

NFRC Manufacturer License Agreement (FenStar®)

This **NFRC Manufacturer License Agreement (FenStar®)** (the “**FenStar® License Agreement**”) is made as of the date set forth on the signature page below, 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. Licensee is currently a party to a Manufacturer License Agreement with NFRC (the “**PCP License Agreement**”). (All capitalized terms not defined in this FenStar® License Agreement shall have the meanings ascribed to those terms under the PCP License Agreement).

B. Under the PCP License Agreement, Licensee has agreed to comply with NFRC’s PCP Certification Program, Rating System, IA Program and other applicable provisions of NFRC’s Accreditation Program with respect to the Licensee’s fenestration products which are submitted for rating, certification and labeling under the Certification Program. Under the PCP License Agreement, Licensee also agreed to comply with NFRC’s requirements for Licensee’s use of NFRC’s Trade Mark and Registered Mark and Label.

C. NFRC has now developed its FenStar® Certification Program for ENERGY STAR® (FS-1001-2017) (the “**FenStar® Certification Program**”). Under the FenStar® Certification Program, NFRC supports the Environmental Protection Agency’s (the “**EPA**”) ENERGY STAR® Windows, Doors and Skylight Program (the “**ENERGY STAR® Program**”) by certifying and verifying that windows, doors and skylights meet the requirements to be included in the ENERGY STAR® certified products list in accordance with the ENERGY STAR® Program requirements for Windows, Doors and Skylights, Standard Operating Procedures for Certification of Products to ENERGY STAR® specifications and Conditions and Criteria for Recognition of Certification Bodies for the ENERGY STAR® Program, as such requirements may be amended and supplemented from time to time (collectively the “**EPA ENERGY STAR® Requirements**”).

D. Under the FenStar® Certification Program, among other actions, NFRC, as an ENERGY STAR® certification body, manages the FenStar® Certification Program in accordance with the ENERGY STAR® certification scheme; manages the independent verification testing (surveillance) of ENERGY STAR® certified products; maintains a system under which ENERGY STAR® certificates of authorization are provided to ENERGY STAR® partners; and maintains an online listing of products and their energy performance ratings authorized for certification.

E. Licensee currently wishes to participate in the ENERGY STAR® Program and has one or more of its fenestration products included in the ENERGY STAR® certified products list and, under the EPA ENERGY STAR® Requirements, Licensee is required to execute this FenStar® License Agreement with NFRC.

NOW, THEREFORE, NFRC and Licensee, intending to be legally bound, hereby agree as follows:

1. **Continuance of PCP License Agreement.** The PCP License Agreement shall remain in full force and effect in accordance with its terms, without modification or amendment. The rights, duties and obligations set forth under this FenStar® License Agreement shall be in addition to the rights, duties and obligations provided for in the PCP License Agreement.

2. **Compliance with the FenStar® Certification Program.** Licensee shall comply with the following:

a. With respect to fenestration products manufactured by Licensee that are included in the ENERGY STAR® certified products list, Licensee shall adhere to the terms of the FenStar® Certification Program, including under the *NFRC FenStar® Certification Program for ENERGY STAR®* (FS-1001-2017), and *FenStar® Verification Testing Procedure* (FS-1100-2017), and ~~such other technical, procedural and~~ the other technical and procedural documents which set forth the terms and conditions for Licensee's participation in the FenStar® Certification Program which are listed on Exhibit 1 hereto and such other documents as the FenStar® Certification Program may adopt from time to time (collectively, the "FenStar® Program Documents"). ~~Licensee acknowledges and agrees further that the FenStar Certification Program and the FenStar Program Documents may be interpreted, amended, modified or supplemented from time to time by NFRC, in its sole discretion, and that such interpretations, amendments, modifications or supplements may be material and shall be binding on Licensee.~~ Subject to any requirements of the ENERGY STAR® Program which NFRC is required to comply with, the FenStar® Program Documents shall be posted on the NFRC publically accessible website and thereby made available to Licensee and any changes and supplements to the FenStar® Program Documents that are made by NFRC from time to time shall also be posted on the NFRC publically available website not less than thirty (30) days prior to the date upon which such changes and supplements will become effective.

b. Licensee acknowledges and agrees that the FenStar® Program Documents shall govern this FenStar® License Agreement and Licensee shall comply with all of the terms of such documents. In the event of a conflict between the terms of this FenStar® License Agreement and the terms of the FenStar® Program Documents, the terms of this FenStar® License Agreement shall control. ~~Licensee acknowledges and agrees that NFRC shall have the authority to interpret all procedures, methods and other requirements comprising the FenStar Certification Program and Licensee shall comply with such interpretations.~~

c. In addition to the permitted amendments described above, NFRC may amend any provision of this FenStar® License Agreement in the following manner. NFRC shall give Licensee not less than 30 days prior written notice of the proposed amendment to this FenStar® License 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 this FenStar® License Agreement as provided in Section 7(c) below. This FenStar® License Agreement shall not be construed as a commitment by Licensee to manufacture only products which are intended to be ENERGY STAR® certified products.

d. Licensee acknowledges and agrees that its participation in the ~~ENERGY~~ENERGY STAR Program is conditioned upon and subject to its compliance with the EPA

~~ENERGY~~ENERGY STAR Requirements. Licensee further acknowledges and agrees that the EPA retains the authority and rights to amend, modify, terminate or interpret the ENERGY STAR® Program and the EPA ENERGY STAR® Requirements and to terminate Licensee's participation in the ENERGY STAR® Program.

e. To participate in the ENERGY STAR® Program, Licensee is required to enter into and maintain an ENERGY STAR® partnership agreement with the EPA and be an active participant in good standing in the PCP Certification Program.

f. Licensee shall label its products to indicate NFRC certification and ENERGY STAR® Program certification solely in accordance with the PCP Certification Program and the FenStar® Certification Program.

g. Licensee shall not use any trademark or certification mark of the ~~ENERGY~~ENERGY STAR Program except in accordance with the EPA ENERGY STAR® Requirements.

h. Licensee agrees that it shall not advertise, market or sell any fenestration product as an ENERGY STAR® certified product, except in compliance with the requirements of the ENERGY STAR® Program and the FenStar® Certification Program, 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, terminate, or revoke Licensee's participation in the FenStar® Certification Program in accordance with the provisions of the FenStar® Program Documents, and shall have the right to suspend, terminate or revoke Licensee's participation in the FenStar® Certification Program under this FenStar® License Agreement for any breach by Licensee of this FenStar® License Agreement.

j. Licensee shall use the ENERGY STAR® label only in accordance with the requirements of the ~~the ENERGY STAR®~~FenStar Certification Program.

k. In the event that the ENERGY STAR® label is affixed to a product that is not a product authorized for listing as an ENERGY STAR® certified product, whether or not inadvertently, Licensee ~~shall not sell or offer for sale such product until the ENERGY STAR® label has been removed from all such products~~acknowledges that NFRC may notify the EPA thereof.

l. Licensee shall participate in the FenStar® Certification Program in a professional and ethical manner and shall not take any actions or make any representations regarding the certification status of its products under the ENERGY STAR® Program that are unauthorized or which may reasonably be considered misleading or that would damage the reputation and credibility of NFRC or the FenStar® Certification Program.

m. Upon the suspension, withdrawal or termination of Licensee's participation in the FenStar® Certification Program or of a Licensee's product certification under the ENERGY STAR® Program, Licensee shall ~~immediately~~promptly discontinue making any statements or advertising that states or implies otherwise.

n. In the event that Licensee has knowledge of any facts or circumstances that would cause it to no longer meet the requirements for participation in the ~~Fenstar~~FenStar® Certification Program or cause its product(s) to not meet the requirements for certification under the ENERGY STAR® Program, it shall promptly notify NFRC in writing of such facts and circumstances.

3. **Representations and Warranties.** Licensee represents and warrants to NFRC that it has received a copy of and understands the requirements set forth in the FenStar® Certification Program and the FenStar® Program Documents, ~~as interpreted, amended, modified or supplemented at the date hereof.~~

4. **Ownership of Marks and Copyrights.** Licensee acknowledges NFRC's exclusive right, title and interest in and to all of the NFRC trademarks, service marks or tradenames used in the FenStar® Certification Program (the "FenStar® Marks") 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. The FenStar® Marks are not certification marks and Licensee shall have no right or license to use, display or modify any of the FenStar~~Marks and~~® Marks without NFRC's prior express written consent or as may hereafter expressly be authorized under the FenStar® Certification Program. Licensee will not use or display any trademark, service mark or tradename that is similar to or likely to be confused with the FenStar® Marks. Licensee further acknowledges NFRC's exclusive right, title and interest in and to all of the FenStar® Program Documents, including all copyrights thereto, 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.

5. **Assignment of Copyrights.** Licensee ~~assigns~~agrees to assign to NFRC all copyrights Licensee may own in any written materials ~~(in paper, or electronic, or other form) Licensee prepared or which were prepared for Licensee that are at any time~~that are hereafter expressly submitted by Licensee to NFRC for ~~its consideration, including~~purposes of incorporation of such materials ~~that may be incorporated~~ into the FenStar® Certification Program and FenStar® Program Documents, whether in written, electronic, or other tangible format (the "Written Contributions"). Licensee acknowledges that Licensee will have no future rights in any of ~~these~~the foregoing Contributions and that NFRC shall own the entire copyright in such Written Contributions. In the event that Licensee submits a Written Contribution to NFRC, Licensee certifies that it ~~has~~will have the legal right to assign the copyright in such Written Contributions to NFRC, and that to its knowledge, such Written Contributions are not protected by any copyright or other proprietary rights owned by any other person or entity.

6. **Term.** This FenStar® License Agreement shall take effect on the date of execution by NFRC as reflected on the signature page below and shall continue in effect until terminated in accordance with the provisions of Section 7.

7. **Termination and Suspension.**

a. This FenStar® License Agreement shall automatically terminate upon the termination of the PCP License Agreement, the termination of Licensee's participation in the PCP Certification Program, or the termination of Licensee's partnership agreement with the EPA.

b. Termination of this FenStar® License Agreement shall not automatically terminate the PCP License Agreement unless the PCP License Agreement is also terminated in accordance with its terms.

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

d. This FenStar® License Agreement shall be suspended automatically upon suspension of Licensee's participation in the ENERGY STAR® Program in accordance with the ENERGY STAR® Requirements or failure of Licensee to make payment of any fees to NFRC or to the Licensee's NFRC IA and NFRC laboratory when due.

e. This FenStar® License Agreement, including certification of any of Licensee's products, shall be suspended automatically upon suspension of Licensee's PCP License Agreement until the cause of such suspension is cured and the suspension is withdrawn.

f. This FenStar® License Agreement may be suspended or terminated by NFRC if, ~~in the determination of NFRC,~~ Licensee has breached ~~this~~the FenStar® License Agreement. 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 FenStar® License 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 FenStar® License Agreement shall continue in full force and effect.

8. **Remedies.** NFRC shall have all such rights as may be available to it at law or in equity, including the right to seek 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, Registered Mark or the FenStar® Marks, caused by or resulting from Licensee's breach of any provision of this FenStar® License Agreement.

9. **Indemnification.** Licensee shall indemnify and hold harmless NFRC, its directors, officers, members, employees and agents, from and against any and all losses, claims, damages or liability, including reasonable attorney's fees and expenses, on account of injury ~~or damage to any person or damage to property, which is based in whole or in part as a result of,~~ damage or loss asserted by a third party against NFRC that arises or results from a breach by Licensee of this FenStar® License 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 or from NFRC's breach of this FenStar® License Agreement or its breach of the requirements of the FenStar® Certification Program.

10. **Confidentiality.** Licensee shall not use and shall retain in confidence and not disclose any confidential or proprietary information or documentation relating to NFRC, the FenStar® Certification Program and any other such information of any third party that is provided to Licensee pursuant to its participation in the FenStar® Certification Program, except as permitted under the FenStar® Program Documents or with NFRC's prior written consent. NFRC shall not use and shall retain in confidence and not disclose any of Licensee's confidential or proprietary information or documentation that Licensee provides to NFRC pursuant to its participation in the FenStar® Certification Program, except as required for NFRC to administer the FenStar® Certification Program, including providing such information on a need to know basis to the EPA and to NFRC licensed test labs, simulation labs and inspection agencies participating in the FenStar® Certification Program.

11. **Independent Contractors.** The parties acknowledge that Licensee is not an agent, partner, joint venturer or employee of NFRC.

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

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

[Signature Page Follows]

IN WITNESS WHEREOF, this FenStar® License Agreement has been executed effective 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)

EXHIBIT 1

FENSTAR PROGRAM DOCUMENTS

<u>FS-1001-2017</u>	<u>FenStar Program Document</u>
<u>FS-1100-2017</u>	<u>FenStar Certification Program</u>
	<u>Verification Testing Procedure</u>
<u>FS-1000.05</u>	<u>Feedback and Complaints</u>
	<u>Procedure</u>
<u>FS-1000.06</u>	<u>FenStar Application User Manual</u>
<u>FS-1001.01-2017</u>	<u>PESI Manual</u>
<u>FS-1001.02-2017</u>	<u>FPD Manual</u>
<u>FS-1001.03-2017</u>	<u>Suspension, Termination, and</u>
	<u>Withdrawal</u>
	<u>Sharepoint Document</u>
	<u>Management User Manual</u>
<u>FS-1100.01-2017</u>	<u>FenStar Verification Testing</u>
	<u>Manufacturer Guidelines</u>
<u>FS-1100.02-2017</u>	<u>FenStar Verification Testing</u>
	<u>Laboratory Guidelines</u>
<u>FS-1100.03-2017</u>	<u>Product Procurement Procedure</u>
<u>FS-1100.04-2017</u>	<u>Procedure for Verification Grading</u>
	<u>and Non-compliance Action</u>

[Exhibit 1]