

**AGREEMENT
BETWEEN
THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
OF THE DEPARTMENT OF COMMERCE OF THE UNITED STATES OF AMERICA
AND
THE SECRETARY OF ECONOMY,
THE NATIONAL COUNCIL OF SCIENCE AND TECHNOLOGY, AND
THE NATIONAL CENTER FOR METROLOGY OF THE UNITED MEXICAN STATES
CONCERNING TECHNICAL COOPERATION IN CHEMICAL, PHYSICAL, AND
ENGINEERING MEASUREMENT SCIENCES, STANDARDS RELATED ACTIVITIES
AND EXCHANGE OF TECHNICAL INFORMATION AND EXPERIENCES**

The National Institute of Standards and Technology (NIST) and The Secretary of Economy (SE), The National Council of Science and Technology (CONACYT), and The National Center for Metrology (CENAM) hereinafter referred to as the "Parties";

MOTIVATED by the desire of achieving a technological and scientific cooperation;

DECLARING their decision to provide a mechanism for scientific and technological cooperation in chemical, physical, and engineering measurement sciences, standards related activities, and exchange of technical information and experiences;

TAKING INTO CONSIDERATION the U.S. - Mexico Agreement for Scientific and Technological Cooperation celebrated in Washington D.C. in June 15, 1972, as amended thereafter in August 10 and September 22, 1994.

The Parties have agreed to the following:

**ARTICLE I.
Scope and Objectives**

The purpose of this Agreement is to provide a framework for the exchange of scientific and technical knowledge and the improvement of scientific and technical capabilities of the Parties, with respect to chemistry, physics, and engineering measurement sciences, standards related activities, and exchange of technical information and experience, and programs that support industrial needs.

ARTICLE II. Cooperative Activities

Forms of cooperative activities under this Agreement may consist of exchanges of technical information and experiences, reference data and materials, calibrations, and standards related activities; exchange visits; cooperative research between scientists of the Parties engaged in research disciplines of mutual interest within the scope of programs of the Parties; technical cooperation; and other forms of cooperation as are mutually agreed upon. Funding and personnel support shall be mutually agreed upon in writing by the Parties.

- A. Specific areas of cooperation with SE may include the following:
1. Assignments of guest scientists to the Parties' facilities for periods of not more than 2 consecutive calendar years.
 2. Technical stays by SE-sponsored scientists, engineers and technicians at NIST, under the NIST Guest Researcher Program. The general terms for this program are specified in Appendix I to this Agreement.
 3. Exchange of publications.
 4. Technical cooperation from NIST experts to Mexico to assist the General Bureau of Standards (DGN) in revising the current national scheme of legal and industrial metrology and standard related activities, as needed.
 5. Cooperation in standards related activities and serving as the point of contact and liaison in each Party's country.
 6. Participation in seminars, workshops and training courses in each other's countries according to the needs of the receiving country.
 7. Cooperation in international standards related activities and organizations.
 8. Cooperation and assistance for programs related to supporting industrial needs, and
 9. Other activities as may be agreed.

B. Specific areas of cooperation with CONACYT may include the following:

1. Assignments of guest scientists to the Parties' facilities for periods of not more than 2 consecutive calendar years.
2. Research and technical stays by CONACYT-sponsored scientists and engineers at NIST, under the NIST Guest Researcher Program. The general terms for this program are specified in Appendix I to this Agreement.
3. Participation in seminars, workshops and training courses in each other's laboratories.
4. Exchange of publications.
5. Participation of other related instances, in particular the Public Research Centers coordinated by CONACYT.
6. Other activities as may be agreed.

C. Specific areas of cooperation with CENAM may include the following:

1. Assignments of guest scientists to the Parties' laboratories for periods of not more than 2 consecutive calendar years.
2. Research stays by CENAM scientists and engineers at NIST, under the NIST Guest Researcher Program. The general terms for this program are specified in Appendix I to this Agreement.
3. Participation in seminars, workshops and training courses in each other's laboratories.
4. Exchange of publications.
5. Cooperative research projects carried out partially in each institution, including cooperation in the production of standard reference data.
6. Mutual development and exchange of certified reference materials.
7. Comparisons of national measurement standards in support of the Mutual Recognition Arrangement (MRA) promoted by the International Committee of Weights and Measures (CIPM).
8. Calibrations of special instruments or standards, in cases where either Party has unique capabilities.

9. Technical cooperation between NIST experts and Mexican counterparts to improve the current national schemes of scientific and industrial metrology, and to develop new metrological activities.
 10. Technical cooperation in design and construction of new metrology laboratories.
 11. Temporary loan of equipment, when available, for the implementation of specific activities, and
 12. Other activities as may be agreed by the Parties.
- D. The specific areas of cooperation identified for SE, CONACYT and CENAM, respectively, in Sections A, B, and C of this Article do not preclude any particular Mexican counterpart from participation in the area(s) identified.

ARTICLE III. Source of Funding

Activities under this Agreement are subject to the availability of funds and personnel available to the Parties. Under the present Agreement, the receiving-side will pay for facilities, supplies, and other research costs except for those which are required only to meet a Guest Researcher's special needs. The sending-side will continue normal support of the exchange scientists, including base salary and fringe benefits. In most cases, any subsistence allowance provided to compensate for differential costs of living will be provided by the sending-side. However, the receiving-side may, based on its availability of funds, provide a portion or all of the subsistence allowance if doing otherwise would prevent the exchange from occurring.

ARTICLE IV. Intellectual Property and Business Confidential Information

The protection and distribution of intellectual property created or furnished in the course of all cooperative activities and business confidential information obtained or furnished pursuant to this Agreement shall be treated in accordance with the provisions of Annex I, which shall form an integral part of the Agreement.

**ARTICLE V.
Disclaimer**

Information transmitted by one Party to the other Party under this Agreement shall be accurate to the best knowledge and belief of the transmitting Party, but the transmitting Party does not warrant the suitability of the information transmitted for any particular use or application by the receiving Party or any third Party.

**ARTICLE VI.
Planning and Review of Activities**

The Parties will name representatives for each participating agency who, at times mutually established by the Parties and at a minimum once a year, will plan and review activities under this Agreement and use their best abilities to mitigate disputes, if any.

The point of contact for implementation of these activities for SE shall be the Office of the Director General of Standards, for CONACYT shall be the Office of the Deputy Director for Technological Development and Innovation Business, for CENAM shall be the Office of the Director for Technology Services and for NIST shall be the International and Academic Affairs Office (IAAO), or other offices notified in writing.

**ARTICLE VII.
Project Annexes**

Any new activities carried out under this Agreement shall be agreed upon by the Parties in writing and shall be subject to further arrangements in accordance with the laws and procedures of the United States and Mexico. Whenever more than the exchange of technical information or exchange visits of individuals or promotion activities is planned to take place, such activity shall be described in an Annex to this Agreement which shall set forth as appropriate to the activity, a work plan, staffing requirements, cost estimates, funding source, and other undertakings, obligations, or conditions not included in this Agreement. In case of any inconsistency between the

terms of this Agreement and the terms of an Annex hereto, the terms of this Agreement shall be - prevailing.

**ARTICLE VIII.
Labor Relations**

The personnel commissioned by each Party for the execution of the cooperation activities derived from the present Agreement shall continue to be directed by and attached to the his or her home organization. No labor relations will be created on the receiving Party, which in no case will be considered as a substitute employer.

**ARTICLE IX.
Insurance**

The Parties will ensure that their personnel participating in cooperation activities are covered by health, personal damage and life insurance.

**ARTICLE X.
Entry into Force and Termination**

This Agreement shall enter into force upon signature by NIST, CONACYT, SE and CENAM and remain in force for ten (10) years, and may be extended upon written agreement of the Parties, unless terminated earlier by either Party upon ninety (90) days' written notice to the other Party.

This Agreement may be modified by written agreement of the Parties, specifying the date where such modifications shall enter into force.

The termination of this Agreement shall not affect the validity or duration of projects under this Agreement that is initiated prior to such termination, unless the Parties decide otherwise.

ANNEX I

Intellectual Property Rights

The following provisions shall be applied without prejudice to the national legislation of the corresponding country and to Applicable International Agreements.

I. General Obligation

Rights to intellectual property created or furnished under this Agreement and relevant implementing arrangements shall be allocated as provided in this Annex.

II. Scope

- A. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees.
- B. For purposes of this Agreement, "intellectual property" shall mean the subject matter listed in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967 and may include other subject matter as agreed by the Parties.
- C. Each Party shall ensure, through contracts or other legal means with its own participants, if necessary, that the other Party can obtain the rights to intellectual property allocated in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.
- D. Except as otherwise provided in this Agreement, disputes concerning intellectual property arising under this Agreement shall be resolved through discussions between the concerned participating institutions, or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) shall govern.
- E. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

III. Allocation of Rights

- A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.
- B. Rights to all forms of intellectual property, other than those rights described in paragraph III. A. above shall be allocated as follows:
 - (1) Visiting researchers shall receive rights, awards, bonuses and royalties in accordance with the policies of the host institution.
 - (2)
 - (a) Any intellectual property created by persons employed or sponsored by one Party under cooperative activities other than those covered by paragraph III. (B) (1) shall be owned by that Party. Intellectual property created by persons employed or sponsored by both Parties shall be jointly owned by the Parties. In addition, each creator shall be entitled to awards, bonuses and royalties in accordance with the policies of the institution employing or sponsoring that person.
 - (b) Unless otherwise agreed in an implementing or other arrangement, each Party shall have within its territory a right to exploit or license intellectual property created in the course of the cooperative activities.
 - (c) The rights of a Party outside its territory shall be determined by mutual agreement considering the relative contributions of the Parties and their participants to the cooperative activities, the degree of commitment in obtaining legal protection and licensing of the intellectual property and such other factors deemed appropriate.
 - (d) Notwithstanding paragraphs III. B (2) (a) and (b) above, if a particular project has led to the creation of intellectual property protected by the laws of one Party but not the other, the Party whose laws provide for this type of protection shall be entitled to all rights to exploit or license intellectual property worldwide although creators of intellectual property shall nonetheless be entitled to awards, bonuses and royalties as provided in paragraph III. B (2) (a).
 - (e) For each invention made under any cooperative activity, the Party employing or sponsoring the inventor(s) shall disclose the inventions promptly to the other Party together with any documentation and information necessary to enable the other Party to establish any rights to which it may be entitled. Either Party may ask the other Party in

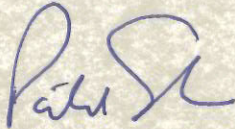
writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights in the invention. Unless otherwise agreed in writing, the delay shall not exceed a period of six months from the date of disclosure by the inventing Party to the other Party.

IV. Business Confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under this Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practices. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, and the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

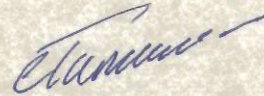
Done at the City of Querétaro, Querétaro State, Mexico; on the 27th of October, 2010, in quadruplicate, with two copies in the English language and two copies in the Spanish language, each text being equally authentic.

**FOR THE NATIONAL INSTITUTE OF
STANDARDS AND TECHNOLOGY OF
THE DEPARTMENT OF COMMERCE OF
THE UNITED STATES OF AMERICA**



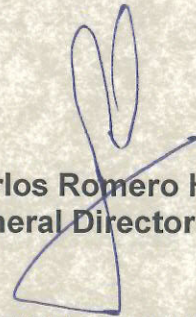
**Patrick D. Gallagher
Director**

**FOR THE SECRETARY OF ECONOMY
OF THE UNITED MEXICAN STATES**



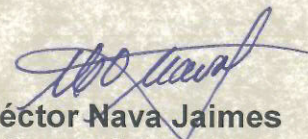
**Christian Turégano Roldán
Director of the
General Bureau of Standards**

**FOR THE NATIONAL COUNCIL OF
SCIENCE AND TECHNOLOGY OF THE
UNITED MEXICAN STATES**



**Juan Carlos Romero Hicks
General Director**

**FOR THE NATIONAL CENTER FOR
METROLOGY OF THE UNITED
MEXICAN STATES**



**Héctor Nava Jaimes
General Director**

APPENDIX I

**TO THE COOPERATION AGREEMENT BETWEEN
THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
OF THE DEPARTMENT OF COMMERCE OF THE UNITED STATES OF AMERICA
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**SPECIFIC COLLABORATION FOR THE GUEST RESEARCHER PROGRAM AT THE
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY**

The National Institute of Standards and Technology of the Department of Commerce of the United States of America, hereinafter referred to as "NIST", commits itself to supervise the Guest Researcher Program relating to the measurement science and technology areas having the objectives and comprising the work described in a Guest Researcher Program Authorization Letter to be prepared by NIST and the Sponsors (SE, CONACYT and CENAM) for each project. Each such Program Authorization Letter shall reference this Appendix and shall be countersigned by the Guest Researcher and by the designated NIST supervisor in accordance with Item 2) below.

NIST activities which complement each program shall be specified in each Guest Researcher Program Authorization Letter.

The Sponsors commit themselves only in terms of liabilities incurred individually.

The sponsors and NIST agree that:

- 1) The Program shall be conducted on the schedule specified in each instance, subject to extension by mutual agreement of the Parties hereto, and to the provisions of Items 3), 5), and 6) below.
- 2) NIST shall be the scientific supervising agency for the Guest Researcher Programs. A NIST supervisor shall be designated for each project.
- 3) The scientific and technical project of the Guest Researchers shall be reviewed at least each semester by the Parties in the present Agreement through coordinating areas and more frequently if deemed advisable by either Party. Such review shall precede approval of the work program for each succeeding period.

The Sponsors shall designate an individual to represent the Sponsors in these reviews.

- 4) The Sponsors shall designate the individual(s) to serve as Guest Researcher(s) for each project. The provisions applying to Guest Researchers as this term is used in the following items of this Agreement shall also apply to members of their supporting staff while serving at NIST as employees of the Sponsors.
- 5) While it shall be the privilege and responsibility of the Sponsors to select the Guest Researchers, they shall also be acceptable to NIST. The Sponsors and NIST each reserve the right to terminate the association with this Program of any individual Guest Researcher by providing notice in writing to the other Party.
- 6) The Sponsors and NIST each reserve the right to terminate this Program at any time within thirty (30) days notice in writing to the other Party.
- 7) Remuneration to the Guest Researcher(s) for travel and related expenditures shall be provided directly by the Sponsors chosen in a mutual way.
- 8) The Sponsors shall reimburse NIST for the cost of special supplies, special material, computation, technician assistance, and/or other special services provided by NIST to the Lead Researcher or Leading Researchers, in connection with the program covered by each Guest Researcher Program Authorization Letter in the terms thereof. Sponsors shall reimburse NIST for any subsistence allowance provided to researchers to offset differential costs of living, if and when the allowance has been previously authorized by the sponsors as long as it is allowed by their own regulation norms. When a strong case can be made that the Sponsors are unable to provide any funds for the subsistence allowance, NIST upon prior consultation with the Sponsors may provide, depending upon the availability of funds, all or part of the allowance.

Charges for special supplies and/or services shall require the approval of the Guest Researcher and the NIST Supervisor for each Program as designated in the pertinent Authorization Letter. Such charges shall not exceed the amount specified for each specific program. Upon completion of each program, outstanding charges shall be billed to the Sponsor to cover such cost.

All equipment, materials, instruments, and supplies purchased during the term of this Agreement, shall be considered the property of the Party with whose resources they were purchased. Special equipment and instruments obtained by the Sponsors from sources external to NIST and provided by the Sponsors to NIST for use in connection with the programs covered by this Agreement will be returned at the Sponsor's expense and risk, as soon as practicable and after termination of this Agreement, or upon written request after termination of the

specific project. The Sponsors agree to assume full responsibility for maintenance of such equipment and instruments.

- 9) Guest Researchers shall pursue their activities at NIST on the work schedule that applies to NIST employees unless otherwise specified in the Guest Researcher Program Authorization Letter, and under the government security and conduct regulations that apply to NIST employees. Guest Researchers shall conform to the requirements of the Department of Commerce Administrative Orders 202-735 and 202-735-A, as amended, hereby made part of this Agreement, to the extent that these Orders prohibit private business activity or interest incompatible with the best interests of the Department.
- 10) The allocation of rights to Intellectual Property created by Guest Researchers and the treatment of Confidential Information shall be subject to and in accordance with Annex I, of the Cooperation Agreement to which this Appendix is attached.
- 11) Guest Researchers are not employees of NIST. The Sponsors may be held accountable for loss of or damage to U.S. Government property (other than that resulting from normal wear and tear) occasioned by the Guest Researchers. The Sponsors and NIST agree to supply all records which may have a bearing on any claim and to cooperate in any reasonable way toward the disposition of any claim which may arise hereunder.
- 12) Institutions related to the activity of CONACYT will be able to participate in the execution of the present program, in particular the Public Research Centers coordinated by this Party.