

# **CERTIFICATION MARK LICENSE AGREEMENT**

## **(“level”™ Certification Program)**

### **Appendix B**

This Certification Mark License Agreement (this “Agreement”) is entered into to be effective as of \_\_\_\_\_, 2009 (the “Effective Date”), by and between **BIFMA International**, a Michigan non-profit corporation and tax exempt trade association, of 678 Front Ave., N.W., Suite 150, Grand Rapids, Michigan 49504 (“Licensor”) and \_\_\_\_[Name of Certification Body]\_\_\_\_, of \_\_\_\_[Address]\_\_\_\_, (“Licensee”).

### **Preliminary Statement**

Licensor is a 501(c)(6) trade association for the North American office and institutional furniture industry. As a part of its leadership in promoting sustainability in the office and institutional furniture industry, Licensor has developed the ANSI/BIFMA e3 Furniture Sustainability Standard (the “Standard”) for purposes of initial product evaluation/certification and re-evaluation at least every three years thereafter. Licensor is the owner of the **level™** certification mark, a copy of which is attached as Exhibit A (the “Certification Mark”), which Licensor has developed for use in its promotion of sustainability in the manufacture and distribution of office and institutional furniture. Licensor has applied to the U. S. Patent and Trademark Office for registration of the Certification Mark on March 31, 2009 (USPTO Serial Number 77/702792). Licensor has established a certification program (the “**level™** Certification Program”) pursuant to which third party certification bodies, which have been recognized by BIFMA as operating a product certification program consistent with ISO/IEC Guide 65, will certify the conformance of office and institutional furniture products to the Standard and award use of the Certification Mark to certified products.

Licensee is a certification body, which has been recognized by BIFMA to conduct product certifications under the Standard. Licensee desires to license the Certification Mark for the purposes of certifying products as conforming under the Standard and awarding use of the Certification Mark with such conforming products in order to convey to the marketplace that the product has been third-party certified to the Standard.

Licensor and Licensee are entering into this Agreement to license the Certification Mark to Licensee to use in connection with the **level™** Certification Program and to award use of the Certification Mark for products which conform under the Standard.

### **Agreement**

In consideration of the facts set forth above and the mutual commitments, promises and obligations set forth in this Agreement, Licensor and Licensee agree as follows:

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1. Grant of License. Licensor grants to Licensee the license to use the Certification Mark and any directly related trademarks, trade names, labels and logos (the “License”), but no other trademarks, trade names, labels or logos of Licensor. The License shall be effective upon execution of this Agreement and grants to Licensee the right to use the Certification Mark solely in connection with the **level™** Certification Program as set forth in Section 4 of this Agreement. Licensee accepts the grant of the License subject to the terms and conditions set forth in this Agreement. Licensee shall not use the Certification Mark in any other forms in connection with any other business or products without the prior written consent of Licensor.

2. Non-Exclusivity and Non-Assignability. The License granted to Licensee is non-exclusive and Licensor reserves the right to grant the same license to other certification bodies. Licensee may not assign or sub-license the License to any other company, affiliate, entity, organization or person without the prior written consent of Licensor, which consent shall not be unreasonably withheld, conditioned or delayed.

3. Ownership of Certification Mark and Other Materials. Licensor represents and warrants to Licensee that it is the true and lawful owner of the Certification Mark (as well as the Standard and the level™ Certification Program), free and clear of any and all liens, claims, encumbrances and rights of third parties whatsoever. Licensee acknowledges Licensor’s ownership of the Certification Mark and agrees that it will do nothing inconsistent with such ownership. Licensee agrees that nothing in this License shall give Licensee any right, title or interest in the Certification Mark other than the right to use the Certification Mark in accordance with this Agreement. Licensee further agrees that it will not challenge Licensor’s ownership of the Certification Mark or challenge the validity of the License.

4. Form and Manner of Use of Certification Mark. Licensee agrees to use the Certification Mark only in conjunction with and not inconsistent with the **level™** Certification Program of Licensor, including but not limited to use in promoting and advertising its certification services under and to the **level™** certification program. Licensee agrees to use the Certification Mark in accordance with the following obligations, responsibilities, commitments and restrictions:

a) Licensee understands that it shall ultimately apply for and attain accreditation with ANSI (in accordance with ISO/IEC Guide 65) as a certifying body under the Standard and the **level™** Certification Program of Licensor.

b) Licensee has received a copy of the **level™** Certification Program Guidelines and Certification Scheme and agrees to be bound by and comply with those **level™** Certification Program Guidelines and Certification Scheme.

c) Licensee will continue to offer its services as a certifying body for office and institutional furniture products as in conformance with the

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Standard, throughout the term of this Agreement and upon such reasonable and standard commercial terms as Licensee shall make available from time to time.

d) Upon retention by an Applicant Organization, Licensee shall evaluate applicable office and institutional furniture products of that Applicant Organization for conformance under the Standard and shall certify whether or not each product, individually, conforms to the Standard and if so, at what level.

e) Licensee may, after prior written approval by Licensor, provide a unique identifier of Licensee to be displayed in conjunction with the Certification Mark which is consistent with the **level™** Certification Program criteria and guidelines; the final form and manner of which shall be attached to this Agreement as Exhibit B.

f) Licensee shall authorize an Applicant Organization to use the Certification Mark (which authorization shall be in the form included as Appendix C) for each office or institutional furniture product which is certified under the Standard, and the Certification Mark may then be used in the marketing, distribution and sale of the certified product in accordance with the Mark Use Guidelines set forth in the level™ Certification Program Guidelines.

g) During the term of this Agreement Licensee shall not use the Standard or any portions of the Standard in conjunction with its own certification program or any other third party's certification program.

h) Licensee shall have procedures in place to accept a certification for an Applicant Organization's product which has been previously certified by a certifying body recognized by Licensor under the **level™** Certification Program. These procedures shall include the acceptance of all data and information generated from the previous certification, so as to reduce or eliminate any requirement for product re-evaluation. Licensee may make the acceptance of a previous certification contingent upon (i) the previous certification being in good standing and (ii) Licensee being provided with the necessary data and information from the previous certifying body and/or the Applicant Organization in order for Licensee to make an informed and sound certification decision.

i) In the event that this Agreement is terminated for any reason in accordance with Section 11 and upon request from an Applicant Organization, Licensee shall provide to each Applicant Organization for which Licensee has certified products and/or to any other certifying body recognized by Licensor under the Certification Program, as specified by the Applicant Organization, all necessary data and information to support the certification of the product.

5. Fees for Program Participation Licensee shall pay an annual license fee to Licensor for program participation which shall be an amount equal to Five percent (5%) of the audit and certification fees (excluding audit travel costs and direct expenses) generated from applicant organizations to Licensee for the certification of each product during the preceding calendar year. Based upon the substantial cost and expense paid by the Members of Licensor through their dues to develop the Standard and the **level™** Certification Program, Licensor requires manufacturers which are not members of Licensor to pay an additional fee of \$5,000 for participation in the **level™** Certification Program which Licensee shall collect for the sole benefit of Licensor and remit such additional fee to Licensor immediately upon payment by the manufacturer. Licensee shall collect no such additional license fee from Members of Licensor.

6. Other Duties and Responsibilities of Licensee. Licensee shall maintain a listing of all office and institutional furniture products, which have been certified as conforming under the Standard on Licensee's web site. Licensee shall provide a monthly report to Licensor showing, on a cumulative basis, all products certified under the Standard and including manufacturer name, product name and identification, certification file number and certification date. Licensee shall address and take action on all product non-conformance, misuse of the Certification Mark and dispute resolution, after it comes to Licensee's attention. Licensor reserves the right to have its personnel or representative review and/or participate in any certification procedures or follow-up assessments. Licensee shall determine when use of the Certification Mark shall be placed on probationary status due to product non-conformance, improper use or infringement of the **level™** Certification Program. Licensee shall perform any and all other functions required of certified bodies under the **level™** Certification Program criteria and guidelines as determined by Licensor, from time to time. Licensee shall provide to Licensor, or its authorized representative, upon not less than ten (10) business days notice and during regular business hours, access to Licensee's personnel, books and records for the purpose of permitting Licensor to verify the compliance of Licensee to the terms and conditions of this Agreement, including the payment of appropriate fees.

7. Other Duties and Responsibilities of Licensor. Licensor agrees to pursue the registration of the Certification Mark with the U. S. Patent and Certification Mark Office and, if registration is attained, to maintain that registration of the Certification Mark throughout the term of this Agreement. Licensor agrees to keep Licensee timely updated on any changes, updates or revisions to the Standard or under the **level™** Certification Program criteria and guidelines. Upon request, Licensor will verify to Licensee whether or not an applicant organization is a Member of BIFMA.

8. Infringement Proceedings. Licensee agrees to notify Licensor of any unauthorized use of the Certification Mark by others with reasonable promptness after such use comes to the attention of Licensee. Licensor shall take all appropriate and reasonable infringement or unfair competition proceedings involving the Certification Mark and protect the Certification Mark from infringement and unauthorized use.

If Licensor commences enforcement proceedings to protect the Certification Mark from infringement or unauthorized use, and such proceedings are relevant to Licensee's interests, Licensee agrees, upon written request from Licensor, to cooperate with Licensor, to provide to Licensor any and all information in its possession with respect to the suspected infringement or unauthorized use and to join with Licensor in any such enforcement action. If Licensee is requested to join in the enforcement action, then all fees, costs and expenses of that enforcement action shall be borne by Licensor and Licensee in proportion to their respective monetary interests in the final results of such enforcement action.

9. Indemnification. Licensor, at its own expense, shall defend, indemnify, protect and hold harmless Licensee, its subsidiaries, affiliates or permitted assignees, and its members, managers, shareholders, directors, officers, employees, agents and representatives (collectively "Licensee Indemnified Persons") from, and against, and with respect to any claim, demand, cause of action, complaint, suit, proceeding, arbitration, debt, or liability, judgment, award, loss or damage, including reasonable attorney's fees, asserted or alleged against, imposed upon or incurred by such Licensee Indemnified Persons, directly or indirectly, by reason of or resulting from or in connection with: (a) any claim of infringement or misappropriation of the Certification Mark, the Standard and/or the level™ Certification Program; (b) any claim related to the obligation of Licensee to collect the additional fee from non-members of Licensor and remit to Licensor; (c) any claim of negligent acts or omissions, or willful misconduct, by or of Licensor; and (d) any material breach by Licensor of this Agreement. Licensor may, at its own expense, appear through legal counsel of its own choosing in connection with any proceeding commenced with respect to any such claims against Licensee.

Licensee, at its own expense, shall defend, indemnify, protect and hold harmless Licensor, its subsidiaries, affiliates or permitted assignees, and its members, managers, shareholders, directors, officers, committee, sub-committee or task group members, employees, agents and representatives (collectively "Licensor Indemnified Persons") from, against and with respect to any claim, demand, cause of action, complaint, suit, proceeding, arbitration debt, or liability, judgment, award, loss or damage, including reasonable attorney's fees, asserted or alleged against, imposed upon or incurred by such Licensor Indemnified Persons, directly or indirectly, by reason of or resulting from or in connection with (a) any misuse, infringement or misappropriation of the Certification Mark by Licensee, (b) any material breach of Licensee's obligations or duties under this Agreement and (c) any claim or negligent acts or omissions, or willful misconduct, by or of Licensee, and to pay monetary costs and damages finally awarded in any such cause of action. Licensee may, at its own expense, appear through legal counsel of its own choosing in connection with any proceeding commenced with respect to any such claims against Licensor.

10. Confidential Information. Licensee and Licensor will take reasonable steps to prevent any Confidential Information of each other from being disclosed to third parties. "Confidential Information" shall mean all information of either party that is not readily available to the public.

11. Term and Termination of this Agreement. The term of this Agreement shall commence as of the Effective Date (as defined above) and continue until the end of that calendar year (the “Initial Term”). The term shall be automatically renewed as of the beginning of each calendar year (each year a “Renewal Year”), unless either party gives to the other party a written notice of termination of this Agreement on or before November 15<sup>th</sup> of each calendar year.

Notwithstanding the prior paragraph, the Term of this Agreement shall terminate (a) immediately in the event of any willful or negligent misuse of the Certification Mark by Licensee or any willful or negligent act or omission being committed by Licensee while exercising its rights under the License or (b) Thirty (30) days after written notice by Licensor to Licensee of a breach of Licensee’s obligations or duties under this Agreement, unless such breach is cured within that Thirty (30) day period. Upon a breach of this Agreement by Licensee, Licensor shall be entitled to exercise any and all remedies available under law or equity, including, but not limited to, the right to specific performance and other injunctive relief, particularly with respect to enforcing the provisions of Section 12 below, and actual damages, and the right to terminate this Agreement immediately without prejudice to any other available remedies.

12. Effect of Termination of this Agreement. Upon termination or expiration of this Agreement, Licensee shall immediately discontinue all use of the Certification Mark and any name, label, logo or mark confusingly similar to the Certification Mark and to destroy any and all printed or electronic materials bearing the Certification Mark. Licensee agrees that upon termination or expiration of this Agreement that the Certification Mark and the goodwill connected with that Certification Mark shall remain the property of Licensor and that Licensee shall not challenge this Section 12 in any manner.

13. Notices. All notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be effective (a) upon delivery, if personally delivered to an authorized representative of either party, (b) upon posting such notice with the U.S. Postal Service, with proper postage attached and addressed to the other party at the address set forth on Exhibit C, which is attached to, and made a part of, this Agreement, or (c) upon verification of receipt of an E-mail transmission by an authorized representative and addressed to the E-mail address set forth in Exhibit C.

14. Amendment. This Agreement may be amended only by a written amendment executed and delivered by the duly authorized representative of Licensor and Licensee, as set forth in Exhibit C.

15. Governing Law. This Agreement shall be governed by and interpreted according to the laws of the State of Michigan and the laws of the United States, without regard to conflicts of law principles. Any dispute regarding this Agreement shall be determined in the federal courts of the United States within the jurisdiction of the U. S. District Court for the Western District of Michigan, or the Circuit Court for Kent County, State of Michigan, and Licensor and Licensee stipulate and agree to jurisdiction and venue in such courts.

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16. Entire Agreement and Binding Effect. This Agreement, including the level™ Certification Program criteria and guidelines, constitutes the entire understanding and agreement between Licensor and Licensee with respect to the subject matter of this Agreement and supersedes all earlier discussions, understandings or agreements, oral and written, between Licensor and Licensee. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns, if any.

17. Severability. If any provision of this Agreement shall be prohibited or deemed unenforceable by any law, court ruling, or any requirement of ANSI (or other applicable accrediting body) that provision shall be ineffective only to the extent and for the duration of the prohibition or ruling of unenforceability, without invalidating the entire Agreement, any other portion of the Agreement or any of the remaining provisions.

18. Counterparts. This Agreement may be executed in counterparts, each of which, when so executed, shall be deemed to be an original and such counterparts shall together constitute one and the same instrument. A counterpart of this Agreement delivered by facsimile or other electronic method shall for all purposes be as effective as delivery of an original, executed counterpart.

**LICENSOR:**

**BIFMA International**

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

Its: \_\_\_\_\_

**LICENSEE:**

**[Name of Certifying Body]**

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

Its: \_\_\_\_\_