BACnet TESTING LABORATORIES

Standard Product Testing and Listing Agreement

Revised August 21, 2006

BACnet is a registered trademark of ASHRAE. ASHRAE does not endorse, approve or test products for compliance with ASHRAE standards. Compliance of listed products to the requirements of ASHRAE Standard 135 is the responsibility of BACnet International (BI). BTL is a registered trademark of BI.

BACnet Testing Laboratories Standard Product Testing and Listing Agreement

STANDARD PRODUCT TESTING AND LISTING AGREEMENT, by and between BACnet® International. ("BI"), a Massachusetts non-profit corporation which operates the BACnet® Testing Laboratories, with its principal place of business at 980 N. Michigan Avenue, Suite 1400, Chicago, IL 60611, U. S. A. ("BACnet® Testing Labs"), and the undersigned party named below with its entity status and principal place of business as named below ("Applicant").

RECITALS:

A. "BACnet" is a data communication protocol for building automation and control networks, that was developed under the auspices of the American Society of Heating, Refrigeration and Air-Conditioning Engineers ("ASHRAE"), and is now an American national standard, a European pre-standard, and an ISO standard that enables end-users and integrators to purchase "off-the-shelf" devices from different manufacturers that will interoperate.

B. BACnet® Testing Labs offers a service under which it provides limited conformance and interoperability testing of products utilizing the BACnet® protocol.

C. BACnet® Testing Labs maintains an official listing in print and at its web site of those products tested and authorized to display "BTL" mark, and BACnet® Testing Labs authorizes display of the BTL mark on and with a product or products tested for BACnet® capability, and determined to be making successful use of the BACnet® communication protocol,

D. BACnet® Testing Labs makes its services available without limitation to all product manufacturers, developers, or their recognized representatives or licensees, whether or not the manufacturer or other party is a member of BACnet® International, however BI members receive a preferred lower member rate for said services and such other potential benefits of membership as may be determined by BI, and

E. Applicant is a product manufacturer, or developer, or their recognized representative or licensee, and desires to submit a product or products ("Product" as further defined in Section 1 below) to BACnet® Testing Labs for testing of such Product(s). Upon successful testing, the Product's name will be listed on the BI web site and in print and is eligible to use the BTL mark on the product. Such testing and subsequent listing is subject to the conditions hereinafter set forth in the agreement below between BACnet® Testing Labs and Applicant.

NOW, THEREFORE, for and in consideration of the premises and mutual promises and covenants hereinafter contained and other good and valuable considerations, the receipt and

sufficiency of which are hereby acknowledged, Applicant and BACnet® Testing Labs hereby agree as follows:

1. Engagement and Application to Test and List Product(s). Applicant hereby requests the services of BACnet® Testing Labs, as described above, and herewith agrees to submit one or more products to BACnet® Testing Labs for (a) testing of such product(s), as described in the Application (Collectively the "Product") for BACnet® capability, and (b) if successfully tested, listing of the name of such Product submitted in the official BACnet® Testing Labs listing in print and on the website and the right to use of the BTL™ mark on the Product, all on the terms and subject to the conditions hereinafter set forth below. With the Agreement, the Applicant also submits the required non-refundable $1,000 application fee, and Applicant's completed application on the BACnet® Testing Labs standard form ("Application").

2. Product Submissions by Applicant After its Application. After the application is received, a BACnet® Testing Labs staff member will contact Applicant to arrange for shipment of a Product sample to BACnet® Testing Labs. Applicant shall arrange that (a) the Product sample be packaged appropriately so that it will arrive in as pristine condition as possible, (b) the Product sample be submitted as part of a "Package" that contains a list of components and materials used in the product, all instruction manuals and wiring diagrams showing any electrical or electronic circuitry that is relevant to testing, and any other documentation requested by BACnet® Testing Labs, (c) any other applicable devices that may be necessary to complete the testing, and (d) the package be sent insured and by a recognized national courier service providing traceable service.

3. Development of Work Specifications for Testing. BACnet® Testing Labs engineering staff will (a) establish the test program including requirements for that product's feature(s), (b) estimate the amount of time needed for testing, (c) provide an estimate of testing costs, with fees based on the testing required for that particular product, and what specific BACnet "functions" the Applicant desires to be tested, and (d) estimate the date on which testing can begin. In conduct of testing, the presence of an engineer from the manufacturer may or may not be required; however, Applicant shall arrange for a technical representative from the manufacturer to be available to answer questions about the product that may arise during the testing process.

4. Applicant Warranties on Application and Submissions. Applicant represents and warrants to BACnet® Testing Labs Applicant's ownership rights and/or other authority to arrange and to enter this Agreement and to arrange this testing and potential listing in accordance with this Agreement. Applicant further represents that the Application and submissions above supplied to BACnet® Testing Labs, are accurate and complete and Applicant has informed BACnet® Testing Labs concerning any dangerous or potentially dangerous characteristics of such samples which could cause injury during the performance of the work or in the transporting of such samples. Applicant also acknowledges that BACnet® Testing Labs is relying upon such information and samples or data in the preparation of Work Specifications above with no further verification by BACnet® Testing Labs as to its accuracy or completeness.

5. Product Testing Process. The test performed by the BACnet® Testing Labs will be based on tests included in the document *Method of Test for Conformance to BACnet*

(ANSI/ASHRAE Standard 135.1), with the final testing procedures and standards being developed by a working group consisting of representatives of BI member companies. The tests performed and standards set will depend on the product category and the BACnet functionality specified in the testing application form. When the product testing is completed by the BACnet® Testing Labs, Applicant will be notified whether or not Applicant's product complies with the pre-established requirements for the Product's BACnet functionality. Testing results and determination of whether or not Product has met its requirements shall be made by the sole determination of BACnet® Testing Labs. Notwithstanding the foregoing, the parties recognize that questions may arise regarding the interpretation of a requirement, or specific decisions, or the test results in general, which questions may, at the request of Applicant, be addressed by an appeal procedure approved by BI. The full costs of such an appeal shall be borne by Applicant, with the appeal procedure to allow a reasonable opportunity to allow Applicant's concerns to be heard, reviewed and, if determined on appeal, acted upon.

Please note that the product testing procedures may change at any time as determined appropriate by BI or BTL.

6. **Limited Scope.** Applicant understands that BACnet® Testing Labs, in performing its functions as requested by Applicant, does not assume or undertake to discharge any responsibility of Applicant's to any other party. It is recognized that the opinions and findings of BACnet® Testing Labs, with regard to the request made by Applicant, represent its judgement given after due consideration to the attendant limitations surrounding the circumstances and agree with BACnet® Testing Labs that BACnet® Testing Labs does not warrant or guarantee the correctness of its opinions, or that there will be universal agreement with, or acceptance of, such findings.

7. **Limited Warranty; Disclaimer.** BACnet® Testing Labs warrants that if any of its completed services fail to conform to a reasonable professional standard, BACnet® Testing Labs will, at its own expense, perform corrective services of the type originally performed as may be reasonable required to correct such defects, of which BACnet® Testing Labs is notified in writing within six months of the completion of services under this Agreement. NO OTHER REPRESENTATION, EXPRESS OR IMPLIED, AND NO WARRANTY OR GUARANTEE IS INCLUDED OR INTENDED IN THIS AGREEMENT, OR IN ANY REPORT, OPINION, DOCUMENT OR OTHERWISE.

8. **Payment Terms.** Applicant shall pay fees for all further services of BACnet® Testing Labs being as set forth in the current Fee Schedule, a copy of which available upon request. This schedule includes guidelines for ranges of fees and expenses involved for test tools, fees for consultation after Application and before test, actual test fees and expenses, and fees for Listing in print and on BI's web site. The fee schedule shall be used as a general benchmark; however, the final fee will depend on the particular project and the assessment made of each such project by BACnet® Testing Labs, and based on what specific BACnet "functions" the manufacturer wants tested. Invoices shall be submitted to Applicant, in accordance with this Section 8, are due and payable to the BACnet® International, at its offices, within thirty (30) calendar days after receipt of invoice. If Applicant fails to make payment in full by such date, Applicant agrees to pay a charge of 3% of the amount due on any late payment, together with any and all collection costs including BI's reasonable attorney's fees and interest on the amount due at 3 points over the Wall Street Journal prime rate then in effect.

9. Confidentiality. BACnet® Testing Labs will refrain, without the Applicant's prior authorization in writing, from voluntarily disclosing to third parties proprietary information which is obtained by BACnet® Testing Labs in confidence from the Applicant and which is not already available to the public or subsequently acquired from other sources without similar obligations. If BACnet® Testing Labs is served with a Subpoena, Subpoena Duces Tecum, or Court Order concerning the Applicant's proprietary information or a report made by BACnet® Testing Labs, based upon the proprietary information, BACnet® Testing Labs shall immediately notify the Applicant by sending a copy of said Subpoena, Subpoena Duces Tecum, or Court order, or other official Governmental request, with said notification. The Applicant shall determine whether it wishes to contest the validity, scope, or content of said Subpoena, Subpoena Duces Tecum, or Court Order or governmental request, and shall immediately advise BACnet® Testing Labs. The costs incurred by BACnet® Testing Labs in contesting or complying with the Order or Subpoena or governmental request including reasonable attorney's fees, shall be reimbursed by the Applicant immediately upon invoicing by BACnet® Testing Labs; however, where Applicant timely advises BACnet® Testing Labs not to contest but rather to comply, then, in the case of a Court Order or Subpoena, the Applicant will reimburse the cost of complying only to cases where Applicant is a party to the proceeding under which such Order or Subpoena has arisen. If BI receives a request to disclose all or any part of the proprietary information of Applicant under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, where the Applicant has contested such disclosure, and disclosure of such information is, after such contest, required, BI will cooperate with Applicant to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the undisclosed information which Applicant so designates, to the extent possible, with all costs of such action borne by Applicant.

10. Official Listing of Product(s) Meeting BACnet® Testing Labs Requirements. After the Product(s) has (have) been tested successfully such that it has been determined to meet the requirements pre-set pursuant to section 5 above, and after Applicant has paid any applicable listing fees, BI will list the Product(s) in an official publication and on its website. BI will not release any proprietary information about Applicant's product without Applicant's written consent, and details of the test results are confidential. However, information about the BACnet functionality of listed products will be displayed in BI literature and on the BI website. For such listing, Applicant will be required to furnish BI in writing the exact name of the product, company and address that Applicant desires to make public after the successful testing of Applicant's product.

11. Listing and Display of BTLÔ Mark . BI has applied to the U.S. Patent and Trademark office for registration of its BTL™ mark as registered certification mark. Products that have been successfully tested by the BACnet® Testing Labs may display the BTL™ mark (logo). However, the manner of display and use are strictly regulated. BACnet® Testing Labs will permit references to the BACnet® Testing Labs in promotional or advertising material solely in connection with listed Products which bear the BTL™ mark, provided that in the opinion of BACnet® Testing Labs the promotional or advertising material is not in conflict with the findings and listing of BACnet® Testing Labs and that the reference to BACnet® Testing Labs in no way tends to create a misleading impression as to the nature of BACnet® Testing Labs' findings, listing, labeling, and follow-up service and does not make use of any registered

label of BACnet® Testing Labs. Except for the BTL™ mark, no reference to BACnet® Testing Labs shall be used in advertising and promotional material supplied with the Product, and when such symbol is used, its text and appearance shall be as prescribed by a separate agreement. Unless otherwise specifically authorized by BACnet® Testing Labs, the BTL™ mark for use on, or in connection with the Product shall be separable in form, such as labels, or may be applied directly to nameplates or other media as authorized by BACnet® Testing Labs. Further information about the use of the BTL™ mark is available from BI.

12. **Re-testing.** Successful re-testing of an Applicant's product may be necessary after the initial testing in order for the product to remain eligible for a BTL listing. Reasons that re-testing might be required include but are not limited to the following: (1) changes to the product's BACnet functionality, (2) modification of the product's software or hardware that affect BACnet communication, (3) changes to the BACnet Standard or significant changes in testing procedures, or (4) substantiated evidence of non-compliance with the BACnet® Testing Labs' requirements. BI will publish its rules regarding re-testing, which may change from time to time. Periodically Applicant will be surveyed about listed products, specifically about any changes in BACnet functionality or implementation that might warrant re-testing. Applicant will be expected to arrange re-testing of Products where re-testing is mandated, unless upon inquiry to BI, it is determined that re-testing was unnecessary. Where re-testing is mandated, eligibility for continued listing and display of the BTL mark on a Product shall cease unless arrangements for re-testing are undertaken in a timely way by Applicant and thereafter the Product is successfully re-tested. BI reserves the right, upon reasonable notice to Applicant, to remove such Products of Applicant from the BI's directory of listed products and require cessation of use of the BTL mark on such Products mandated for testing which were not successfully re-tested.

13. **Non-Compliant Products.** Should examination or test of a Product sample disclose features which in the opinion of the BACnet® Testing Labs representative are not in compliance with the BACnet® Testing Labs' pre-set requirements, Applicant will either correct or remove such features or remove the BTL™ mark from such Products or be denied use of such mark if not tested previously. In the event of disagreement between the Applicant and BACnet® Testing Labs' representative as to whether a Product is eligible to use the BTL mark, the Applicant may appeal as provided in Section 5.

14. **Retention of Product Sample.** Following the completion of testing, the BACnet® Testing Labs may request permission to retain the Product sample(s) from Applicant beyond the testing period, which permission will not be unreasonably withheld and will be assumed granted if no response is made within 30 days of request. However, BACnet® Testing Labs will not retain possession of the Product sample if permission is not granted by Applicant for any reasonable basis, including, without limitation, that continued possession by the BACnet® Testing Labs may cause significant inconvenience or hardship to Applicant. Alternatively, Applicant may, at its option, grant permission on the basis of reasonable conditions with no continued retention of samples if reasonable conditions are not accepted by BACnet® Testing Labs. Applicant understands that such retained Product samples may be used by the BACnet® Testing Labs for other testing activities, including but not limited to testing of products submitted by other applicants. If the BACnet® Testing Labs has no need for the Product sample following the conclusion of testing, or if Applicant requests the return of the

Product sample, then the BACnet® Testing Labs will return the Product sample to Applicant at Applicant's expense and risk, unless other disposition is specified by Applicant.

15. Indemnity and Limitation on Liability. The Applicant agrees to hold BACnet® Testing Labs and BI harmless and indemnify BACnet® Testing Labs and BI from any liability of whatever kind or nature, including but not limited to court costs and reasonable attorneys fees provided that the liability to BACnet® Testing Labs and BI arises in whole or part from (a) information or samples provided by the client which are inaccurate or incomplete where that inaccuracy or incompleteness is itself a cause in whole or part of the liability, or (b) the rendering of this testing otherwise causes liability to BACnet® Testing Labs and BI, where the nature of samples provided by Applicant or the nature of services asked of BACnet® Testing Labs or BI by the Applicant are itself the cause in whole or part of the liability, and , which liability is not the result of gross negligence or willful act of BACnet® Testing Labs or BI. THE APPLICANT FURTHER AGREES IN ANY EVENT TO LIMIT BACNET® TESTING LABS' LIABILITY ARISING FROM BACNET® TESTING LABS' PROFESSIONAL ACTIVITY, ERRORS, OR OMISSIONS, SUCH THAT THE TOTAL AGGREGATE LIABILITY OF BACNET® TESTING LABS SHALL NOT EXCEED BACNET® TESTING LABS' TOTAL FEE FOR THE SERVICES RENDERED ON THE PROJECT IN QUESTION, EXCEPT IN THE CASE OF A FINDING OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF BACNET® TESTING LABS BY A COURT OF COMPETENT JURISDICTION. BACNET® TESTING LABS SHALL NOT BE LIABLE TO THE APPLICANT FOR ANY CONSEQUENTIAL DAMAGES INCURRED BY APPLICANT DUE TO THE FAULT OF BACNET® TESTING LABS, REGARDLESS OF THE NATURE OF THIS FAULT, WHETHER IT WAS COMMITTED BY BACNET® TESTING LABS, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS. CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF USE AND LOSS OF PROFIT. THE APPLICANT AGREES TO EXTEND ANY AND ALL LIMITATIONS, INDEMNIFICATIONS, AND WAIVERS PROVIDED BY THE APPLICANT TO BACNET® TESTING LABS TO THOSE INDIVIDUALS AND ORGANIZATIONS BACNET® TESTING LABS RETAINS FOR PROPER EXECUTION OF THE WORK. These shall be deemed to include but are not necessarily limited to BI and BACnet® Testing Labs' officers and employees and their heirs and assigns, as well as their agents, subcontractors and their officers, employees, heirs and assigns.

Applicant acknowledges that testing, including sample preparation and transportation, may damage or destroy Applicant's product. Applicant agrees to hold BACnet® Testing Labs harmless from any and all responsibility for such alteration.

16. Termination. Either party may, for any reason, or without reason or cause, terminate in whole or in part as to any or all listed Products the rights or authority conferred by this Agreement upon not less than sixty (60) days' written notice to the other party. Any notice of intention to terminate the Agreement shall specify the proposed termination date and shall be sufficient if sent by registered or certified mail return-receipt requested addressed to the party to be notified at his last known address. Either party may terminate earlier than 60-days notice "for just cause" if the other party is in material breach of its obligations under this Agreement. To so terminate for just cause, the party which is not in breach of this Agreement which wishes to terminate for just cause due to the other party's material breach of this Agreement shall give not less than twenty (20) days notice to the other party, which notice shall state that the termination

is for just cause and give the other party specific notice of the nature of its material breach of this Agreement and give that other party that 20-day notice period as a period to cure such breach or breaches of that party's obligations under this Agreement. If the 20-day notice and cure period passes without cure of the breach of obligations being effected, then termination shall have occurred. The 60-day period and 20-day periods mentioned shall be deemed to commence upon the date of mailing of the notice in the United States Mail. Termination of this Agreement by whatever means shall not affect any liability of the parties existing as of the date of such termination, shall not relieve the Applicant of his obligation of indemnity as to Products manufactured or distributed prior thereto, and shall not excuse the applicant from paying any charges owing to BACnet® Testing Labs as earned or accrued prior to the date of termination as received by BACnet® Testing Labs.

17. Miscellaneous. Any notice required under this Agreement shall be given by mail, e-mail or fax, in each instance confirmed by certified mail return receipt requested, with notice to be given to the parties at their principal business address as appears above. Such addresses may be changed by notice given to the other party. Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, executors, successors and assigns. This Agreement constitutes the parties' entire Agreement on the subject matter contained herein and supersedes all their prior and contemporaneous agreements, representations and understandings. No modification or amendment of this Agreement or waiver of its terms or conditions, shall be binding unless in writing and signed by the parties, nor shall any waiver, if any is given by a party, constitute a continuing waiver. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, and the parties consent to jurisdiction of the Federal or state courts of Massachusetts or arbitration there, for resolution of any issue arising under this Agreement. Section headings are for reference only and shall not affect meaning or terms of Agreement.

WITNESS the due execution and delivery of this Agreement by the individuals or authorized officers of the corporations or business entities that are the above named parties to this Agreement.

BACNET® INTERNATIONAL	(Applicant--Company Name)
BY: _____	BY: _____
(Signature)	(Signature)
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____