

# NFRC Fabricator License Agreement



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# NFRC Fabricator License Agreement

**THIS NFRC FABRICATOR LICENSE AGREEMENT** is made as of the last 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 the signature page hereto as the licensee hereunder (the "Licensee").

**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 Product 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**, Licensee manufactures fenestration products for which Licensee has been supplied lineals by a lineal supplier and has obtained or intends to seek product certification authorization by using simulation and validation test reports reissued to it from the lineal supplier in order to certify products as to thermal performance and other NFRC ratings, in accordance with NFRC's requirements pursuant to the PCP;

**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

Fabricator  
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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**, if Licensee meets NFRC's requirements for product certification authorization and complies with all other requirements established by NFRC, Licensee will be entitled to apply the Label to fenestration products for which Licensee has been granted product certification authorization and to utilize the Registered Mark and Word Mark in promoting Licensee's products for which product certification has been granted; and

**NOW THEREFORE**, the parties hereto 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 Label in commerce in connection with the permitted uses referenced in Section 2 below, including under the Certification Program, and 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 Labels to its fenestration products.

2. **Permitted Use.**

A. Subject to the terms and conditions of this Agreement, Licensee may apply the Registered Mark and Word Mark as components of the Label in the manner and form required by NFRC to fenestration products manufactured by Licensee at Licensee's manufacturing facility or facilities listed on Licensee's Schedule I, which is attached hereto. Schedule I is incorporated herein by reference and may be supplemented from time to time by amendment to the schedule executed by NFRC. The products included in Schedule I have been authorized to be certified to indicate compliance with NFRC's product certification requirements as set forth in the most current PCP ("NFRC Requirements") by an independent certification and inspection agency licensed by NFRC ("NFRC IA"). Products for which such product certification authorization

have been granted (referred to herein as "Authorized Products") and the lineal supplier of any such products are set forth on Schedule II, which is attached hereto and incorporated herein by reference and which may be supplemented from time to time by an amendment to the Schedule executed by NFRC setting forth additional Authorization Products. All of the Schedules to this Agreement 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.

B. The Registered mark shall be used with the designation ® in the manner reflected on Exhibit A hereto which is an integral part of that mark. The Word Mark shall be used with the symbol "TM".

C. The Registered Mark and Word Mark may be applied by Licensee to Authorized Products by means of the Label or other permanent marking in a form approved from time to time by NFRC and in accordance with the provisions of Section 5.H. hereof. The affixing of a Label to an Authorized Product by Licensee in accordance with NFRC requirements governing both temporary and permanent Labels shall constitute the act of certification of the product, whereupon the Authorized Product shall become a Certified Product.

### 3. **Prohibited Use.**

A. Licensee shall not affix the Registered Mark, Word Mark or Label to, or use the Registered Mark, Word Mark or Label in connection with any product that has not been manufactured by Licensee at a manufacturing facility listed on Schedule I or is not an Authorized Product. Licensee shall not use the Registered Mark, Word Mark or Label in any manner not contemplated by the Agreement.

B. 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 in a manner 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 customer confusion.

C. Use of the Registered Mark, Word Mark, or Label in any manner prohibited by this Section 3 shall be deemed to be 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.

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 essential features of the Registered Mark are not altered, and provided that when the Registered Mark is used on a Label affixed to a fenestration product, the size, color, format and content of the Label shall conform to NFRC requirements set forth in the most current PCP as amended or interpreted from time to time by NFRC, and in Section 5.H. hereof.

B. Licensee shall obtain the prior written permission of NFRC to reproduce the Registered Mark or Word Mark in its entirety for use on printed materials or in promotion of Certified Products. Licensee shall submit to NFRC at its principal place of business, by a means which provides a record of and receipt for delivery, samples of proposed printed materials not fewer than 45 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 material within 10 business days following receipt by NFRC, Licensee may use such advertising or promotional information in the form provided to NFRC. Licensee shall make such modifications as may be required to NFRC in such materials in order to protect NFRC's rights in the Registered Mark and Word Mark.

C. Licensee may use such other symbols, trademarks or trade names as are not inconsistent with the nature and purpose of the Registered Mark, Word Mark and 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 Label as to cause confusion in the minds of the consumers of such products and provided further that no replica embodying the Registered Mark, Word Mark or Label shall be affixed to or issued with respect to any Certified Product in conjunction with any similar quality or certification mark unless Licensee has first obtained the written permission of 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 Registered Mark, Word Mark and Label applicable to NFRC's licensees generally, 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. With respect to fenestration products manufactured by Licensee to which the Registered Mark is affixed, Licensee shall adhere to and comply with all the provisions of the Certification Program, each as may be interpreted, amended or supplemented from time to time by NFRC. 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 PCP 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 fabricator licensees generally and that Licensee shall comply with such interpretations, amendments or supplements, in order that this Agreement shall remain in full force and effect. 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 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 9A below. This Agreement shall not be construed as a commitment by Licensee to manufacture only products that 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 Certification Program and Licensee shall comply with such interpretations.

C. Licensee agrees that the Label will be used only to identify a Certified Product and that the Label, when affixed to a Certified Product, shall be Licensee's guarantee to its customers and to users that the rating set forth on the Label is accurate and that the Certified Product meets NFRC's applicable requirements.

D. Licensee agrees that it shall not affix or cause to be affixed to a fenestration product a label purporting to be an NFRC Label when the Licensee knows or should know that such 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 Certification Program when such fenestration product does not so conform.

E. Licensee agrees that the production operations, quality control systems and products with respect to Licensee is authorized to use the Registered Mark and Label may be inspected for conformance with NFRC Requirements by NFRC or its duly authorized representative and that Licensee shall cooperate fully in the conduct of inspections, reviews and tests in accordance with the provisions of the PCP.

F. Licensee agrees that it shall provide to NFRC upon request all information, drawings, specifications, data and other materials underlying any

product certification authorization issued to Licensee or any product certification authorization asserted by Licensee by the affixing of a label purporting to be 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 laboratory or federal government-operated laboratory a production line sample of any Certified Product at NFRC's request and that such sample shall be shipped at the Licensee's expense not later than five business days after NFRC makes its request.

G. Licensee agrees that it shall withdraw from the market any fenestration product determined by NFRC to have affixed thereto a label purporting to be an NFRC label which is inaccurate, false or misleading to a consumer, public or government agency. Licensee acknowledges that in the event Licensee fails to properly perform its duties under this Agreement, NFRC may, but is not required to, 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 9 below.

H. Labels.

(i) NFRC shall furnish Licensee with the form of the Label (whether temporary or permanent) and with supplies of Labels in accordance with the provisions of this Agreement and of the PCP and Licensee shall pay such fees therefore as may be set forth in the most current version of the PCP. Failure to make payment of all applicable fees owned 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 Label or permission to print or produce the Label exclusively through NFRC or its duly authorized IA.

(iii) Licensee shall use the Label only in accordance with the requirements set forth as to size, format and content by the most current version of the PCP, as interpreted, amended or supplemented by NFRC from time to time.

(iv) Licensee shall not alter or deface a Label or remove the Labels from Licensee's manufacturing facilities listed in Schedule I except as directed by NFRC or an authorized representative of NFRC.

(v) Labels shall be maintained and used in reasonably clean condition and shall be of a color so as to be clearly legible.

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

I. In the event that the Registered Mark or 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 Label has been removed from all such products, whether at Licensee's manufacturing facilities, or in Licensee's wholesale and retail distribution system. In the event that a product so 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 and Licensee shall cease any advertising or promotion of any such product as a Certified Product.

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

K. Licensee acknowledges and agrees that NFRC shall have the right to suspend or revoke Licensee's product certification authorization or licensing to participate in the Certification Program, in accordance with the provisions of the most current PCP, and 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.

#### **6. Representation and Warranties.**

Licensee represents and warrants that it has received a current copy of and understands the requirements set forth in the most current 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.

#### **7. Ownership of Marks.**

Licensee acknowledges NFRC's exclusive right, title and interest in and to the Registered Mark and the 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 or Word Mark. Licensee acknowledges that the use of the Registered Mark or Word Mark shall not create in Licensee's favor any right, title or interest in or to the Registered Mark or Word Mark. Upon termination of the license granted hereunder, in any manner provided herein, Licensee shall cease and desist from use on the Registered Mark or Word Mark in any way. Licensee shall not adopt or use, without NFRC's prior written consent, any word or mark which is likely to be similar to or confusing with the Registered Mark or Word Mark.



**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 Section 9 below, unless terminated sooner by Licensee or by NFRC in accordance with the provisions of Section 9.

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

**10. Termination.**

A. This Agreement may be terminated by either party upon 60 days prior written notice to the other party.

B. This Agreement shall be suspended automatically upon suspension of Licensee's licensing in accordance with the provisions of the most current 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 5H above.

C. This Agreement shall be suspended automatically upon (i) suspension of Licensee's agreement with its designated NFRC IA or (ii) suspension of Licensee's product certification authorization or licensing in accordance with the provisions of the most current 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 be limited by NFRC 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 most current 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 NFRC IA unless Licensee shall have entered into an agreement with another NFRC IA;

(ii) Revocation by NFRC of Licensee's product certification authorization or licensing in accordance with the provisions of the most current PCP; 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, such revocation may be limited by NFRC to those products for which product certification authorization has been revoked.

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. If the cause of the suspension or termination of this Agreement is cured, in the determination by NFRC, the suspension or termination shall be withdrawn and this Agreement shall continue in full force and effect.

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

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

## 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 the Registered Mark or Word 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 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 Label placed on any product by Licensee or as a result of the negligence or wrongful act of Licensee or 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 from a relative to Licensees' performance of its duties hereunder.

**13. Counterparts.**

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

**14. 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 venture or employee of NFRC.

**15. 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)

**EXHIBIT A**



National Fenestration  
Rating Council®

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