



COOL ROOF RATING COUNCIL
Evaluation Services CRRCSM Program
AGREEMENT

449 15th Street, Suite 400 • Oakland, CA 94612 • Toll-free (866) 465-2523 • Fax (510) 482-4421 • www.coolroofs.org

THIS AGREEMENT is entered into by and between the COOL ROOF RATING COUNCIL, INC. (“CRRC”), a Maryland not-for-profit corporation, and _____ (“Seller”), with respect to Seller’s participation in the Evaluation Services CRRCSM Program under the ENERGY STAR® Program Requirements for Roof Products, as it may be amended from time to time by CRRC (the “ES-CRRC® Program”).

WHEREAS, CRRC is a nonprofit corporation whose mission is to implement fair, accurate and credible radiative performance ratings for roof surfaces, to support continuing research into radiative roofing and to provide education to those interested in understanding the attributes of roofing options; and

WHEREAS, CRRC is recognized by ENERGY STAR as a “certification body” in connection with the ES-CRRC Program; and

WHEREAS, separate and apart from the ES-CRRC Program, CRRC has developed, published, sponsored and administers the CRRC Product Rating Program, wherein a roofing product can be tested for solar reflectance and thermal emittance according to the CRRC-1 Product Rating Program Manual and the ANSI/ CRRC S100 Standard (the “CRRC Program”); and

WHEREAS, Seller is a business entity that manufactures or packages, labels and brings Roofing Products to market and Seller wishes to participate in the ES-CRRC Program.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Seller acknowledges that it has received and read the ES-CRRC Program requirements, policies and procedures contained in this Agreement and the ES-CRRC Program Manual, and agrees to be bound by their terms, as they may be amended from time to time by CRRC, as well as any administrative and implementing documents issued by CRRC (collectively, the “Requirements”). Seller agrees (a) to pay all ES-CRRC Program fees and assessments adopted by the CRRC, and (b) to cooperate in any way requested by CRRC in assuring that the terms of the ES-CRRC Program are being met.
2. Seller agrees to conduct an on-going quality control program to ensure that its Roofing Products continue to comply with ES-CRRC Program Requirements and that all information provided to CRRC by or with respect to Seller or its Roofing Products is complete and accurate at all times.
3. Seller acknowledges and agrees that it shall not, and that it shall not allow others to:
 - (a) represent or warrant, directly or by implication, that Seller or its Roofing Products participate in the CRRC Program, or use, display or publish any CRRC labels, logos, names or marks, unless CRRC has executed a separate written agreement to that effect with Seller and that separate agreement is in full force and effect at such time;
 - (b) make any representation of any kind that it is certified by CRRC or that any Roofing Product is certified by CRRC; or
 - (c) disclose or market to any third party that it is participating in the ES-CRRC Program.

4. In the event of any violation of this Agreement by Seller, in addition to all other rights and remedies, and as a reasonable estimate of damages to CRRC therefrom, CRRC shall be entitled to recover from Seller liquidated damages in the amount of \$5,000 per violation, and in addition to recover reasonable attorneys' fees incurred by CRRC.
5. In the event CRRC conducts certification activities on-site at the Seller's premises, the Seller and/or CRRC's accreditation agency has a right to request that the CRRC's accreditation assessor is present to evaluate the performance of the CRRC's certification activities.
6. Any failure by Seller to comply with the terms and conditions of this Agreement or the Requirements may result in the immediate termination of Seller's participation in the ES-CRRC Program, in addition to any other remedies of CRRC or damages incurred by CRRC. The determination of compliance by Seller with the Requirements shall be made by CRRC in its sole discretion. Violation of the Requirements by Seller may, at the sole discretion of CRRC, result in the revocation of participation in the ES-CRRC Program with respect to all Roofing Products of Seller.
7. The ES-CRRC Program (including its administrative provisions and dispute settlement provisions) may be revised or modified by CRRC from time to time and such revisions or modifications shall be deemed incorporated into the applicable Requirements referred to herein.
8. CRRC, its officers, directors, members, volunteers, representatives, employees and counsel shall not be liable for any act or omission of Seller. Seller (a) shall defend any claims made against CRRC, its officers, directors, members, volunteers, representatives, employees and counsel, and (b) shall indemnify and hold harmless CRRC, its officers, directors, members, volunteers, representatives, employees and counsel from any liability which may be imposed upon CRRC, its officers, directors, members, volunteers, representatives, employees and counsel and from any and all damages, losses, expenses or claims (including reasonable attorneys' fees) resulting from or arising out of: (i) Seller's acts or omissions, (ii) any Roofing Product of Seller, (iii) Seller's participation in the ES-CRRC Program, or (iv) any reference to CRRC by Seller.
9. Seller agrees to waive any and all claims against CRRC, its officers, directors, members, volunteers, representatives, employees and counsel and shall indemnify and hold harmless CRRC and its officers, directors, members, volunteers, representatives, employees and counsel from any liability arising out of the acts or omissions of any director, officer, agent, volunteer, representative, employee or counsel of CRRC in connection with or in any way relating to the conduct of the ES-CRRC Program, the duties or responsibilities of CRRC under this Agreement or the administration of this Agreement or the ES-CRRC Program.
10. This Agreement may be suspended and terminated at any time by CRRC in whole or in part in the event that:
 - (a) Seller is using any CRRC name, logo, mark, label or copyrighted material in any respect in contravention of this Agreement;
 - (b) Seller is not complying with the Requirements;
 - (c) Any Roofing Product fails to comply with the Requirements of the ES-CRRC Program;
 - (d) Seller in any other respect is not complying with any other provision of this Agreement; or
 - (e) Seller has failed to pay required fees and charges assessed under the ES-CRRC Program.
11. This Agreement shall become effective upon its execution by CRRC.
12. After the effective date, this Agreement shall continue in force until December 31 of the then current year and shall be automatically renewed from year to year thereafter unless terminated or suspended in accordance with other terms of this Agreement. Seller may terminate the Agreement at any time by giving

twelve (12) months advance written notice of termination to CRRC; fees and expenses paid or payable to CRRC are not refundable. The Agreement may be terminated by CRRC on written notice to Seller at any time.

13. Seller's indemnification and confidentiality obligations and waivers and releases of claims shall survive any termination of this Agreement. All fees associated with a period of suspension or termination will be forfeited.
14. The CRRC Board of Directors shall determine from time to time fees to be paid under the Agreement. Fees shall be paid in advance and are nonrefundable.
15. Seller acknowledges and agrees that compliance with the terms of this Agreement is necessary to protect the goodwill and other proprietary interests of CRRC and that a breach of this Agreement by Seller would result in irreparable and continuing harm to CRRC for which there would be no adequate remedy at law. Accordingly, Seller agrees that in the event of any breach of this Agreement (a) CRRC shall be entitled to injunctive relief and/or specific performance, (b) Seller shall not oppose such relief on the grounds that there is an adequate remedy at law, and (c) such equitable remedy shall be cumulative and in addition to any other remedies at law or in equity (including monetary damages) which may be available to CRRC. The provisions of this Section shall survive the termination of this Agreement.
16. Capitalized terms in this Agreement, if not defined herein, shall have the meanings set forth in the Requirements.
17. This Agreement may not be assigned by the Seller without the written permission of CRRC.
18. This Agreement shall be construed in accordance with the laws of the state of Maryland, excluding the choice of laws rules thereof. Subject to contrary provisions in the Requirements, any claim arising under this Agreement in connection with the ES-CRRC Program shall exclusively be brought in the courts of either the state of Maryland or the District of Columbia and both parties consent to the exclusive jurisdiction of those courts.
19. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signature of or on behalf of each party appears on each counterpart, but it shall be sufficient that the signature of or on behalf of each party appears on one or more of the counterparts. All counterparts shall collectively constitute a single agreement.
20. To facilitate execution, this Agreement may be executed through the use of facsimile or electronic transmission, and a counterpart of this Agreement that contains the facsimile or electronic signature of a party, which counterpart has been transmitted by facsimile or electronic transmission to the other party hereto, shall constitute an executed counterpart of this Agreement. A facsimile, emailed or electronically delivered copy of this Agreement or of a signature of a party will be effective as an original.
21. **CRRC does not make any representations or warranties with respect to the ES-CRRC Program or any Requirements and other materials provided in connection with the ES-CRRC Program (collectively, the "Materials"). The ES-CRRC Program and Materials are provided on an "AS IS" and on an "AS AVAILABLE" basis. CRRC HEREBY DISCLAIMS ALL WARRANTIES OF ANY NATURE, EXPRESS, IMPLIED OR OTHERWISE, OR ARISING FROM TRADE OR CUSTOM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, COMPLETENESS OR ACCURACY.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, CRRC SHALL NOT BE LIABLE FOR ANY LOSSES, EXPENSES OR DAMAGES OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, SPECIAL, INCIDENTAL, PUNITIVE, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOST INCOME OR PROFITS, RESULTING FROM OR ARISING OUT OF SELLER'S USE OF THE MATERIALS OR PARTICIPATION IN THE ES-CRRC PROGRAM, WHETHER ARISING IN TORT, CONTRACT, STATUTE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN THE EVENT THAT CRRC IS FOUND LIABLE TO SELLER, SELLER SHALL ONLY BE ENTITLED TO RECOVER ACTUAL AND DIRECT DAMAGES FROM CRRC, IN AN AGGREGATE AMOUNT NOT TO EXCEED THE AMOUNT SELLER ACTUALLY PAID TO CRRC UNDER THE ES-CRRC PROGRAM IN THE PRECEDING SIX (6) MONTHS.

- 22. Seller shall not use (other than as expressly permitted by CRRC) or disclose, either during or after the term of this Agreement, any knowledge, document, Materials, Requirements, method, practice, procedure, proprietary information, system or trade secret regarding matters confidential to CRRC, or any other confidential information concerning the ES-CRRC Program or CRRC's methods of operation to any person, firm, corporation, association, or other entity for any reason or purpose. In the event of Seller's breach or threatened breach of this paragraph, CRRC shall be entitled to a temporary restraining order or an injunction restraining and enjoining Seller from using or disclosing all or any part of CRRC's information, and from rendering any services to any person, firm, corporation, association, or other entity to whom all or any part of such information has been, or is threatened to be, disclosed or for whom all or any part of such information has been, or is threatened to be, used. In addition to or in lieu of the above, CRRC may pursue all of the remedies available to CRRC for such breach or threatened breach, including the recovery of damages from Seller. Seller's obligations of confidentiality shall survive termination or expiration of this Agreement.
- 23. If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of said agreement.
- 24. Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure of any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. The remedies provided in this Agreement shall be cumulative, and shall not preclude any party from asserting any other rights or seeking any other remedies against the other party or such other party's successors or permitted assigns, pursuant to this Agreement, as provided under other agreements, and as provided by applicable law. If CRRC engages an attorney in connection with the enforcement of this Agreement, Seller shall pay to CRRC, in addition to all other amounts and damages, the reasonable attorneys' fees incurred by CRRC in enforcing this Agreement.
- 25. (a) For the purposes of this Agreement, (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires, (ii) the word "including" and words of similar import when used in this Agreement shall mean "including, without limitation," unless the context otherwise requires or unless otherwise specified, and (iii) the word "or" shall not be exclusive.

(b) This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any agreement, instrument or document to be drafted.

