

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 201 \_\_, by and between the Kitchen Cabinet Manufacturers Association, an Illinois nonprofit corporation having its principal office at 1899 Preston White Drive, Reston, Virginia 20191-5435 (hereinafter called "Licensor"), and \_\_\_\_\_

having its principal place of business at \_\_\_\_\_ (hereinafter called "Licensee").

IT IS AGREED:

### *1. Administration of Certification Program.*

(a) Licensor shall maintain a Standards and Certification Committee, comprised of members of the Licensor, who participate in the certification program (the "Certification Program") operated by Licensor to evaluate compliance with the KCMA Performance and Construction Standard for Kitchen and Vanity Cabinets (ANSI/KCMA A161.1) (the "Standard"). The Standards and Certification Committee (hereinafter called the "Committee") shall prepare and maintain a Manual of Operation and Guidance. Licensee shall comply with the Standard, all rules, standards, policies, statements, specifications, decisions, and interpretations, including, without limitation with the Manual of Operation and Guidance, prescribed by the Licensor from time to time and as amended by Licensor from time to time in connection with the Certification Program (collectively, the "Policies"). The Policies are incorporated by reference herein and are made a part hereof. If applicable, Licensee also shall comply with the KCMA Severe Use Specifications (which, if applicable, shall be included in the definition of "Standards" for purposes of this Agreement) and all Policies adopted by Licensor in connection therewith, each of which is incorporated by reference herein and is made a part hereof.

(b) Upon referral by the Licensor, the Committee shall determine the applicability of the Standards to the cabinet(s) of any Licensee. Licensee shall abide by the decision of the Licensor as to the compliance and non-compliance of the Licensee's products, determined in accordance with the Certification Program and the requirements of the designated Standards and subsequent inspection(s) of such products. The Licensor and the Committee are and shall be the sole judge of the compliance or non-compliance of Licensee's product with the designated Standards for purposes of certification under Licensor's Certification Program. Licensor will provide Licensee with a Certificate of Certification for each cabinet line certified under the Certification Program.

(c) A Licensee that operates more than one manufacturing facility shall have cabinets tested from each plant and is subject to Licensor selecting and testing cabinets from each plant. The fees, as set forth in Appendix A, shall be based on the total sales from all plants.

(d) Licensee, without prior notice, shall permit Licensor's representatives at least twice each year to select Licensee's cabinets for testing to determine compliance with the Certification Program.

(e) To be eligible for certification, knock-down or ready-to-assemble cabinets must be fully assembled for sale in a designated assembly area at the warehouse/plant of Licensee located in North America. Knock-down or ready-to-assemble cabinets not so assembled are not eligible for certification under the Certification Program.

## ***2. Reports and Payments by Licensee.***

(a) Upon signing this License Agreement, Licensee shall report to the Licensor each of its cabinet lines for which Licensee seeks certification. Licensee may withdraw a certified cabinet line from the Certification Program if production thereof is permanently discontinued, or for other specified cause, and Licensee so stipulates in writing to the Licensor.

(b) Licensee shall notify Licensor at any time a significant change is made in a certified cabinet line to enable the Licensor to determine whether a retest is necessary. Licensee shall have thirty (30) days from the time a change is made to a certified cabinet line to submit a Request for Waiver of Retest to the Licensor if such changes are deemed to be in compliance with all standards requirements and to be of a minor nature not affecting the product's test performance.

(c) Licensee shall pay in advance for testing fees as set forth in Appendix A upon notification by Licensor of the necessity of a compliance inspection in conformance with Paragraph 1(d) of this Agreement.

(d) Licensee shall pay Licensor a license fee as set forth in Appendix A, attached hereto. This fee is payable monthly according to the Licensor's payment terms (net 30). Invoices will be furnished monthly and Licensee must calculate the correct amount due Licensor. Licensee shall not be entitled to a refund of any portion of the license fees paid hereunder.

## ***3. Certification Seals and Mark.***

Licensor shall provide Certification Seals to Licensee and will invoice Licensee for the cost and freight of seals. Licensee shall affix a Certification Seal to all sink fronts, sink bases, vanity fronts, and vanity bases for certified lines, however, Licensee also may affix the Certification Seal to any other of Licensee's certified cabinets in the locations set forth on Appendix B. Licensor shall not be liable for any damage to cabinet finishes, and Licensee shall affix Certification Seals only at the time and place of final assembly and only to those assembled cabinets of Licensee which have been approved by the Licensor for certification and listing in the Directory. Licensee shall not affix the Certification Seal to any product not submitted for certification, any product for which certification has been withheld or withdrawn, or any product which by reason of change in design or the method or materials of construction has been changed from that as originally certified. Licensee shall not use, sell, lend, reproduce, print, transfer or otherwise dispose of a Certification Seal in any manner other than by affixing it as prescribed herein to Licensee's certified product or by returning it to the Licensor. "Certification Seal" as used in this Agreement shall mean Licensor supplied adhesive stickers used for placement on certified cabinets. Licensor grants Licensee a revocable, non-exclusive license to use the certification mark attached to this Agreement as Appendix C (the "Mark"), solely to signify that a particular cabinet line is certified under the Certification Program. Licensee shall not use the Mark in connection with any general Licensee company materials or in connection with cabinets that are not certified under the Certification Program. The Certification Seals and Mark may not be used in any manner that, in the sole discretion of Licensor: (i) discredits Licensor or tarnishes its reputation and goodwill; (ii) is false or misleading; (iii) violates the rights of others; (iv) violates any law, regulation, or other public policy; (v) mischaracterizes the relationship between Licensor and Licensee; or (vi) violates this Agreement or any of the Policies. Licensee agrees that Licensor is the sole and exclusive owner of the Standard and Certification Program intellectual property (including, without limitation, the Certification Seals and Mark), and Licensee shall not take any actions which are inconsistent with Licensor's ownership rights including, but not limited to, challenging Licensor's rights.

#### ***4. Directory of Certified Cabinets.***

(a) Licensor shall annually prepare and publish a Directory of Certified Cabinets (hereinafter called "Directory") which shall include a listing of Licensee's certified cabinets, including private brands, which have been found under the Certification Program to comply with the Standard. The listing of each certified cabinet shall specify the name, model number, style (color) or other description of the product. Licensee shall annually furnish promotional or technical literature to adequately describe listed lines. For listing new lines in the annual Directory, Licensee is responsible for furnishing necessary documentation to substantiate the line's eligibility for certification. Licensor shall not be liable for any damages if a certified cabinet is inadvertently omitted from or in any manner incorrectly designated in the Directory.

(b) Licensee's name and product listing shall be removed from the Directory if payments or reports due Licensor under paragraph 2 of this License Agreement become ninety (90) days past due, and such removal shall remain in effect until such past due payments or reports are brought up to date in accordance with this Agreement and all other Certification Program requirements are satisfied.

#### ***5. Advertising by Licensee.***

Licensee agrees to make proper use and mention of the KCMA certification seal and Certification Program in its company specifications, literature, packaging and advertising. Licensee shall not use the Mark or the term "certified" in connection with advertising referring to products which have not been certified or from which certification has been withheld or withdrawn.

#### ***6. Testing; Inspections.***

(a) Licensee shall submit to the Licensor-approved Test Laboratory for testing, at Licensee's expense, production samples for each product line for which Licensee desires certification. Licensor shall arrange for selection of the appropriate test specimen at Licensee's plant. Licensee shall render reasonable assistance to enable the selection of its certified products to be performed without undue delay and, if required, to provide suitable work space thereof on a temporary basis.

All production samples which are tested will be disposed of by the Test Laboratory on completion of test work, unless the Licensee advises the Licensor or Test Laboratory to make other disposition of cabinets. Any costs attributed to such other disposition shall be borne by Licensee. Each product that is selected shall be clearly identified by name, model number, style (color) or other description and include catalogues, design specifications or other material, to indicate clearly to the Licensor's Agent the line of cabinets being selected.

(b) Licensee must ship, at Licensee's expense, selected samples to the designated Test Laboratory within five (5) working days of the visit of the Licensor's representative or upon Licensor's request. In addition, Licensee shall cause its applicable facilities producing cabinets certified or to be certified under the Certification Program to be available for inspection and product selection in accordance with the Policies.

(c) The reports and results of all testing and inspection shall be held in strict confidence by Licensor and Test Laboratory, except for such communication as may be necessary with respect to the listing or removal of listing of Licensee's products in the Certification Directory or the suspension or exclusion of Licensee from the Certification Program.

### ***7. Retesting.***

(a) If a production sample fails its primary test under the Certification Program, Licensee shall submit for retest a production sample for any such product lines. Licensee shall have sixty (60) days in which to submit the production samples for retest.

(b) Upon a finding by the Licensor that a certified product of Licensee has been changed or is in non-compliance as a result of unannounced plant selection for testing or due to a complaint or otherwise, Licensee shall submit for retest specimens of any product lines requested by the Licensor. In the case of such a finding, Licensee shall have sixty (60) days in which to accomplish the corrective action as may be required and to notify Licensor that the corrective action has been completed and that the changed products is being manufactured and available for unannounced selection and retesting at Licensee's expense.

### ***8. Testing Upon Complaint.***

Upon receipt of written complaint of non-compliance of a certified cabinet manufactured by Licensee, the Licensor shall investigate such complaint. If the Licensor finds that a test of the product is necessary, the complaining party must place in escrow funds covering the cost of the test, including the test specimen and incidental expenses. If the test results, as found by the Licensor, sustain the complainant's claim of non-compliance, Licensee shall be required to pay the expenses incurred in testing and to take corrective action, as provided in Section 7 of this License Agreement, to bring said cabinet into compliance with the Standards, and the complainant's funds held in escrow shall be returned to complainant. If the complaint of non-compliance is not so upheld by the Licensor, the cost of the test and any other expenses which the Licensor may have authorized as a result of said complaint shall be paid from the escrow account, and no action will be taken against Licensee with respect to said cabinet.

### ***9. Suspension.***

(a) Upon any failure of Licensee to perform in accordance with Licensee's obligations under this License Agreement, Licensor shall have the right, upon written notice to Licensee, to suspend Licensee from participation in the Certification Program for a reasonable period of time. During the suspension period, Licensee is required to continue paying monthly and other applicable fees.

(b) Upon failure of Licensee to take corrective action and obtain re-certification of a non-complying cabinet line according to Section 7 of this Agreement, Licensor shall determine if such non-compliance is of a nature to not affect compliance of other certified cabinet lines. When the non-compliance is determined by Licensor to be isolated, Licensor may, upon written notice, suspend the Licensee's right to certify the non-complying cabinet line and remove such product listing from the Directory.

### ***10. Termination.***

(a) Upon the failure of Licensee to enable the completion of certification testing in any calendar year according to the requirements of this Agreement, Licensor shall have the right to terminate this License Agreement and remove Licensee's name and product listings from the Directory upon written notice to Licensee.

(b) Upon the failure of Licensee to take or complete the necessary action leading to recertification within sixty (60) days according to Section 7 of this Agreement, Licensor shall have the right to terminate this License Agreement and remove Licensee's name and product listings from the Directory upon prior written notice to Licensee.

(c) Upon the failure of Licensee to make a payment due Licensor or upon any other failure of Licensee to perform in accordance with Licensee's obligations under this Agreement for a period of five (5) days or more after written notice from Licensor, Licensor shall have the right to terminate this License Agreement and remove Licensee's name and product listings from the Directory.

(d) Licensee may terminate this License Agreement upon sixty (60) days written notice to Licensor.

### ***11. Effect of Termination.***

Upon the effective date of termination of this License Agreement, or during any period of suspension, Licensee:

- (a) shall not use the Mark and shall not affix the Certification Seal to any cabinet which Licensee thereafter manufactures that is subject to the suspension or termination;
- (b) shall make no reference either directly or indirectly, by implication or comparison, to any Standard or this Certification Program with respect to the cabinet line(s) subject to the suspension or termination; and
- (c) shall, within ten (10) days of said termination date, return to Licensor all Certification Seals then in Licensee's possession.

### ***12. Term.***

The initial period of this License Agreement shall be for two years from the date written above unless the Agreement is terminated as provided in Section 10. The Agreement will automatically be renewed for successive two-year terms unless either party gives written notice to the other party of its intention not to renew sixty (60) days before a new term is to begin.

### ***13. Indemnification; Limitation of Liability.***

(a) Licensee hereby indemnifies, defends, and holds Licensor, its successors and assigns, and its directors, committee members, officers, employees, members, representatives and agents, harmless from and against any and all loss, liability, damage, claim, suit, demand and expense, including, but not limited to, taxes, fines, penalties, court costs and attorneys fees, arising in connection with or related to any act or omission (including, without limitation, any breach of this Agreement) of Licensee or its officers, employees or agents.

(b) Subject to the terms of this License Agreement, Licensor shall defend any suit or proceeding brought against Licensee and shall hold Licensee harmless from any damages awarded against Licensee to the extent they are based upon a claim that the Certification Seal or Mark infringes upon a third party's intellectual property rights; provided Licensee promptly notifies Licensor within fifteen (15) days of receipt of notice of any such suit or proceeding. At Licensor's expense, Licensee gives Licensor the right to defend the suit, however, Licensee reserves the right to participate in its own defense at its own expense.

**(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, EXCEPT IN CASES OF FRAUD OR WILLFUL MISCONDUCT, LICENSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOST INCOME OR PROFITS, RESULTING FROM OR ARISING OUT OF THIS AGREEMENT OR THE STANDARDS OR CERTIFICATION PROGRAM, WHETHER ARISING IN TORT, CONTRACT, STATUTE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, EXCEPT FOR FRAUD OR WILLFUL MISCONDUCT, IN THE EVENT THAT LICENSOR IS FOUND LIABLE TO LICENSEE, LICENSEE SHALL ONLY BE ENTITLED TO RECOVER ACTUAL AND DIRECT DAMAGES IN AN AGGREGATE AMOUNT NOT TO EXCEED THE AMOUNT OF LICENSE FEES PAID BY LICENSEE TO LICENSOR IN THE PRECEDING TWELVE (12) MONTH PERIOD.**

(d) The provisions of this Article 13 will survive any expiration or termination of this License Agreement.

***14. Agency.***

No association, agency, apparent agency, employer/employee relationship, partnership, or joint venture of any kind is created by this License Agreement. Licensor is not responsible for the acts or omissions of Licensee, nor may Licensee speak or act for, or otherwise legally bind, Licensor.

***15. Waiver; Remedies Cumulative.***

(a) 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.

(b) All of the rights and remedies of the parties hereto shall be cumulative with, and in addition to, any other rights, remedies or causes of action allowed by law and shall not exclude any other rights or remedies available to either of the parties hereto.

***16. Severability.***

If any part of any provision of this Agreement shall be invalid or unenforceable in any respect, as determined by a court of appropriate jurisdiction, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provision or the remaining provisions of this Agreement.

***17. Amendment.***

Amendment or revision of this License Agreement or an Appendix hereto shall require a majority vote of the Standards and Certification Committee and Board of Directors of Licensor.

***18. Governing Law.***

This License Agreement and the parties' performance hereunder shall be governed by the laws of the Commonwealth of Virginia without giving effect to principles of conflicts of law thereunder. Exclusive jurisdiction for any claim or dispute between the parties resides in federal or State court in Virginia, and the parties agree and expressly consent to the exercise of personal jurisdiction in the Commonwealth of Virginia. **EACH PARTY HERETO HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF.**

***19. Counterparts.***

This License Agreement may be executed in any number of counterparts, and by any party on separate

counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This License Agreement may be executed and delivered by facsimile or electronic transmission and means, with the same effect as originals.

IN WITNESS WHEREOF, the parties have executed this License Agreement as of the date first above written.

KITCHEN CABINET MANUFACTURERS  
ASSOCIATION, Licensor

By: \_\_\_\_\_

Charles P. Arnold  
KCMA Director of Certification

\_\_\_\_\_, Licensee  
(Signature, Title)

\_\_\_\_\_  
(Print)

APPENDIX A

LICENSE AGREEMENT  
FEE SCHEDULE  
KITCHEN CABINET MANUFACTURERS ASSOCIATION  
CERTIFICATION PROGRAM

o Annual Certification Fee

- |              |   |   |
|--------------|---|---|
| KCMA Members | - | Covered by membership   |
| Non-Members  | - | \$640 plus \$348 to be placed in escrow to cover minimum monthly certification fee for <u>first</u> six months. |

o Monthly Certification Fee:

All Licensees shall pay a monthly license fee based on total cabinet sales. Licensee shall remit monthly to Licensor a monthly certification fee of 0.0006 of that month's dollar sales, provided, however, that this fee shall be at least \$48.00 (\$58 for non-members) but not over \$600 (\$720.00 for non-members) per month. This fee is payable monthly by the tenth of the month.

Invoice will be furnished to the Licensee monthly in blank for the Licensee to insert the correct amount due Licensor.

o Testing Fee:

Licensee shall pay for handling, shipping and laboratory testing of its cabinets as required under the License Agreement.

o Certification Seals Fee:

Licensor shall provide Certification Seals to Licensee for use on Licensee's products certified under the Certification Program. Certification Seals will be paid for by Licensee.

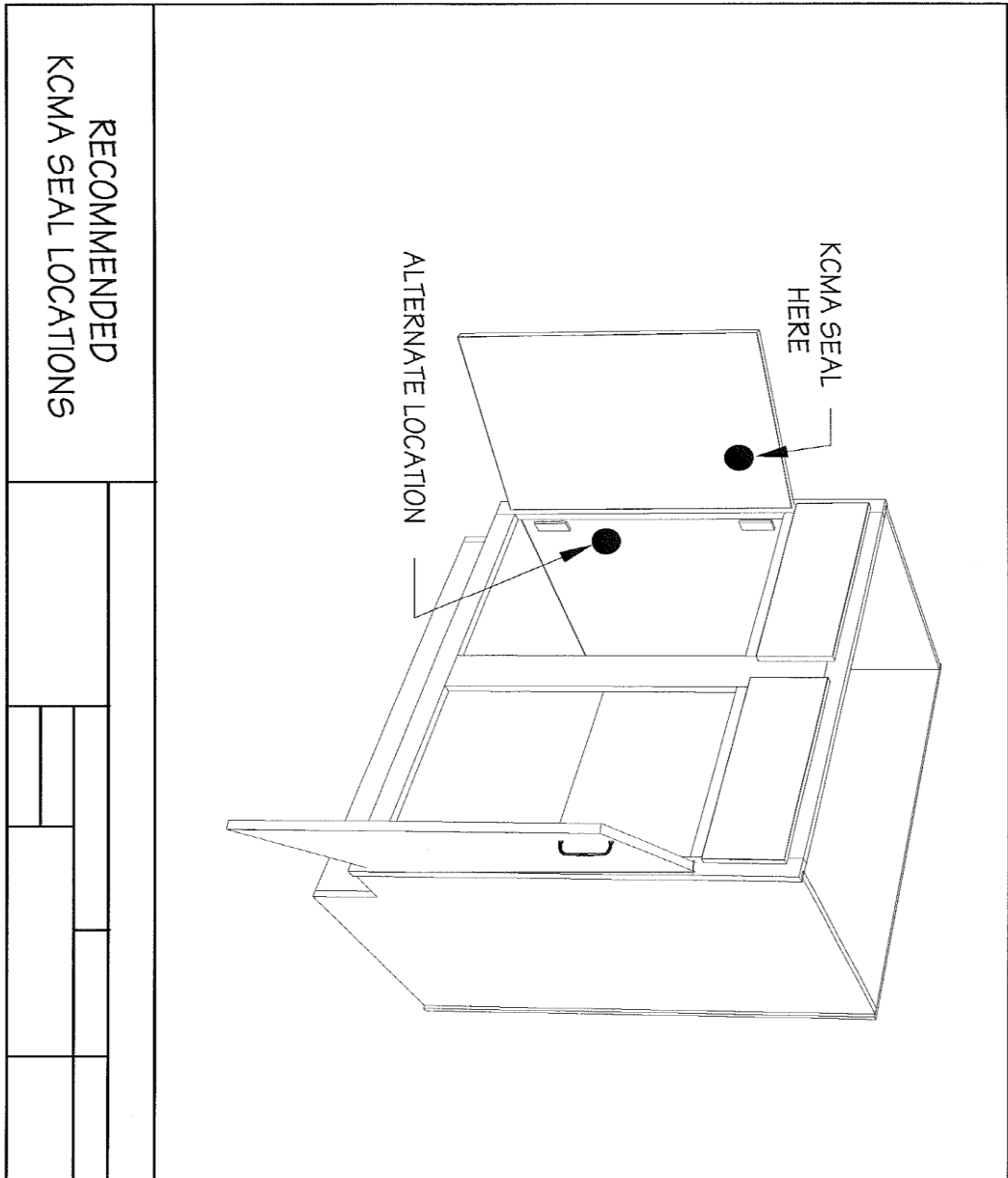
o Multiple Plant Fee:

In addition to the other fees, a company with multiple plants shall pay a monthly fee of \$40 (\$48 for non-members) for all but one plant where cabinets are manufactured or assembled.



APPENDIX B

SEAL LOCATIONS



APPENDIX C

