

## **AGREEMENT BETWEEN**

**LabTest Certification Inc.**

**AND**

\_\_\_\_\_

**This Agreement,**

**BETWEEN: LabTest Certification Inc.**, a company  
incorporated under the laws of the Province of British  
Columbia, Canada  
hereafter referred to as '**LabTest**'

The Party of the First Part,

**AND**

\_\_\_\_\_, a company incorporated under the laws of the \_\_\_\_\_  
of \_\_\_\_\_ in \_\_\_\_\_,

hereafter referred to as '**Listee**'

The Party of the Second Part,

**WHEREAS:**

- A. LabTest provides certification and other services for various products, constructions, assemblies, designs, facilities and companies ("Products") to determine if these Products meet established standards ("Standards") used by LabTest;
- B. LabTest allows for the use of its registered certification mark ("Mark") on these Products; and
- C. The Listee has applied to LabTest for a listing of its Products described in the attached schedule and for the right to use certification labels or other designated certification marks ("Labels", "Marks") on these Products.

NOW THEREFORE in consideration of their mutual obligations, the parties agree as follows:

1. LabTest obligations:

- (a) to carry out an initial inspection of the Products by documenting materials and methods of construction of Listee and to assess the Listee's capabilities relevant to maintaining Product conformity and acceptable levels of quality as per the applicable established Standards for the Products;
- (b) upon the Listee's request and successful completion of the inspection by LabTest, to provide approval to the Listee to produce certification Labels or other means to display LabTest's certification Marks and to allow the Listee to attach the LabTest Certification Labels or Marks to the Products;
- (c) to notify Listee of any deviations or variances in the Products from the requirements of Standards used by LabTest;
- (d) to treat all information related to Listee's plant, facilities and manufacturing procedures as strictly confidential, unless authorized in writing by the Listee to disclose such information or any part of it to a third party;
- (e) should LabTest be ordered by a court to release confidential information or any part of it, to advise Listee of such order immediately;
- (f) to make available upon Listee's request, relevant LabTest policies and procedures when required for a corrective action or an appeal proceeding.

2. The Listee obligations:

- (a) to provide LabTest with all relevant specifications or other appropriate documentation related to its Products. LabTest shall be the sole judge of what documentation is relevant. Any changes in required documentation shall require the prior written approval of LabTest;
- (b) to use and display LabTest certification Labels or Marks, and Listing Certificate as approved by LabTest. Labels shall be printed to LabTest specifications by LabTest approved printers;
- (c) to designate a responsible person or persons to control security with respect to certification Labels or Marks, to maintain traceability records for the Products to which the Labels or Marks have been affixed, and to provide LabTest with access to these records during normal business hours;

- (d) to ensure at all times that Listee equipment, plant, facilities and procedures conform to the requirements of the relevant Factory Audit Manual and Quality Manuals, or as otherwise may be specified in writing from time to time by LabTest;
- (e) to provide unhindered plant access to LabTest representatives and representatives of applicable accreditation organisations during normal business hours;
- (f) to furnish samples of the Products as may be required by LabTest for follow-up inspections;
- (g) to affix the Certification Labels or Marks only to the Products which have been evaluated and authorized for certification by LabTest;
- (h) to assure that any use other than specified in 2(g) of the LabTest name, Listing Certificate, or certification Label or Mark, is approved in writing by LabTest;
- (i) to apply the Certification Label or Mark to the Products only at the Listee manufacturing location, unless otherwise approved in writing by LabTest;
- (j) where Regulatory Authorities request specific certification or evaluation reports and other data, to permit the relevant Regulatory Authorities to examine any information used in making certification decisions including test data. Such examination may be conducted either at the Listee or at the LabTest premises.
- (k) to vest in LabTest the title to and the right of control of LabTest certification Labels or Marks, until these Labels or Marks are properly applied to the Products in accordance with this Agreement that grants to Listee a non-exclusive License to use LabTest Certification Labels;
- (l) to pay to LabTest a fee stipulated in a separate document and revised from time to time;
- (m) to allow LabTest at its discretion to initiate remedial actions, should any deviation or variance from the applicable Standards used by LabTest occur in the Listee Products. Necessary remedial actions shall be at Listee's expense including but not limited to: withdrawal of the supply of certification Labels, removal of the Labels or Marks from non-confirming Products, removal of Listee's Products from the published Listings, as well as notification of regulatory bodies, authorities having jurisdiction and other concerned parties;

- (n) upon termination of this Agreement for any reason, to return all Listing Certificates, Certification Labels or Marks that are in Listee possession. If applicable, to return to LabTest or dispose of to LabTest satisfaction any other means that indicate LabTest certification (e.g. stamps or dies);
- (o) to understand and agree that upon termination of this Agreement for any reason, LabTest is entitled to de-list the Products;
- (p) to understand and agree that LabTest carrying out its obligations does not assume or undertake any responsibility of the Listee to any other party, and that LabTest makes no warranty or guarantee, either expressed or implied, concerning Listee's Products;
- (q) to understand and agree that if the services provided by LabTest pursuant to this Agreement give rise to the need for the preparation or the attendance of a LabTest employee or agent in any legal, arbitration, or similar procedure in any jurisdiction, the time spent by that employee or agent, including travelling time, shall be billed to Listee at the usual fee rate for that employee or agent; all related disbursements shall be billed at cost;
- (r) to agree to indemnify LabTest against any liability, loss or damage from claims, demands, costs (including legal fees) or judgements incurred by any of them arising out of any of the Products or the right to use or use of LabTest certification Labels or Marks in connection with the Products whether authorized or unauthorized;
  - (s) to understand and agree that notwithstanding paragraph 2(q), the maximum aggregate liability of LabTest in any way arising out of services provided in connection with this Agreement, in contract or tort, including negligence, strict liability or on any other basis, shall not exceed the latest annual fee paid to LabTest under this Agreement;
- (t) to understand and agree that LabTest will not under any circumstances be liable, in contract or in tort, including negligence, strict liability or on any other basis, for loss of capital, loss of profit or loss of product or third party claims or for any indirect, special or consequential damages arising out of services provided in connection with this Agreement;
- (u) to understand and agree that LabTest makes no representation or warranty that any particular regulatory body, authority having jurisdiction or other concerned party will recognize or accept LabTest certification and Listing; therefore, the relevant authorities should be consulted by Listee before sale, distribution or installation of the Products;

- (v) to understand and agree that for the purpose of subsections (q), (r) and (s), LabTest is acting for itself and on behalf of its present and former directors, officers, employees and agents;
- (w) to keep a record of all complaints made known to Listee relating to a Product's compliance with requirements of the relevant standard and to make these records available to LabTest when requested;
- (x) to take appropriate action(s) with respect to any complaints or deficiencies found in Products or services that effect compliance with the requirements for certification;
- (y) to report any situation where a product bearing the LabTest certification Label or Mark could lead to a potential hazard;
- (z) to abide at all times by the relevant requirements of ISO/IEC Guide 65, General Requirements for Bodies Operating Product Certification Systems, namely:
  - (1) to comply at all times with the relevant provisions of the LabTest Product Certification Program, as instructed by LabTest;
  - (2) to make all necessary arrangements, as per the LabTest directions, for the conduct of the evaluation, including provision for examining documentation and access to all areas, records (including internal audit reports) and personnel for the purposes of evaluation (e.g. testing, inspection, assessment, surveillance, reassessment) and resolution of complaints;
  - (3) to make claims regarding certification only in respect of the scope for which the LabTest product certification has been granted;
  - (4) not to use LabTest Product Certification in such a manner as to bring LabTest into disrepute and not to make any statement regarding LabTest Product Certification which LabTest may consider misleading or unauthorized;
  - (5) upon suspension or cancellation of certification, to discontinue the use of all advertising matter that contains any reference thereto and to return all certification documents and materials as required by LabTest;

- (6) to use the LabTest Product Certification only to indicate that products are certified as being in conformity with specified standards;
  - (7) to endeavor to ensure that no LabTest certificate or report nor any part thereof is used in a misleading manner;
  - (8) in making reference to the LabTest Product Certification in communication media such as documents, brochures or advertising, to comply with the requirements of and directions from LabTest;
  - (9) to inform LabTest in a timely manner about any of the following circumstances relevant to the products certified by LabTest:
    - ( i) intended modifications to a certified product,
    - ( ii) intended modifications to a manufacturing process,
    - (iii) changes in the Listee business ownership,
    - (iv) changes in the Listee management,
    - ( v) changes in the Listee business structure
    - (vi) changes in the Listee Quality System;
  - (10) not to release the certified products affected by the changes in 2 (z9) above until LabTest determines whether the announced changes require further investigations, and notifies the Listee in writing that the products resulting from the changes in 2 (z9) may be released.
3. The Listee understands and agrees that in certifying our Products and authorizing our use of LabTest Certification Labels and/or Marks, LabTest does not approve, endorse or guarantee any product, or in any way make any express or implied warranties in connection with any product.
4. All reports prepared by LabTest are confidential and for the exclusive use of the Listee. The use in whole or in part of these reports for purposes other than those originally intended shall require the prior written approval of LabTest.
5. The Listee understands that LabTest follows procedure # 2009, Complaints, Appeals, Disputes to resolve disputes related to granting, maintaining, suspending, or withdrawing the licence to use LabTest certification Labels and Marks.
- 6 This Agreement may be terminated by the Listee upon one (1) month's notice in writing to LabTest.
7. This Agreement may be terminated upon the earlier of the following:

- (a) immediately upon notice in writing by LabTest, if the Listee fails to comply with any of the provisions of this Agreement, or if field experience or the results of inspection made by LabTest on samples of the Products either furnished by the Listee or purchased by LabTest on the open market show that in the opinion of LabTest, the Products do not meet the requirements of LabTest;
  - (b) upon one (1) month's prior notice in writing to Listee by LabTest if the Standards used in the current listing program are revised or superseded in such manner as to require further investigation or testing of the Products by LabTest and the Listee does not comply with the revised requirements;
  - (c) upon non-payment within sixty (60) days of the full amount of any invoices rendered to the Listee by LabTest.
8. The provisions of Section 2 (k), (m), (n), (o), (p), (r), (s), (t), (u), (z1), (z4), (z5), (z7), and (z8) will survive the termination of this Agreement.
9. The Listee understands that the Standards Council of Canada (SCC) is the final level of appeal in disputes regarding the conformance with accreditation criteria. All other disputes, controversies and differences which may arise under this Agreement which cannot be resolved between ourselves shall be settled by arbitration pursuant to the Commercial Arbitration Act (British Columbia). Any party desiring arbitration shall make a written demand for the same and within 30 days after such written demand is received by the other party, both parties shall agree upon and appoint a single arbitrator. In the event such parties shall fail to agree upon and appoint a single arbitrator within the time period set forth herein, then within 30 days thereafter the Listee shall designate an arbitrator and LabTest shall designate an arbitrator and both arbitrators shall within 30 days after their designation jointly designate a third arbitrator satisfactory to them who shall be chairman of the arbitration panel. If the Listee or LabTest fails to appoint an arbitrator or the arbitrators designated by these two parties are unable to agree upon the selection of the third arbitrator within the time periods set forth above, such arbitrator shall be appointed by a judge of the Supreme Court of British Columbia. The expenses of the arbitrators shall be paid as the arbitrators shall decide in the award. All arbitration proceedings shall be in Vancouver, British Columbia, Canada. The decision of the arbitrators shall be final and binding on the parties and judgment upon any award rendered may be entered in any court of competent jurisdiction.

10. The address of each of the parties for the purpose of notices under this Agreement is as follows:

**LabTest Certification Inc.**

3133-20800 Westminster Hwy.

Richmond, British Columbia

V6V 2W3, Canada

Ph.: 604-247-0444

Fax: 604-247-0442

**Attention:**

Josef Otto, P.Eng.

Certification Manager

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

Ph: \_\_\_\_\_

Fax: \_\_\_\_\_

**Attention:**

\_\_\_\_\_

Or to any other address as the parties may from time to time specify by written notice. Any communication sent by prepaid registered mail will be deemed to have been received on the third working day after the date of mailing.

11. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties.
12. No amendment or modification of this Agreement, including the Endorsement, shall be binding, unless in writing and signed by an authorized representative of each of the parties.
13. This Agreement shall ensure to the benefit of and shall be binding upon the parties and their successors and assigns.
14. This Agreement will be interpreted in accordance with and governed by the laws of British Columbia.

*LabTest Certification Inc.*  
**Certification and Listing Agreement**



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**IN WITNESS WHEREOF**, the parties hereto have duly signed this Agreement in duplicate on the dates opposite the name and signature of each party.

**LABTEST CERTIFICATION INC.**

\_\_\_\_\_  
**Signature:**

**Name:** Josef Otto, P.Eng.  
**Title:** Certification Manager

\_\_\_\_\_  
**Date**

**LISTEE:** \_\_\_\_\_

\_\_\_\_\_  
**Signature:**

**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

\_\_\_\_\_  
**Date**