

**As ECRC**

and

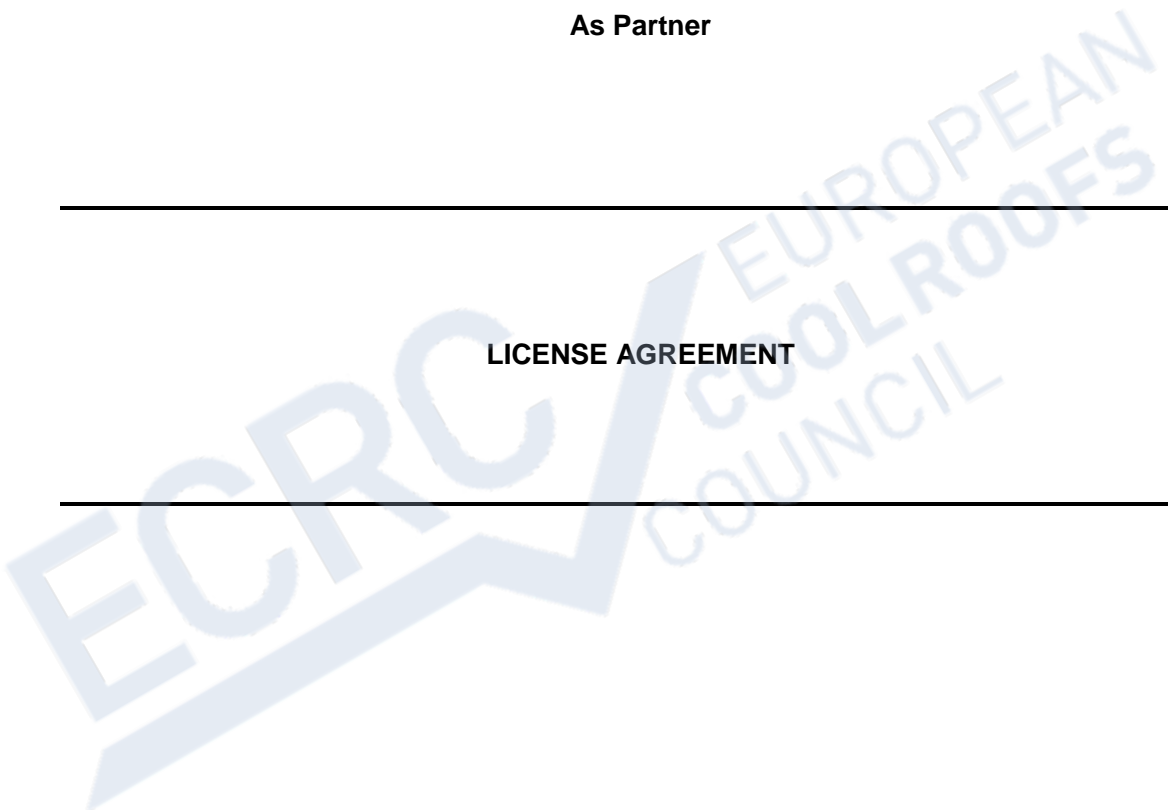
[ \_\_\_\_\_ ]

**As Partner**

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**LICENSE AGREEMENT**

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## LICENSE AGREEMENT

### BETWEEN

1. **EUROPEAN COOL ROOFS COUNCIL**, an international non-profit association incorporated and existing under the laws of Belgium, having its registered office at 1190 Forest, Dreve du Pressoir 38 (Belgique), registered with the register of legal entities under n° 0839.014.168, hereby represented by [\_\_\_\_\_] in its capacity of [\_\_\_\_\_] (hereafter referred to as “**ECRC**”).

### AND

2. [\_\_\_\_\_] a legal entity incorporated and existing under the laws of [\_\_\_\_\_] having its registered office at [\_\_\_\_\_] registered with the register of legal entities under number [\_\_\_\_\_] hereby represented by [\_\_\_\_\_] in his/her capacity as [\_\_\_\_\_] (hereafter referred to as the “**Partner**”).

### WHEREAS:

- A.** The ECRC is an international non-profit association of which the mission is to develop scientific knowledge and research in relation to “cool roof” technology and to promote the use of cool roof products and materials in Europe, including developing a Roofing Product rating and labelling program (hereafter referred to as the “**ECRC Roofing Product rating program**”).
- B.** The ECRC has developed, published, sponsored and now administers this Roofing Product rating program, as described in a Manual published by the ECRC (as enclosed to **Schedule 1**). This Manual fully applies to this Agreement and, particularly regarding the definitions in the Manual, Parties refer thereto, unless explicitly derived thereof in this Agreement.
- C.** According to the Roofing Product rating program, Manufacturers or Sellers may have their Roofing Products examined and labelled by the ECRC, disclosing those products Radiative Properties as determined by particular laboratories working with the ECRC.
- D.** The Partner is in the business of packaging, labelling, producing, marketing or commercializing Roofing products, components or raw materials that determine the Radiative Properties of Roofing Products.
- E.** Parties want to work together in the ECRC Roofing Product rating program according to the following principles:
- (i) Certain Manufacturers or Sellers can sign up with the ECRC to participate in the ECRC Roofing Product rating program, upon the condition that they comply with the applicable requirements, as set out in the Manual and in this Agreement and have paid the applicable fees.
  - (ii) Subsequently, the Manufacturers and Sellers can directly contact the laboratories involved in the ECRC Roofing Product rating program to have their Roofing Products tested at their own charge.

- (iii) The laboratories will inform the Manufacturers and Sellers of the results of those tests.
- (iv) The Manufacturers and Sellers will communicate these results to the ECRC in order to obtain an ECRC Label, disclosing those products Radiative Properties as determined by particular laboratories working with the ECRC.
- (v) The partner wants to use such an ECRC Label and the ECRC is prepared to grant such an ECRC Label, upon the condition that the Partner complies with particular terms and conditions.

Therefore, Parties have negotiated the following terms and conditions (together hereinafter: the "**Agreement**").

## IT IS AGREED AS FOLLOWS:

### 1. DEFINITIONS

As used in this Agreement, the following terms shall have the following respective meanings:

- 1.1. "**Affiliate**" shall mean any entity within the meaning of article 6 of the Belgian Companies Code.
- 1.2. "**Agreement**" shall mean this document and its annexes.
- 1.3. "**Best Industry Practices**" shall mean the generally accepted and applicable knowledge, techniques, practices, technology and/or methodologies (known to a Party or which should at least be known to a diligent and professional party) that, through experience and research, have a proven reliability in the applicable field of industry and includes the commitment to use all such knowledge, techniques, practices, technology and/or methodologies in order to ensure successful completion of its obligations.
- 1.4. "**Confidential Information**" shall encompass, without limitation, any and all business, financial, marketing, commercial and/or technical information, know-how, trade secrets, inventions, processes, software programs (in source code or compiled form), hardware and software product information and research provided to the receiving Party, irrespective whether provided in writing, in printed form, in electronic form, orally, pictorially, or observed visually. Confidential Information shall not encompass information that:
  - i) is or becomes generally available to the public through no act or failure to act by the receiving Party; or
  - ii) is subsequently disclosed to the receiving Party on a non-confidential basis by a third party without violating any obligation of secrecy relating to the information disclosed; or
  - iii) is independently developed by the receiving Party without making use of or relying upon the Confidential Information.
- 1.5. "**Document**": includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

- 1.6. “**ECRC Label**”: the label as enclosed in **Schedule 2**.
- 1.7. “**Effective Date**”: [\_\_\_\_\_].
- 1.8. “**Force Majeure**” shall mean any unforeseeable and/or exceptional situation or event beyond the reasonable control of a Party, which prevents that Party from performing its obligation(s) under the Agreement, for as long such event was not due to error or negligent act(s) or omission(s) on the part of that Party and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as Force Majeure unless they stem directly from a genuine case of Force Majeure.
- 1.9. “**Intellectual Property**” shall mean all of the following rights: patent(s) (applications), trademarks, labels, service marks, designs, trade and business names, know how, models, trade secrets, domain names, database rights, trade marks, copyrights, software protection rights, utility model(s) applications, and rights of the same or similar nature, whether registered or unregistered, in any part of the world, and (divisional) applications for any of these rights.
- 1.10. “**Requirements**” shall mean the requirements as set out in article 2.1 below.
- 1.11. “**Partner**”: the Manufacturer or Seller as described above.
- 1.12. “**Term**”: the term as specified in article 5.1 below.

## 2. COMMITMENTS OF THE PARTIES

- 2.1. **The Partner** explicitly declares and acknowledges that it has received and read the Manual and is aware of all the aspects and requirements of the ECRC Roofing Product rating program agrees to be bound by its terms, as they may be amended from time to time; as well as any applicable administrative and implementing documents issued by the ECRC (hereinafter referred to collectively as the “**Requirements**”).
- 2.2. **The Partner** shall, during the Term:
- (i) Comply with the Requirements and check these on changes on a regular basis;
  - (ii) cooperate with ECRC according to the Best Industry Practices in performing the ECRC Roofing Product rating program, which can also be modified by ECRC any time upon its sole discretion without notification or enclosure to this Agreement since it is described in the Manual;
  - (iii) Pay the applicable Partner fees to the ECRC pursuant to the grid enclosed in **Schedule 3** in order to participate in the ECRC Product Rating program and use the ECRC Label. The Partner agrees that these fees are subject to change.
- 2.3. The Partner is aware that non-compliance with one of the above-mentioned obligations can lead to:
- (i) the immediate exclusion of the Partner of the ECRC Roofing Product rating program and the cease of the use of the ECRC Label;
  - (ii) termination of this Agreement,;
  - (iii) damages;
  - (iv) the Partner’s liability.

**ECRC** shall co-operate to a reasonable extent with the Partner in all matters relating to the ECRC Label.

- 2.4. **Each Party** shall execute this Agreement as an independent party and has neither the right nor the power to enter into an agreement, expressly or implicitly, on behalf of and/or for the other Party and will not be authorized to represent the other Party in anyway whatsoever, without its prior written consent. However, Parties agree that this is an *intuitu personae* agreement and entered into between ECRC and the Partner because of their personal qualities.

### **3. LICENSE ON MANUAL AND THE ECRC LABEL**

- 3.1. ECRC hereby grants to the Partner, that accepts, a non-exclusive and worldwide, non-assignable, non-transferable and non-sublicensable, strict personal right to use the Manual and the ECRC Label during the Term, for the only purpose of:
- (i) communicating to the public that the Partner participates in the ECRC Roofing Product rating program;
  - (ii) putting the ECRC Label on the corresponding Roofing Products accompanied in a clear and legible way with "RATED PRODUCT".
- 3.2. ECRC hereby warrants, as far as necessary, to have obtained all necessary consents for the above mentioned license.
- 3.3. ECRC shall assist the Partner upon the Partner's first request with all formalities regarding this Agreement and the registration, confirmation and/or enforcement thereof.
- 3.4. No other rights are granted to the Partner under this Agreement, including but not limited to rights regarding the ECRC Label. For the sake of clarity, the Partner is not entitled to:
- (i) use the ECRC Label on any other product or product packaging, on any test or research report, not corresponding with the properties disclosed on the ECRC Label;
  - (ii) alter, delete, or amend the ECRC Label in any way whatsoever, which it shall receive from the ECRC, except with respect to size and colour. The Partner's use of the ECRC Label and the ECRC name will be of such size as to permit legibility of the wording. The Partner may use the colours set forth in **Schedule 2** or may use black or shades of gray.
- 3.5. The Partner acknowledges and agrees that compliance with the terms of this Agreement and the Requirements is necessary to protect the goodwill and other proprietary interests of ECRC and that an unauthorized use of the ECRC Label or false representations regarding the affiliation of the Partner with ECRC would result in irreparable and continuing harm to ECRC for which there would be no adequate remedy at law. Accordingly, the Partner agrees that in the event of unauthorized use of the ECRC Label or false representations regarding the affiliation of the Partner with ECRC, the ECRC shall be entitled to legal remedies (including monetary damages). Moreover, the Partner shall at all times refrain from any act or omission, whether wilful or negligent, that could discredit ECRC or tarnish its reputation or goodwill.
- 3.6. ECRC shall have the right, from time to time, to request from the Partner samples of the use of the ECRC Label in order to verify the compliance with this Agreement.

#### **4. REMUNERATION AND PAYMENT**

- 4.1. Parties agree that the Partner shall pay the annual applicable fees to the ECRC pursuant to the grid enclosed in **Schedule 3** in order to participate in the ECRC Roofing Product rating program and to use the ECRC Label. These fees will at all times be non-refundable.
- 4.2. However, the mere payment of the fees is not sufficient to be accepted in the ECRC Roofing Product rating program.

#### **5. TERM AND TERMINATION**

##### **5.1. Term**

Except if explicitly state otherwise, Parties agree that this Agreement shall enter into effect as of the Effective Date and shall remain in effect until December 2016, which shall be subsequently renewed for one (1) year periods thereafter (hereinafter "**Term**").

##### **5.2. Termination**

- (i) The Partner shall have the right to terminate this Agreement by giving a sixty (60) days notice period in written to ECRC.
- (ii) ECRC shall have the right to terminate this Agreement with immediate effect at any time upon written notice to the Partner.
- (iii) Either Party shall have the right to terminate this Agreement with immediate effect upon written notice to the other Party:
  - (a) If the other Party commits a material breach of any obligation imposed by this Agreement, and such default is not remedied within 30 days after written notice;
  - (b) voluntary or involuntary bankruptcy proceedings by or against the other Party;
  - (c) the appointment of a receiver for the other Party;
  - (d) the assignment of the other Party's assets for the benefit of its creditors;
  - (e) the other Party shall be liquidated or dissolved.

##### **5.3. Consequences of termination**

In case of termination of this Agreement, by any reason whatsoever, the Partner shall:

- (i) cease every use in any way whatsoever of the Manual and the ECRC Label;
- (ii) be excluded of the ECRC Roofing Product rating program;
- (iii) cease every use of the ECRC Label;
- (iv) cease to refer in any way whatsoever to its relation with or .accreditation or approval by the ECRC in any way whatsoever.



## **6. LIABILITY**

### **6.1. General**

The ECRC, its officers, directors, members, employees and counsels shall not be liable for any act or omission of the Partner. The Partner (a) shall defend any claims made against ECRC, its officers, directors, members, employees and counsel, and (b) shall indemnify and hold harmless ECRC, its officers, directors, members, employees and counsel from any liability which may be imposed upon ECRC, its officers, directors, members, employees and counsel from any and all damages or claims (including reasonable attorneys' fees) resulting from or arising out of the Partner's acts or omissions.

The Partner agrees to waive any and all claims against the ECRC, its officers, directors, members, employees and counsel and shall indemnify and hold harmless the ECRC and its officers, directors, members, employees and counsel from any liability arising out of the acts or omissions of any officer, agent, employee or counsel of ECRC in connection with or in any way relating to the ECRC Roofing Product rating program and/or this Agreement.

### **6.2. Limitation**

In no event will the ECRC be liable to the Partner or any third party for lost profits or business, or for any indirect damages of any kind arising out of or in connection with this Agreement.

### **6.3. Force Majeure**

Neither Party shall be liable to the other for a failure to perform any of its obligations under this Agreement, with the exception of payment obligations, due to circumstances of Force Majeure, provided such Party provides written notice of the delay.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1. The Partner represents and warrants that it legally complies with the Requirements.

7.2. Parties represent and warrant to each other as follows:

- (i) ECRC and the Partner have the full right, power and authority to enter into this Agreement, and to perform all their respective obligations under this Agreement;
- (ii) This Agreement constitutes the legal, valid and binding obligation of ECRC and the Partner and is enforceable against each other in accordance with its terms, except as enforceability may be limited by equitable principles or by bankruptcy, fraudulent conveyance or insolvency laws affecting enforcement of creditors' rights generally;
- (iii) The execution and delivery of this Agreement by ECRC and the Partner, the performance of their respective obligations hereunder, shall not constitute a breach, default or violation any agreement to which the ECRC or the Partner is a party or is otherwise bound.

7.3. Parties agree that any violation of the clauses set out under this article 7 will be considered a serious breach.

## **8. CONFIDENTIALITY**

- 8.1. Every Party shall keep secret any confidential information, in any form whatsoever (oral, graphic, digital etc.) about the other Party, and/or their businesses, coming to its knowledge as a result of the cooperation between Parties, both during the execution of this Agreement and during 5 years after its termination.
- 8.2. Parties shall only disclose the general existence of this Agreement to third parties. Parties shall not disclose specific clauses, e.g. the remuneration. This obligation can be overruled by an imperative article of law.

## **9. MISCELLANEOUS PROVISIONS**

### **9.1. Costs**

Except as otherwise provided in writing, each Party bears its own costs relating to the negotiation, preparation and execution and implementation by it of this Agreement and of all other ancillary documents.

### **9.2. Other agreements – amendments**

This Agreement constitutes the entire agreement between the Parties and supersedes and replaces any and all prior agreements, negotiations, arrangements and understandings, whether or not in writing, between the Parties with respect to the subject matter of the Agreement. No variation of this Agreement is valid unless it is in writing and signed by or on behalf of each Party.

### **9.3. Waivers**

No failure or delay by any Party in exercising any right or remedy provided by law or pursuant to this Agreement will impair such right or remedy or be construed as a waiver of it and will not preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy will preclude any further exercise of it or the exercise of any other remedy.

### **9.4. Severability**

If any provision of this Agreement is held to be invalid or unenforceable, then such provision will (as far as it is invalid or unenforceable) have no effect and will be deemed not to be included in this Agreement, but without invalidating any of the remaining provisions of this Agreement. Parties must then use all reasonable endeavours to replace the invalid or unenforceable provision by a valid and enforceable substitute. This substitute is as close as possible to the intended effect of the invalid or unenforceable provision.

### **9.5. Assignment / transfer**

- (i) Neither Party shall assign or transfer any of its rights or obligations under this Agreement, either in whole or in part, to any third party without the prior written consent of the other Party. Any such assignment or transfer without the prior written consent of the other Party shall be deemed null and void.
- (ii) the ECRC however shall be entitled to assign or transfer this Agreement, in whole or in part, to its Affiliates or any other company of the group of companies to which it belongs or in connection with the sale, transfer, merger, consolidation, or any other disposition of all or substantially all of its assets or business, upon giving formal written notice thereof to the



Partner, provided that such transfer or assignment does not adversely affect the Partner's rights.

**10. GOVERNING LAW AND JURISDICTION**

10.1. This Agreement is governed by and must be construed and interpreted in accordance with the Laws of Belgium, excluding conflict-of-laws rules or provisions that would cause the laws of any jurisdiction other than Belgium to be applicable.

10.2. Any dispute concerning the validity, interpretation, enforcement, performance or termination of this Agreement shall be submitted to the exclusive jurisdiction of the courts of Brussels.

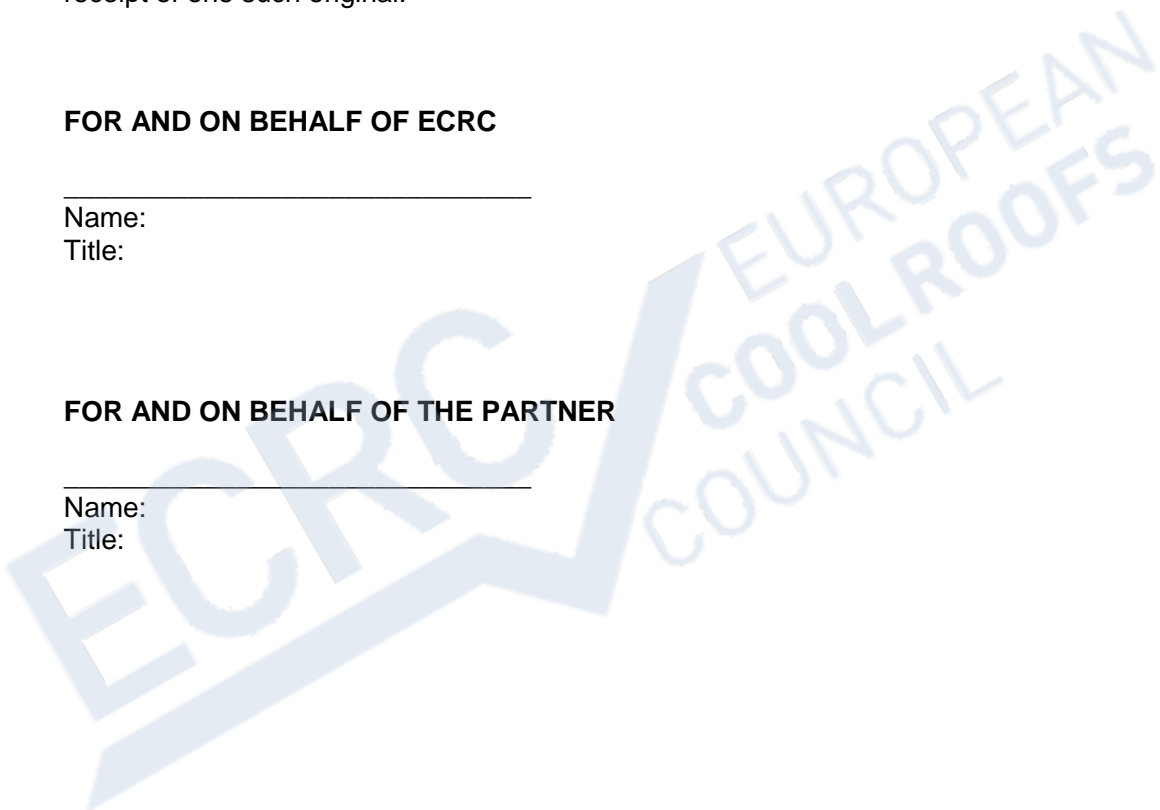
Made in \_\_\_\_\_ on \_\_\_\_\_, in two originals, each Party acknowledging receipt of one such original.

**FOR AND ON BEHALF OF ECRC**

\_\_\_\_\_  
Name:  
Title:

**FOR AND ON BEHALF OF THE PARTNER**

\_\_\_\_\_  
Name:  
Title:





**ENCLOSURE 2 – ECRC Label**



**ENCLOSURE 3-FEES**

