

Fyfe Certified Applicator Agreement Supplementary Terms and Conditions

1. Definitions.

1.1 "Business" means the use of any fiber reinforced polymer composite materials, including the Tyfo Products, for the strengthening of infrastructure.

1.2 "Certified Applicator" means a company which meets all requirements in the Fyfe Certified Applicator Agreement ("Agreement") to purchase and utilize Tyfo Products.

1.3 "Intellectual Property Rights" means patent rights, trade and service marks and trade names (including, without limitation, the Trademarks), domain names, copyrightable materials (including, without limitation, the Works) and rights in the Know-how, in each case whether registered or unregistered, whether or not including Confidential Information, and all applications for registration, and all rights or forms of protection having equivalent or similar effect, held by Fyfe, by license or otherwise, as of the Effective Date or which may be acquired by or licensed to Fyfe after the Effective Date, in each case relating to the Tyfo Systems or the Tyfo Products.

1.4 "Know-how" means all practical information of Fyfe (including knowledge, experience, data and technical information resulting from experience and testing) that is necessary for the design, manufacture, supply, sale, warehousing, storage, keeping, installing, importation and/or use of the Tyfo Products and includes, but is not limited to, descriptions of manufacturing processes, recipes, formulae, or drawings relating to design, development, manufacture, assembly, repair, testing, installation and use of the Tyfo Products in the Tyfo Systems.

1.5 "Trademarks" means the Fyfe® and TYFO® trademarks and tradenames. Fyfe reserves the right to amend this listing of Trademarks from time to time.

1.6 "Works" means: (a) any and all copyrightable materials relating to the Tyfo Systems and the Tyfo Products and supplied by Fyfe to Customer such as, without limitation, designs, plans, brochures, instructions or other means of expression, photography, diagrams and other visual presentations that relate to the Tyfo Systems, and (b) all New Works, as defined in Section 7 herein.

1.7 The Agreement shall be referenced for all capitalized terms not otherwise defined herein.

2. Reservation of Rights and Restrictions.

2.1 General. Other than the rights expressly granted to Customer in the Agreement, all rights in and to the Tyfo Products, the Tyfo Systems and Intellectual Property Rights are hereby reserved by, in and for Fyfe. Customer agrees that it does not have any right, title or interest in the Tyfo Products, the Tyfo Systems or the Intellectual Property Rights other than as described in the Agreement. Customer agrees not to assert anywhere in the world any rights in the Tyfo Products, the Tyfo Systems or the Intellectual Property Rights. Customer shall not use Fyfe's trademarks, service mark or trade names as part of the corporate, trade or other legal name of Customer. Customer shall not register any internet domain name, whether inside or outside of the Territory, that is associated with the Tyfo Products or the Tyfo Systems, or use Fyfe's Trademarks in any registered domain.

2.2 Cooperation. If Fyfe requests and agrees in writing to bear reasonable external costs incurred by Customer, Customer shall take all steps, or cause all steps to be taken, that may be necessary to obtain, preserve and protect, for the benefit of Fyfe, the rights of Fyfe (proprietary and otherwise) in the Tyfo Systems and the Intellectual Property Rights.

2.3 Changes. Customer acknowledges and agrees that from time to time Fyfe may change or modify the Intellectual Property Rights by giving notice thereof to Customer and, in any such event, Customer shall adopt such changes or modifications to the Intellectual Property Rights as specified in the applicable notice from Fyfe.

2.4 Conduct of Intellectual Property Infringement Litigation. If Customer becomes aware of any infringement or threatened infringement of the rights licensed to Customer hereunder, Customer shall forthwith notify Fyfe thereof. Fyfe shall have the sole and absolute right to initiate, defend and control any such proceedings. Customer expressly acknowledges that without the express written consent of Fyfe it may not commence nor do any act whatsoever in respect of the aforesaid proceedings.

3. Indemnification.

3.1 By Fyfe. Fyfe agrees to indemnify and hold Customer harmless from and against any and all losses, expenses, damages or liabilities (including any and all attorneys' and expert witness fees and court costs), that Customer may incur as a result of all claims, suits, actions or proceedings arising out of or relating to a breach of the Agreement by Fyfe. Fyfe will indemnify Customer for any actual damages incurred by Customer as a result of third party product liability claims provided that such damages are: (a) directly and solely related to Tyfo Products sold by Fyfe to Customer (and not the installation of such Tyfo Products); and (b) incurred within one (1) year of the sale of such Tyfo Products.

3.2 By Customer. Customer agrees to indemnify and hold Fyfe harmless from and against any and all losses, expenses, damages or liabilities (including any and all attorneys' and expert witness fees and court costs), that Fyfe may incur as a result of all claims, suits, actions or

proceedings arising out of or relating to (a) a breach of the Agreement by Customer, or (b) Customer's use, practice or other exploitation of the Tyfo Systems or the Intellectual Property Rights.

4. Insurance. During the Term and thereafter until all of Customer's obligations hereunder (including obligations to provide continuing service or warranty after the expiration or earlier termination of the Agreement) have been discharged, Customer shall obtain and maintain, in full force and effect and at Customer's sole cost and expense, for the duration of the Agreement, all insurance necessary and customary for Customer's business, including, but not limited to, the following insurance:

4.1 Commercial General Liability insurance, including Products-Completed Operations coverage, for minimum limits of \$1,000,000 each occurrence/\$2,000,000 general aggregate/\$2,000,000 products-completed operations aggregate. The Fyfe will be included as an Additional Insured and the coverage afforded to the Fyfe shall be on a primary and non-contributory basis, with respect to other insurance. Coverage for the Fyfe shall be provided using the ISO Additional Insured endorsement form numbers CG 2010 (edition 10/01) and CG 2037 (edition 10/01). The General Aggregate limit shall apply per project.

4.2 Umbrella Liability insurance, for minimum limits of \$25,000,000 each occurrence/\$25,000,000 aggregate. The Fyfe will be included as an Additional Insured and the coverage afforded to the Fyfe shall be on a primary and non-contributory basis, with respect to other insurance.

4.3 Workers Compensation and Employers Liability insurance. The Employers Liability coverage limits shall not be less than \$1,000,000 each accident.

4.4 All such policies of insurance shall be primary in respect of Fyfe, and, upon the Effective Date, and thereafter upon the request of Fyfe from time-to-time, Customer shall provide Fyfe with a certificate of insurance from each such insurer which (i) evidences compliance by Customer with its obligations hereunder, (ii) identifies Fyfe as a certificate holder, and (iii) provides that the identified insurer will not cancel or fail to renew the identified insurance without giving Fyfe at least 30 days' prior notice thereof.

4.5 If Customer engages in any work that would make it advisable to maintain contractor's pollution liability insurance, Customer will obtain and maintain such insurance.

5. Records and Audit.

5.1 Records. Customer shall keep complete, accurate, and current records relating to the exploitation or practice of the Tyfo Systems from any work performed by, on behalf of, or under the authority of Customer or which involves in any way its participation in the Business. All such records set forth in the preceding sentence shall be referred to herein as "Records." Records of Customer shall include (a) records of all inquiries for orders, orders, contracts and the work done thereunder, together with details of the date when such work was done and the gross contract price thereof, and (b) books of account in respect of operations. Customer shall retain all Records during the Term and for a minimum of 5 years thereafter.

5.2 Audit. Without limiting any other provision of the Agreement, Customer agrees that from time to time during the Term and for a period of 5 years thereafter, Fyfe and its representatives (such as, without limitation, Fyfe's internal or external auditors) shall have the right to inspect or audit the Records and Customer's sites of operation as Fyfe may consider necessary including all aspects of Customer's provision of the Tyfo Systems and exploitation of the rights licensed to Customer hereunder to determine whether Customer is, or was, as applicable, in full compliance with all of the terms of the Agreement. If Fyfe elects to conduct such an audit or inspection, Customer agrees to cooperate with Fyfe and its representatives and to provide reasonable assistance and access to information in connection therewith. Fyfe will incur all costs and expenses associated with the exercise of these rights, unless such audit and inspection reveals that Customer is, or was, not in material compliance with any provision of the Agreement, in which case, Customer agrees promptly to pay Fyfe the reasonable costs and expenses of such audit and inspection. Such payments by Customer shall not waive or replace any rights or remedies which Fyfe may have with respect to Customer's failure to comply with any and all terms of the Agreement, and Fyfe expressly reserves all rights and remedies in connection therewith.

6. Customer Confidentiality Obligations. Customer agrees to sign Fyfe's standard non-disclosure agreement upon entering into the Agreement. Customer shall not without Fyfe's prior written consent (i) copy Fyfe's copyrighted material; (ii) use Fyfe's trademarks, trade names, or other designations in any promotion or publication; or (iii) use recording equipment in training sessions. Customer agrees that Fyfe may disclose lists of Certified Applicators, including Customer, in relation to its promotion of Tyfo Products.

7. New Works, Moral Rights and Inventions.

7.1 New Works. If Fyfe so requests in writing, Customer agrees (a) at Fyfe's expense for Customer's reasonable out-of-pocket costs, to cooperate with Fyfe in obtaining and preserving for Fyfe copyright protection or registration for the Works and executing all documents that, in Fyfe's discretion, are necessary therefor, and (b) to maintain records (including invoices, correspondence and related material) of, and to advise Fyfe with respect to, any and all adaptations, derivative works (such as, without limitation, any translations), new works and other works created by Customer based on, incorporating, or otherwise utilizing, the Intellectual Property Rights or any part or element thereof (collectively, "New Works"). For the avoidance of doubt, Customer's rights in the New Works are limited to the license expressly granted to Customer in the Agreement. Customer shall be deemed to have conveyed, transferred, and assigned to Fyfe all right, title, and interest (including all trademarks rights and associated

goodwill, all copyright rights and all other intellectual property rights), throughout the world and without further consideration, in and to all New Works as of the date of creation.

7.2 Moral Rights. The assignment of any copyright to Fyfe under the Agreement includes all rights of paternity, integrity, disclosure, attribution and withdrawal and any other rights that may be known or referred to as "moral rights". To the extent such "moral rights" cannot be assigned under applicable law or to the extent such assignment is not allowed by the laws in the various jurisdictions where "moral rights" exist, Customer will ensure that, in relation to the moral rights, the relevant author consents to Fyfe, its Affiliates and the officers, employees, agents, contractors or advisers of any of them:

- (a) not identifying him or her as the author;
- (b) making any changes (material or otherwise) to the material; and
- (c) using the material, whether changes have been made to it or not, in any context and in any way Fyfe sees fit.

7.3 Inventions. Customer shall make prompt and full disclosure to Fyfe in writing of any and all inventions, discoveries, designs, developments, improvements, and ideas (whether or not patentable) relating to the Tyfo Systems, whether or not such Inventions are developed or reduced to practice including any and all new, improved or modified products, equipment, know-how, operations or methods relating to the Tyfo Systems (collectively, "Inventions"). Customer agrees to hold in trust for the sole benefit of Fyfe, and shall upon creation be deemed to assign to Fyfe, all right, title and interest (including all patent and other intellectual property rights) in and to any Inventions. Customer agrees to provide Fyfe with all such information and know-how in its possession or under its control as may be necessary to patent, use, market or develop the Inventions.

7.4 Cooperation. Customer agrees to (a) execute any and all documentation requested by Fyfe to confirm any waiver, conveyance, transfer or assignment made in the Agreement promptly after Fyfe requests such execution and to cause its employees and contractors to do the same, (b) upon Fyfe's request, assist Fyfe to (i) perfect or register all copyrights and other rights and protections relating to any New Works, throughout the world, (ii) obtain extensions and renewals of any such registrations, and (iii) from time to time enforce all copyrights and other intellectual property rights and projections relating to any New Works throughout the world, (c) cooperate with Fyfe as may be necessary or useful to obtain patent protection for the Inventions, and (d) assist and cooperate with Fyfe and its successors and Customers in the defense or prosecution of any claim of infringement concerning the Inventions, the New Works or any portion thereof. Customer hereby irrevocably designates and appoints Fyfe as Customer's agent and attorney-in-fact to execute all documents contemplated by the Agreement which Customer fails to timely execute, with the same legal force and effect as if executed by Customer.

8. Limitation of Liability. In no event shall Fyfe be liable for any consequential, indirect, incidental, special, exemplary, or punitive damages, lost profits or revenues, or diminution in value arising out of, relating to, and/or in connection with any breach of the Agreement, regardless of (a) whether such damages were foreseeable, (b) whether or not Fyfe was advised of the possibility of such damages, and (c) the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based. FYFE'S AGGREGATE LIABILITY FOR CLAIMS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE AGREEMENT, THE TYFO SYSTEMS (INCLUDING ANY TRAINING PROVIDED BY FYFE IN RESPECT THEREOF), THE TYFO PRODUCTS, THE INTELLECTUAL PROPERTY RIGHTS, OR THE EQUIPMENT AND SUPPLIES PROVIDED UNDER THE AGREEMENT, WHETHER FOR BREACH OF CONTRACT, IN TORT OR OTHERWISE, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT OF PAYMENTS MADE BY CUSTOMER TO FYFE HEREUNDER OVER THE 12 MONTHS PRECEDING THE MONTH IN WHICH THE DAMAGE OR INJURY IS ALLEGED TO HAVE OCCURRED.

9. Termination of Agreement.

9.1 Termination. Either party may terminate the Agreement at any time upon 30 days' written notice to the other party. In the event of a default or material breach of any provision of the Agreement by Customer, Fyfe may terminate the Agreement immediately. Any notice of termination under the Agreement automatically operates as a cancellation of any training services that are scheduled to take place subsequent to the effective date of termination. Provided that Customer is not in default, termination of the Agreement shall not operate to revoke certification related to the sale of Tyfo Products which has already been transacted.

9.2 Duties upon Expiration or Termination. Upon the expiration or earlier termination of the Agreement for any reason whatsoever, Customer shall, except as necessary to fulfill its obligations under this Section, immediately:

- (a) pay to Fyfe all amounts owing to Fyfe under the Agreement;
- (b) return, at Customer's expense and at no cost to Fyfe, all Tyfo Products that are in the possession of Customer that have not been paid for by Customer;
- (c) forever cease all use and other exploitation of the Intellectual Property Rights and the Tyfo Systems and deliver to Fyfe all literature, brochures, documents, videos and the like in respect thereof, including all originals and copies of the Works, the Know-how and other Confidential Information and any other printed or electronic materials or bulletins provided by Fyfe hereunder and relating to the Tyfo Systems;
- (d) surrender its rights hereunder peaceably and in good faith and make no further use of the same;

(e) without limiting any other provision of the Agreement, forever cease all use of the Trademarks as trade or service marks or trade names, including all use of Fyfe® and TYFO®;

(f) turn over to Fyfe, at Fyfe's request and in accordance with its instructions, copies of all of the sales product and service records, customer lists and other records and data relating to sale and service of products installed pursuant to exploitation of the Tyfo Systems which may then be in the possession or control of Customer; and

(g) if requested by Fyfe, assign to it free of charge all claims to any and all rights arising from the use and practice of the Intellectual Property Rights and the Tyfo Systems.

9.3 Additional Duties upon Expiration or Termination.

(a) If Customer is a party to any agreement that Customer entered into prior to expiration or termination of the Agreement, and that agreement requires Customer to perform the Tyfo Systems after the expiration or termination of the Agreement, then this Section shall apply to Customer's performance under such agreement. Upon termination or expiration of the Agreement, Customer shall give Fyfe prompt notice thereof of any such agreements (along with a copy thereof). Customer shall use its best efforts to complete its performance under any such agreements as promptly as possible following the date of expiration or termination of the Agreement and the terms of the Agreement shall be extended solely for purposes of allowing Customer to complete its performance under such agreements. Notwithstanding the foregoing, if the Agreement has been terminated as a result of any material breach by Customer, then the terms of the Agreement shall not be extended pursuant to the preceding sentence and Customer shall immediately cease all use of the Tyfo Systems and Intellectual Property Rights.

(b) Notwithstanding any term or provision in the Agreement to the contrary, upon termination of the Agreement for any reason other than a material breach by Customer, Customer shall be entitled to continue to use such Tyfo Products already in its possession, in addition to the Intellectual Property Rights and the Tyfo Systems and the Trademarks associated therewith, and the terms of the Agreement shall be extended solely for purposes of allowing Customer to Supply all Tyfo Products purchased before the date of termination

9.4 Clarifications. For the avoidance of doubt, Fyfe shall not be liable to Customer upon the expiration or earlier termination of the Agreement for any reason whatsoever, for any compensation, reimbursement or damages on account of the loss of prospective profits on anticipated sales, or on account of expenditures, investments, lease commitments in connection with Customer's business, or goodwill of Customer, or otherwise.

10. Assignment. Subject to the further provisions of this section, the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Customer may not without Fyfe's express prior written consent, by operation of law or otherwise, sell, assign (whether by subcontract or otherwise), transfer, convey, give away, sub-license, or encumber to any person, the whole or any part of its interest in the Agreement. For purposes of this section, if the person or group of persons who control Customer as of the Effective Date cease to have such control, such change of control shall be deemed an assignment of Customer's interest in the Agreement. Fyfe may assign the Agreement at any time with prior notice to Customer.

11. Relationship of the Parties. Nothing in the Agreement shall create any association, partnership, joint venture, or the relation of principal and agent or employee between the parties, it being understood that Fyfe and Customer shall perform all services hereunder as an independent contractor. Each party agrees that it shall not represent itself as the agent or legal representative of the other for any purpose whatsoever. In furtherance of the foregoing but without limiting the generality thereof, throughout the Term, Customer agrees to (a) expressly and properly identify the relationship between Customer and Fyfe in respect of Customer's exploitation of the Tyfo Systems and not do anything which might mislead or deceive the public, be detrimental to the good name, Trademarks, Know-how, Confidential Information, Works, goodwill or reputation of Fyfe or its products, and (b) upon request of Fyfe, discontinue any advertising or practice which may be deemed by Fyfe, in its sole discretion, to have such effect.

12. Disclaimer.

12.1 Customer acknowledges that the Know-how (and any training provided by Fyfe in respect thereof) is for general guidance in the use and exploitation of the Tyfo Systems. Customer acknowledges that the success of the Tyfo Systems is highly dependent on the experience and skills of the installers, including Customer and its employees and contractors. Accordingly, the Tyfo Systems, the Tyfo Products, the Intellectual Property Rights, and the equipment and the supplies provided hereunder are provided to Customer on an "AS IS" basis. Further, Customer agrees that (i) Fyfe shall not be held responsible for Customer's use or compliance with the Know-how (whether or not Fyfe provided Customer with any training with respect thereto), and (ii) the application of any information obtained from the Know-how or other materials (whether in connection with any training provided by Fyfe with respect thereto or not) shall be the sole responsibility of Customer.

12.2 TO THE EXTENT PERMITTED BY LAW AND SUBJECT ONLY TO FYFE'S STANDARD TERMS AND CONDITIONS FOR THE SALE OF TYFO MATERIALS, FYFE AND ITS AFFILIATES HEREBY DISCLAIM ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, STATUTORY, ORAL OR WRITTEN INCLUDING ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT FYFE KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), IN EACH INSTANCE WITH RESPECT TO THE TYFO SYSTEMS (INCLUDING ANY TRAINING PROVIDED BY FYFE IN RESPECT THEREOF), THE TYFO PRODUCTS, THE INTELLECTUAL PROPERTY RIGHTS, AND THE EQUIPMENT AND SUPPLIES PROVIDED UNDER THE AGREEMENT. SUBJECT ONLY TO FYFE'S STANDARD TERMS AND CONDITIONS FOR THE SALE OF TYFO MATERIALS, FYFE AND ITS AFFILIATES FURTHER DISCLAIM ANY AND ALL

WARRANTIES, CONDITIONS OR REPRESENTATIONS OF TITLE AND NON-INFRINGEMENT WITH RESPECT TO THE TYFO SYSTEMS (INCLUDING ANY TRAINING PROVIDED BY FYFE IN RESPECT THEREOF), THE TYFO PRODUCTS, THE INTELLECTUAL PROPERTY RIGHTS, AND THE EQUIPMENT AND SUPPLIES PROVIDED UNDER THE AGREEMENT.

13. No Third Party Beneficiaries. This Agreement will not confer any rights or remedies on any person other than the parties hereto and their respective successors and permitted assigns.
14. Severability. If any provision of the Agreement is declared or found to be illegal, unenforceable or void, then both Parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is illegal, unenforceable or void, it being the intent and agreement of the parties that the Agreement shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefore another provision that is legal and enforceable and achieves the same objective. If the remainder of the Agreement shall not be affected by such declaration or finding and is capable of substantial performance, then, each provision not so affected shall be enforced to the extent permitted by law.
15. Waiver. A party's failure to enforce any provision or provisions of the Agreement shall not in any way be construed as a "course of dealing" or a waiver of any such provision or provisions as to any future violations thereof.
16. Cumulative Remedies. No right or remedy conferred by the Agreement upon either party is exclusive of any other right or remedy conferred herein or by law or in equity; rather, all of such rights and remedies are cumulative of every other such right or remedy and may be exercised concurrently or separately therefrom.
17. Survival. Each provision of the Agreement that would by its nature or terms survive any termination of the Agreement shall survive any termination of the Agreement, regardless of the cause.