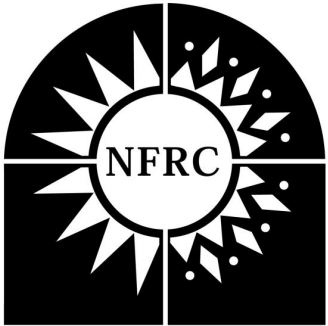


NFRC Private Labeler License Agreement



National Fenestration
Rating Council®

NFRC PRIVATE LABELER LICENSE AGREEMENT

THIS AGREEMENT is made as of the date set forth on the signature page hereof by and between NATIONAL FENESTRATION RATING COUNCIL INCORPORATED, a Maryland nonprofit corporation (“NFRC”), and the party executing the signature page attached hereto (the “Licensee”).

RECITALS

A. NFRC owns and controls the use of procedures for rating performance and other 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”), and *NFRC 301: Standard Test Method for Emittance of Specular Surfaces Using Spectrometric Measurements* (“NFRC 301”) and *NFRC 400: Procedure for Determining Fenestration Product Condensation Resistance Values and NFRC 500: Procedure for Determining Fenestration Product Condensation Resistance Values*, copies of which have previously been provided to Licensee;

B. NFRC owns and controls the use of a program for rating (by computer simulation and physical testing), certification and NFRC Labeling of fenestration products for energy performance and other attributes (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;

C. 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. This 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 Mark may also be used by manufacturers, among others, on a NFRC-authorized NFRC 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; and

D. 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”); and

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E. One or more manufacturers of fenestration products have agreed to grant to Licensee the right to sell and distribute such manufacturer's products under Licensee's own private label.

F. The manufacturer whose products will be private labeled by Licensee has obtained or intends to obtain a grant of product certification authorization for those products pursuant to the Rating System, Certification Program, and IA Program, as they may be amended from time to time (collectively, the "Programs").

G. Licensee seeks authorization to apply the NFRC Label to fenestration products for which the manufacturer(s) thereof have obtained product certification authorization pursuant to the Programs and which will be sold and distributed under Licensee's private label. Alternatively, Licensee seeks authority to allow the manufacturer(s) of such certified products, on behalf of Licensee, to apply NFRC Labels to those authorized products at the manufacturer's facility.

H. NFRC is willing to grant a license to Licensee to apply the NFRC Label to such authorized fenestration products that Licensee will market and sell under its private label, on the terms and conditions set forth below.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Grant of License.** NFRC hereby grants to Licensee a nonexclusive, non-divisible, non-assignable and non-sublicensable license to use the Word Mark and Registered Mark as components of the NFRC Label in commerce in connection with the permitted uses referenced in Section 2 below, subject to the terms and conditions of this Agreement. No other right or license is granted to Licensee hereunder, either express or implied, with respect to any other trademark, service mark, trade name or other intellectual property right of NFRC. No license is granted hereunder to Licensee's affiliates, owners, officers, directors or members. Upon NFRC's termination or suspension of Licensee and upon termination of this Agreement, the license granted hereunder shall automatically terminate and Licensee shall no longer have any right to use the Word Mark or the Registered Mark, or to apply NFRC Labels to any fenestration products.

2. **Permitted Use.**

a. NFRC hereby grants to Licensee a non-exclusive, non-assignable, non-sublicensable license to apply NFRC Labels on the fenestration products (the "Authorized Products") listed on Schedule V hereto which products have been authorized to be certified by an IA to indicate compliance with NFRC's product certification requirements as set forth in the PCP ("NFRC Requirements"). Licensee shall apply the NFRC Labels to such Authorized Products at the Licensee's location(s), if any, identified on Schedule VI hereto. Licensee may also authorize the manufacturers of such Authorized Products to apply the NFRC Label to such products at the manufacturers' facilities, if any, identified on Schedule I hereto. Licensee shall provide prior written notice to NFRC that it has authorized designated manufacturers to apply the NFRC Labels to the Authorized Products at the facilities identified in Schedule I hereto. Licensee shall

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be responsible for such manufacturer's compliance with the labeling requirements set forth in this Agreement and any failure by such manufacturer to meet those requirements shall constitute a breach of Licensee's obligations under this Agreement. Schedule II attached hereto identifies the Authorized Products and the facilities where such products are manufactured or assembled. The foregoing Schedules are incorporated herein by reference and may be supplemented or amended from time to time by an amendment to such Schedule executed by Licensee and NFRC. In addition, if available on NFRC's website, Licensee may amend or supplement the Schedules on the NFRC website in accordance with procedures established by NFRC from time to time. If NFRC does not notify Licensee of any objection to such proposed changes to the Schedule(s) within 30 days after such proposed changes are posted on the website, those changes to the Schedule(s) shall be deemed approved and effective as of the end of that 30 day period

b. The Registered Mark shall be used with the symbol ® in the manner reflected on Exhibit A hereto which constitutes an integral part of the Registered Mark. The Word Mark shall be used with the symbol "TM".

c. The Registered Mark and Word Mark may be applied by Licensee, or as applicable, by the Licensee's designated manufacturer, to Authorized Products by means of the NFRC Label or other permanent marking in a form approved from time to time by NFRC and in accordance with the provisions of this Agreement. The affixing of a NFRC Label to an Authorized Product by Licensee, or by the manufacturer designated by Licensee, during the term of this Agreement in accordance with NFRC requirements governing both temporary and permanent NFRC Labels and in conformance with this Agreement shall constitute the act of certification of the product, whereupon the Authorized Product shall become a Certified Product.

d. Subject to the terms and conditions of this Agreement, Licensee may use the Word Mark and Registered Mark on printed materials for the purpose of indicating that the fenestration products identified on Schedule V hereto are Certified Products.

3. **Prohibited Use.**

a. Licensee shall not affix, or allow the manufacturer of its private labeled products, to affix, the Word Mark, Registered Mark or NFRC Label to, or use the Word Mark, Registered Mark or NFRC Label in connection with, any product that has not been manufactured or fabricated at a facility listed on Schedule I or is not an Authorized Product; nor shall Licensee use the Word Mark or Registered Mark or NFRC Label in any manner not expressly authorized by the Agreement or that could injure or harm 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 Word Mark or Registered Mark on a NFRC Label that sets forth false, misleading or inaccurate information relating to a fenestration product 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 consumer confusion.

b. Licensee's use of the Registered Mark, Word Mark or NFRC Label in any manner

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prohibited by this Section 3 shall be deemed a material breach of this Agreement and shall be the basis for immediate suspension of Licensee's licensing under the Certification Program or termination of this Agreement pursuant to Section 9.d below.

4. **Manner of Use.**

a. Licensee may adapt the color and size of the Registered Mark according to Licensee's needs, provided that the shape, typeface, legibility and other essential features of the Registered Mark are not altered, and provided that when the Registered Mark is used on a NFRC Label affixed to a fenestration product, the size, color, format and content of the NFRC Label shall conform to NFRC requirements set forth in the PCP, Appendix B, as amended or interpreted from time to time by NFRC, and in Section 5.j. hereof.

b. Licensee shall obtain the prior written permission of NFRC to reproduce the Registered Mark and Word Mark in its entirety for use on printed materials or in promotion of Certified Products. Licensee shall submit to NFRC at NFRC's principal place of business, by a means which provides a record of and receipt for delivery, samples of proposed printed materials using the Registered Mark or Word Mark not fewer than 10 business days prior to the proposed commencement of public dissemination or printing, whichever comes earlier. If NFRC does not contact Licensee to require modification of such proposed printed materials within 10 business days following receipt of such materials by NFRC, Licensee may use such printed materials in the form provided to NFRC. Licensee shall make such modifications as may be required by NFRC in such materials in order to protect NFRC's rights in the Registered Mark and Word Mark and to comply with the legal requirements for use of such marks.

c. Licensee may use such other symbols, trademarks or trade names as are not inconsistent with the nature and purpose of the Word Mark, Registered Mark or NFRC Label to identify any Certified Product sold by it, provided, however, that no such symbol, trademark or trade name shall be so similar to the Registered Mark, Word Mark or NFRC Label as to cause confusion in the minds of consumers of such products, and provided further that the Registered Mark and Word Mark shall not be affixed to or issued with respect to any Certified Product in conjunction with any similar quality or certification mark from any other source or authority unless Licensee has first obtained the written permission of the NFRC. Licensee shall not use, reproduce or distribute any of NFRC's copyrighted materials, except as permitted in the CAP and this Agreement.

d. NFRC may adopt such further policies and restrictions on the use of the Word Mark, Registered Mark and NFRC Label applicable to NFRC's licensees generally, including such restrictions as are necessary to protect the Registered Mark as a certification mark under applicable law, and Licensee agrees to comply with such policies or restrictions upon notice thereof.

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

a. Licensee and NFRC acknowledge that the manufacturer who manufactures or

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assembles the Authorized Products is an NFRC licensed manufacturer and shall be responsible for its compliance with the terms of its Manufacturer License Agreement with NFRC. With respect to fenestration products sold or distributed by Licensee to which the NFRC Label is affixed pursuant to this Agreement, Licensee shall adhere to and comply with all of the applicable provisions of the Certification Program and the terms of the Certification Program shall govern this Agreement. In the event of a conflict between this Agreement and the Certification Program, this Agreement shall control. Licensee acknowledges and agrees further that the Certification Program, Rating System, and all other NFRC program documents, including the IA Program and Accreditation 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 this Agreement shall be deemed to be modified to incorporate such interpretations, amendments or supplements applicable to NFRC private labeler licensees generally and that Licensee shall comply with such interpretations, amendments or supplements. In addition to the permitted amendments 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 of its 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 9(a) below. This Agreement shall not be construed as a commitment by Licensee to sell or distribute only fenestration products which are Authorized Products.

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

c. Licensee agrees that the NFRC Label will be used only to identify a Certified Product and that the NFRC Label, when affixed to an Authorized Product by Licensee or its designated manufacturer, shall be Licensee's guarantee to its customers and to users that the rating and related information set forth on the NFRC Label is accurate and that the Certified Product meets NFRC's applicable requirements.

d. Licensee agrees that it shall not affix or allow to be affixed an NFRC Label to a fenestration product when the Licensee knows or should know that such NFRC Label sets forth a performance rating that is false, deceptive or misleading to a reader, a consumer, the public or a government agency or that indicates conformance with the Rating System or Certification Program when such fenestration product does not so conform.

e. Licensee agrees that Licensee's facilities and the Authorized Products may be inspected for conformance with NFRC Requirements by NFRC or its duly authorized

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representative, including IA's, and that Licensee shall cooperate fully in the conduct of inspections, reviews and tests in accordance with the provisions of the Certification Program.

f. Licensee agrees that upon request it shall provide to NFRC and its authorized representatives all information relating to Licensee's compliance with this Agreement, all agreements and communications between Licensee and the manufacturers identified on any of the Schedules to this Agreement and other materials relating to Licensee's ordering, receipts and labeling of Authorized Products or any product certification authorization asserted by Licensee by the affixing of an NFRC Label on Licensee's product, including but not limited to a specimen of a Certified Product. Licensee agrees that the foregoing sentence requires that Licensee shall deliver to NFRC or to an NFRC-accredited or federal government-operated laboratory a sample of any Certified Product at NFRC's request and that such sample shall be shipped at Licensee's expense not later than five business days after NFRC makes its request.

g. Licensee agrees that it shall withdraw from the market and cease affixing an NFRC Label to any fenestration product determined by NFRC to have affixed thereto an NFRC Label which is inaccurate, false or misleading, or to any product for which Licensee no longer has the manufacturer's permission to distribute and sell on a private label basis. Licensee acknowledges that in the event Licensee or the manufacturer authorized by Licensee to apply NFRC Labels fails to properly perform the duties required under this Agreement, NFRC may place Licensee on probation on terms and conditions deemed appropriate by the NFRC Board of Directors or authorized committee thereof. If Licensee fails or refuses to adhere to all of the terms and conditions of probation deemed appropriate by the NFRC Board of Directors, in its sole discretion, NFRC may elect to suspend or terminate Licensee as provided in Section 10 below.

h. Licensee agrees that it shall not market or sell any fenestration product as a Certified Product if the product is not an Authorized Product and a Certified Product, or if to do so would be inaccurate, false or misleading to the consumer or the public.

i. Licensee acknowledges and agrees that NFRC shall have the right to suspend or terminate Licensee's license granted hereunder for any breach of this Agreement, which NFRC determines to be material. A material breach shall include but not be limited to any breach related to the dissemination of false or misleading information, whether by labeling or advertising or promotion of a product.

j. NFRC Labels.

(i) NFRC shall furnish Licensee with the form of the NFRC Label (whether temporary or permanent) in accordance with the provisions of this Agreement and the PCP and Licensee shall pay such fees therefore as may be set forth in the PCP, as amended from time to time. Failure to make payment of all applicable fees owed by Licensee within 45 days after payment is due shall be grounds for suspension or termination of Licensee's license hereunder.

(ii) Licensee shall obtain the NFRC Label or permission to print or produce the NFRC Label exclusively through NFRC or its duly authorized IA.

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(iii) Licensee shall use the NFRC Label only in accordance with the requirements set forth as to size, format and content by the PCP, Appendix B, as interpreted, amended or supplemented by NFRC from time to time and the other terms and conditions of this Agreement.

(iv) Licensee shall not alter or deface an NFRC Label or remove the NFRC Labels from the applicable facilities listed in Schedule I or Schedule VI, except as directed by NFRC or its authorized IA.

(v) NFRC Labels shall be maintained and used in reasonably clean condition and shall be clearly legible.

(vi) NFRC Labels in Licensee's possession shall be available at all times for inspection by NFRC or authorized representatives of NFRC.

k. In the event that the Registered Mark or NFRC Label is affixed to a product that is not an Authorized Product, whether or not inadvertently, Licensee shall not sell or offer for sale such product until the Registered Mark and/or NFRC Label has been removed from all such products, whether at the manufacturing facilities, or in Licensee's wholesale or retail distribution system. In the event that a product that is NFRC Labeled has been listed in the NFRC Certified Products Directory, Licensee agrees that NFRC may publish a notice that such product is not an Authorized Product or Certified Product. In that event, Licensee shall cease any advertising or promotion of any such product as a Certified Product.

l. Licensee shall notify NFRC in writing immediately of the termination of any agreements between Licensee and fenestration manufacturers which authorized Licensee to distribute and sell such manufacturer's Authorized Products on a private label basis.

6. **Representations and Warranties.** Licensee represents and warrants to NFRC that it has received a copy of and understands the requirements set forth in the Certification Program and Rating System, as interpreted, amended or supplemented at the date hereof. Licensee further represents and warrants that neither Licensee nor its affiliates has any financial interest in any IA or NFRC accredited simulation or testing laboratory

7. **Ownership of Marks.** Licensee acknowledges NFRC's exclusive right, title and interest in and to the Registered Mark and Word Mark 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. In connection with the use of the Registered Mark and Word Mark, Licensee shall not in any way represent that it has any ownership in the Registered Mark and Word Mark. Licensee acknowledges that the use of the Registered Mark and Word Mark shall not create in Licensee's favor any right, title or interest in or to the Registered Mark or Word Marks other than the license to use such marks hereunder. Upon suspension or termination of the license granted hereunder, in any manner provided herein, Licensee shall cease and desist from use of the Registered Mark and Word Mark in any way. Licensee shall not adopt or use any word or mark which is likely to be similar to or confused with the Registered Mark and Word Mark.

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8. **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.

9. **Term.**

a. This Agreement shall take effect on the date of execution shown below, which shall not be prior to notification to NFRC by an NFRC IA that Licensee has met NFRC’s Requirements, and shall continue in effect until terminated in accordance with the provisions of Section 9.

b. Any period during which Licensee’s license granted hereunder has been placed on probation, suspended or revoked or any period during which Licensee’s licensing under the Certification Program has been placed on probation, suspended or revoked shall not extend the term of this Agreement and shall not entitle Licensee to a refund for NFRC Labels purchased.

10. **Termination.**

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

b. This Agreement shall be suspended automatically upon suspension of Licensee’s licensing under the Certification Program in accordance with the provisions of the PCP or failure of Licensee to make payment of any fees due NFRC or the Licensee’s NFRC IA when due as set forth in Section 5.(j)(i) above.

c. This Agreement shall be suspended automatically upon (i) suspension of Licensee’s agreement with its designated NFRC IA or (ii) suspension of product certification authorization for Certified Products sold or distributed by Licensee in accordance with the provisions of the PCP; provided that if suspension occurs under clause (ii) and such suspension relates to some but not all products for which product certification authorization has previously been granted, such suspension may, in NFRC’s sole discretion, be limited to those products for which product certification authorization has been suspended. If the cause of such suspension is cured and the suspension is withdrawn in accordance with the provisions of the PCP, this Agreement shall continue in full force and effect.

d. This Agreement shall terminate automatically upon:

(i) Termination of the agreement between Licensee and its designated IA unless, prior to the effective date of that termination, Licensee shall have entered into an

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agreement with another NFRC approved IA;

(ii) Revocation by NFRC of the product certification authorization for products sold or distributed by Licensee; provided that if revocations occur under this clause and such suspension relates to some but not all products for which product certification authorization has previously been granted, in NFRC's sole discretion, such revocation may be limited by NFRC to those products for which product certification authorization has been revoked;

(iii) Termination of all agreements between Licensee and fenestration manufacturers which authorize Licensee to distribute and sell such manufacturers' Authorized Products on a private label basis.

e. This Agreement may 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 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.

f. In the event of either the suspension or termination of this Agreement or the suspension or revocation of Licensee's licensing by NFRC under the PCP, Licensee shall immediately cease using the Registered Mark, Word Mark and NFRC Labels and shall surrender to NFRC or NFRC's authorized representative all NFRC Labels remaining in Licensee's possession and shall remove all NFRC Labels affixed to Licensee's private label fenestration products, whether in manufacturing facilities or in Licensee's wholesale or retail distribution system.

11. 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 Licensee agrees that it will comply with the provisions of such 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, or to the Word Mark or Registered Mark, caused by or resulting from Licensee's breach of any provision of this Agreement.

12. Indemnification.

a. Licensee shall indemnify and hold harmless NFRC, its directors, officers, members, employees and agents, from and against any and all losses, claims, damages or

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liability, including reasonable attorney's fees and expenses, on account of injury to any person or damage to property, which is based in whole or in part on reliance on the NFRC Label on any product by Licensee or by a manufacturer authorized by Licensee to apply NFRC Labels to fenestration products or as a result of a breach by Licensee of this Agreement; provided, however, that Licensee shall not be required to provide indemnification hereunder 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 any termination or notice of termination of its agreement with an NFRC IA and of any claim or loss, damage or liability, arising relative to Licensees' performance of its duties hereunder.

13. **Independent Contractors.** The parties acknowledge that Licensee is an independent licensee of the Registered Mark and Word Mark and is not an agent, partner, joint venturer or employee of NFRC.

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

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

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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

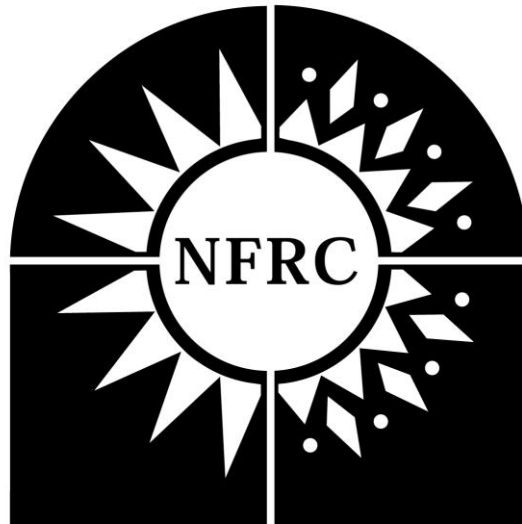
(Please Print Organization Name)

By: _____
Authorized Signature

(Please Print Name)

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EXHIBIT A



National Fenestration
Rating Council®
