



# **Standard Product Testing Agreement**

**Version 16.1**

# **BTL Lab Standard Product Testing Agreement**

STANDARD PRODUCT TESTING AGREEMENT (the “Agreement”), by and between BACnet International, Inc. (“BACnet Intl”), a non-profit corporation which operates the BTL Lab, with its principal place of business at PMB 321, 2900 Delk Road Suite 700, Marietta, GA 30067-5350, U. S. A., and the undersigned party with its principal place of business appearing 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. The BTL Lab offers a service under which it provides limited conformance and interoperability testing of products utilizing the BACnet protocol.

C. The BTL Lab 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 Intl, however BACnet Intl members receive a lower member rate for said services and such other potential benefits of membership as may be determined by BACnet Intl in exchange for and in recognition of the BACnet Intl member’s payment of membership dues.

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 the BTL Lab for testing of such Product(s). Such testing is subject to the conditions hereinafter set forth in the Agreement below between the BTL Lab and Applicant.

E. BTL Working Group is a volunteer committee of technical experts administered by BACnet International charged with developing testing requirements for BACnet products.

NOW, THEREFORE, for and in consideration of the premises and mutual promises and covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Applicant and BTL hereby agree as follows:

**1. Engagement and Application to Test Product(s).** Applicant hereby requests the services of the BTL Lab, as described herein, and herewith agrees to submit one or more products to the BTL Lab for testing of such product(s) (collectively, the “Product”), as described in the Application, the contents of which are incorporated herein, 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 \$750 application fee, and Applicant's completed application on the BTL Lab standard form ("Application"). This Agreement is solely for Product testing on the terms provided herein. Applicant is not, and shall not hold itself out as an agent, legal representative, joint venture, partner, or employee of BACnet Intl or the BTL Lab for any purpose whatsoever.

**2. Product Submissions by Applicant After its Application.** After the Application is received, a BTL Lab staff member will contact Applicant to arrange for shipment of a Product sample to the BTL Lab. 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 the BTL Lab, (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. Development of Work Specifications for Testing.** The BTL Lab engineering staff will: (a) establish the test program including requirements for the 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 the BTL Lab 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. Along with this warranty, Applicant agrees to indemnify, defend and hold BACnet Intl, the BTL Lab, 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 the BTL Lab and/or BACnet Intl in connection with any action brought or threatened) resulting from or arising out of any intellectual property infringement arising from Applicant's Product. Applicant further represents that the Application and submissions above supplied to the BTL Lab, are accurate and complete and Applicant has informed the BTL Lab 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 the BTL Lab is relying upon such information and samples or data in the preparation of work specifications above with no further verification by the BTL Lab as to its accuracy or completeness.

**5. Product Testing Process.** The test performed by the BTL Lab 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 Application. When the Product testing is completed by the BTL Lab, 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 the BTL Lab. 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 and set forth in writing by BACnet Intl, which may be amended from time to time. 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 BACnet Intl or the BTL Lab, such changes, if any, to take effect at such time as specified by BACnet Intl or the BTL Lab, and then binding on Applicant, unless otherwise provided by BACnet Intl or the BTL Lab.

The BTL Working Group has implemented a minimum Protocol Revision requirement which affects both testing and listing. This requirement went into effect on January 1, 2014. BTL Working Group may revise this requirement from time to time. The latest copy of this requirement is attached hereto and is contained in the appropriate BTL test package which is available on the BTL website. The content of this requirements document is incorporated into this Agreement and Applicant is bound thereto.

BTL Working Group also has a policy concerning testing of products which contain a higher Protocol Revision than the current BTL Test Package. Periodically, interim Test Package updates will be released which allow for testing such products. This policy is attached hereto and may be modified from time to time by BTL Working Group. Any Applicant considering testing of products with higher a Protocol Revision than the current BTL Test Package should carefully review this policy.

**6. Limited Scope.** Applicant understands that the BTL Lab, 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 the BTL Lab, with regard to the request made by Applicant, represent its judgment given after due consideration to the attendant limitations surrounding the circumstances and Applicant agrees with the BTL Lab that the BTL Lab 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 the BTL Lab as set forth in the current Fee Schedule, a copy of which is attached hereto. 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 the BTL Lab, 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 BACnet Intl, 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 one-time charge of 3% of the amount due on any late payment, together with any and all collection costs including BACnet Intl's reasonable attorney's fees and interest on the amount due at 1.5% per month or the maximum rate allowed by law.

BACnet Intl corporate members will be granted a 50% discount on all testing fees, excluding the non-refundable application fee, in consideration of their payment of membership dues and support of the organization. BACnet Intl non-members shall have the option of paying testing fees with no 50% discount, or joining BACnet Intl as a paying corporate member by submitting a membership application concurrently with the testing application, and upon payment of membership dues. Non-members that do not join BACnet Intl must pre-pay 50% of the estimated testing fees before testing will start.

In the course of testing, fees and expenses are incurred and invoiced. In the event that the aggregate fees and expenses reach 80% of the estimated amount provided to Applicant by the BTL Lab in the last estimate given to Applicant, then a change order form is required to be signed by Applicant prior to continued testing. This change order form will be supplied by the BTL Lab to the Applicant with an updated estimate for future testing fees and expenses. Signature thereupon shall indicate Applicant's consent to the revised estimated charges and indicate Applicant's agreement to pay for the continued testing services.

**8. Confidentiality.** BTL Lab understands that Applicant will disclose certain information through the testing process which may be considered confidential. To ensure the protection of this confidential information, BTL Lab agrees as follows:

The confidential information to be disclosed by Applicant ("Confidential Information") can be described as and includes:

Technical and business information relating to Applicant's proprietary ideas, patentable ideas copyrights and/or trade secrets, existing and/or contemplated products and services, software, schematics, research and development, production, costs, profit and margin information, finances and financial projections, customers, clients, marketing, and current or future business plans and models, regardless of whether such information is designated as Confidential Information at the time of its disclosure. For the purposes of this agreement, Applicant's testing process and testing results will also be considered Confidential Information.

BTL Lab shall use the Confidential Information only for the purpose of the testing process described herein or otherwise in the performance of this Agreement.

BTL Lab shall limit disclosure of Confidential Information to its directors, officers, partners, members and/or employees having a need to know, and to its third-party testing lab. BTL Lab imposes confidentiality terms on its contractors at least as restrictive as those appearing in this section.

This Agreement imposes no obligation upon BTL Lab with respect to any Confidential Information (a) that was in BTL Lab's possession before receipt from Applicant; (b) is or becomes a matter of public knowledge through no fault of BTL Lab; (c) is rightfully received by

BTL Lab from a third party not owing a duty of confidentiality to the Applicant; (d) is disclosed without a duty of confidentiality to a third party by, or with the authorization of, Applicant; or (e) is independently developed by BTL Lab.

If BTL Lab is served with a Subpoena, Subpoena Duces Tecum, or Court Order concerning the Applicant's proprietary information or a report made by BTL Lab, based upon the proprietary information, BTL Lab 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 Lab. The costs incurred by BTL Lab 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 Intl; however, where Applicant timely advises BTL Lab 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 Lab 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 Lab 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.

Applicant warrants that he/she has the right to make the disclosures under this Agreement.

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

**10. Limitation on Remedies.** The BTL Lab's entire liability and Applicant's exclusive remedy for any error or defective service by the BTL Lab in the testing of any particular Product for the Applicant performed under this Agreement or for any other claim against BACnet Intl or the BTL Lab based directly or indirectly on this Agreement, shall be for the BTL Lab, in its sole discretion, to either: (a) refund the fee paid by the Applicant to the BTL Lab 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 the BTL Lab 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 the BTL Lab such error or defective service also represented a failure by the BTL Lab 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. THE BTL LAB EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF DESIGN, MERCHANTABILITY, 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 THE BTL LAB ARE PERFORMED IN GOOD FAITH WITH NO WARRANTIES AS PROVIDED IN SECTION 11. EXCEPT FOR THE LIMITED REMEDIES EXPRESSLY SET FORTH IN SECTION 10, THE BTL LAB 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 THE BTL LAB UNDER THIS AGREEMENT OR ANY USE, DISCLOSURE OR PUBLICATION OF THE RESULTS OF SUCH SERVICES EVEN IF THE BTL LAB HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE BTL LAB SHALL NOT BE LIABLE TO THE APPLICANT FOR ANY CONSEQUENTIAL DAMAGES INCURRED BY APPLICANT DUE TO THE FAULT OF THE BTL LAB, REGARDLESS OF THE NATURE OF THIS FAULT, WHETHER IT WAS COMMITTED BY THE BTL LAB, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS. IN NO EVENT SHALL THE BTL LAB'S OR BACNET INTL'S LIABILITY ARISING UNDER THIS AGREEMENT EXCEED THE FEE PAID BY APPLICANT TO THE BTL LAB 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 THE BTL LAB AND/OR BACNET INTL TO THOSE INDIVIDUALS AND ORGANIZATIONS INCLUDING BTL OR BACNET INTL RETAINS FOR PROPER EXECUTION OF THE WORK, AS WELL AS TO ITS OFFICERS AND DIRECTORS.

**13. Indemnification.** Applicant shall indemnify, defend and hold the BTL Lab and BACnet Intl, 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 the BTL Lab and/or BACnet Intl 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 the BTL Lab 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 the BTL Lab and BACnet Intl, where the nature of samples provided by Applicant or the nature of services asked of the BTL Lab or BACnet Intl 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 intentional misconduct of the BTL Lab or BACnet Intl.

Applicant acknowledges that testing, including sample preparation and transportation, may damage or destroy Applicant's Product. Applicant agrees to hold BACnet Intl and the BTL Lab harmless from any and all responsibility for such alteration or damage.

**14. Force Majeure.** Neither party shall be liable for failure to perform its obligations under this Agreement due to events beyond its reasonable control, including, but not limited to, strikes, riots, wars, terrorism, fire, acts of God, and acts in compliance with any applicable law, regulation or order (whether valid or invalid) of any governmental body.

**15. 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 its 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 its obligation of indemnity as to Products manufactured or distributed prior thereto, and shall not excuse the Applicant from paying any charges owing to the BTL Lab as earned or accrued prior to the date of termination as received by the BTL Lab.

**16. 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 State of Georgia, and the parties consent to jurisdiction of the Federal or state courts of Georgia 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. All provisions of this Agreement are severable. If any provision or portion hereof is determined to be unenforceable in arbitration or by a court of competent jurisdiction, then the remaining portion of the Agreement shall remain in full effect. This Agreement may not be assigned by either party without the express prior written consent of the other party.

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, Inc. (for BTL Lab)**

**Applicant:**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

BY: \_\_\_\_\_

(Signature)

Name: Natalie Nardone

Title: Association Manager

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

BY: \_\_\_\_\_

(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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