



# IAPMO RESEARCH AND TESTING, INC.

# 1

A NON-PROFIT CORPORATION

• 5001 E. PHILADELPHIA STREET • ONTARIO, CALIFORNIA 91761 • USA •  
(909) 472-4100 • FAX (909) 472-4244

## MEXICO PRODUCT LISTING PROCEDURES

- Step 1 Read the application (Form #2) completely. Fill in all spaces, sign and return the original. When selecting certification type, please refer to Table 1 or Table 2 below for descriptions of each certification type or option.
- Step 2 Complete the manufacturing information (Form 2A).
- Step 3 Read the attached Listing Agreement completely. Sign, date and return the two originals (signature area is page 7 of the Listing Agreement).
- Step 4 Please contact IAPMO R&T Staff to determine the fees; submit the application forms, Listing Agreement and fees to the Association, along with the information and materials set forth in steps 5-9 as follows.
- Step 5 Refer to Exhibit "G" (attached) for the proper IAPMO R&T Certification Mark which is to be applied to the product under the terms of the Listing Agreement.
- Step 6 Furnish one (1) copy of detailed, dimensioned engineering drawings of the product which includes the location, text and type of the required Certification Mark and all markings required by the product standard, i.e., etched, glass-over label, raised letters, etc.
- Step 7 Furnish one (1) copy of a test report(s) from an ema accredited and CONAGUA recognized testing laboratory indicating compliance with the appropriate product standard. A list of ema accredited and CONAGUA recognized testing laboratories is available at <http://www.ema.org.mx>. Test reports shall not be more than ninety days old and must be in the required format.
- Step 8 Furnish one (1) copy of the originals of the following: literature/brochures showing and describing the product, care & maintenance instructions, and installation instructions (color brochures may be used to satisfy this requirement).
- Step 9 Furnish the street address, telephone number, and other information required in section 17 of the Listing Agreement for the manufacturing location where the listed product is produced or warehoused. This information is not required for component part manufacturing locations but only for final assembly locations.

Table 1. Description of certification types for NOM-008-CONAGUA-1998

Type I	Certificate Valid for 1 year	Product certification by means of periodic testing of the product. When opting for this certification, the client shall demonstrate the product meets the requirements of the applicable NOM standard. The client will receive a surveillance visit at a maximum of 6 months +/- 20 calendar days from the certification date and prior to the end of the certification period. The surveillance visit shall consist of sample selection only, as required by CONAGUA policies and procedures.
Type II	Certificate Valid for 2 years	Product certification with evaluation of the Quality Control System and of the product. When opting for this certification, the client shall demonstrate it has implemented a quality control system in accordance with the sections of NMX-CC-9001-IMNC-2015* (or equivalent) noted in Table 3, covering the processes of the product to be certified, and that the product is in compliance with the applicable NOM standard. The client will receive surveillance visits at a maximum of 12 months +/- 20 calendar days from the certification date and prior to the end of the certification period. The surveillance visit consists of review of the quality control system and collection of samples for testing to the applicable standard. The sample selection will be as required by CONAGUA policies and procedures.
Type III	Certificate Valid for 3 years	Product certification with validation of NMX-CC-9001-IMNC-2015* (or equivalent) Management System certification and evaluation of the product. When opting for this certification, the client must submit a current NMX-CC-9001-IMNC-2008* (or equivalent) certificate from a certification body accredited by an IAF MLA signatory accreditation body that covers processes of product to be certified, and demonstrate that the product is in compliance with the applicable NOM standard. The client will receive during the certification period surveillance visits at a maximum of 18 months +/- 20 calendar days from the certification date and prior to the end of the certification period. These visits entail the validation of the NMX-CC-9001-2015 (or equivalent) certification status and sample collection, as required by CONAGUA policies and procedures, for testing to the applicable NOM standard.
Type IV	Certificate Valid for Indefinite Period	Product certification with validation of the NMX-CC-9001-IMNC-2015 (or equivalent) Management System certification, inspection of product, and product testing. When opting for this certification, the client must submit a current NMX-CC-9001-IMNC-2015* (or equivalent) certificate from a certification body accredited by an IAF MLA signatory accreditation body that covers processes of product to be certified, and demonstrate that the product is in compliance with the applicable NOM standard. The client will receive surveillance visits conducted at intervals not greater than 12 months and +/- 20 calendar days from the certification date. For NOM-002-CONAGUA-2021, the client will receive surveillance visits at a maximum of 12 months +/- 20 calendar days (document review surveillance, quality management system and documentary proof of product compliance) and at 18 months plus 20 calendar days (document review surveillance with product sampling on the market with laboratory testing), from the certification date and prior to the end of the certification period., These visits entail the validation of the NMX-CC-9001-IMNC-2015 (or equivalent) certification status, inspection of samples against the standard, and to collect samples for testing in accordance with CONAGUA policies and procedures.

\*This can be substituted with a later revision of the equivalent standard.

**FEES ARE SUBJECT TO CHANGE WITHOUT NOTICE**

Table 2. Description of certification Options NOM-002-CONAGUA-2021

Option I	Certificate Valid for 1 year	Product certification by means of periodic testing of the product. When opting for this certification, the client shall demonstrate the product meets the requirements of the applicable NOM standard. The client will receive a surveillance visit at a maximum of 6 months +/- 20 calendar days from the certification date and prior to the end of the certification period. The surveillance visit shall consist of sample selection only, as required by CONAGUA policies and procedures.
Option II	Certificate Valid for 2 years	Product certification with evaluation of the Quality Control System and of the product. When opting for this certification, the client shall demonstrate it has implemented a quality control system in accordance with the sections of NMX-CC-9001-IMNC-2015* (or equivalent) noted in Table 3, covering the processes of the product to be certified, and that the product is in compliance with the applicable NOM standard. The client will receive surveillance visits at a maximum of 12 months +/- 20 calendar days from the certification date and prior to the end of the certification period. The surveillance visit consists of review of the quality control system and collection of samples for testing to the applicable standard. The sample selection will be as required by CONAGUA policies and procedures.
Type III	Certificate Valid for Indefinite Period	Product certification with validation of the NMX-CC-9001-IMNC-2015 (or equivalent) Management System certification, inspection of product, and product testing. When opting for this certification, the client must submit a current NMX-CC-9001-IMNC-2015* (or equivalent) certificate from a certification body accredited by an IAF MLA signatory accreditation body that covers processes of product to be certified, and demonstrate that the product is in compliance with the applicable NOM standard. The client will receive surveillance visits conducted at intervals not greater than 12 months and +/- 20 calendar days from the certification date. For NOM-002-CONAGUA-2021, the client will receive surveillance visits at a maximum of 12 months +/- 20 calendar days (document review surveillance, quality management system and documentary proof of product compliance) and at 18 months plus 20 calendar days (document review surveillance with product sampling on the market with laboratory testing), from the certification date and prior to the end of the certification period., These visits entail the validation of the NMX-CC-9001-IMNC-2015 (or equivalent) certification status, inspection of samples against the standard, and to collect samples for testing in accordance with CONAGUA policies and procedures.

Table 3. Elements of the Quality Control System that must be established for compliance with the NMX-CC-9001-IMNC-2015 standard or equivalent standard.

<ul style="list-style-type: none"> <li>• Control of Records</li> </ul>	<ul style="list-style-type: none"> <li>• Validation of processes for production and service provision</li> </ul>
<ul style="list-style-type: none"> <li>• Infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>• Identification and traceability</li> </ul>
<ul style="list-style-type: none"> <li>• Work Environment</li> </ul>	<ul style="list-style-type: none"> <li>• Control of monitoring and measurement equipment</li> </ul>
<ul style="list-style-type: none"> <li>• Competence, training and awareness</li> </ul>	<ul style="list-style-type: none"> <li>• Monitoring and measurement of processes</li> </ul>
<ul style="list-style-type: none"> <li>• Planning of product realization</li> </ul>	<ul style="list-style-type: none"> <li>• Monitoring and measurement of product</li> </ul>
<ul style="list-style-type: none"> <li>• Purchasing</li> </ul>	<ul style="list-style-type: none"> <li>• Control of nonconforming product</li> </ul>
<ul style="list-style-type: none"> <li>• Control of production and service provision</li> </ul>	<ul style="list-style-type: none"> <li>• Analysis of data</li> </ul>



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## EXHIBIT G

“Certification Marks,” as described in paragraph 2 of the Listing Agreement, shall mean the following:  
**The use of IAPMO R&T certification marks is mandatory upon product listing.**

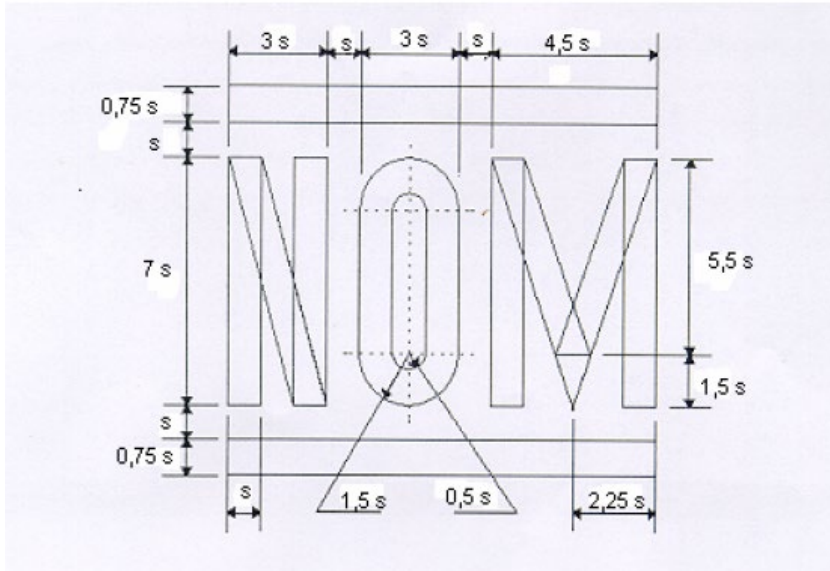
Note: The letters “®” are not required to be in proportion with the certification mark, but must be large enough to be legible.



IAPMO R&T Mark of Conformity for Mexico Certification Program

### Use of the Official NOM Emblem:

- Products certified by IAPMO R&T to any of the NOM standards must also bear in conjunction with the IAPMO R&T Mexico certification mark the Official NOM emblem.
- Details of emblem are as follows:




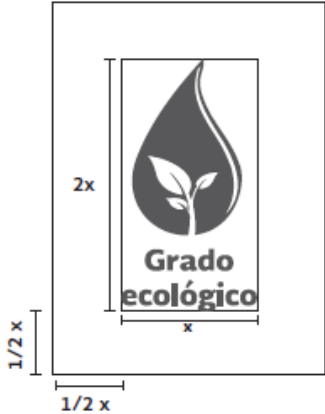



**NOTE: THE PROPORTIONS OF THE OFFICIAL EMBLEM MUST BE A FUNCTION OF THE VALUE ASSIGNED TO THE LETTER “S”.**

- The display of the Official Emblem must be done on the container, package, label, wrapping or in each unit of the product, in accordance with the applicable NOM and must be done by means of a marking or label that makes it evident, clear, legible and indelible, such that it remains visible at least until the product is acquired by the final consumer.

**Use of Ecologic Grade Logo:**

- Products certified as compliant with the Ecologic Grade requirement of the applicable standard may bear on the product or its promotional material the CONAGUA owned logo for Ecologic Grade in accordance with the following guidelines:

<p><b>Graphical:</b> Composed of a drop, most representative form of the water resource and an element of nature wrapped in it.</p>	
<p><b>Colors:</b> The authorized colors for its reproduction in color CMYK are:</p>	 <p>Pantone BlackC 80% C 0, M 0, Y 0, K 8 R 87, G 87, B 8</p>
<p><b>Allowed Applications:</b> The only allowed applications are: one ink in black at 80% and white draft</p>	
<p><b>Area of Visual Protection:</b> To ensure the correct perception of our logo, there is an established area of restriction that has to remain free.</p>	
<p><b>Typography:</b> Soberana Sans is the respected institutional source, with arrangement in two lines and centered. Version: Soberana Sans/black</p>	
<p><b>Minimum Scale:</b> 2.5 cm</p>	



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## APPLICATION FOR EVALUATION FOR IAPMO R&T MEXICO CERTIFICATION

### FOR APPLICATION TYPE PLEASE CHECK ONE OF THE FOLLOWING:

- NEW PRODUCT CERTIFICATION APPLICATION (NEW FILE)
- REVISION TO EXISTING CERTIFICATION / FILE

### CHECK ONE OR MORE OF THE FOLLOWING THAT APPLIES TO THIS APPLICATION:

- Renewal
- Reinstatement
- Model Number change (Modification)
- Request Copy of Certificate in English
- Technical Modification to listed product: (design, material, shape, components etc.)
- Name change<sup>1</sup> (Modification)
- Additional Models

<sup>1</sup> For company name correction and address change, please contact our customer service directly.

### PLEASE CHECK THE NOM STANDARD THAT APPLIES TO THIS APPLICATION:

- NOM-002-CONAGUA-2021 Aparatos y Accesorios de Uso Sanitario/Plumbing Fixtures and Accessories for Sanitary Use
- NOM-008-CONAGUA-1998 Regaderas empleadas en el aseo corporal-Especificaciones y métodos de prueba / Shower fixtures employed in physical cleansing-Specifications and testing methods

### CERTIFICATION TYPE

- Type/Option I Valid for One year
- Type/Option II Valid for Two years
- Type III Valid for Three years (NOM-008 only)
- Type IV Valid for Indefinite Time (Option III for NOM-002)

Brief Product Description: \_\_\_\_\_

Model Number(s): \_\_\_\_\_

Manufacturer, Distributor or Importer in Mexico: \_\_\_\_\_ Legal Status: \_\_\_\_\_

Tax ID Number (R. F. C.): \_\_\_\_\_ Tariff Fraction (Fracción Arancelaria): \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Country: \_\_\_\_\_ Website: \_\_\_\_\_

Contact Name: : \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email Address: \_\_\_\_\_

Name of Company in charge of Billing: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Country: \_\_\_\_\_ Website: \_\_\_\_\_

Contact Name: : \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email Address: \_\_\_\_\_

Is there a situation under which the product can lead to potential hazard?  Yes  No

Is your company ISO 9001 certified?  Yes  No

Which ema accredited and CONAGUA recognized testing laboratory will you be utilizing to conduct the testing of your product(s)? \_\_\_\_\_

### SEE REVERSE SIDE

- This Box is For IAPMO R&T Use Only -

Application Number \_\_\_\_\_ Date Filed \_\_\_\_\_ Fee \_\_\_\_\_ Received by \_\_\_\_\_ File Number \_\_\_\_\_

## SURVEY:

How/Where did you hear about the IAPMO R&T Inc. Mexico Certification Program?

- Testing Lab
- Inspector
- Home Center
- Consultant
- Trade Show
- Post Card
- Phone Call
- Other: \_\_\_\_\_

**Why do you wish your products to be IAPMO R&T Inc. certified?**

- Recognition Mexico     Enhanced Quality     Acceptance by Inspection Authority  
 Prestige     Convenience     One Stop Service  
 Other: \_\_\_\_\_

**APPLICATION FOR LISTING POLICIES**

1. This is an application for listing.
2. Only one category of products (by standard) is permitted on one application.
3. Applicant agrees to furnish all necessary drawings, test data, and laboratory reports required by the IAPMO R&T.
4. The application must be complete (including signatures) and all steps of Sheet 1 completed. If, after an application is first received, a period of three months elapses without the steps of Sheet 1 being completed, the application/file will be closed.
5. The application fee and product evaluation fee are non-refundable. If a product is not accepted for listing, only the Directory Listing Fee shall be refunded upon written request of the applicant.
6. Membership in the IAPMO R&T is not necessary for product acceptance, nor will membership in any way facilitate or confer product acceptance.
7. This application will be accepted for processing only if accompanied by an executed copy of the IAPMO Listing Agreement.
8. The appropriate certification mark shall be displayed on the product to indicate that it has been listed by IAPMO R&T and the certification mark shall be visible on the product after installation. The only exception to this rule is for decorative or highly polished items, for items which are too small to accept the marking. In such cases, the certification mark and/or qualifying statements may be applied on the closest level of packaging to the product or other accompanying information. Listee shall contact IAPMO R&T to obtain IAPMO R&T's consent to permit such deviation.
9. The applicant declares under oath that the sample presented for testing is representative of the new product intended to be certified.

The undersigned certifies that he/she has read, understands, and, on behalf of applicant, approves and agrees to all the foregoing provisions of this application.

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

Print or type name and title: \_\_\_\_\_

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# 2a

## LISTING APPLICATION ATTACHMENT

### Inspection Location

The following information is required for the location where the finished products and/or processes will be available for inspection in accordance to the certification type being requested.

COMPANY NAME: \_\_\_\_\_ FILE NO. (If Known): \_\_\_\_\_

LOCATION NAME: \_\_\_\_\_

THIS LOCATION IS A  FACTORY;  WAREHOUSE;  BOTH

LOCATION STREET ADDRESS: \_\_\_\_\_

(City, State/ Prov., Postal Code, Country): \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ FAX # \_\_\_\_\_

HOURS & DAYS OF OPERATION: \_\_\_\_\_

ANTICIPATED PLANT CLOSINGS, SHUTDOWNS OR HOLIDAYS: \_\_\_\_\_

PERSON RESPONSIBLE FOR QA SYSTEM: \_\_\_\_\_

Is this plant ISO 9001 Certified?  No  Yes (If yes, registrar's name): \_\_\_\_\_

Can English be used as the language for all audits? Yes  No  If no, please specify preferred language: \_\_\_\_\_

SIGNATURE OF APPLICANT \_\_\_\_\_ DATE \_\_\_\_\_

PRINT OR TYPE NAME AND TITLE \_\_\_\_\_



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## LISTING AGREEMENT

THIS AGREEMENT, effective on the date of the last signature set forth below, is between IAPMO Research and Testing, Inc. (IAPMO R&T), a California non-profit corporation which lists products that have been found to meet applicable Mexican standards and the undersigned "Listee", a person or organization desiring to have a product or products accepted and listed by IAPMO R&T, 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 R&T and Listee for the product listed on the attached Application for Evaluation and Inspection by the IAPMO R&T. Listing is solely a representation of IAPMO R&T that the product specification, and sample submitted for examination, have been found to meet applicable Mexican standards. Listing does not carry any guarantee of product acceptance by local jurisdictions or authorities affiliated with IAPMO R&T. IAPMO R&T will make reasonable efforts to assist a listee in obtaining such acceptance. IAPMO R&T 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 R&T 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 R&T 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 Mexican standard.

### INTEREST GRANTED

2. IAPMO R&T 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 R&T. 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 R&T, and Listee claims no rights and shall claim no right therein, other than provided herein.

3. Acceptance of the product for listing by IAPMO R&T, 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 "G" to this Agreement on such products as are accepted by the IAPMO R&T 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 the period specified on the Certificate of Listing issued under the terms of this Agreement, and shall continue automatically for successive certification type terms unless this agreement is modified or changed. In the event that this agreement is proposed to be modified or changed, IAPMO R & T shall notify listee of its proposed changes in writing at least 90 days prior to the expiration of any initial or renewing period and it shall be a condition precedent to the continued effectiveness of the listing that listee execute and deliver to IAPMO R&T by the end of such initial or 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 "G" to the product or on other items, such as packaging or maintenance and/or installation sheets, as such other items may be approved by the IAPMO R&T, in accepting the product for listing. If Listee reasonably believes that the aesthetic appearance of the product may be affected by this requirement, then Listee shall contact IAPMO R&T to obtain IAPMO R&T's consent to permit Listee to affix the Certification Mark (s) (by means of a label or sticker to be purchased by Listee from IAPMO R&T) to the product in a location or on an area which is not exposed or visible to the consumer, and to other items such as packaging or maintenance and installation sheets. IAPMO R&T 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 R&T 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 R&T 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 R&T to obtain IAPMO R&T's consent to permit Listee to affix a sticker or label with such markings, symbols, codes or abbreviation to the product or to other items such as packaging or maintenance and installation sheets. IAPMO R&T 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 R&T 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 R&T if it does not bear the appropriate Certification Mark. A Listee may, however, apply the appropriate Certification Mark to a product which has not been previously listed, provide that the product has subsequently reviewed by the IAPMO R&T and has obtained the required listing. 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 R&T'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 "G" 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 R&T. Listee recognizes that from time to time IAPMO or IAPMO R&T 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 R&T, 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 R&T.

9. In no case shall Listee amend, alter, abridge or otherwise edit the Certificate of Listing or any other certification documents produced by IAPMO R&T 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 R&T. In no case shall Listee use its product certification in such a manner as to bring IAPMO R&T Inc. 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 R&T, their respective management, committees or boards of directors. Neither IAPMO nor IAPMO R&T 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 R&T. Listee may submit advertising copy and promotional material to IAPMO R&T for prior approval, and IAPMO R&T 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 R&T.

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 R&T for prior approval, as provided in Paragraph 9 and subject to the limitations set forth therein.

11. Listee agrees to promptly notify IAPMO R&T of any actual or suspected uses or infringements of any Certification Mark. IAPMO R&T 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 R&T.

12. In order to assist IAPMO R&T 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 R&T with its protection and enforcement of the Certification Marks, upon request by and at the cost of IAPMO R&T, Listee shall furnish to IAPMO R&T, copies of, any and all documents, not deemed confidential by Listee, necessary or desirable to evidence IAPMO's or IAPMO R&T's ownership of the Certification Marks and to verify the quantity of listed products manufactured and sold by Listee. IAPMO R&T 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 R&T for any purpose whatsoever.

13B. Listee shall promptly inform IAPMO R&T 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 R&T 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 recognized by IAPMO R&T, or as such standards may be changed, and as incorporated in the samples and documents submitted for evaluation and inspection by the IAPMO R&T Listee shall make no substantial change in material, manufacturing process, marking or design of the product without prior written approval of the IAPMO R&T. 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). Listee acknowledges 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 R&T which is not authorized by IAPMO R&T 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 recognized by IAPMO R&T, IAPMO R&T will notify Listee of the change or changes in writing. With this notification, IAPMO R&T will advise Listee of any need for supplementary testing of the listed products and 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) submit to IAPMO R&T the test reports documenting successful completion of the supplementary testing. IAPMO R&T shall use good faith efforts to accommodate Listee’s needs and requirements in this regard. Notwithstanding the foregoing, however, Listee acknowledges and agrees that it is the Listee’s responsibility to fully comply with all standards applicable to Listee’s listed products.

## QUALITY CONTROL

16. Listee should establish, maintain and use a 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 R&T, 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 R&T or IAPMO to liability as a result of the use or operation of such products. Listee shall make the records available to IAPMO R&T 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 R&T pursuant to Paragraph 18, Listee shall advise IAPMO

R&T in writing of the location of such complaint record. Listee shall provide the complaint record to IAPMO R&T by whatever means selected by IAPMO R&T. The Listee shall make all arrangements necessary and required of Listee, as indicated by IAPMO R&T to Listee, in order to facilitate IAPMO R&T’s listing program, the investigation of complaints and the participation of observers whose presence is required in the sole determination of IAPMO R&T.

## MANUFACTURING LOCATIONS

17. Listee shall promptly furnish to IAPMO R&T, 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, and each location where the listed product is warehoused or stored by or on behalf of Listee. Listee shall also provide the name and telephone number of a contact person for each such plant or storage 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 and storage 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 warehousemen, 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.

## CONTINUOUS COMPLIANCE-INSPECTIONS

18. Listee consents to the review of listee’s products by IAPMO R&T or its subcontractor and Listee shall permit IAPMO R&T or its subcontractor to make up to four (4) announced or unannounced continuous compliance inspections of; (a) each of Listee’s domestic and foreign manufacturing or storage 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 R&T reasonably believes in good faith that Listee is not in compliance with the terms and conditions of this Listing Agreement, IAPMO R&T 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 R&T maintains the right to make inspections to any domestic or foreign manufacturing or storage facilities, which are owned or operated by Listee, except where IAPMO R&T is precluded from doing so by restrictions contained in governmental regulations (where IAPMO R&T has been notified and is reasonably satisfied as to the validity of such governmental regulation). Further, Listee shall use its best efforts in good faith to obtain all consents or approvals necessary to permit IAPMO R&T to inspect any domestic or foreign manufacturing or storage facilities which are owned and operated by persons or entities other than Listee, except where IAPMO R&T is precluded from doing so by restrictions contained in governmental regulations. In the event that Listee, after such efforts, fails to obtain such consents or approvals, then Listee shall promptly notify IAPMO R&T in writing. IAPMO R&T shall meet with representatives of Listee to attempt to mutually agree upon the course of action to be taken in respect of such third party facilities, including, without limitation, attempting further negotiations with the third party in an

attempt to obtain its consent to or approval of the inspection of its facilities by IAPMO R&T, and discussing Listee's alternatives to Listee's use of such third party's facilities. Neither Listee nor any third party who has consented to or approved of the inspection of its facilities by IAPMO R&T shall hamper IAPMO R&T'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, 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 R&T 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 R&T to grant immediate access to the inspector, or to comply with the other requirements of this Paragraph 18, may constitute grounds for delisting.

#### **CONTINUOUS COMPLIANCE-FEES**

19. Listee shall pay to IAPMO R&T an inspection fee for any inspection conducted under the provisions of Paragraph 18 hereof. All costs of inspection, including laboratory fees if outside laboratory testing is required by IAPMO R&T, 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 who has consented to or approved of the inspection of its facilities by IAPMO R&T during the operation hours which are on file at IAPMO R&T, Listee shall pay to IAPMO R&T the basic inspection fee. All such fees will be in accordance with the then-current Schedule of Fees published by IAPMO R&T from time to time, and will be paid by Listee within forty-five (45) days of the invoice from IAPMO R&T. Testing laboratories will be selected by Listee from a list of testing laboratories listed by IAPMO R&T (the "Approved Laboratory List"), which Approved Laboratory List will be provided to Listee by IAPMO R&T.

#### **DELISTING/DECERTIFICATION**

20. In the event (i) an inspection or (ii) a subsequent standard interpretation or standard revision; or (iii) subsequent testing reveals that a listed product manufactured, sold or being held for distribution by listee fails to meet IAPMO R&T's listing criteria, then Listee shall (a) immediately cease use of the Certification Marks on any non-complying product, and (b) immediately (or within a reasonable time agreed to by IAPMO R&T) correct any and all items of non-compliance and submit to IAPMO R&T in writing within fifteen (15) 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 R&T and, provided, further, that the fifteen (15) 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 R&T that all items of non-compliance have been corrected, Listee shall permit

IAPMO R&T 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 R&T'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 R&T with a certificate in a form reasonably acceptable to IAPMO R&T 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 R&T'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 R&T, 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 R&T, (E) destroying the returned products and/or (F) distinguishing all further inventory and/or production of such products from the returned or destroyed products.

21. In the event an inspection reveals that an unlisted product manufactured, sold or being held for distribution by Listee, bears one of IAPMO R&T's Certification Marks, then Listee shall (a) immediately cease use of the Certification Marks from all such unlisted products, and (b) 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 R&T 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 R&T 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 R&T, including, but not limited to, the action described in items (A) through (F) of Paragraph 20.

22. Upon request by IAPMO R&T, Listee shall permit IAPMO R&T 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 R&T 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 R&T 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 R&T discovers either (x) listed products which fail to meet the criteria for listing and which bear one of the Certification Marks, then IAPMO R&T shall have the right to conduct further inspections of the remaining locations contained on the Customer Lists. Listee shall reimburse IAPMO R&T in accordance with the Schedule of Fees 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 R&T'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 R&T under circumstances where Listee requests such a decision in writing, and/or (b) any appropriate test of samples by one of the independent testing laboratories on the Laboratory List. Deliberations should be concluded within fifteen (15) days of notification. During the time of such deliberation by IAPMO R&T and/or such test, Listee shall not ship such product with a Certification Mark thereon without the express written permission of IAPMO R&T. Should IAPMO R&T concur with the inspector's finding, or should the product fail such independent test, Listee may contest the matter to the IAPMO R&T in the manner set forth in Paragraph 25.

24. In the event Listee ceases all manufacturing and storage of listed product at one of Listee's manufacturing or storage locations, or if one of Listee's manufacturing or storage locations closes or moves to a new location, than Listee will either (a) permit IAPMO R&T to enter Listee's manufacturing and storage facilities in order to verify that manufacturing and storage of the products bearing the Certification Marks has ceased, or that the plant has moved or has been closed, or (b) promptly provide IAPMO R&T with a certification which states that manufacturing and storage 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 R&T under this Paragraph 24 in accordance with IAPMO R&T's Schedule of Fees.

#### **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 R&T may (in its sole and absolute discretion and in addition to any other remedies available to IAPMO R&T) (a) deny the application for a product listing (under circumstances where the product is not yet listed); or (b) delist the product or deny renewal of a product listing (under circumstances where the product is already listed) and terminate the license granted under this Agreement, including by way of example and not limitation the failure of any listed product to meet the applicable listing criteria as a result of a subsequent standard change or standard interpretation. Further, IAPMO R&T may (in its sole and absolute discretion and in addition to any other remedies available to IAPMO R&T) immediately delist any and all product and terminate the license granted hereunder upon any continuous failure of any listed product to meet IAPMO R&T'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 change or standard interpretation. In the event of any such failure or breach, Listee shall be notified by IAPMO R&T 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, the date and time of the meeting of the IAPMO R&T 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 R&T 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 affirmance by the IAPMO R&T 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, 31 and 32 hereof shall immediately apply.

26. IAPMO R&T shall have the right to notify its membership and the general public of the delisting of any product. If the cause of any failure may reasonably affect other listed products of Listee, IAPMO R&T may also require the inspection and testing of such other products, or proof satisfactory to IAPMO R&T 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 R&T may delist such other products. In addition to the delisting, IAPMO R&T 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 R&T 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 of IAPMO R&T 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 R&T's Rules on Appeal from Decisions of Committees of IAPMO Research and Testing, Inc., copies of which are available free of charge from IAPMO R&T upon request.

#### **RENEWAL**

28. Prior to the expiration of a product listing, Listee shall file an Application for Evaluation and Inspection (Renewal) of the product's listing with IAPMO R&T and a re-executed Listing Agreement, if revisions have been made to the agreement in force at the time of renewal, each on forms provided by IAPMO R&T. IAPMO R&T will attempt to notify Listee prior to the expiration date of the listing that the listing is due for renewal. However, calendaring renewal of a product listing is the sole and exclusive responsibility of Listee. If a complete application to renew is not received prior to the date of expiration, or a request by Listee for additional time to file has not been granted, the listing will automatically expire on the expiration date without notice to Listee. IAPMO R&T shall have the right to notify its membership and the general public of any expiration of the listing of any product.

29. By re-executing the Listing Agreement and submission thereof as a renewal, Listee certifies that each substantial change or modification of whatever kind, type or manner in or to the product, since the previous application, has been accepted by IAPMO R&T in accordance with Paragraph 14 hereof, and that any proposed substantial change or modification is described in detail in a writing attached to the renewal application. As used in the Paragraph 29, the phrase "substantial change or modification" shall have the same meaning as the term "substantial change" set forth in Paragraph 14 hereof. Listee understands that new drawings, tests and product samples may be required by IAPMO R&T as a condition of renewal if there is any such substantial changes or modification since the last acceptance. In the absence of a writing attached to the renewal application and describing all such substantial changes or modifications, Listee certifies by re-executing the Listing Agreement that no substantial change or modification whatsoever has been made to the product since its last acceptance by IAPMO R&T. If any

substantial change or modifications found to have been made to the product during the period of acceptance has not been submitted to IAPMO R&T for prior approval, then IAPMO R&T shall have the right to immediately delist the product.

## **TERMINATION**

30. In addition to the grounds and procedures for delisting and termination of the license to use the Certification Marks stated in Paragraphs 18, 25, 28, 29 and 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 R&T shall be paid by Listee before a listing is granted or before renewal of a listing is granted. The non-payment of any fee shall be grounds for delisting.

## **REMOVAL OF CERTIFICATION MARKS**

31. Within six (6) months of 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 R&T, (b) to destroy all such property and merchandise from which any of the Certification Marks or reference to IAPMO and/or IAPMO R&T have not been removed, and (c) not to thereafter employ any Certification Marks or any confusingly similar words or design in any manner whatsoever. Notwithstanding the foregoing, however, and only with respect to products for which a listing has expired (as opposed to products which have been delisted or the listing for which has been terminated by IAPMO R&T prior to the expiration thereof), Listee shall have the right to sell and distribute products already bearing a Certification Mark which have been previously found by IAPMO R&T to be in compliance with IAPMO R&T's listing criteria at the time the Certification Mark was applied properly to such product. Listee's rights under the immediately preceding sentence, however, shall be subject to all of the terms and conditions of this Agreement, and this Agreement shall continue in full force and effect until Listee has completely sold and distributed all such products.

32. In the event the product is delisted, IAPMO R&T shall have the right to enter all domestic and foreign manufacturing and storage 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 R&T 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 R&T 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 in accordance with IAPMO R&T's Schedule of Fees. Listee acknowledges that (a) the distribution or sale of any product bearing a Certification Mark of IAPMO R&T when such product is not currently listed by IAPMO R&T; or (b) any representation by Listee that any such unlisted product is listed by IAPMO R&T, constitutes an infringement of IAPMO R&T's rights in its Certification Marks and constitutes a violation of applicable state and federal trademark laws.

## **CONFIDENTIALITY**

33. IAPMO R&T 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.

34. IAPMO R&T shall maintain the Data in strictest confidence and shall not disclose the Data (a) to any person, entity or organization outside of IAPMO R&T 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 R&T 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 R&T 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 R&T shall strictly follow any and all court orders or other legal process required or mandated with respect to disclosure of the Data.

35. For purposes of this Agreement, the term "Data" does not include any information which (a) is generally available to the public other than as a result of a disclosure by IAPMO R&T, (b) was available to IAPMO R&T on a non-confidential basis prior to its disclosure to IAPMO R&T by Listee, or (c) is available to IAPMO R&T 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 R&T by any contractual, legal or fiduciary obligation. All documentation, reports and information within the file maintained by IAPMO R&T for Listee that does not fall within the definition of Data herein above shall be the sole property of IAPMO R&T. All documentation, correspondence, reports and information within the file maintained by IAPMO R&T for Listee that does not fall within the definition of Data (as defined in Paragraphs 33-35) is the sole property of IAPMO R&T.

## **GENERAL PROVISIONS**

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

37. Listee hereby waives any claim or cause of action against IAPMO R&T based on negligence arising out of any actions or failures to act by IAPMO R&T in granting, denying or revoking any listings, except claims based on (a) gross negligence or lack of good faith by IAPMO R&T, and (b) a breach of the provisions of Paragraphs 33, 34 or 35 hereof.

38. In no event shall IAPMO R&T 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.

39. 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 R&T's rights therein or to IAPMO R&T by Listee's use of the Certification Marks. Listee agrees to indemnify, defend and hold IAPMO R&T 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 R&T's listing program, including but not limited to statements by Listee to third parties relating to Listee's participation in IAPMO R&T'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 R&T or commercially standard in the Industry.

40. 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.

41. 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

42. 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, 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.

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

44. 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**

**IAPMO RESEARCH AND TESTING, INC.  
(For Association use only)**

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

By: \_\_\_\_\_

Contact: \_\_\_\_\_

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

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

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

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

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

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