



National Conference on Weights and Measures (NCWM) NTEP Certification Mark (Logo) License Agreement

This License Agreement (“License”) is entered into by and between the National Conference on Weights and Measures, Inc., a Nebraska nonprofit, tax-exempt corporation with its principal office located at 1135 M Street, Suite 110, Lincoln, NE 68508 (known in this License as “NCWM”), and the Licensee.

Background

The NTEP (National Type Evaluation Program) name and logo (the “Certification Mark”) is a Certification Mark registered with the United States Patent and Trademark Office and owned by the National Conference on Weights and Measures (“NCWM”). As the owner of the Certification Mark, NCWM has the exclusive right to authorize the parties that may use the Certification Mark and how the Certification Mark may be used. NCWM also is required to prevent the misuse of the Certification Mark.

Generally NCWM authorizes holders of Certificates of Conformance, and third party purchasers of certified devices, to use the Certification Mark provided such parties enter into a Certification Mark licensing agreement with NCWM and agree to use the Certification Mark in conformance with NCWM’s policies.

WHEREAS, NCWM is the owner of the trademark shown in Exhibit A and referred to as the “Certification Mark” in this agreement, which Certification Mark is registered with the United States Patent and Trademark Office (Registration No. 3483730) and is used to certify that an apparatus has been found through the National Type Evaluation Program to conform to the design requirements and be capable of meeting the performance requirements for goods of the particular type as set forth in *Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, of the National Institute of Standards and Technology; and,

WHEREAS, Licensee desires to obtain a license to use the Certification Mark with respect to the distribution or sale of a certified device;

NOW THEREFORE, the parties agree as follows:

AGREEMENT

1. **License grant.** Provided Licensee complies with all the terms, conditions and policies relating to the use of the Certification Mark, NCWM grants Licensee a limited, non-exclusive, world-wide, revocable, non-transferable royalty-free license to use the Certification Mark on or in connection with a certified device.
2. **Reservation of rights.** Except for the limited license rights granted in this agreement, NCWM reserves to itself all right, title and interest in and to the Certification Mark.
3. **License requirements and limitations.** The license granted in section 1 is granted subject to the following requirements and limitations:
 - a. **Compliance with the NCWM National Type Evaluation Program Administrative Policy, Publication 14 (“Publication 14”).** Licensee shall comply with all requirements in Publication 14, as currently existing or later revised. Licensee is solely responsible for keeping itself informed of the current requirements in Publication 14 by reviewing from time to time the information posted on the NCWM website. NCWM is under no obligation to inform Licensee of changes to Publication 14 other than by posting the revised version on its website. If Licensee does not agree with any changes to Publication 14, Licensee’s sole remedy is to terminate this Agreement as provided herein. If the provisions of Publication 14 and this License conflict, the terms of this License shall control.
 - b. **Certification Mark used with certified devices only.** Licensee shall only use the Certification Mark in conjunction with devices that have been certified in accordance with NCWM Publication 14 and NIST Handbook 44, and that hold an active NTEP Certificate of Conformance. It is essential that when a device is included as part of a product that it be clear that only the device, and not the entire product, is certified. When a certified product is shown on the same page with a non-certified product, the Certification Mark must be located in close proximity to the certified product. Licensee understands and agrees that NCWM shall determine, in its sole discretion, if use of the Certification Mark is inappropriate or unclear, and Licensee agrees to revise the use or placement of the Certification Mark, or remove the Certification Mark, as directed by NCWM.
 - c. **Advertising Statements.** Licensee understands and agrees that all statements used in conjunction with the Certification Mark must comply with Publication 14 NTEP Administrative Policy, Section 23.3. Licensee understands and agrees that NCWM shall determine, in its sole discretion, if the statements used comply with NCWM’s policies, and Licensee agrees to revise or remove statements that NCWM determines do not comply with its policy.
 - d. **Certification Mark may not be modified.** Licensee shall not modify, enhance or change the Certification Mark or combine it with another mark, or use, adopt or register any marks confusingly similar to the Certification Mark.

NTEP LOGO LICENSE TERMS

- e. **Certification Mark may not be used:** (i) in any manner that is likely to reduce, diminish or damage the goodwill, value or reputation associated with the Certification Mark; (ii) in any manner as would violate the rights of any third parties; (iii) in any manner as would result in any third party claim or any governmental investigation, claim or proceeding alleging unlawful or improper use of the Certification Mark; (iv) on or in connection with any products or services other than the certified devices and promotional materials pertaining to the certified devices; or (v) in any manner other than as a certification mark.
 - f. **Inspection.** Licensee will, upon NCWM's request and at no cost to NCWM, provide NCWM with samples of all uses of the Certification Mark by Licensee.
 - g. **Withdrawn Certification.** If at any time the NTEP Certificate of Conformance is withdrawn from a device, Licensee will immediately cease all use of the Certification Mark. Licensee also will notify all distributors and customers who may have or promote formerly certified devices that the NTEP Certificate of Conformance has been withdrawn and the use of the Certification Mark must cease immediately.
 - h. **Noncompliance.** Licensee shall immediately and at its sole costs and expense correct any usage of the Certification Mark that NCWM regards as failing to comply with the requirements of this Agreement or Publication 14.
 - i. **Third-Party Infringement.** Licensee will promptly notify NCWM if it becomes aware of any infringement of the Certification Mark by a third party. Licensee shall have neither the right nor the obligation to prosecute any infringement claims against third-party infringers.
 - j. **Use of NCWM.** Nothing in this Agreement gives Licensee the right or license to use the marks "National Conference of Weights and Measures" or "NCWM" apart from the Certification Mark as shown in Exhibit A.
 - k. **Unauthorized Use.** Licensee acknowledges that if it engages in any unauthorized use or reference to the Certification Mark, its right to continue using the Certification Mark may be terminated and that irreparable injury will occur if such unauthorized use continues.
4. **License fees and royalties.** This license is granted without license fee to any current holder of an active NTEP CC. Any non-holder of an active NTEP CC is subject to a one-time license fee established by the NCWM.
5. **NCWM ownership of Certification Mark.** Licensee acknowledges the National Conference of Weights and Measures exclusive right, title and interest in and to the Certification Mark and acknowledges that nothing in this Agreement shall be construed to provide to Licensee any rights in the Certification Mark except as expressly provided in the Agreement. Licensee acknowledges that its use of the Certification Mark will not create in it any right, title or interest in the Certification Mark other than the limited license rights granted to Licensee in this Agreement and that all such use of the Certification Mark and the

goodwill generated thereby will inure to the benefit of the NCWM. Licensee warrants and represents that: (a) it will not at any time challenge the NCWM's right, title or interest in the Certification Mark or the validity of the Certification Mark or any registration of the Certification Mark; (b) it will not do or cause to be done or omit to do anything, the doing, causing, or omitting of which would contest or in any way impair or tend to impair the rights of the NCWM in the Certification Mark; (c) it will not represent that it has any ownership in or rights with respect to the Certification Mark; and (d) it will not, either during or subsequent to the term of this Agreement, adopt, use or register any certification mark, trademark, service mark, trade name, insignia or logo that is confusingly similar to or a colorable imitation of the Certification Mark or any of the NCWM's other marks.

6. **Representations of Licensee.** Licensee represents and warrants that:
 - a. It is duly organized and in good standing under the laws of its jurisdiction of organization;
 - b. Licensee has taken all actions that are necessary or advisable in order for it to enter into this Agreement;
 - c. The person executing this Agreement on behalf of Licensee is authorized to do so;
 - d. The Agreement, upon its execution by Licensee (and assuming due execution by NCWM) shall be the binding obligation of Licensee, enforceable in accordance with its terms;
 - e. Licensee will comply with all changes to Publication 14 within one (1) month from the date such changes are made;
 - f. Licensee will not challenge NCWM's rights under its National Type Evaluation Program, Publication 14, or this Agreement and will not challenge the validity of any NCWM mark.
7. **No warranty by the NCWM. The NCWM provides the license granted in this Agreement without warranty of any kind. TO THE MAXIMUM EXENT PERMITTED BY LAW, THE NCWM DISCLAIMS ALL EXPRESS , IMPLIED AND STATUTORY WARRANTIES.**
8. **Limitation of Liability.** IN NO EVENT SHALL NCWM BE LIABLE FOR LOST PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH CLAIM IS BASED AND EVEN IF THE NCWM HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

9. **Indemnity.** Licensee agrees to defend, indemnify and hold NCWM and its respective representatives, employees, officers, directors and agents harmless against all claims, suits, cost, damages, judgments, attorney's fees, settlements or expenses incurred, caused by, arising from or relating to any breach of this Agreement by Licensee or claimed, obtained or sustained by any third party, whether for personal injury, misrepresentation, or otherwise arising out of or relating to the manufacture, advertising, promotion, use, marketing or sale of the certified devices, provided such claims are not caused by NCWM's negligence or breach of this Agreement.

10. **Effective date, term and termination.**

a. **Effective date.** This Agreement shall commence and the license granted under the Agreement shall become effective (the "Effective Date") upon the execution of this agreement by both parties.

b. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until terminated by a party as provided in this Agreement.

c. **Termination.**

i. **Termination by Licensee.** Licensee may terminate this Agreement at any time by providing written notice to NCWM and by discontinuing all use of the Certification Mark. Termination in this manner shall be effective upon receipt of the written notice by NCWM or at such time (not to exceed thirty days after the date notice is received) specified in the notice from Licensee.

ii. **Termination by NCWM.** NCWM may terminate this Agreement upon thirty (30) days notice if Licensee breaches any provision of this Agreement and fails to cure such breach within such thirty 30-day period. NCWM also may terminate this Agreement upon thirty 30-day notice if it discontinues use of the Certification Mark or modifies the design of the Certification Mark.

iii. **Consequences of termination.** Upon termination of this Agreement, the license granted shall immediately terminate. Licensee will immediately discontinue all use of the Certification Mark and shall destroy all materials in their possession containing the Certification Mark and shall certify to the destruction of such materials if the NCWM requests that they do so.

11. **Compliance with laws.** Licensee will at all times comply with all laws, regulations, ordinances, rules and orders that are applicable to it in connection with its manufacture and sale of NTEP certified devices and the operation of its business generally.

12. **Miscellaneous.**

- a. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Nebraska as applied to agreements entered into and fully performed therein by residents thereof. Both parties submit to jurisdiction in Nebraska and further agree that any cause of action arising under this Agreement shall be brought in a court in the County of Lancaster, Nebraska.
- b. **Severability; Headings.** If any provision within this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.
- c. **Independent contractors.** The parties are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by this Agreement. Neither party shall make any warranties or representations on behalf of the other party.
- d. **Notice.** NCWM may give notice to Licensee by personal delivery, mail, courier, facsimile or email to Licensee's address as identified in this Agreement. Licensee may give notice to NCWM by personal delivery, mail, courier, or facsimile to NCWM's physical address as identified at www.ncwm.com or electronically by email to info@ncwm.com. Notice shall be deemed given: upon personal delivery; if sent by fax, with confirmation of correct transmission, on the next business day after it was sent; upon the courier's confirmed delivery if sent by courier; and if sent by mail with proper postage prepaid, five (5) days after the date of mailing. Notices by email shall be deemed given by the end of the business day on which they are sent.
- e. **Entire agreement; Waiver.** This Agreement sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. This Agreement may be changed only by a writing executed by both parties that expressly states that it is changing the provisions of this Agreement. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- f. **Assignment.** Licensee may not transfer its rights or obligations under this Agreement in whole or in part to any third party without the prior written consent of NCWM and any attempt to do so is void.
- g. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument,

Exhibit A

Certification Mark

