

Site-Built License Agreement



National Fenestration
Rating Council®

**SITE-BUILT LICENSE AGREEMENT
WITH THE NATIONAL FENESTRATION RATING COUNCIL, INCORPORATED**

THIS SITE BUILT 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 (hereinafter “NFRC”), a Maryland nonprofit corporation, 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 energy performance 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: Interim Standard Test Method for Measuring Soar Heat Gain Coefficient of Fenestration Systems Using Colorimeter Hot Box Methods (“NFRC 201”), Test Method for Determining the Solar Optical Properties of Glazing Materials and Systems (“NFRC 300”), NFRC 301: Standard Test Method for Emittance of Specular Surfaces Using Spectrometric Measurements (“NFRC 301”); NFRC 400-2004: Procedure for Determining Fenestration Air Product Leakage (“NFRC 400-2004”); and NFRC 500: Procedure for Determining Fenestration Product Condensation Resistance Values (“NFRC 500”)*, copies of which have 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 thermal performance and other performance 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;

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 “R”. 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 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 be the party responsible for ensuring that specific fenestration site-built products identified in this Agreement comply with NFRC standards and;

WHEREAS, the Licensee wishes to have simulation and validation testing done in accordance with NFRC procedures and programs in order to determine that these site-built products meet NFRC requirements for thermal performance and other performance attributes, if applicable, and receive a NFRC Label or NFRC Label Certificate;

WHEREAS, the Licensee wishes to assure that the site-built samples submitted for simulation and validation testing comply with all of the requirements of NFRC's programs and procedures and;

WHEREAS, Licensee is either a manufacturer, non-lineal supplier, or installer of site-built fenestration products and wishes to seek product certification authorization in order to certify as the thermal performance and other performance attributes of those site-built fenestration products in accordance with NFRC’s requirements under the Certification Program and;

WHEREAS, if Licensee meets NFRC’s requirements for product certification authorization and complies with all other applicable requirements established by NFRC, Licensee will be entitled to have certification authorization reports issued for such site-built products and have the NFRC Label Certificate in the form attached hereto displayed on the site-built products;

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

1. **Grant of License.**

NFRC hereby grants to Licensee a non-exclusive, non-assignable, non-sublicensable license to have simulation and validation testing performed and test reports generated on site-built products designated below subject to the terms and conditions of this Agreement. The Licensee shall provide to NFRC the following schedules to be attached hereto: Schedule I shall identify the manufacturer and the facilities in which the supplied fenestration components were manufactured; Schedule II, shall list the specific components of fenestration product lines to be included in the Project Site (as defined below) (the "Site-Built Products"); and. The Licensee shall also provide information on a Schedule IV, if known, that shall list the specific address of the project location in which the fenestration products shall be or are installed (the "Project Sites"). If the Licensee is an installer of the Site-Built Products, it shall provide the information required for Schedule IV. 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 objection 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. **Grant of License Marks.**

NFRC hereby grants to Licensee a nonexclusive, non-divisible, non-assignable and non-sublicenseable license to use the Work Mark and Registered Mark as components of the NFRC Label Certificate in commence in connection with the permitted uses referenced in Section 3 below, including under the Certification Program, IA Program and Accreditation 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 NFRC Label Certificates.

3. **Permitted Use of Marks.**

a. Subject to the terms and conditions of this Agreement, Licensee may apply the Word Mark and Registered Mark as components of the NFRC Label Certificate in the manner and form required by NFRC in connection with the Site Built Products at the Project Sites.

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

c. 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 Site Built Products identified on Schedule II hereto are Certified Products.

4. **Permitted Testing and Verification.**

Subject to the terms and conditions of this Agreement, Licensee may have its designs, specifications, orders and any other materials deemed necessary by NFRC, the simulation laboratories, testing laboratories and IAs pursuant to the NFRC programs and procedures, simulated, physically tested and verified in order to have those specific fenestration products rated for the issuance and use of the NFRC Label Certificate, which shall be used in place of the NFRC Label by an NFRC licensed licensee. If Licensee is a supplier of the Site-Built Products, the

Licensee shall only provide reissued reports of simulation and physical testing reports for the Site Built Products to a client who is a NFRC licensed Licensee for such products at the Project Sites included in Schedule IV. Licensee shall apply at the designated Project Site the NFRC Label Certificates for such products furnished by the supplier or manufacturer of those products. Licensee shall only provide the NFRC Label Certificate for Site Built Products to be installed at a designated Project Site.

5. Prohibited Use.

- A. Licensee shall not directly or indirectly issue, use or display the NFRC Label Certificate on or in connection with any fenestration products other than the Site-Built Products specifically listed in Schedules I and II and designated for installation at the Project Site listed in Schedule IV.
- B. Licensee shall not directly or indirectly issue, use or display any simulation or validation reports, for the purpose of certification and, labeling, under NFRC standards for any fenestration products other than the Site Built Products listed in Schedules I and II and designated for installation at the Project Sites listed in Schedule IV.
- C. 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 Word Mark or Registered Mark on a NFRC Label Certificate 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. Licensee shall not use, reproduce, or distribute any of NFRC's copyrighted materials, except as permitted in the CAP and this Agreement.
- D. Licensee's Use of the Registered Mark, Word Mark or NFRC Label Certificate in any manner 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.

6. Terms and Conditions.

Licensee agrees to comply with the following terms and conditions:

- A. With respect to fenestration products manufactured by Licensee, if any, to which the NFRC Label Certificate or Registered Mark or Word Mark is affixed pursuant to this Agreement, Licensee shall adhere to and comply with all of the provisions of the Certification Program, Rating System, IA Program

and applicable provisions of the Accreditation Program, as each may be interpreted, amended or supplemented from time to time by NFRC. Licensee acknowledges and agrees that the terms of the Certification Program, Rating System, IA Program and applicable provisions of the Accreditation 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 Certification Program, Rating System, IA Program and applicable provisions of the 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 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 after 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 10A below. This Agreement shall not be construed as a commitment by Licensee to manufacture, supply or install only products which receive Product Certification under the Certification Program.

- 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 Site Built 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 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 Work Mark and to comply with the legal requirements for use of such marks.
- C. Licensee agrees that it shall provide to NFRC, upon request, all information, drawings, orders, specifications, data and other materials underlying any simulation or validation test reports or product certification authorization issued to any Site-Built Product referenced in Licensee's Schedules I, II, and

IV, including specimens of any simulation or validation tests of a certified product. Licensee further agrees that if so directed by NFRC, it shall send to an NFRC accredited laboratory a test sample of any product or product line of any Certified Product, at Licensee's expense, not later than fifteen business days after NFRC makes its request. Failure to comply shall result in automatic withdrawal of the NFRC Label Certificate for such Site-Built Products, and, at NFRC's election, the suspension or revocation of the Licensee's license hereunder or any and all other penalties and fines allowed to be imposed under NFRC's Compliance Assurance Program.

- D. Licensee agrees that it shall not cause simulation or validation reports to be issued for any site-built products which do not comply with the NFRC rating programs or procedures or which are inaccurate, false or misleading.
- E. Unless approved by Licensee's IA, Licensee shall have no authority under this license to print or use NFRC labels, Registered Mark or Word Mark except as provided hereunder. Licensee shall have no authority to use or display a NFRC Label Certificate for its own use or the use of its customers others than those authorized by NFRC in accordance with this Agreement. 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 hereunder for any breach of this Agreement. Licensee acknowledges and agrees that if 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 of probation deemed appropriate by NFRC's Board of Directors or authorized committee thereof. If Licensee fails to adhere to all of the terms and conditions of such probation, NFRC may elect to suspend or terminate this Agreement as provided in Section 11.E below.
- F. Licensee will provide to NFRC the information regarding the Label Certificates and pay the fees due with respect to those certificates as 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.

7. Representations and Warranties.

Licensee represents and warrants to NFRC that it has received a copy of and understands the requirements set forth in the Rating System, Accreditation Program and PCP and Compliance Assurance Program, 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.

8. **Ownership of Marks.**

Licensee acknowledges NFRC's exclusive right, title and interest in and to the NFRC Label Certificate, 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.

9. **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.

10. **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 IA that Licensee has met all of NFRC's requirements for eligibility to receive a license hereunder, and shall continue in effect until terminated by Licensee or by NFRC in accordance with the provisions of Section 11 below.
- 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.

11. **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 or the NFRC IA when due.

- C. This Agreement shall be suspended automatically upon (i) suspension of Licensee's agreement with its designated IA or (ii) suspension of Licensee's product certification authorization or licensing 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 Site-Built 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 NFRC IA unless, prior to the effective date or that termination, Licensee shall have entered into an agreement with another IA;
 - (ii) Revocation by NFRC of Licensee's product certification authorization or licensing in accordance with the provisions of the PCP for all fenestration products;
- 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 Label Certificate and shall surrender to NFRC or NFRC's authorized representative all NFRC Label Certificates remaining in Licensee's possession and shall remove all NFRC Labels affixed to the Site-Built Products.

12. **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; including payment of assessed fines.
- 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.

13. **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 NFRC Label placed on any product by Licensee or as a result of the negligence or wrongful acts 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 or relating to Licensees' performance of its duties hereunder.

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

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

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

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)

Date: _____

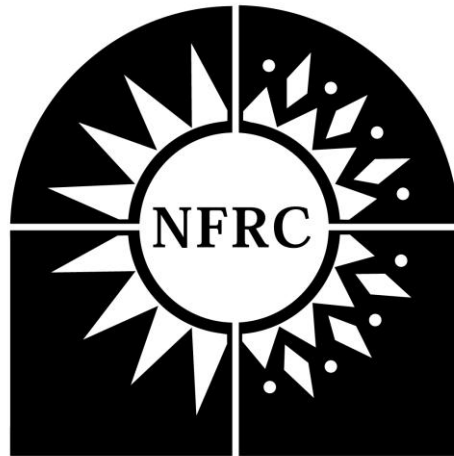
LICENSEE

(Print Organization Name)

By: _____
Authorized Signature

(Please Print Name)

EXHIBIT A



National Fenestration
Rating Council®
