



## GOLD STAR AUTHORIZED APPLICATOR AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between EcoStar, LLC, a New York Limited Liability Company, with its principal office located at 42 Edgewood Drive, Holland, New York, 14080 (“EcoStar”) and

\_\_\_\_\_ (“Applicator”), with an address of

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Doing business as a(n) (LLC, S-Corp, C-Corp, Sole Proprietor, etc.): \_\_\_\_\_ organized under the state laws of \_\_\_\_\_.

### WITNESSETH

In consideration of the mutual promises and undertakings stated herein, EcoStar and Applicator agree as follows:

#### 1. GRANT

- (a) EcoStar grants to Applicator the non-exclusive right to purchase and install EcoStar roofing products (“Products”) consisting of all roofing products now or hereafter marketed by EcoStar.
- (b) EcoStar reserves the right to sell, distribute and install Products direct or through others, at EcoStar's discretion.

#### 2. GENERAL DUTIES OF APPLICATOR

Applicator shall:

- (a) At EcoStar's request from time to time provide adequate assurance satisfactory to EcoStar of Applicator's due performance of its obligations under this Agreement and Applicator's financial responsibility.
- (b) Use its best efforts to sell and promote the use of the Products.
- (c) Attend EcoStar's training meetings and pay for travel, lodging, and living expenses while attending such meetings. Applicator agrees not to begin any installation of Products until (i) Applicator has attended at least one (1) training meeting; (ii) Applicator is satisfied that it has received details, installation instructions, procedures, and updates; and (iii) EcoStar has provided Applicator with written notice that applicator is authorized to install the Products.
- (d) Advise every building owner (“Building Owner”) in writing at the time Applicator submits its bid, that EcoStar will provide Building Owner, at Applicator's expense as set forth in EcoStar's most current price list, the most current standard form of the EcoStar’s Limited Labor and Material Warranty (“Gold Star Warranty”) at such time as EcoStar has accepted the installation of Products and has received payment from the Applicator for the Products and the Gold Star Warranty.

- (e) At the time a roofing contract is awarded to Applicator, provide to EcoStar a copy of all bonds on public or private work including the amount of the bond and the name and address of the surety or guarantor and also complete and provide to EcoStar any required EcoStar project related forms.
- (f) Follow all details, installation instructions, and procedures as furnished in writing by EcoStar from time to time. Applicator shall inquire about any updates or revisions regarding installation of Products before beginning any roofing project.
- (g) Comply with all federal, state, and local laws, regulations, ordinances and governmental orders.
- (h) Ensure each of Applicator's employees or other personnel responsible for the supervision of the installation of the Products have received the training specified herein.
- (i) Not subcontract any work related to the installation of the Products to a non-authorized Gold Star Applicator without receiving EcoStar's prior written consent.

### **3. GENERAL DUTIES OF ECOSTAR**

EcoStar shall:

- (a) Make available to Applicator instructional materials, instructions, and training which, in EcoStar's judgment, are necessary to assure adequate quality and uniformity in installation of Products.
- (b) Provide Applicator with a reasonable supply of promotional material, which, in EcoStar's judgment, is adequate for Applicator's use in the sale, and promotion of Products.
- (c) Provide to Applicator for presentation to Building Owner, and at Applicator's expense as set forth in EcoStar's most current price list, EcoStar's Gold Star Warranty. EcoStar reserves the right to refuse to issue a Gold Star Warranty if (i) its specifications, details, installation instructions, and procedures are not followed and it has not approved and accepted the installation, or (ii) it has not been paid for Products and the Gold Star Warranty.

### **4. NOTICE OF AWARD**

- (a) At its expense, Applicator shall furnish to EcoStar for every job on which Applicator is to install Products:
  - i. Notice of Award of the roofing contract and copies of all job specifications, shop drawings, details, and other plans to be used in connection with the installation of Products, as soon as such items become available.
  - ii. A description of the nature of the work (i.e., public or private work), copies of all types and amounts of bonds furnished, and the name and address of the surety or guarantor and a completed copy of the EcoStar form entitled "Request for Warranty".
- (b) EcoStar's review of the above plans, details, and other information is for the purpose of evaluating watertight integrity only. ECOSTAR MAKES NO WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE AND SHALL NOT BE LIABLE FOR ANY DIRECT INCIDENTAL OR CONSEQUENTIAL DAMAGES.

## **5. INSPECTIONS**

For every job, Applicator shall:

- (a) Send written notice to EcoStar, indicating completion of Products installation, within seven (7) calendar days after completion of the installation.
- (b) Allow EcoStar to inspect (at its option) the installation of the Products. EcoStar may direct Applicator to make such changes or repairs, as EcoStar deems necessary for proper installation of the Products. Such changes or repairs shall be at Applicator's expense if EcoStar determines that Applicator failed to follow and adhere to EcoStar's written specifications, details, installation instructions and procedures in effect at the time of installation.
- (c) For a period of three (3) years beginning with the date upon which the installation passes final inspection by EcoStar or, in the event a Gold Star Warranty is not issued, then for a period of three (3) years beginning with the completion of the installation of the Products, repair upon request of either Building Owner or EcoStar, at Applicator's expense, any leaks caused by faulty handling or installation of the Products including but not limited to the use of materials not approved by EcoStar.

## **6. WARRANTY TO APPLICATOR**

EcoStar warrants its material to be free from defects at the time of its delivery to a project site. EcoStar's liability and Applicator's remedies are limited to EcoStar's replacement of defective material, F.O.B. EcoStar's factory. Replacement of defective material will be made only upon EcoStar's inspection of the material. Applicator shall return defective material and EcoStar shall pay the cost of shipping only after EcoStar has sent definite shipping instructions.

THERE ARE NO WARRANTIES EITHER EXPRESS OR IMPLIED WHICH EXTEND BEYOND THE FACE HEREOF INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ECOSTAR SHALL NOT BE LIABLE FOR ANY DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LAW.

NO REPRESENTATIVE OF ECOSTAR HAS AUTHORITY TO MAKE ANY REPRESENTATIONS OR PROMISES EXCEPT AS STATED HEREIN.

## **7. RELATIONS BETWEEN PARTIES**

- (a) Applicator shall not use the name EcoStar, EcoStar's logo, or any other EcoStar trademark or trade name in Applicator's firm name or assumed name or in any other manner, provided, however, Applicator may indicate in correspondence or advertising related to Products that it is a Gold Star Authorized Roofing Applicator, provided however, the Applicator shall obtain EcoStar's prior written approval of all correspondence or advertising referencing that Applicator is a Gold Star authorized Applicator prior to use in each advertising or promotional campaigns. Upon expiration or termination of this Agreement for any reason, Applicator shall immediately discontinue any use of any name, logo, trademark, or trade name used by EcoStar.
- (b) Applicator shall act only in Applicator's legal capacity as an independent contractor. In no event shall Applicator be an employee, franchisee, or agent of EcoStar. EcoStar is not a franchiser. Applicator has no authority to act for, or on behalf of EcoStar or to bind EcoStar in any way whatsoever, and Applicator shall not so hold itself out to anyone or otherwise represent that Applicator has such authority. Applicator is not authorized to make or extend any promises, representations, or warranties with respect to Products except as set forth in EcoStar's Gold Star Warranty.

## 8. EXCUSED PERFORMANCE

Neither party shall be held responsible for delays or failure to perform hereunder, except for payment of money when due, if caused by fires, floods, strikes, labor disputes, accidents, acts of war, priorities required or requested by any governmental authority, transportation delays, restrictions imposed by federal, state or local law, regulations or ordinances, or EcoStar's inability to secure raw materials or energy, or for any other causes beyond a party's control.

## 9. INDEMNIFICATION

- (a) Applicator agrees to indemnify, pay for the defense of, and save EcoStar and its members, managers, officers, employees and legal representatives harmless from any and all damages, losses or expenses including attorney's fees, direct or indirect, including settlement of any claim subject to Applicator's approval which approval shall not be unreasonably withheld, which EcoStar may be subjected to because of Applicator's negligence or failure to perform any term or condition of this Agreement. EcoStar shall not be obligated to appeal any judgment that would impose liability on Applicator.
- (b)
  - i. EcoStar shall indemnify and save Applicator harmless from all damages, losses or expenses, including reasonable attorney's fees, which Applicator may sustain as determined by a final judgment against Applicator or a settlement of any claim, approved in writing by EcoStar, resulting from EcoStar's negligence in performing or failure to perform its obligations under the Gold Star Warranty; provided, however, that this indemnity shall not be enforceable against EcoStar (whether or not EcoStar may have been negligent in performing or failing to perform its obligations under the Gold Star Warranty) if the damages, losses, or expenses sustained by Applicator were caused in whole or in part from any act or failure to act by Applicator as required by this Agreement.
  - ii. In the event that any claim, action, or proceeding is threatened or made against Applicator which may impose liability on EcoStar under this indemnity, Applicator shall promptly serve written notice on EcoStar of such claim, action, or proceeding and EcoStar shall have the option to join in the defense of the claim at its expense.

## 10. TERM OF AGREEMENT; TERMINATION

- (a) Application to be an Applicator is not deemed accepted by EcoStar until an authorized EcoStar employee has signed this Agreement and has returned one signed copy of this Agreement to Applicator. This Agreement shall remain in effect until:
  - i. Either party cancels this Agreement with or without cause by giving thirty (30) days prior written notice of termination to the other party by certified mail (return receipt requested) or by facsimile and ordinary mail at the address stated herein or such other address as either party may designate in writing.
  - ii. Either party may terminate this Agreement immediately for breach of any covenant contained herein.
  - iii. Subject to any provisions of law to the contrary, there is an adjudication of Applicator as bankrupt or insolvent, or entry of an order, remaining unstayed by appeal or otherwise for thirty (30) days, appointing a receiver or trustee for Applicator, or for all or any of its property, or approving a petition seeking reorganization or other similar relief under the bankruptcy or other similar laws of the United States of America or any state, or the filing by the Applicator of a petition seeking any of the foregoing or consenting *thereto, or the filing by the Applicator of a petition to take advantage of any debtors' act or making a general assignment for the benefit of creditors, or admitting in writing its inability to pay its debts as they mature*

- (b) Unless otherwise agreed in writing by both parties, termination of this Agreement as provided herein shall automatically cancel all accepted orders for Products not shipped by EcoStar by the date of EcoStar's or Applicator's receipt of the termination notice. Upon termination, Applicator will immediately furnish to EcoStar a list of all jobs for which Applicator has been awarded contracts for the installation and use of Products. If Applicator's account is not in arrears and Applicator has not otherwise breached the terms of this Agreement, then EcoStar in its sole discretion may fill orders for such jobs in accordance with the terms and conditions of this Agreement and will charge Applicator's account therefore. As a condition to filling such orders, EcoStar at its option may require Applicator to furnish a surety bond or other extraordinary credit/collection procedures in an amount or manner acceptable to EcoStar's credit department.
- (c) Termination of this Agreement shall not relieve Applicator from its obligations and liabilities hereunder, including but not limited to, its obligations to repair Products as provided in paragraph 6, to complete the installation of Products undertaken and not completed by Applicator by the date of the termination notice, and to make all payments due or accrued to EcoStar and other material suppliers.

## **11. WAIVER**

The failure of either party to enforce at any time any of the provisions hereof shall not be construed to be a waiver of such provision or of the right of such party thereafter to enforce any such provisions.

## **12. ASSIGNMENT**

The rights created by this Agreement are personal and not assignable, and the obligations imposed upon Applicator are not delegable without the written consent of EcoStar, provided, however, that EcoStar may assign this Agreement to its successors as well as to any entity or corporation now or hereafter owned or controlled by or affiliated with EcoStar (defined as any corporation controlling or under common control with EcoStar).

## **13. CONSTRUCTION**

This Agreement constitutes the entire Agreement between the parties and the parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representation inducing the execution and delivery hereof except as specifically set forth in this Agreement. No change, alteration, modification, or addition to this Agreement shall be effective unless in writing and signed by an authorized EcoStar employee. A mere acknowledgment or acceptance of any acts or performance by either party inconsistent with the terms of this Agreement shall not be deemed an acceptance or approval by EcoStar of such inconsistent acts or performance with respect to subsequent transactions. This Agreement supersedes and is in lieu of all prior agreements or arrangements between the parties. The captions in this Agreement are for convenience only and shall not affect the interpretation hereof.

## **14. GOVERNING LAW**

This Agreement shall be construed under the laws of, and by the courts of, the State of New York, and if any provision here of shall be adjudged to contravene any applicable law, the parties agree to remain bound to all of the remaining provisions.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in duplicate by their representatives duly authorized as of the day and year first written above.

**APPLICATOR COMPANY NAME**

\_\_\_\_\_

**Signature:** \_\_\_\_\_

**Witness Signature:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

**Position/ Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ECOSTAR LLC**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

**Position/ Title:** \_\_\_\_\_