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 Agreement

Revised October 9, 2007

Approved by BI Steering Committee as a recommendation to the BOD 8/14/07

BACnet Testing Laboratories Standard Product Testing Agreement

STANDARD PRODUCT TESTING AGREEMENT, by and between BACnet International. ("BI"), a Massachusetts non-profit corporation which operates the BACnet Testing Laboratories ("BTL"), with its principal place of business at 2100 Roswell Rd., Suite 200C – PMB 302, Marietta, GA 30062, U. S. A., and the undersigned party named below with its 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, Refrigerating and Air-Conditioning Engineers ("ASHRAE"), and is an American national standard, a European standard, and an ISO standard that enables end-users and integrators to purchase "off-the-shelf" devices from different manufacturers that will interoperate.

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

C. BTL 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 BI, 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.

D. 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 BTL for testing of such Product(s). Such testing is subject to the conditions hereinafter set forth in the agreement below between BTL 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 BTL hereby agree as follows:

1. <u>Engagement and Application to Test Product(s).</u> Applicant hereby requests the services of BTL, as described above, and herewith agrees to submit one or more products to BTL for (a) testing of such product(s), as described in the Application (Collectively the "Product") for BACnet capability 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 BTL standard form ("Application"). This Agreement is solely for Product testing on the terms here provided. Applicant is not, and shall not hold itself out as an agent, legal representative, joint venture, partner, or employee of BI or BTL for any purpose whatsoever.

2. <u>Product Submissions by Applicant After its Application</u>. After the application is received, a BTL staff member will contact Applicant to arrange for shipment of a Product sample to BTL. 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 BTL, (c) any other applicable devices that may be necessary to complete the testing, and (d) the package be sent insured and by a recognized courier service providing traceable service.

3. <u>Development of Work Specifications for Testing</u>. BTL 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. <u>Applicant Warranties on Application and Submissions</u>. Applicant represents and warrants to BTL Applicant's ownership rights and/or other authority to arrange and to enter this Agreement and to arrange this testing in accordance with this Agreement. Applicant further represents that the Application and submissions above supplied to BTL, are accurate and complete and Applicant has informed BTL 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 BTL is relying upon such information and samples or data in the preparation of Work Specifications above with no further verification by BTL as to its accuracy or completeness.

5. <u>Product Testing Process</u>. The test performed by BTL 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 the BTL working group. 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 BTL, 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 BTL. 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. When appeal is requested and the appeal procedures followed, the results of such appeal shall be final. It is understood and acknowledged by the Applicant that the product testing procedures may change at any time as determined appropriate by BI or BTL, such changes, if any, to take effect at such time as specified by BI or BTL, and then binding on Applicant, unless otherwise provided by BI or BTL.

6. **Limited Scope.** Applicant understands that BTL, 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 BTL, 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 BTL that BTL does not warrant or guarantee the correctness of its opinions, or that there will be universal agreement with, or acceptance of, such findings.

7. **Payment Terms.** Applicant shall pay fees for all further services of BTL as set forth in the current Fee Schedule, a copy of which is 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. 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 BTL, and based on what specific BACnet "functions" the manufacturer wants tested. Invoices shall be submitted to Applicant, in accordance with this Section, and are due and payable to BI, 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, such interest to be paid on the amount outstanding until the debt is paid off in its entirety..

8. **Confidentiality of Applicant's proprietary information.** BTL will refrain, without the Applicant's prior authorization in writing, from voluntarily disclosing to third parties proprietary information which is obtained by BTL in confidence from the Applicant and which is not already available to the public or subsequently acquired from other sources without similar obligations. If BTL is served with a Subpoena, Subpoena Duces Tecum, or Court Order concerning the Applicant's proprietary information or a report made by BTL, based upon the proprietary information, BTL 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 BTL. The costs incurred by BTL 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 BI; however, where Applicant timely advises BTL 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 BTL 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, BTL 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.

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9. Retention of Product Sample. Following the completion of testing, BTL 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. The Applicant may, at its option, grant permission on the basis of specified conditions. If the conditions are not accepted by BTL the product will be returned. Applicant understands that such retained Product samples may be used by BTL for other testing activities, including but not limited to testing of products submitted by other applicants. If BTL has no need for the Product sample following the conclusion of testing, or if Applicant requests the return of the Product sample, then BTL will return the Product sample to Applicant at Applicant's expense and risk, unless other disposition is specified by Applicant.

10. Limitation on Remedies. BTL's entire liability and Applicant's exclusive remedy for any error or defective service by BTL in the testing of any particular Product for the Applicant performed under this Agreement or for any other claim against BI or BTL based directly or indirectly on this Agreement, shall be for BTL, in its sole discretion, to either: (a) refund the fee paid by the Applicant to BTL under this Agreement for the particular Product to be tested, or (b) perform a retest of the Product which is the subject of Applicant's claim. Such remedies shall only be provided where Applicant has notified BTL in writing within six months of the completion of services under this Agreement, specifying the nature of the error or defective service and in the judgment of BTL such error or defective service also represented a failure by BTL to conform to a reasonable professional standard.

11. No Warranties Intended. Disclaimer of Warranties. NO REPRESENTATION, EXPRESS OR IMPLIED, AND NO WARRANTY OR GUARANTEE IS INCLUDED OR INTENDED IN THIS AGREEMENT, OR IN ANY REPORT, OPINION, DOCUMENT, NOR SHALL THE RESULT SET FORTH IN ANY TEST REPORT OR ANY STATEMENT OF BTL WHETHER WRITTEN OR ORAL BE DEEMED TO BE OR CONSTRUED AS A WARRANTY. BTL EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF DESIGN, MERCHANTABILILITY, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCT(S) TESTED BY BTL UNDER THIS AGREEMENT, THE RESULTS OF SUCH SERVICES, AND THE USE, DISCLOSURE, OR PUBLICATION BY ANY PARTY OF SUCH RESULTS (INCLUDING, BUT NOT LIMITED TO, ANY TEST REPORT).

12. Limitation on Damages and Liability. THE SERVICES PERFORMED BY BTL ARE PERFORMED IN GOOD FAITH WITH NO WARRANTIES AS PROVIDED IN SECTION 14. . EXCEPT FOR THE LIMITED REMEDIES EXPRESSLY SET FORTH IN SECTION 13, BTL AND BI SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC, OR SPECIAL DAMAGES) ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE TESTING SERVICES PERFORMED BY BTL UNDER THIS AGREEMENT OR ANY USE, DISCLOSURE OR PUBLICATION OF THE RESULTS OF SUCH SERVICES EVEN IF BTL HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BTL SHALL NOT BE LIABLE TO THE APPLICANT FOR ANY CONSEQUENTIAL DAMAGES INCURRED BY APPLICANT

DUE TO THE FAULT OF BTL, REGARDLESS OF THE NATURE OF THIS FAULT, WHETHER IT WAS COMMITTED BY BTL, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS. IN NO EVENT SHALL BTL'S OR BI'S LIABILITY ARISING UNDER THIS AGREEMENT EXCEED THE FEE PAID BY BTL TO THE APPLICANT FOR THE TESTING OF THE PRODUCT(S) INVOLVED. THE APPLICANT AGREES TO EXTEND ANY AND ALL LIMITATIONS, INDEMNIFICATIONS, AND WAIVERS PROVIDED BY THE APPLICANT TO BTL AND/OR BI TO THOSE INDIVIDUALS AND ORGANIZATIONS INCLUDING BTL OR BI RETAINS FOR PROPER EXECUTION OF THE WORK, AS WELL AS TO ITS OFFICERS AND DIRECTORS.

13. Indemnification. Applicant shall indemnify, defend and hold BTL and BI, and their respective officers, directors and employees and their heirs and assigns, as well as their agents, subcontractors and their officers, directors and employees, heirs and assigns, harmless from and against any and all losses, damages, liabilities, costs and expenses (including any all reasonable attorneys fees incurred by BTL and/or BI in connection with any action brought or threatened) resulting from or arising out of any:

(a) use, disclosure, or publication by Applicant or any third party use of the results of any services performed, including, but not limited to, the Test Report performed prepared by BTL under this Agreement,
(b) 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
(c) the rendering of this testing otherwise causes liability to BTL and BI, where the nature of samples provided by Applicant or the nature of services asked of BTL or BI by the Applicant are itself the cause in whole or part of the liability;

provided, however, such indemnification shall not be provided to the extent that such losses, damages, liabilities, costs and expenses are directly attributable to the gross negligence or the willful act of BTL or BI. Applicant acknowledges that testing, including sample preparation and transportation, may damage or destroy Applicant's product. Applicant agrees to hold BI and BTL harmless from any and all responsibility for such alteration.

14. Termination. Either party may, for any reason, or without reason or cause, terminate in whole or in part as to any or all testing of 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 BTL as earned or accrued prior to the date of termination as received by BTL.

15. 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 or below. 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

BY: _____

(Signature)

Name: _____

Title: _____

Date: _____

Applicant:
Company Name: _____

Address: _____

_____

BY: _____

(Signature)

Name: _____

Title: _____

Date: _____