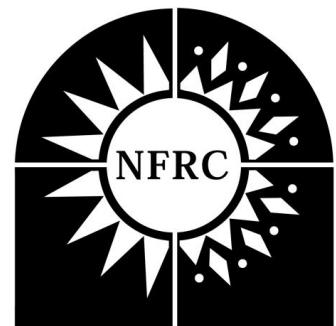


NFRC Door Manufacturer/Lineal Supplier License Agreement

[To be used by door component manufacturer who is not responsible for finished glazing on door and supplies simulation/validation testing to assembler/distributor.]



National Fenestration
Rating Council®

NFRC Door Manufacturer/Lineal Supplier License Agreement

THIS AGREEMENT is made as of the date set forth on the signature page hereof by and between the NATIONAL FENESTRATION RATING COUNCIL, INCORPORATED, a Maryland nonprofit corporation ("NFRC") and the party executing this Agreement as the licensee hereunder ("Licensee").

WHEREAS, Licensee manufactures door lineals and other door components and distributes them to door distributors and installers who will be responsible for assembling and selling finished door products. The door distributor/assembler has or intends to seek product certification authorization in order to certify the finished door products as to thermal performance and other performance attributes, if applicable, in accordance with NFRC's requirements pursuant to the Certification Program and;

WHEREAS, NFRC owns and controls the use of procedures for rating thermal and other performance attributes of fenestration products (the "Rating System") set forth in *NFRC 100: Procedure for Determining Fenestration Products U-factors* ("NFRC 100") and *NFRC 200: Procedure for Determining Fenestration Product Solar Heat Gain Coefficients and Visible Transmittance at Normal Incidence* ("NFRC 200"), et seq., as amended and updated from time to time, *NFRC 400: Procedure for Determining Fenestration Product Air Leakage* ("NFRC 400"), *NFRC 500: Procedure for Determining Fenestration Product Condensation Resistance Value* ("NFRC 500"), *NFRC 101: Procedure for Determining Thermo-Physical Properties of Materials for Use in NFRC-approved Software Programs* ("NFRC 101"), *NFRC 102: Test Procedure for Measuring the Steady-State Thermal Transmittance of Fenestration Systems* ("NFRC 102"), *NFRC 201: Procedure for Interim Standard Test Method for Measuring the Solar Heat Gain Coefficient of Fenestration Systems Using Colorimeter Hot Box Methods* ("NFRC 201"), *NFRC 300: Test Method for Determining the Solar Optical Properties of Glazing Materials and Systems* ("NFRC300"), *NFRC 301: Standard Test Method for Emittance of Specular Surfaces Using Spectrometric Measurements* ("NFRC 301"), *NFRC 400-2004: Procedure for Determining Fenestration Air Leakage* ("NFRC 400"), and *NFRC 500: Procedure for Determining Fenestration Product Condensation Resistance Values* ("NFRC 500"),] copies of which have previously been provided to Licensee;

WHEREAS, NFRC owns and controls the use of a program for rating (by computer simulation and physical testing), certification and labeling of fenestration products for energy performance (the "Certification Program") set forth in the document entitled NFRC PCP: Product Certification Program, as it may be amended and updated from time to time ("PCP" or "Certification Program"), a copy of which has previously been provided to Licensee;

NFRC DOOR MANUFACTURER/LINEAL SUPPLIER LICENSE AGREEMENT

WHEREAS, NFRC is the owner and proprietor of U.S. Registration No. 2,238,431 for the certification mark (the “Registered Mark”) attached hereto as Exhibit A, being a distinctive trademark logotype incorporating the initials “NFRC” inside a circle within an arched window featuring half a sun and snowflake design on either side of the circle and further containing NFRC’s name and the designation “®”. The Registered Mark may be used by third parties who are certification and inspection agencies (“IA”) and who have met the requirements embodied in the NFRC Certification Agency Program (CAP or the “IA Program”) as it may be amended or updated from time to time, a copy of which has previously been provided to Licensee. This Registered Mark may also be used by manufacturers, among others, on a NFRC-authorized label, as defined in the PCP (the “NFRC Label”), to be affixed to fenestration products to indicate those products meet the requirements of the Certification Program;

WHEREAS, NFRC owns common law trademark and trade name rights to the word mark “NFRC” for use in association with the operation of its Certification Program and otherwise (the “Word Mark”);

WHEREAS, the Licensee wishes to have simulation and validation testing done in accordance with NFRC procedures and programs in order that those purchasing the Licensee's products will have the opportunity to produce fenestration products which meet NFRC procedures and programs for certification authorization and have those products labeled with the Registered Mark, Word Mark and NFRC Label and;

WHEREAS, the Licensee wishes to become a licensee under the Certification Program in order to have Licensee’s product components and its samples submitted for simulation and validation testing in accordance with all NFRC programs and procedures and;

WHEREAS, if Licensee meets NFRC's requirements for product certification authorization and complies with all other requirements established by NFRC, Licensee will be entitled to have simulation and validation testing reports reissued to the assemblers and distributors of the finished door products to which the Licensee sells its door components and;

WHEREAS, if Licensee meets NFRC’s requirements for product certification authorizations and complies with all other applicable requirements established by NFRC, Licensee will be entitled to have its door lineal products and components simulation and validation tested and used by the assembler/distributor of finished door products.

NOW THEREFORE, The parties hereto agree as follows:

1. **Grant of License.** NFRC hereby grants to Licensee a nonexclusive, nonassignable, non-sublicensable license to have its door lineals and components listed on Schedule III attached hereto simulation and validation tested and to reissue Licensee's simulation and validation testing reports to the NFRC-licensed assemblers/distributors listed on Schedule III hereto, as amended from time to time. With respect to the Licensee’s products and product lines listed on

NFRC DOOR MANUFACTURER/LINEAL SUPPLIER LICENSE AGREEMENT

Schedule III hereto. Licensee shall be permitted to have the NFRC accredited simulation and validation testing laboratories reissue reports to NFRC licensed assemblers/distributors which are listed on Licensee's Schedule III and the series and model designation of the door lineals and components being supplied by Licensee to those distributors/licensees. All of the Schedules to this Agreement are hereby incorporated by reference and may be supplemented from time to time by an amendment to the Schedule(s) executed by Licensee and NFRC. In addition, if available on NFRC's website, Licensee may revise any of the Schedules in accordance with the procedures offered by NFRC. If NFRC does not notify Licensee of any objections to such proposed changes to the Schedule(s) within 30 days after they are made on the website, those changes shall be deemed approved effective as of the end of that 30 day period.

2. **Prohibited Use.**

A. Licensee shall not reissue or agree to reissue simulation or validation reports, for purpose of NFRC certification and labeling, to any party unless that party is NFRC-licensed and listed on Schedule III hereto, as amended from time to time.

B. Licensee shall not reissue or agree to reissue any simulation or validation reports, for purpose of certification and labeling, to any NFRC-licensed assembler/distributor for any product or product lines other than those specifically listed on Schedule III hereto, as amended from time to time.

C. Licensee shall not have the right to use or display the Registered Mark or Word Mark except as expressly authorized by NFRC. Licensee shall not use, reproduce or distribute any of NFRC's copyrighted materials, except as permitted in the CAP and this Agreement.

D. Licensee shall not cause injury or harm to the good name or reputation of NFRC. Injury or harm to the good name or reputation of NFRC shall include, but not be limited to, use of the Registered Mark or Word Mark, other than as expressly authorized by NFRC or use of the Word Mark or Registered Mark in a manner that states or implies that a fenestration product is rated or certified in accordance with the Rating System or Certification Program when the product is not, or in any manner that is false, misleading, inaccurate or tends to cause customer confusion.

3. **Terms and Conditions.** Licensee agrees to comply with the following terms and conditions:

A. Licensee acknowledges and agrees that the terms of the Certification Program shall govern this Agreement but that in the event of a conflict, this Agreement shall control. Licensee acknowledges and agrees further that the Certification Program may be interpreted, amended or supplemented from time to time by NFRC, and that such interpretations, amendments or supplements may be material. Licensee further agrees that the terms of the Agreement shall be deemed to be modified to incorporate such interpretations, amendments or

NFRC DOOR MANUFACTURER/LINEAL SUPPLIER LICENSE AGREEMENT

supplements applicable to NFRC door lineal supplier licensees generally and that Licensee shall comply with such interpretations, amendments or supplements. In addition to the permitted amendment described above, NFRC may amend any provision of this Agreement in the following manner. NFRC shall give Licensee not less than 30 days prior written notice of the proposed amendment to this Agreement, including the specific language of the proposed amendment. If Licensee does not notify NFRC in writing of its objection to the proposed amendment within 30 days receipt of the above-referenced written notice, the proposed amendment shall automatically become effective as of the end of that 30-day period. If Licensee provides a written notice of its objection to the proposed amendment within that 30 day period, the amendment shall not become effective and NFRC may elect to terminate the Agreement upon 60 days prior written notice to Licensee as provided in Section 7C below. This Agreement shall not be construed as a commitment by Licensee to manufacture only door component products that will meet the NFRC product certification requirements and be included hereunder.

B. Licensee acknowledges and agrees that NFRC shall have the authority to interpret all NFRC procedures, methods and other requirements comprising the Rating System and the Certification Program and Licensee shall comply with such interpretations.

C. Licensee agrees that it shall not allow or cause to have Licensee's simulation or validation test reports reissued, for purpose of certification and labeling, to any other entities other than the assembler/distributors listed on its Schedule III.

D. Licensee agrees that it shall provide to NFRC upon request all information, drawings, specifications, data and other materials underlying any simulation or validation test reports or product certification authorization issued to any NFRC-licensed assembler/distributor on Licensee's Schedule III, including but not limited to specimens of any simulation test or validation tests or Certified Product. Licensee agrees that the foregoing sentence requires that Licensee shall deliver to NFRC or to an NFRC accredited laboratory or federal government operated laboratory a test sample of any product or product line or a production line sample of any Certified Product for which Licensee provided lineals at NFRC's request and that such sample shall be shipped at the Licensee's expense not later than five (5) business days after NFRC makes its request.

E. Licensee agrees that it shall not cause simulation or validation reports to be reissued for any door lineal products and components which are not listed on Schedule III hereto or which do not comply with the NFRC rating programs or procedures or which are inaccurate, false or misleading to a consumer, the public or a government agency.

F. Licensee shall have no authority under this Agreement to print or use NFRC Labels for its own use or the use of any of its assemblers/distributors.

G. Licensee acknowledges and agrees that NFRC shall have the right to suspend or revoke Licensee's license to participate in the Certification Program, in accordance with the provisions of the PCP, and shall have the right to suspend or terminate Licensee's license granted

NFRC DOOR MANUFACTURER/LINEAL SUPPLIER LICENSE AGREEMENT

hereunder for any breach of this Agreement which NFRC determines to be material, including but not limited to Licensee's dissemination of false or misleading information relating to Licensee's products.

4. **Representation and Warranties.** Licensee represents and warrants that it has received a current copy of and understands the requirements set forth in the PCP, as interpreted, amended or supplemented at the date hereof. Licensee further represents and warrants that neither Licensee nor its affiliates have any financial interest in any IA or NFRC accredited simulation or testing laboratory.

5. **Ownership of Mark.** Licensee acknowledges NFRC's exclusive right, title and interest in and to the Registered Mark, the Word Mark and the NFRC Label and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title and interest. Licensee shall not adopt or use any mark, words or designation which is similar to or likely may be confused with the Registered Mark or Word Mark.

6. **Assignment of Copyrights.** Licensee assigns to NFRC all copyrights Licensee may own in any written materials Licensee prepared or which were prepared for Licensee that are at any time submitted to NFRC for its consideration, including materials that may be incorporated into any NFRC program or technical documents, whether in written, electronic, or other tangible format (the "Contributions"). Licensee acknowledges that Licensee will have no future rights in any of these Contributions and that NFRC shall own the entire copyright in such Contributions. Licensee certifies that it has the legal right to assign the copyright in such Contributions to NFRC, and that to its knowledge such Contributions are not protected by any copyright or other proprietary rights owned by any other person or entity.

7. **Term.**

A. This Agreement shall take effect on the date of execution shown below and shall continue in effect until terminated in accordance with Section 7 below.

B. Any period during which Licensee's license granted hereunder has been suspended or revoked for any period during which Licensee's license under this Agreement has been suspended or revoked shall not extend the term of this Agreement

8. **Termination.**

A. This Agreement shall be suspended automatically upon suspension of Licensee's licensing in accordance with the provisions of the PCP.

B. This Agreement shall be suspended or terminated by NFRC if, in the determination of NFRC, Licensee has breached any provision of this Agreement in any material respect. Notwithstanding the foregoing, NFRC, in its sole discretion, may provide a designated

NFRC DOOR MANUFACTURER/LINEAL SUPPLIER LICENSE AGREEMENT

period for Licensee to cure such breach. If the cause of the suspension or termination of this Agreement is cured within any cure period stipulated by NFRC, if any, in the determination by NFRC, the suspension or termination shall be withdrawn and this Agreement shall continue in full force and effect.

C. This Agreement may be terminated at any time by either party upon 60 days prior written notice to the other party.

D. In the event of either the suspension or termination of this Agreement, Licensee shall immediately cease the reissuing of all test reports to fabricators and further provide NFRC with any and all documents, materials or other information of any nature requested by NFRC whose enforcement powers shall survive the termination of this agreement.

9. Remedies.

A. Licensee acknowledges that NFRC has a program for the imposition of fines to be paid by persons failing to comply with the requirements, among others, of the Certification Program or any license agreement with NFRC and agrees that it will comply with the provisions of that Program.

B. NFRC shall have all such rights as may be available to it at law or in equity, including the right to a temporary restraining order, temporary injunction and permanent injunction, to prevent damage to or to recover from damage to it, including but not limited to damage to the operation of its programs, its name or reputation, caused by or resulting from Licensee's breach of any provision of this Agreement.

10. Indemnification.

A. Licensee shall indemnify and hold harmless NFRC, its directors, officers, members, employees and agents from and against any losses, claims, damages or liability, joint or several, including reasonable attorney's fees and expenses, to which such entities or persons may become subject, arising from or in connection with any negligent or wrongful act of Licensee or as a result of a breach by Licensee of this Agreement; provided, however, that Licensee shall not be required to provide indemnification under this Section 9A if the loss, claim, damage or liability resulted from a negligent or wrongful act of NFRC.

B. Licensee shall promptly notify NFRC in writing of its receipt of any claim of loss, damage, or liability made against Licensee in connection with the PCP or Licensee's performance of its duties hereunder.

11. **Counterparts.** This Agreement shall be executed in duplicate counterparts and one such counterpart shall be delivered to each party to this Agreement.

12. **Independent Contractors.** The parties acknowledge that Licensee is an independent

NFRC DOOR MANUFACTURER/LINEAL SUPPLIER LICENSE AGREEMENT

licensee of NFRC and is not an agent, partner, joint venturer or employee of NFRC.

13. **Applicable Law.** This Agreement shall be construed under the laws of Maryland.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year written below.

**NATIONAL FENESTRATION RATING COUNCIL
INCORPORATED**

By _____
Authorized Signature

(Please Print Name)

Dated _____

LICENSEE

(Please Print Organization Name)

By _____
Authorized Signature

(Please Print Name)

Schedule III to the Lineal Supplier License Agreement

List of Assembler/Distributors, Product and Product Lines Addressed under this Agreement:

Assembler/Distributor

Product Line(s)

Date:

NFRC DOOR MANUFACTURER/LINEAL SUPPLIER LICENSE AGREEMENT

EXHIBIT A



National Fenestration
Rating Council®
