

DISTRIBUTION OF NIST STANDARD REFERENCE MATERIALS NON-EXCLUSIVE LIMITED DISTRIBUTION AGREEMENT

THIS AGREEMENT is by and between _____ and the specifically identified subsidiary(ies) and/or affiliate(s) listed in Appendix A, (hereinafter collectively referred to as DISTRIBUTOR) and the National Institute of Standards and Technology (NIST) to distribute certain NIST Standard Reference Materials (SRMs). For the purposes of this Agreement (AGREEMENT), it is understood that SRMs may include, and will be selected by NIST from, the certified series of NIST SRMs and the series of NIST Reference Materials (NIST RMs).

Based on NIST's assessment of the DISTRIBUTOR's capabilities, facilities, and accreditations, NIST will designate specific NIST SRMs that can be sold by DISTRIBUTOR under this AGREEMENT. The initial list of these SRMs is in Appendix B, incorporated by reference, and is subject to revision by NIST.

1. Obligations of NIST

Upon execution of this AGREEMENT, NIST will:

- 1.1. Accept orders from DISTRIBUTOR and execute the sale at then-current NIST prices;
- 1.2. Ship SRMs, as listed by NIST as available for sale, to DISTRIBUTOR's nominated shipment point according to NIST standard performance specification for that shipping point;
- 1.3. Use reasonable efforts to advise DISTRIBUTOR of any sold out or discontinued SRMs;
- 1.4. Advise DISTRIBUTOR of SRMs that are to be discontinued when sold out or of SRMs that are placed on a sales restriction;
- 1.5. Supply DISTRIBUTOR with access to inventory levels of current SRMs;
- 1.6. Notify DISTRIBUTOR by SRM number and lot number if appropriate of any SRM being recalled and to accept return or disposal;
- 1.7. Provide DISTRIBUTOR with copies of current and any subsequent revisions to SRM Certificates of Analysis, Reports of Investigation, and Safety Data Sheets (hereinafter collectively referred to as DOCUMENTATION) in the English language;
- 1.8. Include the name and contact details of DISTRIBUTOR in the NIST SRM Catalogue, both print and electronic forms, and indicate therein those SRMs DISTRIBUTOR is authorized to distribute under this AGREEMENT;
- 1.9. Provide the same level of technical support for end users of SRMs sold by DISTRIBUTOR as is provided by NIST to its direct end users;
- 1.10. Provide DISTRIBUTOR with business and marketing information to advance the sales of NIST SRMs in the DISTRIBUTOR's market.

2. Obligations of DISTRIBUTOR

DISTRIBUTOR agrees to the following conditions, obligations and understandings:

- 2.1. DISTRIBUTOR shall be free to set the retail price of SRMs sold by DISTRIBUTOR.
- 2.2. DISTRIBUTOR shall ensure that inward and outward transport of SRMs will comply with all domestic and international shipping regulations as well as the requirements of the U.S. Department of Commerce and NIST, particularly with respect to hazardous goods and cold temperature shipping.
- 2.3. DISTRIBUTOR shall comply with United States export laws and regulations, including, but not limited to, the International Traffic in Arms Regulations and the Department of Commerce Export Regulations.
- 2.4. DISTRIBUTOR shall use reasonable efforts to promote and increase sales of the SRMs covered by the AGREEMENT, as detailed in Paragraph 4, Promotion and Publicity.
- 2.5. DISTRIBUTOR shall maintain such stock of SRMs as DISTRIBUTOR deems necessary to meet market needs. Such storage shall comply with the requirements of Paragraph 3, Storage and Distribution of SRMs.
- 2.6. DISTRIBUTOR shall sell only those SRMs that are authorized for sale by NIST and sold to DISTRIBUTOR by NIST under this AGREEMENT.
 - 2.6.1. DISTRIBUTOR may continue to offer for sale and sell SRMs designated by NIST as discontinued when sold out until DISTRIBUTOR's stock is depleted.
 - 2.6.2. DISTRIBUTOR shall immediately cease offering for sale or selling SRMs designated by NIST as on restriction until advised otherwise in writing by NIST.
- 2.7. DISTRIBUTOR shall permit NIST to visit and inspect, during DISTRIBUTOR's normal business hours, with five (5) day's advance notice to DISTRIBUTOR, DISTRIBUTOR's place(s) of business, to assess DISTRIBUTOR's conformance to quality assurance practices in accordance with ISO Guide 34 and any specific instructions on the certificates of NIST SRMs stored by DISTRIBUTOR.
 - 2.7.1. For any such visit by NIST, DISTRIBUTOR shall cooperate fully with NIST, including providing NIST unrestricted access to any and all SRMs in possession of DISTRIBUTOR, as well as access to relevant and knowledgeable personnel of DISTRIBUTOR.
 - 2.7.2. The cost to NIST of any such NIST visit will be borne by NIST; however, NIST shall not be responsible for any costs incurred by DISTRIBUTOR for such NIST visit.
 - 2.7.3. Following an assessment, if NIST determines that DISTRIBUTOR is in non-compliance with the provisions of ISO Guide 34 or specific instructions on the certificates of NIST SRMs under this AGREEMENT, NIST will provide written notice to DISTRIBUTOR of the identified

findings and required corrective action. DISTRIBUTOR shall promptly resolve all identified findings to NIST's satisfaction.

- 2.8. DISTRIBUTOR shall immediately inform NIST Office of Reference Materials (ORM) of any complaint or concerns expressed by purchasers of SRMs.
- 2.9. DISTRIBUTOR shall be responsible to ensure that its named subsidiaries and affiliates comply with this AGREEMENT.
- 2.10. DISTRIBUTOR shall notify NIST with any changes to the list of named subsidiaries and affiliates within fourteen (14) days of any such change.

3. Storage and Distribution of SRMs

- 3.1. DISTRIBUTOR must hold a valid ISO Guide 34 accreditation as a producer of Certified Reference Materials. Accreditation shall be from a body that is a member of the International Laboratory Accreditation Cooperation (ILAC).
 - 3.1.1. Accreditation certificate and scope shall be attached as Appendix C to this AGREEMENT.
- 3.2. DISTRIBUTOR agrees that the scope of the accreditation must include all aspects associated with the proper storage and handling of certified reference materials, and in particular must include:
 - Sales activities including dealing with update of Certificates and introduction of new products;
 - Dealing with Non-Conformities and Complaints;
 - Audits;
 - Staff Training.
- 3.3. For SRMs listed in Appendix B, the storage and handling environment provided by DISTRIBUTOR must conform to, the relevant parts of ISO Guide 34 and in particular:
 - 3.3.1. Provide secure and appropriate storage facilities at room temperature, +4C, -20C and -70C as per requirements for each SRM;
 - 3.3.2. Implement and maintain a refrigeration equipment monitoring and alarm system;
 - 3.3.3. Record the accuracy and precision of storage temperatures;
 - 3.3.4. Report any significant excursion from the specified temperature to NIST.
- 3.4. Where shipment to final end-user requires the use of external facilities that are not themselves accredited in accordance with the relevant parts of DISTRIBUTOR's ISO Guide 34 accreditation, then DISTRIBUTOR shall ensure actual conformance of such external facilities through appropriate and periodic audits, and shall provide NIST with the results of such audits by DISTRIBUTOR.
- 3.5. DISTRIBUTOR agrees to provide secure and appropriate storage facilities for hazardous materials in full conformity with all local environmental, health and safety regulations;

- 3.6. DISTRIBUTOR agrees to have in place a data system that allows a full historical audit trail for every SRM unit to ensure that if NIST needs to contact the end user this can be done promptly;
- 3.7. DISTRIBUTOR agrees to neither alter, obscure, remove or conceal or otherwise interfere with labels applied to the SRMs by NIST, other than to add supplementary labels indicating “Supplied by (DISTRIBUTOR Name).”
- 3.8. If any NIST label is not, in the judgment of DISTRIBUTOR, compliant with Globally Harmonized System (GHS) requirements, DISTRIBUTOR may add a supplementary label, in which case DISTRIBUTOR must inform NIST and provide a copy of the additional label added.
- 3.9. DISTRIBUTOR agrees to distribute the SRMs to end users using appropriate packaging that will ensure the SRM reaches the end user in an unchanged condition;
- 3.10. DISTRIBUTOR agrees to comply with all local, national and international regulations for the shipping of hazardous or biological materials, as appropriate to the SRMs in the shipment.
- 3.11. All SRMs shall be properly marked, packed and shipped in accordance with (i) the Specifications, (ii) the instructions for shipping and packaging included in the applicable order, and (iii) all applicable laws. NIST shall notify DISTRIBUTOR immediately of any variation of the instructions included in the applicable order.

4. Promotion and Publicity; Use of Trademarks

- 4.1. DISTRIBUTOR may identify itself to the public as a “Licensed Distributor of NIST Standard Reference Materials[®]” and is hereby granted a non-exclusive, royalty-free right, without the right to sub-license, to use the Registered NIST Trademark STANDARD REFERENCE MATERIAL[®] the NIST Trademarks “SRM” and “NIST RM” (the Licensed Marks) in its literature and on its website in connection with DISTRIBUTOR’s promotion, marketing and sales of SRMs during the term of this AGREEMENT only.
- 4.2. NIST shall have the right, at all reasonable times, to inspect the DISTRIBUTOR’s goods, services and promotional activities employing the Licensed Marks to ensure that such use is of proper quality and otherwise consistent with this Agreement. Notwithstanding the foregoing, DISTRIBUTOR has no right to use any other Logo or Mark of NIST or the United States Department of Commerce. DISTRIBUTOR agrees that the neither the Name of NIST or the United States Department of Commerce will be used in any manner which would constitute an endorsement of DISTRIBUTOR’s products or services not included under this AGREEMENT.
- 4.3. DISTRIBUTOR agrees that it is prohibited from interfering with NIST’s rights in the Licensed Marks, including challenging NIST’s use, registration of, or

application to register any of the Licensed Marks, alone or in combination with other words or designs, anywhere in the world. DISTRIBUTOR is further prohibited from attempting to register any Licensed Marks, or any confusingly similar mark, whether or not registered by NIST, alone or in combination with other words or designs, as a U.S. or foreign trademark, and from asserting trademark rights in such mark through DISTRIBUTOR's use. Any rights asserted by DISTRIBUTOR in such mark shall vest in NIST, and any goodwill from use of such mark by DISTRIBUTOR shall inure to the benefit of NIST.

- 4.4. DISTRIBUTOR shall abide by the following guidelines for the use of the Licensed Marks:
 - 4.4.1. NIST considers the Licensed Marks to be its trademarks and service marks, and holds them out to the public as such.
 - 4.4.2. DISTRIBUTOR in using any of the Licensed Marks that is or hereafter becomes federally registered shall clearly indicate that the mark is federally registered with the U.S. Patent & Trademark Office and that it is the property of the National Institute of Standards and Technology, U.S. Department of Commerce. Such indication of registration shall be in the form of the "®" ("R in a circle") designation. The DISTRIBUTOR in using any of the Licensed Marks that is not federally registered shall clearly indicate that the mark is the property of the National Institute of Standards and Technology, U.S. Department of Commerce. Such indication shall be in the form of the "TM" or "SM" designation. Where possible, a statement such as "STANDARD REFERENCE MATERIAL® is a federally registered trademark and service mark of NIST" or "SRM™ is a trademark and service mark of NIST" shall also be used.
 - 4.4.3. DISTRIBUTOR shall include the following statement as a running link labeled "Trademarks" on its web site pages, as well as on any printed literature of DISTRIBUTOR that includes any of the Licensed Marks: "(DISTRIBUTOR name) is a Licensed Distributor of NIST Standard Reference Materials®. NIST®, STANDARD REFERENCE MATERIAL®, SRM™, and NIST RM™, and depictions or representations thereof, are trademarks and service marks of the National Institute of Standards and Technology of the Department of Commerce."
 - 4.4.4. DISTRIBUTOR shall not use any of the Licensed Marks, or a confusingly similar element or variant thereof, as a second level domain name.
- 4.5. DISTRIBUTOR is required to notify NIST of any potential infringement of the Licensed Marks of which the DISTRIBUTOR is or becomes aware, or reasonably should be aware. NIST retains the right to determine what constitutes infringement and the course of action to be taken to address it. DISTRIBUTOR

- shall also notify NIST of any claims of which DISTRIBUTOR is aware that the Licensed Marks are infringing the name, logo or trademark of another.
- 4.6. DISTRIBUTOR agrees to provide all lawful assistance, as reasonable, to NIST should NIST decide to register any of the Licensed Marks in the U.S. or foreign countries. DISTRIBUTOR shall comply with all applicable legal requirements governing trademark and service mark use, including but not limited to, registered user requirements. DISTRIBUTOR agrees that all use of the Licensed Marks by DISTRIBUTOR shall inure to the benefit of the NIST.
 - 4.7. The DISTRIBUTOR will be provided with an agreed number of NIST official catalogues and literature.
 - 4.8. The DISTRIBUTOR may issue its own catalogues and literature in paper, electronic or other formats to support the promotion and publicity of SRMs.
 - 4.8.1. Copies of all such DISTRIBUTOR material shall be provided to NIST.
 - 4.9. DISTRIBUTOR shall manage publicity measures including, but not limited to:
 - 4.9.1. Attendance at learned society and commercial exhibitions and symposia;
 - 4.9.2. Maintenance of sufficient web pages needed to provide a full and accurate description of offered SRMs, including the facility to download SRM DOCUMENTATION, by providing a link to the NIST Web page applicable to the SRM or by other suitable means;
 - 4.9.3. Advertising using both own and third party media and other appropriate means to effectively distribute promotional and technical material.
5. DISTRIBUTOR shall submit an electronic report to NIST no later than 10 (ten) days after the first day of each quarter during each year during which the AGREEMENT is in effect. The report shall list all sales records of NIST SRMs, identifying the customer name, address, each purchased SRM number and name, the number of units of each purchased SRM, and the purchase date. The Parties understand and accept the need to ensure that confidential information in such reports is kept between the Parties.
6. This AGREEMENT is non-transferable; should DISTRIBUTOR change ownership, the AGREEMENT is terminated, except DISTRIBUTOR may, with the written approval of NIST, assign to: (i) to any affiliate of DISTRIBUTOR, provided that any such assignment to an affiliate shall not relieve DISTRIBUTOR as the primary obligor hereunder, or (ii) in connection with the merger, consolidation or sale of the stock or substantially all of the assets of the DISTRIBUTOR business responsible for the performance of this AGREEMENT , provided such assignment does not prejudice NIST.
7. **DURATION and TERMINATION.**

7.1. Term of Agreement. Subject to earlier termination pursuant to Section 8, this AGREEMENT shall commence as of the date of the last of the signature dates herein below (Effective Date) and will remain in effect until the five (5) year anniversary of the Effective Date. This AGREEMENT can be renewed only upon written mutual agreement.

8. EARLY TERMINATION.

- 8.1. This AGREEMENT may be terminated by either party to this AGREEMENT (Party) without cause by giving the other Party 60 (Sixty) days' notice in writing.
- 8.2. In the event of a breach of the AGREEMENT by a Party (such Party being the "Breaching Party"), the non-breaching Party may, by written notice to the Breaching Party, terminate this AGREEMENT and any order outstanding thereunder unless, if the breach is able to be cured, the Breaching Party cures the breach, to the satisfaction of the non-breaching Party, within thirty (30) days after receipt of notice and the Breaching Party provides the non-breaching Party, upon request, with assurances, acceptable to the non-breaching Party, of future performance.
- 8.3. In the event that DISTRIBUTOR loses Accreditation under ISO Guide 34, DISTRIBUTOR shall promptly notify NIST. NIST shall have the right, but not the obligation, to terminate this AGREEMENT at its sole discretion. Failure to promptly notify NIST of loss of accreditation shall be deemed a breach of this AGREEMENT.
- 8.4. Notwithstanding any other provision hereof, this AGREEMENT may be modified or terminated by NIST in the event that:
 - 8.4.1. NIST determines, in its sole discretion, that DISTRIBUTOR has willfully made a material false statement or willfully omitted a material fact in any report required under this AGREEMENT ; or
 - 8.4.2. DISTRIBUTOR is adjudged a bankrupt, files a petition for bankruptcy or has its assets placed in the hands of a receiver or makes any assignment or other accommodation for the benefit of creditors.
- 8.5. DISTRIBUTOR recognizes and acknowledges that a breach by DISTRIBUTOR of this Agreement may cause NIST irreparable damage which cannot be readily remedied in monetary damages in an action at law, and may, in addition thereto, constitute an infringement of the Licensed Marks. In the event of any default or breach by DISTRIBUTOR that could result in irreparable harm to NIST or cause some loss or dilution of NIST's goodwill, reputation, or rights in the Licensed Marks, DISTRIBUTOR agrees that NIST shall be entitled to seek immediate injunctive relief to prevent such irreparable harm, loss, or dilution in addition to any other remedies available.

8.6. NIST agrees to promptly consider and adjudicate any and all claims which may arise out of this Agreement resulting from the actions of NIST, duly authorized representatives, or contractors of the Government, and to pay for any damage or injury as may be required by Federal law. Such adjudication will be pursued under the Federal Tort Claims Act, 28 U.S.C. Section 2671 et seq., the Federal Employees Compensation Act, 5 U.S.C. Section 8101 et seq., or such other legal authority as may be pertinent.

9. Effect of EXPIRATION OR TERMINATION.

Upon expiration or termination of this AGREEMENT for any reason:

- 9.1. All orders accepted by NIST prior to the effective date of the termination or expiration shall be fulfilled pursuant to and subject to the terms of this AGREEMENT, even if the shipment dates of products under such orders are after the effective date of expiration or termination;
- 9.2. Except as noted in 9.1 and 9.3, within 5 days of expiration or termination per Section 8 of this AGREEMENT, DISTRIBUTOR shall:
 - 9.2.1. cease to operate as a Licensed Distributor of NIST Standard Reference Materials;
 - 9.2.2. cease to identify itself as an Authorized Distributor of NIST Standard Reference Materials;
 - 9.2.3. may begin to operate as an unlicensed purchaser and reseller of NIST Standard Reference Materials;
- 9.3. Any orders accepted by DISTRIBUTOR prior to the effective date of the termination or expiration shall be fulfilled pursuant to and subject to the terms of this AGREEMENT, even if the shipment dates of products under such orders are after the effective date of expiration or termination;
- 9.4. All rights of DISTRIBUTOR to use the Licensed Marks shall immediately terminate.

10. NIST will use reasonable efforts to deliver a high quality SRMs. However, NIST makes NO EXPRESS OR IMPLIED WARRANTY AS TO ANY MATTER, INCLUDING NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND NO WARRANTY OF NON-INFRINGEMENT.

11. This Agreement shall be interpreted and implemented in accordance with the Federal common law as interpreted by the U.S. District Court for the District of Columbia.

This AGREEMENT contains the entire agreement and understanding between the Parties and supersedes all prior discussions and writings. No modification of this AGREEMENT shall be effective unless made in writing and signed by both Parties.

IN WITNESS THEREOF, the Parties hereto have affixed their signatures below:

**NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
U.S. Department of Commerce**

By: _____

Date: _____

Name of Authorized Signatory: Steven J. Choquette.
Director, Office of Reference Materials
Material Measurement Laboratory
National Institute of Standards and Technology

Address: 100 Bureau Drive
MS 2300
Gaithersburg, MD 20899

Contact: steven.choquette@nist.gov
301-975-3096

DISTRIBUTOR: _____

By: _____

Date: _____

Name of Authorized Signatory:	
Title	
Organization Name:	
Address:	
Address:	
Address:	
Address:	
Contact E-Mail:	
Telephone:	

Appendix A

List of Distributor Subsidiaries and/or Affiliates Covered by the AGREEMENT

Name	Location

Appendix B

List of NIST Standard Reference Materials Covered by the AGREEMENT

SRM Number		SRM Name	