

## **PARTICIPANT AGREEMENT**

**IMPORTANT - READ CAREFULLY: THIS PARTICIPANT AGREEMENT (“Agreement”) IS A LEGAL AGREEMENT WITH PAINTCARE INC. (“PaintCare”) AND IT GOVERNS PARTICIPATION IN THE PAINT STEWARDSHIP PROGRAMS FOR WHICH PAINTCARE OR ONE OF ITS AFFILIATE ORGANIZATIONS HAVE AGREED TO SERVE AS STEWARD IN VARIOUS U.S. STATES (with such programs described further at [www.paintcare.org](http://www.paintcare.org) and referenced generally herein as the “Programs”). ENTITIES SUBJECT TO THIS AGREEMENT WITH PAINTCARE SHALL BE REFERENCED HEREIN AS A “Participant(s)”. PAINTCARE IS WILLING TO ALLOW A PARTICIPANT TO JOIN AND BE A PART OF THE PROGRAMS ONLY ON THE CONDITION THAT SUCH PARTICIPANT ACCEPT AND AGREE TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT. BY CLICKING THE “I ACCEPT” ICON BELOW, OR BY ACCESSING, DOWNLOADING, COPYING, OR OTHERWISE USING A PAINTCARE PORTAL OR WEBSITE (“Website”) IN ORDER TO PARTICIPATE IN THE PROGRAMS, PARTICIPANT AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT.**

**1. General Participant Obligations.** This Agreement applies to the named entity on the account associated with access or participation in the Programs by Participant. Participant covenants that such Participant, or the person agreeing to this Agreement on behalf of such Participant, is at least eighteen (18) years of age (or the legal age of majority (whichever is greater)) and will, at all times, provide true, accurate, current, and complete information when submitting information or materials on the Website, as a part of the Programs, or to PaintCare. Participant agrees that it shall be responsible and liable for its own reports, payment obligations, data, business rules, and requirements as well as any acts or omissions of its designated employee(s) (with Participant and its designated employee(s) referenced herein as the “Authorized User(s)”). Participant also acknowledges that PaintCare and its affiliate organizations have the authority to establish policies, procedures, and rules for the administration and enforcement of the Programs, and Participant agrees to be bound by all such policies, procedures, and rules.

**2. Record Requirements.** Participant shall, upon the Effective Date and continuously throughout the term of this Agreement, provide to PaintCare in writing and within all time requirements specified by PaintCare, applicable State law, or by the Programs, the identity of the then-current architectural paint (“Program Product(s)”) and, from time to time, any new Program Products. Participant shall maintain and keep accurate records of all Program Product transactions by it during the term of this Agreement (namely, Program Products sold, leased, or supplied by it) in such form and fashion as to allow for a confirmation of the monies paid or due and payable by the Participant to PaintCare pursuant to the Programs. The record-keeping obligation shall apply in all states in which PaintCare or one of its affiliate organizations operates or fulfills a stewardship role for the Programs, where Participant sells Program Products, or where Participant has elected to register with PaintCare in order to participate in the Programs and shall include, without limitation, the obligation to submit a monthly remittance report summarizing all Program Product sales. Unless otherwise expressly agreed upon by PaintCare, Participant shall also in a timely manner as required by the applicable State law or this Agreement, identify the Program Products that it has sold to an entity fulfilling the “Remitter” responsibility under these Programs. In addition, PaintCare or Participant shall in a timely manner as required by applicable State law, the Programs, or this Agreement identify the architectural paint stewardship assessment amount so that “Remitter Fees” (as such fees are defined by the Programs) can be accurately calculated. Participant acknowledges that the foregoing information may be separately shared by PaintCare with an applicable Remitter(s) (as the case may be) as necessary for the purposes of the Programs. Participant shall allow PaintCare or its designee to access and inspect such records in order to confirm completeness or accuracy of the information submitted to PaintCare upon PaintCare’s reasonable request.

**3. Fee Obligations.** Participant agrees to remit in a timely manner to PaintCare or to its designated representative all “Assessment Fees” as defined by the Programs, namely, the amount added to the purchase price of Program Product sold in an applicable State in order to cover the cost of collecting, transporting and processing the post-consumer-use Program Product managed through an applicable Program Plan. Participant acknowledges and agrees that the Assessment Fees may be changed from time to time in the absolute discretion of PaintCare or its affiliate organizations, provided that the Participant shall receive ninety (90) days’ notice before such change takes effect.

The Assessment Fees are payable to PaintCare on any sale of Program Products to any person in any state(s) in which PaintCare or a PaintCare affiliate organization is operating or fulfilling a stewardship role for the Programs and in which Participant has elected to register for participation in the Programs.

**4. Confidentiality.** As used herein, the term “Confidential Information” means non-public, confidential, or proprietary information about a party’s business, assets or operations deemed by such party to be of commercial or competitive value and not commonly known to others within such party’s industry and specifically includes, without limitation, the terms and conditions of this Agreement. Examples of Confidential Information include, without limitation, any information regarding a party’s marketing techniques, pricing, sales, product purchases, product evaluations, business prospects, customers, employees and relationships with vendors and suppliers. Confidential Information shall not include information which the receiving party demonstrates by documentary evidence: (i) was known to the public at the time of its disclosure, or becomes known to the public after the disclosure through no fault of the receiving party; (ii) as evidenced by prior written documentation, was rightfully in its possession prior to the time of the disclosure; (iii) as evidenced by prior written documentation, was developed by the receiving party independent of the disclosure by the disclosing party; or (iv) is required by law to be disclosed; provided that the receiving party gives the disclosing party prior written notice thereof and ensures that such information is disclosed only under conditions in which its confidentiality is maintained and so as to provide the disclosing party the opportunity to obtain such protective orders or other relief as may be available in the circumstances. As a part of the Programs, PaintCare or Participant may obtain or have access to Confidential Information of the other party. With respect to the Confidential Information of the other party, PaintCare and Participant shall, and shall cause each of their respective employees, contractors, and agents to: (a) keep in confidence all such Confidential Information and limit the disclosure of such Confidential Information only to those individuals or entities who “need to know” such information for purposes of the performance of this Agreement or for participation in or operation of the Programs; (b) not use any such Confidential Information for any purpose other than the performance of this Agreement; (c) not disclose any such Confidential Information to any third party unless such disclosure is necessary for performance of this Agreement or for participation in or operation of the Programs and further, only when such disclosure is subject to an obligation of confidentiality meeting the requirements of this Agreement; and (d) return all such Confidential Information, including all tangible, electronic copies and analyses thereof, to the other party promptly upon termination of this Agreement or upon written request of the other party. The protection afforded by this Agreement to Confidential Information is not intended to limit, and does not limit, in any way any of the protection provided to such Confidential Information under any applicable law. Subject to the foregoing, Participant acknowledges and agrees that certain disclosures by PaintCare of information of Participant to another party (as a Remitter or Participant), which may constitute the Confidential Information of Participant, will be a necessary part of participation in the Programs and Participant hereby acknowledges and agrees to such disclosures or information sharing. Participant further acknowledges and agrees that the obligations of confidentiality as provided herein are in addition to and not in lieu of any existing confidentiality obligations contained in separate agreements between parties fulfilling the responsibility of a Remitter or a Participant.

**5. Indemnification.** PaintCare and Participant each hereby agree to defend, indemnify, and hold harmless each other, and such other party’s respective employees, agents, directors, officers, shareholders, attorneys, successors, assigns, and wholly-owned parent/subsidiary companies from and against all third-party claims and the associated losses, costs (including reasonable attorney’s fees), damages, or demands (such claims and losses, costs, damages, or demands, collectively, “Claims”) arising out of a breach by the other party of an express term or condition of this Agreement. Participant shall further indemnify PaintCare, and any of its wholly-owned parent/subsidiary companies, from any Claims arising out of a failure by a Participant to pay required fees or provide required reports pursuant to this Agreement and applicable State law in a timely manner. With respect to any Claim, PaintCare and Participant shall use reasonable efforts to cooperate with the other party in defense of any Claim. Participant further acknowledges and agrees that PaintCare reserves the right, in its sole discretion, to participate in any Claim for which indemnification is owed by Participant and assume for such Claim, at Participant’s expense or such other cost sharing arrangement agreeable to PaintCare, the control, defense, and/or settlement of any matter otherwise subject to such Claim or this indemnification obligation.

**6. Other Terms and Conditions.** Additional notices, terms, and conditions may apply to use of the Website or participation in the Programs. Participant agrees to abide by such other notices, terms, and conditions, as applicable. If there is a conflict between this Agreement and other notices, terms, and conditions posted to the Website, PaintCare shall resolve any conflict in good faith in its sole discretion but the latter terms shall generally control

with respect to use of the Website or participation in the Programs.

**7. Governing Law.** This Agreement has been made in and will be construed and enforced in accordance with the laws of the District of Columbia as applied to agreements entered into and completely performed in the District of Columbia. Participant agrees to the personal jurisdiction by and venue in courts in the District of Columbia and waives any objection to such jurisdiction or venue.

**8. Dispute Resolution.** In the event a dispute arises out of or relating to this Agreement, Participant and PaintCare agree to first make a good-faith effort to resolve such dispute themselves through designated representatives within thirty (30) days after written notice of the dispute was first given, or as otherwise agreed upon. Upon failing, Participant and PaintCare further agree to engage in non-binding mediation with a mediator to be mutually agreed on by Participant and PaintCare. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, which Participant and PaintCare cannot settle informally or through mediation, shall be settled by arbitration in the District of Columbia, and administered by the American Arbitration Association in accordance with its then-existing Commercial Arbitration Rules (or the rules of another mutually acceptable impartial organization). The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The parties consent to, and waive any right to object to, jurisdiction with respect to the resolution of disputes hereunder in the District of Columbia.

**9. Warranty and Representations.** Participant represents and warrants that (a) it is authorized to enter into the Agreement and perform its obligations; (b) the signatory for Participant is authorized to execute the Agreement on behalf of Participant; (c) Participant has all required permits, licenses, and other governmental authorizations and approvals to use the Website and participate in the Programs; and (c) the reports and data provided by Participant to PaintCare in connection with the Agreement are accurate, to Participant's knowledge, and provided to PaintCare with any necessary consent, right, permission, license, clearance, or authority (including any further reasonable proof thereof (if requested by PaintCare)) to permit PaintCare to use such reports and data in connection with the Agreement and the Programs. PaintCare represents to Participant that PaintCare has the full authority and right to enter into the Agreement.

**10. Disclaimer.** EXCEPT FOR THE FOREGOING, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PAINTCARE MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE PROGRAMS, AND EXPRESSLY DISCLAIMS (TO THE FULLEST EXTENT OF THE LAW) ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. BECAUSE THE PROGRAMS ARE BASED IN LARGE PART ON PARTICIPANT'S REPORTS AND DATA, THE ENTIRE RISK AS TO THE QUALITY AND RESULTS OF PARTICIPATING IN THE PROGRAMS ARE WITH PARTICIPANT. IF THIS DISCLAIMER OF WARRANTY IS HELD TO BE UNENFORCEABLE BY A COURT OF COMPETENT JURISDICTION IN ANY MANNER, THEN ALL EXPRESS AND/OR IMPLIED WARRANTIES MANDATED BY SUCH COURT SHALL BE LIMITED IN DURATION AND SCOPE TO THE MAXIMUM EXTENT OF THE LAW.

**11. Limitation of Liability.** EXCEPT FOR THE BREACH OF THE CONFIDENTIALITY OBLIGATIONS OR INDEMNIFICATION OBLIGATIONS HEREIN, IN NO EVENT WILL PAINTCARE OR PARTICIPANT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PROGRAMS OR THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF PAINTCARE OR PARTICIPANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MOREOVER, TOTAL LIABILITY OF PAINTCARE FOR ANY REASON WHATSOEVER RELATED TO THE AGREEMENT OR A PARTICIPANT'S PARTICIPATION IN THE PROGRAMS SHALL NOT EXCEED FIVE THOUSAND DOLLARS (\$5,000) (US).

**12. Injunctive Relief.** Participant acknowledges that any breach, threatened or actual, of this Agreement will cause irreparable injury to PaintCare, such injury would not be quantifiable in monetary damages, and PaintCare would not have an adequate remedy at law. Each Participant therefore agrees that PaintCare shall be entitled, in addition to other available remedies, to seek and be awarded an injunction or other appropriate equitable relief from a court of competent jurisdiction restraining any breach, threatened or actual, of Participant's obligations under any

provision of this Agreement. Accordingly, Participant hereby waives any requirement that PaintCare post any bond or other security in the event any injunctive or equitable relief is sought by or awarded to PaintCare to enforce any provision of this Agreement.

**13. Term & Termination.** This Agreement will take effect at the moment Participant, or any person acting or purporting to act on its behalf, certifies or assents to agreement with the terms and conditions of this Agreement or Participant (or such person) registers to participate in the Programs, whichever is earliest (the date this Agreement takes effect shall be referenced herein as the “Effective Date”). This Agreement and Participant’s active status in the Programs shall continue following the Effective Date for as long as the Programs remain in effect. PaintCare may terminate this Agreement at any time for breach by Participant of a term or condition of this Agreement or violation of any requirements, guidelines, or rules for the Programs, including, without limitation, failure to keep required records, non-filing of Remitter Reports, or non-payment of Remitter Fees (as such terms are defined by the Programs, namely, all fees payable by a Remitter to PaintCare pursuant to the Programs at the then-current applicable rates). Prior to such termination, PaintCare shall give Participant notice of such breach, which if related to payment shall include the method of calculation of fees owed to provide a basis for the breach for nonpayment. Participant shall have a period of thirty (30) days in which to effect a cure to such default. If such default is not cured, then this Agreement shall terminate immediately without further notice. In addition, Participant or PaintCare may terminate this Agreement upon providing to the other party sixty (60) days’ prior notice of its intention to terminate. PaintCare will notify the appropriate State agency of Participant’s cancelled registration under the Programs.

**14. Effect of Termination.** Upon termination, Participant must pay to PaintCare all Assessment Fees due up to the date of termination. In addition, Participant must destroy or return to PaintCare all Program materials or other Confidential Information of PaintCare in Participant’s possession or control. The provisions concerning confidentiality, warranty disclaimer, limitations of liability, waiver and severability, entire agreement, injunctive relief, dispute resolution, and governing law will survive the termination of this Agreement for any reason.

**15. Waiver & Severability.** Failure to insist on strict performance of any of the terms and conditions of this Agreement will not operate as a waiver of any subsequent default or failure of performance. No waiver by PaintCare of any right under this Agreement will be deemed to be either a waiver of any other right or provision or a waiver of that same right or provision at any other time. If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and the liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most clearly matches the intent of the original provision and the remainder of this Agreement shall continue in effect.

**16. Entire Agreement.** No joint venture, partnership, employment, affiliate, or agency relationship exists between you and PaintCare as a result of this Agreement or participation in the Programs. This Agreement represents the entire agreement between Party and PaintCare with respect to the subject matter herein, and supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between Party and PaintCare with respect to the Website. The rights and obligations of a Participant may not be assigned, transferred, or delegated without the prior written consent of PaintCare.