWR Institute of any material change in the information or material provided in the Validation Application including, but not limited to, those events or changes set forth in Section 3 above.
 - Within thirty (30) days of any event or change of situation identified in Section 3(b) above, Company shall notify SWR Institute in writing of said event or change to the information provided in the Validation Application. The Company shall explain the event or change of situation and provide Company's plan to cure or improve the event or change of situation. SWR Institute's committee shall rescore Company's Validation Application to determine whether the event or change of situation warrants a change to Company's grade. If the event or change of situation lowers the grade previously assigned to Company below the recognition level of Bronze, then the Company's Validation shall terminate upon SWR Institute's written notification to Company of the new score assigned to Company. If the event or change of situation does not lower the grade assigned to Company below the recognition level of Bronze, then Company shall be allowed to retain its Validation. SWR Institute shall republish any change to Company's recognition level of Bronze or better assigned as a result the recalculation as provided herein.
 - Should Company fail to timely notify SWR Institute of any material change in the information or material provided in the Validation Application including, but not limited to the events or changes set forth in Section 3 above and Company's Validation is terminated as a result of said event or changes, Company shall be ineligible to apply for revalidation within two (2) years after the termination of Company's prior Validation.
- 5. Certificate of Validation.** Only upon Company's receipt of a recognition level of Bronze or better on its Validation Application, SWR Institute will issue Company a Certificate of Validation. The Certificate of Validation shall include the following information:
- Date of validation.
 - Company's Name (or branch office if applicable).
 - Expiration date of validation (3 years from Item "a.").
 - Specific CSI Section covered in the Validation Application.
- Any defacing or alteration of Certificate of Validation will be considered a breach of Validation Agreement.

6. Seal of Validation. Only upon Company's receipt of a recognition level of Bronze or better on its Validation Application, SWR Institute grants Company a non-exclusive limited license to use the appropriate Seal of Validation ("Seal") copies of which will be supplied to Company by SWR Institute. The Seal may be attached to any written public offering (advertisement, press release, brochure, etc.) of the Company and must be on at least one. The Seal shall have printed within its face the following:

- a. Date of validation.
- b. Company's Name (or branch office if applicable).
- c. Expiration date of validation (3 years from Item "a.").
- d. Specific CSI Section covered in the Validation Application.

Any defacing or alteration of Seal will be considered a breach of this Validation Agreement. This Seal must appear in clear and legible form when used on any of Company's written material.

7. Use of Seal. Upon receipt of the Seal from SWR Institute, Company agrees to display the SWR Institute Seal of Validation only as provided herein. The Company agrees to alter its Web site resources relative to this Validation as soon as reasonably possible but, in any case, no later than six (6) months after the date of validation. Company further agrees that the Seal of Validation may be affixed to any other printed product offering(s) and that any replication must be unaltered in any way from the original Seal of Validation. Noncompliance could result in withdrawal of the Seal of Validation (see Paragraph 8). Upon expiration of validation and/or if the Company has not been re-validated, the Company shall immediately remove the Seal from its web site and shall also remove the Seal from all printed material no later than one (1) year from the expiration date of validation.

8. Misuse of Seal or Certificate of Validation. If SWR Institute, in its sole judgment, determines that Company has misused the Seal or Certificate of Validation, SWR Institute may immediately withdraw the Seal and Certificate of Validation and the Company's right to use the Seal and Certificate of Validation. As used herein, the term "misuse" shall include, as examples but not by way of limitation, the following:

- a. Any misrepresentation of the Seal or Certificate of Validation as signifying anything other than as provided herein.
- b. Any use of the Seal, Certificate of Validation or facsimiles thereof in connection with any entity or branch of Company which has not been validated, such as displaying a facsimile of the Seal or Certificate of Validation in advertising literature that refers to non-validated entity or branch and fails to state clearly and conspicuously that the Seal or Certificate of Validation applies only to the Company that has been validated.

9. Withdrawal of Validation. If at any time SWR Institute determines, as provided above, that Company has misused the SWR Institute Validation Program or failed to comply with Company's obligations contained herein and/or the Seal in any way including but not limited to those acts set forth in Paragraph 8, the Certificate of Validation issued under Paragraph 5 shall be withdrawn and the Company shall cease all use of SWR Institute's Seal of Validation. Such certificate and

rights shall not be reinstated until SWR Institute, in its sole judgment, is satisfied that the misuse has ceased and that it shall not reoccur.

10. No Transfer of Validation. Only the Company stated in this Agreement shall be allowed to represent that it has received the Validation as described herein. Validation is not transferable from the Company stated in this agreement.

11. Withdrawal from the Validation Program. SWR Institute reserves the right, in its sole discretion, to change the terms and conditions governing validation and use of the Seal and Certificate of Validation from time to time. Company shall abide by such changed provisions upon receipt of notice thereof or otherwise withdraw entirely from the SWR Institute Contractor Validation Program by surrendering its Certificate of Validation and foregoing the right to use the Seal or facsimile thereof in any way.

12. Authority. The parties hereto certify by the signatures below of their authorized agent that they have read this Agreement, understand all its provisions and agree to abide by them.

13. Hold Harmless and Indemnity. Company shall hold SWR Institute, its officers, directors, guests, employees, agents, and any other entity acting for or on its behalf (hereafter referred to collectively as its "Affiliated Persons") free and harmless and agrees to indemnify SWR Institute and its Affiliated Persons from any claim, loss, cost, liability, damage or cause of action that may occur whatsoever (including all costs, expenses, legal fees and expert fees) from or in any way related to this Company's use of Certificate of Validation or the Seal, or the Company's participation in any manner with respect to this Validation Program. Company further holds SWR Institute and its Affiliated Persons free and harmless and agrees to indemnify SWR Institute and its Affiliated Persons from any claim, loss, cost, liability, damage or cause of action that may occur whatsoever (including all costs, expenses, legal fees and expert fees) from any third party concerning Company's participation in this Validation Program.

14. Miscellaneous. The provisions, covenants and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, heirs, successors and assigns of each of the parties hereto, except that no assignment by Company shall be allowed and that no attempted assignment by Company shall vest any right in the assignee of the Company. Any waiver by SWR Institute of any breach or breaches, default or defaults of Company hereunder, shall not be deemed or construed to be a continuing waiver of such breach or default nor as a waiver of or permission expressed or implied, for any subsequent breach or default. This Agreement, the Validation Application and any attachments thereto contain the entire agreement between the parties and except as specifically provided herein, no modification of this Agreement shall be binding upon the parties unless evidenced by an agreement in writing signed by the parties hereto after the date hereof. The Agreement shall be construed and interpreted according to the laws of the State of Missouri, notwithstanding the operation of any conflict or choice of law statutes or decisional law to the contrary. Exclusive jurisdiction and venue shall be in the Federal or State Courts in Jackson County, Missouri.

CONTRACTOR VALIDATION PROGRAM AGREEMENT *(continued)*

15. Disclaimer. The Validation Program was developed by industry representatives as an aid to owners, contractors and designers to use when pre-qualifying a specialty contractor for a specific work task based upon strict performance based criteria. The SWR Institute and its Affiliated Persons have merely made available a format to validate that a company satisfies a minimum set of criteria for project experience, key management personnel, financial stability, safety, training and general corporate benchmarks. Accordingly, SWR Institute and its Affiliated Persons cannot accept responsibility for the accuracy of the information and representations made by the Company or the actual ability of the Company to properly perform the work task in all situations and under all circumstances.

Dated this _____ day of _____, 20____.

[Print Company name above]

By: _____
Signed by President or other Authorized Representative

Printed Name of Person Signing:

Title of Person Signing:

Sealant, Waterproofing & Restoration Institute

By: _____
Signed by SWR Institute Executive Vice President

Printed Name: _____

Title: _____

SEALANT, WATERPROOFING & RESTORATION INSTITUTE
400 Admiral Blvd.
Kansas City, MO 64106
816.472.7974 Fax: 816.472.7765
www.swrionline.org

PROGRAM RATES:

SWR Institute Members

- Initial Application - \$500 \$ _____
- Branch Review - \$250 \$ _____
- Additional Work Tasks - \$250 \$ _____
- Re-submission - \$250..... \$ _____

TOTAL \$ _____

Non-Members

- Initial Application - \$1,000..... \$ _____
- Branch Review - \$350 \$ _____
- Additional Work Tasks - \$350 \$ _____
- Re-submission - \$350..... \$ _____

TOTAL \$ _____

METHOD OF PAYMENT:

- Check enclosed (*Make checks payable to SWR Institute.*)
 - VISA MasterCard American Express

Card Number _____

Expiration Date _____

Name on Card _____

Authorized Signature _____

SWR Institute Headquarters Use Only:

_____ Date Application Received

_____ Date Assigned to Committee

_____ Applicable Fees Paid

_____ Certificate of Validation (i.e. Grant Date) issued: Date: ____/____/____; Expiration Date: ____/____/____