



## LISTING AGREEMENT

THIS AGREEMENT, effective on the date of the last signature set forth below, is between IAPMO Ventures, LLC, dba IAPMO EGS (“IAPMO EGS”), a California Limited Liability corporation Nationally Recognized Test Laboratory (“NRTL”) which lists products that have been found to meet applicable standards and the undersigned “Listee”, a person or organization desiring to have an electrical product or products listed by IAPMO EGS, and who is identified in the attached Application for Evaluation and Inspection.

The parties agree as follows:

1. This is a Listing Agreement between IAPMO EGS and Listee for the product listed on the attached Application for Evaluation and Inspection. Listing is solely a representation of IAPMO EGS that the product specification, and sample submitted for examination, have been found to meet applicable standards. Listing does not carry any guarantee of product acceptance by local jurisdictions or authorities or otherwise affiliated with IAPMO EGS. IAPMO EGS will make reasonable efforts to assist a listee in obtaining such acceptance. **IAPMO EGS MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED AND ALL IMPLIED WARRANTIES INCLUDING ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.** In addition, IAPMO EGS has the right under this Agreement to conduct periodic inspections of Listee’s manufacturing facilities and to review Listee’s quality assurance procedures and records related thereto in accordance with the provisions of Paragraphs 16 and 18 hereof. This right of inspection and review, permits IAPMO EGS to verify that Listee has appropriate manufacturing controls and has the ability to manufacture products which will continue to comply with the requirements of the applicable standard(s).

### INTEREST GRANTED

2. IAPMO EGS is the licensee of various certification marks and the goodwill associated therewith (the “Certification Marks”), both unregistered and registered with the United States Patent and Trademark Office, which are of great value to IAPMO EGS. Listee agrees that the Certification Marks, together with the goodwill

connected therewith, are the sole and exclusive property of the International Association of Plumbing and Mechanical Officials (“IAPMO”) and IAPMO EGS, and Listee claims no rights and shall claim no right therein, other than provided herein.

3. Acceptance of the product for listing by IAPMO EGS, as indicated by the issuance of a certificate of acceptance for said product, constitutes a non-assignable, non-exclusive and revocable license to use the Certification Marks shown in Exhibit “A” to this Agreement on such products for the term of the listing in a manner which is consistent with this Agreement.

4. Listee shall have no right or license to use any Certification Marks on any unlisted product or to license or sublicense any other person or entity to use any Certification Mark. Nothing in this Agreement shall be construed to give Listee or any other person or entity any right, title or interest in any of the Certification Marks, except as expressly granted in this Agreement. Listee agrees that it will not register or attempt to register any Certification Mark in its own name or in the name of any other person or entity, and that it will not use any Certification Mark as any part of the name or identity of any person or entity.

### TERM

5. Subject to the provisions of this Agreement, this listing, and Listee’s right to employ the Certification Marks on the listed product, shall extend for one (1) year from the date of the Certificate of Listing issued under the terms of this Agreement, and shall continue automatically for successive one-year periods unless this agreement is modified or changed. In the event that this agreement is proposed to be modified or changed, IAPMO EGS shall notify listee of its proposed changes in writing at least 90 days prior to the expiration of any initial or one year renewing period and it shall be a condition precedent to the continued effectiveness of the listing that listee execute and deliver to IAPMO EGS by the end of such initial or one year renewal period (along with any renewal or other required fees) the modified or changed version of the agreement. Nothing in this paragraph 5 shall be deemed to alter listee’s other obligations set forth herein.

## LISTEE'S GENERAL OBLIGATIONS

6. Subject to Paragraph 20 below, Listee shall affix at least one of the Certification Marks listed in Exhibit "A" to the product along with test standard(s) to which the product is certified. When it is not feasible to affix such Certification Marks on the product, the certification mark may be affixed to as the packaging or maintenance and/or installation sheets, as approved by IAPMO EGS, in accepting the product for listing. IAPMO EGS agrees that it shall not unreasonably withhold any such consent.

7. Together with the Certification Mark, Listee shall permanently identify each listed product with markings (or symbols, codes or abbreviations on products with insufficient space for complete markings) indicating the location where the product was manufactured. Listee shall provide IAPMO EGS with the key to all such markings, symbols, codes or abbreviations. In the event Listee has only one manufacturing plant where all of Listee's listed products are manufactured, the absence of any such marking, symbol, code or abbreviation may be accepted by IAPMO EGS as sufficient identification of the location where the product was manufactured. In the event that Listee reasonably believes that permanent markings on listed products may impose undue cost and expense on Listee, then Listee shall contact IAPMO EGS to obtain IAPMO EGS's consent to permit Listee to affix a sticker or label with such markings, symbols, codes or abbreviation to the product. IAPMO EGS agrees that it shall not unreasonably withhold any such consent.

8. Subject to Paragraph 6 above, all products (or models or products) which have been accepted for listing by IAPMO EGS shall bear the appropriate Certification Mark at the time of their manufacture. Any product or model which would otherwise be a listed product shall not be considered to be listed by IAPMO EGS if it does not bear the appropriate Certification Mark. Listee agrees that it shall not use any model number for a listed product on any other products which are not listed or which do not meet IAPMO EGS's listing requirements for such product. Listee also agrees that the ® designation is to be interpreted as part of any Certification Mark where shown, and the use or non-use of such designation except as shown in Exhibit "A" is strictly prohibited. The display of other IAPMO Certification Marks with the product or any modification of the approved display shall only be made with the prior written approval of IAPMO EGS. Listee recognizes that from time to time IAPMO or IAPMO EGS may add to, change or otherwise modify its Certification Marks or the products on which the Certification Marks may be employed. Listee agrees that it will conform with such subsequent changes, within one year of the Listing renewal, following written notice thereof by IAPMO and/or IAPMO EGS, and that it will follow and use any such changes as if they were part of this Agreement at the time of the execution hereof. Nothing in this Paragraph 8 shall be construed to require Listee to remove any existing Certification Marks from listed products which have been manufactured prior to the date of any changes or modifications to the Certification Marks made by IAPMO or IAPMO EGS. Listee may grant permission for a Multiple Listee to be added to the File as licensee of the Certification Mark(s). Multiple Listee shall execute a Listing Agreement in its own name. The license granted to the Multiple Listee shall be subject to the consent of the primary Listee.

9. In no case shall Listee amend, alter, abridge or otherwise edit the Certificate of Listing or any other certification documents produced by IAPMO EGS including by way of example the Certificate of Listing. Whether it be for internal use of Listee, or if Listee provides copies of the certification documents to others, the documents shall only be reproduced in its entirety or as otherwise specified in the applicable certification scheme by Listee and approved by IAPMO EGS. In no case shall Listee use its product

certification in such a manner as to bring IAPMO EGS into disrepute or issue any written or oral statement, or issue or publish any advertisement or catalog containing any statement, which states or implies a commercial endorsement, or express or implied warranty for any purpose, of any product by IAPMO or IAPMO EGS, their respective management, committees or boards of directors. Neither IAPMO nor IAPMO EGS approves or recommends any product or material, and therefore only the phrases "accepted by", "accepted for listing by", or "listed by" followed by the appropriated Certification Mark is permissible. The use of any language which in any manner tends to be misleading or to enlarge the scope or intent of the listing of the product is strictly prohibited.

Any and all claims made by Listee with regard to the listed product shall be consistent with, and limited by, the scope of the listing provided as set forth in writing on the Certificate of Listing provided to Listee by IAPMO EGS. Listee may submit advertising copy and promotional material to IAPMO EGS for prior approval, and IAPMO EGS will respond to Listee's request for such approval within a reasonable time. Under no circumstances, however, shall Listee use any such submitted advertising copy or promotional material until it receives approval therefor from IAPMO EGS.

10. Listee shall not use any of the Certification Marks in a manner which implies that an unlisted product is listed or is the equivalent of a listed product. Without limiting the foregoing, Listee shall not use a listed product bearing a Certification Mark as a component or sub-component of an unlisted product or an unlisted assembly of products in a manner which implies that the entire product or assembly is listed. By way of illustration only, Listee shall not use a listed clamping band on a non-listed product. Further, Listee shall not use or display any Certification Mark in any literature or advertising relating only to unlisted products. If both listed and unlisted products are contained on the same advertisement or literature, any Certification Mark therein must be displayed in reasonably close proximity with listed products only and must not be displayed in a manner which would tend to imply that any unlisted product is listed. By way of illustration only, a Certification Mark shall not be used on the cover of a catalog which advertises any unlisted product. Listee may submit proposed advertisements or literature to IAPMO EGS for prior approval, as provided in Paragraph 9 and subject to the limitations set forth therein.

11. Listee agrees to promptly notify IAPMO EGS of any actual or suspected uses or infringements of any Certification Mark. IAPMO EGS alone, at its sole discretion, has the right to challenge any unauthorized uses or infringements of the Certification Marks, and alone has the right to prosecute any person or entity who unlawfully uses or attempts to use any of the Certification Marks. Under no circumstances shall Listee have any right to challenge any unauthorized uses or infringements of the Certification Marks or to prosecute any person or entity who unlawfully uses or attempts to use any of the Certification Marks, without the express prior written permission of IAPMO EGS.

12. In order to assist IAPMO EGS with its applications for registration, renewal and the pursuit of opposition to registration by others of the Certification Marks, and in order to assist IAPMO EGS with its protection and enforcement of the Certification Marks, upon request by and at the cost of IAPMO EGS, Listee shall furnish to IAPMO EGS, copies of, any and all documents, not deemed confidential by Listee, necessary or desirable to evidence IAPMO's or IAPMO EGS's ownership of the Certification Marks and to verify the quantity of listed products manufactured and sold by Listee. IAPMO EGS will use such documents solely for purposes of establishing its ownership of the Certification Marks and the widespread use of the Certification Marks in the marketplace.

13A. Listee is not, and shall not hold itself out as, an agent, legal representative, joint venturer, partner, employee or servant of IAPMO or IAPMO EGS for any purpose whatsoever.

13B. Listee shall promptly inform IAPMO EGS in the event of any change that may affect Listee's ability to comply with the terms of this Agreement and the terms of the listing granted. By way of example, and not limitation, Listee shall promptly notify IAPMO EGS of any change in corporate ownership, change in product or production sites, or major change in Listee's quality management system.

## QUALITY STANDARDS

14. Listee shall maintain the product design, quality and workmanship in accordance with the current applicable standards, or as such standards may be changed, and as incorporated in the samples and documents submitted for evaluation and inspection by IAPMO EGS. In addition, Listee shall make no substantial change in material, manufacturing process, marking or design of the product without prior written approval of IAPMO EGS. As used in this paragraph 14, the term "substantial change" means any change which would make any of the information set forth on the Certificate of Listing for the product false or misleading (or which would reasonably be deemed to cause the product to fail to conform to the applicable standard (s) for the product set forth in the Certificate of Listing and agrees that (a) new drawings, tests and product samples may be required as a result of any such substantial changes; (b) any substantial change in the original product after acceptance and listing by IAPMO EGS which is not authorized by IAPMO EGS will automatically result in delisting of the product until such written approval is received; and (c) a new application, additional fees and test reports may be required in the event of any such delisting.

15. In the event of any changes in the current applicable standards, IAPMO EGS will notify Listee of the change or changes in writing including the effective date if one is provided in the standard. With this notification, IAPMO EGS will advise Listee of any need for supplementary testing of the listed products. Where no effective date is set forth in the revised standard, IAPMO EGS will confer with Listee to mutually agree upon the period of time needed by the Listee to (a) prepare for and perform such testing; and (b) successful completion of the supplementary testing. Notwithstanding the foregoing, however, Listee acknowledges and agrees that it is the Listee's responsibility to fully comply with all standards and model codes applicable to Listee's listed products.

## QUALITY CONTROL

16. Listee shall establish, maintain and use a quality management system. Listee shall notify IAPMO EGS in advance of any intended material changes to the quality management system. As used in the Paragraph 16, the term "material change" means any change to Listee's quality management system which could reasonably be expected to (a) reduce the level of quality management that previously existed in Listee's operations, and/or (b) compromise the health and safety of consumers or the general public as a result of the use or operation of the listed products. In addition, Listee shall maintain true and accurate records showing the quantity and quality of products, and materials used in products, bearing the Certification Marks which are manufactured or sold by or for Listee. Listee shall also keep records of complaints Listee receives since the last on-site inspection performed by IAPMO EGS, which complaints are as a result of problems with or failures of, listed products manufactured by or for Listee which could be reasonably deemed to (i) result from failures or problems with Listee's quality management system; (ii) pose a health and safety risk to consumers or the general public due

to circumstances under Listee's control; or (iii) expose IAPMO EGS or IAPMO to liability as a result of the use or operation of such products. Listee shall make the records available to IAPMO EGS upon request. At a minimum, Listee's records shall (A) state the nature of the complaint; (B) identify the listed product pertinent to the complaint; and (C) confirm the remedial action(s) taken and the status (open or closed) of the complaint, as known to Listee. In the event that the complaint record required by the Paragraph is not retained by Listee at a plant location which is being inspected by IAPMO EGS pursuant to Paragraph 18, Listee shall advise IAPMO EGS in writing of the location of such complaint record. Listee shall provide the complaint record to IAPMO EGS by whatever means selected by IAPMO EGS. The Listee shall make all arrangements necessary and required of Listee, as indicated by IAPMO EGS to Listee, in order to facilitate IAPMO EGS's listing program, the investigation of complaints and the participation of observers whose presence is required in the sole determination of IAPMO EGS.

## MANUFACTURING LOCATIONS

17. Listee shall promptly furnish to IAPMO EGS, in writing, the street address, hours of operation, anticipated dates when plants will be temporarily closed or shut down, anticipated dates when plants will temporarily cease production and all local or state holidays of each plant where the listed product is being manufactured or to be manufactured by or on behalf of Listee. Listee shall also provide the name and telephone number of a contact person for each such plant location, both at the time of application for evaluation and in the event of any changes in this information. Listee shall provide such information for all plants locations, whether foreign or domestic. If the product is imported or to be imported, Listee shall also provide the name, street address, telephone number and contact person of the importer and the consignee. The requirements of this Paragraph 17 with respect to consignees and importers shall apply only to the extent that legal title to the products remains in Listee or Listee's affiliates, agents or legal representatives. At such time as legal title to the listed products passes from Listee (or its affiliates, agents or legal representatives) to a warehouseman, consignee or importer, Listee shall be relieved of its obligations under this Paragraph 17, subject to the provisions of Paragraph 20.

## FOLLOW UP SERVICES INSPECTIONS

18. Listee consents to the review of listee's products by IAPMO EGS or its subcontractor and Listee shall permit IAPMO EGS or its subcontractor to make up to four (4) announced or unannounced follow-up inspections of; (a) each of Listee's domestic and foreign manufacturing facilities; (b) Listee's records relating to quality control, production, quantity of inventory and shipping of listed products (collectively, "Records"); and (c) Listee's products themselves during each listing year; provided, however, that in the event IAPMO EGS reasonably believes in good faith that Listee is not in compliance with the terms and conditions of this Listing Agreement, IAPMO EGS may make a reasonable number of additional announced or unannounced inspections of such facilities, records and products as it shall deem necessary or appropriate to protect its rights hereunder and to the Certification Marks. IAPMO EGS maintains the right to make inspections to any domestic or foreign manufacturing facilities, which are owned or operated by Listee, except where IAPMO EGS is precluded from doing so by restrictions contained in governmental regulations (where IAPMO EGS has been notified and is reasonably satisfied as to the validity of such governmental regulation). Further, Listee shall obtain all consents or approvals necessary to permit IAPMO EGS to inspect any domestic or foreign manufacturing facilities which are owned and operated by persons or entities other than Listee, except where IAPMO EGS is precluded from doing so by restrictions contained in

governmental regulations. Neither Listee nor any third party shall hamper IAPMO EGS's inspector in carrying out such inspector's duties. At the time of each inspection, the inspector shall have the right of immediate entry to all manufacturing and other areas, the right to require appropriate personnel to accompany the inspector, full access to all records (as defined in this Paragraph), production and products, the right to take random samples for independent testing, and the right to any other service the inspector reasonably deems to be necessary or appropriate to the proper completion of the inspection. Such inspections may be made at any time during normal business hours. IAPMO EGS shall make every attempt to accommodate plant vacations, inventory shut-downs and other non-productive periods or plant closings. The inspector shall use reasonable efforts not to unnecessarily interrupt the work flow at a plant or manufacturing facility. Notwithstanding the preceding sentence, however, Listee acknowledges that some interruption of the work flow at a plant or manufacturing facility may be an unavoidable consequence of any particular inspection. Refusal by Listee or any third party manufacturer who has consented to or approved of the inspection of its facilities by IAPMO EGS to grant immediate access to the inspector, or to comply with the other requirements of this Paragraph 18, may constitute grounds for delisting.

#### **FEES**

19. Listee shall pay to IAPMO EGS a maintenance fee billed at regular intervals. Listee shall pay to IAPMO EGS an inspection fee for any inspection conducted under the provisions of Paragraph 18 hereof. All costs of inspection, including laboratory fees shall be borne by Listee. In the event an inspector is unable to gain admittance to a plant or facility which is owned by Listee, under Listee's control or under the control of a third party during the operation hours which are on file at IAPMO EGS, Listee shall pay to IAPMO EGS the basic inspection fee. All fees will be paid by Listee within forty-five (45) days of the invoice from IAPMO EGS.

#### **DELISTING/DECERTIFICATION**

20. In the event (i) an inspection; (ii) standard revision; or (iii) subsequent testing reveals that a listed product manufactured, sold or being held for distribution by listee fails to meet IAPMO EGS's listing criteria, then Listee shall (a) immediately cease use of the Certification Marks on any non-complying product, (b) cease and desist use of the Certification Mark for future production of affected product, and (c) immediately (or within a reasonable time agreed to by IAPMO EGS) quarantine the listed product and correct any and all items of non-compliance and submit to IAPMO EGS in writing within thirty (30) days of the date of inspection or subsequent testing a report of planned and/or actual corrective action taken by Listee; provided, however, that nothing in this Paragraph 20 shall be deemed to relieve Listee of its continuing responsibility to use the Certification Marks only on listed products complying with all requirements of IAPMO EGS and, provided, further, that the thirty (30) day period described in this Paragraph applies to the written report and not the date for corrective action by Listee. Upon notification by Listee to IAPMO EGS that all items of non-compliance have been corrected, Listee shall permit IAPMO EGS to conduct another inspection and test of the products, at Listee's cost and expense. In the event that any subsequent inspection or test reveals that the products continue to fail IAPMO EGS's listing criteria, than Listee shall, subject to the provisions of Paragraph 23, remove the Certification Marks from all products in stock which fail to meet such criteria in the presence of the inspector or promptly provide IAPMO EGS with a certificate in a form reasonably acceptable to IAPMO EGS and its representatives, signed by Listee or a duly authorized officer, member or agent of

Listee which states that the Certification Marks have been removed from the listed products. In the event that listed products which fail to meet IAPMO EGS's listing criteria previously have been delivered to third parties and are no longer in the possession, custody or control of Listee, and the product failure could be reasonably deemed to pose a health and safety risk to consumers or the general public, then Listee shall take all actions as may be reasonably required by IAPMO EGS, including, but not limited to (A) sending recall notices to all such third parties requesting that they return the products to Listee, (B) obtaining and holding the products returned by such third parties, (C) removing the Certification Marks from such returned products, (D) holding the returned products in an impounded area for inspection by IAPMO EGS, (E) destroying the returned products and/or (F) distinguishing all further inventory and/or production of such products from the returned or destroyed products. When product recall is ordered by IAPMO EGS, Listee shall provide IAPMO EGS with product recall plan in advance. Product recall plan provides detail action items and at a minimum include the following (i) number of nonconforming units shipped via traceability logs and customer records, (ii) product recall notice, (iii) action plan to determine, notify, and request third parties who received recalled product to return product back to Listee, and (iv) disposition or removal of certification marks for returned recalled products. Failure of Listee to initiate a product recall within the required time frame upon notification from IAPMO EGS will result in legal action. Upon notification by Listee to IAPMO EGS that the approved product recall plan has been completed, Listee shall permit IAPMO EGS to conduct another inspection to confirm that product recall has been properly executed and documented.

21. In the event an inspection reveals that an unlisted product manufactured, sold or being held for distribution by Listee, bears one of IAPMO EGS's Certification Marks, then Listee shall (a) immediately cease use of the Certification Marks from all such unlisted products, (b) cease and desist use of the Certification Mark of future production of all such unlisted products, and (c) quarantine the marked product and remove the Certification Marks from all unlisted products in stock which bear one of the Certification Marks in the presence of the inspector or provide IAPMO EGS with a certificate which states that the Certification Marks have been removed from the unlisted products. In the event there is no adequate method for the removal of the Certification Marks without destroying the products, then Listee shall destroy such products in the presence of the inspector or provide IAPMO EGS with a certificate which states that the products have been destroyed. In the event that unlisted products bearing the Certification Marks have previously been delivered to third parties and are no longer in the possession, custody or control of Listee, then Listee shall take all actions as may be reasonably required by IAPMO EGS, including, but not limited to, the action described in items (A) through (F) of Paragraph 20. When product recall is ordered by IAPMO EGS, Listee shall provide IAPMO EGS with product recall plan in advance. Product recall plan provides detail action items and at a minimum include the following (i) number of nonconforming units shipped via traceability logs and customer records, (ii) product recall notice, (iii) action plan to determine, notify, and request third parties who received recalled product to return product back to Listee, and (iv) disposition or removal of certification marks for returned recalled products. Failure of Listee to initiate a product recall within the required time frame upon notification from IAPMO EGS will result in legal action. Upon notification by Listee to IAPMO EGS that the approved product recall plan has been completed, Listee shall permit IAPMO EGS to conduct another inspection to confirm that product recall has been properly executed and documented.

22. Upon request by IAPMO EGS, Listee shall permit IAPMO EGS to inspect and review copies of (1) any and all recall notices sent by Listee under Paragraphs 20 and 21, (2) any and all responses

received from the recipients of such recall notices and (3) Listee's lists of those third parties who obtained the products described in Paragraphs 20 and 21 (hereinafter "Customer Lists"). IAPMO EGS agrees to maintain all Customer Lists in strict confidence in accordance with the provisions contained in Paragraphs 34 and 35, subject to the limitations contained therein. IAPMO EGS shall have the right to select a representative sample of locations from Listee's Customer Lists and the right to conduct an inspection of such locations. If, pursuant to such inspections after a product recall, IAPMO EGS discovers either (x) listed products which fail to meet the criteria for listing and which bear one of the Certification Marks, then IAPMO EGS shall have the right to conduct further inspections of the remaining locations contained on the Customer Lists. Listee shall reimburse IAPMO EGS for all of the matters described in this Paragraph 22, including, without limitation (a) the time required to monitor the removal of the Certification Marks or the destruction of such products (b) all expenses and costs for the travel to and from and stay at Listee's facility or facilities, (c) the time, expenses and cost incurred in obtaining products from third parties and removing the Certification Marks or destroying the products, and (d) inspecting all Customer Lists, customer facilities and/or impounded areas of products.

23. In the event Listee disputes the inspector's findings with respect to a listed product which has initially or repeatedly failed to meet IAPMO EGS's listing criteria, Listee shall hold such product at its factory or in storage, and make no sale or distribution of such product, pending the outcome of (a) a decision of IAPMO EGS under circumstances where Listee requests such a decision in writing, and/or (b) any appropriate test of samples. Deliberations should be concluded within thirty (30) days of notification. During the time of such deliberation by IAPMO EGS and/or such test, Listee shall not ship such product with a Certification Mark thereon without the express written permission of IAPMO EGS. Should IAPMO EGS concur with the inspector's finding, or should the product fail such test, Listee may contest the matter in the manner set forth in Paragraph 25.

24. In the event Listee ceases all manufacturing of listed product at one of Listee's manufacturing locations, or if one of Listee's manufacturing locations closes or moves to a new location, then Listee will permit IAPMO EGS to enter Listee's manufacturing facilities in order to verify that manufacturing of the products bearing the Certification Marks has ceased, or that the plant has moved or has been closed. Listee agrees to pay all costs associated with any entry of its facilities by IAPMO EGS under this Paragraph 24.

#### **DENIAL OF LISTING**

25. In the event that Listee breaches any of its representations, warranties, covenants or agreements contained in this Agreement, any application for a product listing or any other agreement or document relating hereto or thereto, then IAPMO EGS may (in its sole and absolute discretion and in addition to any other remedies available to IAPMO EGS) (a) deny the application for a product listing (under circumstances where the product is not yet listed); or (b) delist the product (under circumstances where the product is already listed) and terminate the license granted under this Agreement. Further, IAPMO EGS may (in its sole and absolute discretion and in addition to any other remedies available to IAPMO EGS) immediately delist any and all product and terminate the license granted hereunder upon any continuous failure of any listed product to meet IAPMO EGS's applicable listing criteria or upon any breach of Listee's obligations or other duties under the Agreement including but not necessarily limited to the failure of any listed product to meet the applicable listing criteria as a result of a subsequent standard revision or interpretation. In the event of any such failure or breach, Listee shall be notified by IAPMO EGS in writing of the denial of the listing or

the delisting (as applicable), the reasons therefor and, if the denial or delisting relates to a product deficiency, at which Listee may contest the denial or delisting, as applicable. Within twenty (20) days following receipt of such notification of denial or delisting based on a product deficiency, Listee shall inform IAPMO EGS in writing if Listee contests the denial or delisting and the specific reasons for such contest. In the absence of such information from Listee, the denial of the product listing or the delisting of the product shall be final without further notice to Listee. If any denial or delisting becomes final, either through failure of Listee to contest or through an appeal, the license granted by this Agreement shall be immediately and automatically terminated without further notice to the Listee, and all of the requirements of Paragraphs 20, 21, 22, 29 and 30 hereof shall immediately apply.

26. IAPMO EGS may, in its sole discretion, notify the general public of the delisting of any product. If the cause of any failure may reasonably affect other listed products of Listee, IAPMO EGS may also require the inspection and testing of such other products, or proof satisfactory to IAPMO EGS that such other products are not affected. In the absence of satisfactory inspection and testing results for any reason, or satisfactory proof that such other products are not affected, IAPMO EGS may delist such other products. In addition to the delisting, IAPMO EGS may require, prior to accepting further applications from Listee to list products, proof that adequate measures have been taken by the former Listee to insure that the causes of prior breaches or product failures have been eliminated, including sufficient inspections and tests to provide IAPMO EGS with an indication that the former Listee can maintain compliance with listing requirements. In the event of any such delistings, Listee shall have the right to contest same as set forth in Paragraph 25.

#### **APPEAL**

27. A final decision for accepting or rejecting any product for listing or relisting, or delisting any product, shall be subject to review only according to the provisions set forth in IAPMO EGS's Appeals Procedure, copies of which are available free of charge from IAPMO EGS upon request.

#### **TERMINATION**

28. In addition to the grounds and procedures for delisting and termination of the license to use the Certification Marks stated elsewhere in this Agreement, Listee's products may be delisted and such license terminated immediately in the event that Listee shall become bankrupt or insolvent, or if the business or Listee shall become placed in the hands of a receiver, assignee for the benefit of creditors, or trustees, by voluntary act of Listee or otherwise. All outstanding fees and fees due to IAPMO EGS shall be paid by Listee before a listing is granted. The non-payment of any fee shall be grounds for delisting.

#### **REMOVAL OF CERTIFICATION MARKS**

29. Immediately following termination or expiration of this Agreement or delisting of a product, Listee agrees (a) to remove from its products, property and merchandise, including, but not limited to, its advertising labels, cartons, packages and stationery supplies, the Certification Marks and all references to IAPMO and/or IAPMO EGS, (b) to destroy all such property and merchandise from which any of the Certification Marks or reference to IAPMO and/or IAPMO EGS have not been removed, and (c) not to thereafter employ any Certification Marks or any confusingly similar words or design in any manner whatsoever.

30. In the event the product is delisted, IAPMO EGS shall have the right to enter all domestic and foreign manufacturing facilities owned or controlled by Listee in order to verify that the Certification Marks have been removed from products and literature or that all products and literature bearing any Certification Marks have been destroyed. Listee agrees to permit such entry by IAPMO EGS for the purposes stated. In the event that delisted products have previously been delivered to third parties and are no longer in the possession, custody or control of Listee, then Listee agrees to take all actions reasonably requested by IAPMO EGS with respect thereto (including, but not limited to, the actions described in Paragraphs 20 and 22 above). Listee also agrees to pay all costs associated with the above. Listee acknowledges that (a) the distribution or sale of any product bearing a Certification Mark of IAPMO EGS when such product is not currently listed by IAPMO EGS; or (b) any representation by Listee that any such unlisted product is listed by IAPMO EGS, constitutes an infringement of IAPMO EGS's rights in its Certification Marks and constitutes a violation of applicable state and federal trademark laws.

## CONFIDENTIALITY

31. IAPMO EGS agrees to use any and all information received from Listee, together with all Records, Customer Lists and records of complaints referred to in Paragraph 16 (collectively, the "Data"), for internal purposes only in connection with the required evaluations and documentation to be performed under this Agreement.

32. IAPMO EGS shall maintain the Data in strictest confidence and shall not disclose the Data (a) to any person, entity or organization outside of IAPMO EGS or IAPMO's internal staff and external auditors, other than Listee and Listee's directors, officers, employees, and agents, without the express prior written consent of Listee; and (b) except as may be required by any applicable law or regulation, requests made in discovery, subpoena, or other court order or decree (which disclosures are hereby consented to by Listee, subject to the following sentence). In order to provide Listee with an opportunity to contest the scope of any requests made in discovery or any subpoena, order or decree, and to attempt to protect the confidentiality of any Data, IAPMO EGS shall notify Listee in writing prior to such disclosure as to the name and address of the intended recipient, the reason for disclosure and a description of the Data to be disclosed; provided, however, that any failure by IAPMO EGS to so notify Listee shall not relieve Listee of its obligations under this Agreement. It shall be the sole and exclusive responsibility of Listee to challenge or contest the scope of any such requests, subpoenas, orders and decrees, and IAPMO EGS shall strictly follow any and all court orders or other legal process required or mandated with respect to disclosure of the Data.

33. For purposes of this Agreement, the term "Data" does not include any information which (a) consists of IAPMO EGS work product (including by way of example, but not limitation, engineering work product and proprietary internal strategies), (b) is generally available to the public other than as a result of a disclosure by IAPMO EGS, (c) was available to IAPMO EGS on a non-confidential basis prior to its disclosure to IAPMO EGS by Listee, or (d) is available to IAPMO EGS on a non-confidential basis from a source other than Listee, provided that such source is not bound by a confidentiality agreement with Listee or otherwise prohibited from transmitting the Data to IAPMO EGS by any contractual, legal or fiduciary obligation. All documentation, correspondence, reports and information within the file maintained by IAPMO EGS for Listee that does not fall within the definition of Data (as defined in Paragraphs 33-35) is the sole property of IAPMO EGS.

## GENERAL PROVISIONS

34. IAPMO EGS warrants only that the services provided by IAPMO EGS pursuant to this Agreement will be provided in good faith. No other representations or warranties are provided by IAPMO EGS with respect to its services or this Agreement.

35. Listee hereby waives any claim or cause of action against IAPMO EGS based on negligence arising out of any actions or failures to act by IAPMO EGS in granting, denying or revoking any listings, except claims based on (a) gross negligence or lack of good faith by IAPMO EGS, and (b) a breach of the provisions of Paragraphs 31, 32 or 33 hereof.

36. In no event shall IAPMO EGS be liable to Listee or any other person or entity for any consequential, special or indirect damages for any claim or cause of action whatsoever, whether based in contract, tort or otherwise.

37. Listee shall not manufacture, prepare, assemble, package or deliver any products bearing a Certification Mark which are deficient in quality or packaged in a misleading or deceptive manner, or otherwise manufacture, prepare, assemble, package, sell, deliver or advertise such products in violation of any law or any of the terms of this Agreement, nor do any other act detrimental to any Certification Mark or to IAPMO EGS's rights therein or to IAPMO EGS by Listee's use of the Certification Marks. Listee agrees to indemnify, defend and hold IAPMO EGS and the officers, directors, members, agents and representatives harmless from and against any and all claims, liabilities, losses, damages, costs and expenses, including, but not limited to, attorney's fees, investigative costs and court costs arising out of, relating to or in connection with (a) Listee's participation in IAPMO EGS's listing program, including but not limited to statements by Listee to third parties relating to Listee's participation in IAPMO EGS's listing program, and (b) all third party claims relating to the purchase or use of Listee's products, whether based in contract (including, but not limited to, warranty claims), tort (including, but not limited to, negligence or product liability claims) or otherwise. Listee further agrees to obtain and maintain policies of product liability insurance, general liability insurance or similar equivalents with coverage's in amounts that are reasonably satisfactory to IAPMO EGS or commercially standard in the Industry.

38. Listee hereby acknowledges and agrees that IAPMO EGS is not a designer, marketer, manufacturer, seller, endorser, guarantor, or insurer of your products or systems of any kind. By providing the services set forth herein IAPMO EGS is not assuming and disclaims any obligation, including any duty of care toward Listee or any third party related to the design, testing by entities other than IAPMO EGS, or the manufacture, marketing, or sale of any product(s) or system(s) that you submit in connection with this Listing Agreement. Listee agrees that: (i) provision of services by IAPMO EGS is not intended to supplant your examination and testing of such product(s) or system(s); (ii) IAPMO EGS is not assuming any duty incumbent upon Listee to examine or test the design of such product(s) or system(s), either before or after manufacture or sale; (iii) IAPMO EGS does not warrant or endorse the safety or performance of such product(s) or system(s); and (iv) in rendering the services required herein IAPMO EGS is not supplying to Listee information for Listee's guidance and conduct of Listee's business.

39. In the event of any legal action or dispute brought by either party arising out of (a) the relationship created by this Agreement; (b) the subject matter of this Agreement; or (c) the interpretation or enforcement of any provision hereof, the prevailing party in such dispute or action shall receive from the losing party all of the prevailing party's costs, expenses and such amounts as the court may adjudge to be reasonable attorneys' fees. Such sums shall be included as part of any judgment.

40. All statements, notices and other communications which are required or permitted hereunder shall be addressed to the parties at their addresses designated in the most current Application for Evaluation and Inspection, until such addresses are changed by written notice. All notices required or permitted hereunder shall be deemed received on the day personally delivered or five (5) days after they are mailed, postage prepaid by first class mail and correctly addressed

41. This writing and the documents referenced herein contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, oral and

written agreements and understandings with respect thereto. This Agreement may not be altered or amended except by a writing executed by a duly authorized officer of the parties subsequent hereto.

42. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

43. The undersigned representative of Listee certifies that (a) the foregoing provisions have been read and understood, (b) Listee agrees to the foregoing provisions, and (c) the undersigned is duly authorized and empowered to execute this Agreement on behalf of Listee

**LISTEE**

Company: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**IAPMO EGS**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**MULTIPLE LISTEE**

Company: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**IAPMO EGS**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_