



Licensing Agreement: Certification Providers

Trademark License Agreement for Use of WaterSense® Mark by

(Name of Certification Provider)

This Trademark License Agreement (“Agreement”) is made between the United States Environmental Protection Agency (“EPA”, “Agency”, or “Licensor”), 1200 Pennsylvania Ave, NW, Washington, DC 20406 and _____ (“(Name)” or “Licensee”),
(Name of Certification Provider)

(Certification Provider Address) (collectively, “the parties”).

Whereas the United States Environmental Protection Agency is the owner of the WaterSense certification mark (“Mark”), Registration Number: U.S. Reg. No. 3,459,138, which the Agency will include on a certificate template to identify new homes that meet certification standards established by the Agency for achieving a high level of water efficiency; and

Whereas the _____ has declared to the Agency its conformance to the
(Name of Certification Provider)

requirements for licensed certification providers outlined in the *WaterSense New Home Certification System*¹, incorporated herein by reference;

Whereas _____ wishes to assist the Licensor in its certification efforts
(Name of Certification Provider)

by conducting tests and inspections in accordance with the most current version of the *WaterSense New Home Specification and Inspection Guidelines for WaterSense Labeled New Homes*², incorporated herein by reference, to determine whether new homes meet the criteria for certification established by the Agency;

Now, therefore, in consideration of the mutual promises herein contained, it is agreed that:

1. **Grant of License:** The Licensor hereby grants to the Licensee a non-exclusive, royalty-free right to use the Mark in the following manner:
 - (a) The Licensee shall have the authority to provide a certificate containing the Mark to a builder partner for a new home that the Licensee has determined, after conducting tests and inspections approved by the Licensor, meets the specification criteria established by the Licensor in the most current version of the *WaterSense New Home Specification*. Licensee will permit the builder partner to apply the Mark only to that new home (the “certified new home”) in accordance with the *WaterSense Label Use Guidelines*³, incorporated herein by reference.

¹ A copy of the *WaterSense New Home Certification System* is available on the WaterSense website, www.epa.gov/watersense. References to the *WaterSense New Home Certification System* refer to the most current version.

² Copies of the most current version of the *WaterSense New Home Specification* and *Inspection Guidelines for WaterSense Labeled New Homes* are available on the WaterSense website, www.epa.gov/watersense. References to the *WaterSense New Home Specification* and *Inspection Guidelines for WaterSense Labeled New Homes* apply to the most current versions.

³ A copy of the *WaterSense Label Use Guidelines* is available on the WaterSense website, www.epa.gov/watersense. References to the *WaterSense Label Use Guidelines* refer to the most current version.

- (b) The Licensee may not display the Mark to identify its services for certifying new homes to WaterSense criteria. The Licensee may instead use the WaterSense partner logo or promotional label in accordance with the *WaterSense Partner Logo Use Guidelines* or *Promotional Label Use Guidelines*⁴, respectively, incorporated herein by reference.
2. **Quality Control:** The Licensor shall have the right, at all reasonable times, to inspect the Licensee's advertising materials, services, and promotional activities employing the WaterSense partner logo or promotional label to ensure that such use is of proper quality and otherwise consistent with this Agreement.
 3. **Duration and Termination:** This Agreement shall terminate on October 1, 2014. The parties may mutually agree to extend the term of this Agreement for an additional 1 year by properly executing a Renewal Agreement. The parties may also mutually agree to terminate this agreement at any time.

Upon termination of this Agreement, all rights of the Licensee to use the certificate template containing the Mark shall immediately terminate. In the event of a breach of any of the terms and conditions of this License by the Licensee, the Licensor shall give the Licensee written notice of such breach. In the event the Licensee does not cure such breach within sixty (60) days, the Licensor may immediately terminate this License and shall notify the Licensee in writing of such termination.
 4. **Assignments and Sub-Licenses:** This License is not assignable, and any attempt by the Licensee to assign any portion of the License or to grant a sub-license, except as provided for in this Agreement, shall be deemed a breach of this Agreement and shall be cause for termination. Notwithstanding this provision, the Licensee may hire subcontractors to perform activities under this Agreement.
 5. **Validity and Ownership of Mark:** The Licensee is prohibited from challenging or contesting in any way the Licensor's ownership of the Mark with the U.S. Patent & Trademark Office, or with any other trademark office, or the Licensor's exclusive worldwide ownership of the Mark.
 6. **Use of Mark:** The Licensor will supply the Licensee with a copy of a certificate template containing the Mark that the Licensee shall customize for builder partners of certified new homes to give to the homes' owners. In addition, the Licensee shall abide by the following guidelines:
 - (A) The Licensor considers the certificate template containing the Mark to be its certification Mark and holds it out to the public as such.
 - (B) The Licensee further agrees that the use of the certificate template containing the Mark shall be done in such a way that there does not exist any appearance of Government endorsement, authorization or affiliation of the Licensor
 - (C) The Licensee shall customize the certificate to include details about the home being certified (i.e. the address of the home being certified, the date of certification, the name of the water efficiency home inspector, and the name of the Licensee). The Licensee shall not adjust any non-rewritable portions of the certificate template, including the Mark, the certification statement, or the EPA logo.
 7. **Infringement:** The Licensee is required to notify the Licensor of any potential infringement of the Mark of which the Licensee is aware, or reasonably should be aware. The Licensor retains the right to determine what constitutes infringement and the course of action to be taken to address it. The Licensee shall also notify the Licensor of any claims of which the Licensee is aware that the licensed Mark is infringing the name, logo, or trademark of another.

The Licensor shall only use the Licensee name, to indicate its availability to perform services related to WaterSense certification. The WaterSense certification shall not result in any authorization to use a Licensee certification mark, except as otherwise expressly authorized by the Licensee.

⁴ Copies of the WaterSense Partner Logo Use Guidelines and Promotional Label Use Guidelines are available on the WaterSense website, www.epa.gov/watersense. References to the WaterSense Partner Logo Use Guidelines or Promotional Label Use Guidelines refer to the most current versions

8. **Governing Law:** This Agreement shall be interpreted and implemented in accordance with the laws applicable to the United States Government as interpreted by the U.S. District Court for the District of Columbia.
9. **Foreign Trademarks and Service Marks:** Licensee agrees to provide all lawful assistance, as reasonable and at the Licensor's request and expense, to the Licensor should the Licensor decide to register the Mark in foreign countries. The Licensee shall comply with all applicable legal requirements governing trademark and certification mark use, including but not limited to, registered user requirements. The Licensee agrees that all use of the certificate template containing the Mark by the Licensee shall inure to the benefit of the Licensor.
10. **Indemnification:** The Licensee agrees to indemnify and hold the Licensor harmless from any and all claims, damages and attorneys' fees arising from the misuse of the Mark by the Licensee and its operations under the Agreement, except to the extent that any such claims, damages or attorneys' fees arose in connection with any act, failure to act, breach of this Agreement or misrepresentation by the Agency. Although the Licensor is precluded from indemnifying the Licensee, per se, pursuant to the Anti-Deficiency Act, the Licensor warrants that it is the owner of the Mark that is the subject of this Agreement and that it knows of no other entity with superior rights therein. Further, it agrees to cooperate with and assist the Licensee in the unlikely event that the Licensee's use of the Mark is challenged. If the Licensee's use of the Mark is challenged, the Licensee may immediately terminate this Agreement by providing written notice to the Licensor.
11. **Prior Agreements:** This Agreement sets forth and contains the entirety of representations, understandings, and agreements of the parties hereto and merges all prior representations, understandings and agreements. This Agreement may be amended only through written instrument executed by a duly authorized representative of each of the Parties hereto.

In witness whereof, the parties have caused this document to be duly executed as of the latter of the two dates below.

For the United States Environmental Protection Agency

For the _____
(Name of Certification Provider)

Signature

Signature

Sheila E. Frace

Name of Signing Official

Name of Signing Official

Director, Municipal Support Division

Title

Title

Date

Date