

# CERTIFICATION MARK LICENSE AGREEMENT

This CERTIFICATION MARK LICENSE AGREEMENT effective January 1, 2010 (the Effective Date), between AOAC RESEARCH INSTITUTE ("AOAC-RI"), a Virginia corporation, having its principal place of business at 481 North Frederick Avenue, Gaithersburg, Maryland, 20877-2417, USA and ("LICENSEE"), having its principal place of business at:

## WITNESSETH

WHEREAS, AOAC-RI, a subsidiary of AOAC INTERNATIONAL is an independent nonprofit corporation whose stated purpose is to promote and carry out activities related to the development, improvement, and understanding of analytical practices and procedures affecting public health and welfare;

WHEREAS, AOAC-RI has established a test kit performance testing program ("Program") and accompanying Program Policies and Procedures (Exhibit A) ("Procedures") which provide an independent third-party review of producers' claims regarding the performance of test kits used in the analysis of substances affecting food, agriculture, public health and safety, and the environment;

WHEREAS, AOAC-RI will grant *PERFORMANCE TESTED<sup>SM</sup>* status to test kits found to be in conformance with their producers' claims to those producers which agree to comply with AOAC-RI's Programs and Procedures;

WHEREAS, LICENSEE desires to obtain AOAC-RI's certification mark for its test kits and agrees to fully comply with AOAC-RI's Programs and Procedures.

NOW, THEREFORE, for one U.S. Dollar (U.S. \$1.00) and other valuable consideration the receipt of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of WHEREAS Clauses. The parties incorporate by reference the WHEREAS clauses set forth above as if fully set forth herein.

2. Ownership of the Mark. AOAC-RI has exclusive rights to license the use of the Certification Mark, AOAC Research Institute, and design (attached hereto as Exhibit B and hereinafter called "the Mark") relating to test kits which AOAC-RI approves pursuant to its Program and Procedures.

3. Grant of Rights. AOAC-RI hereby grants to LICENSEE and any of its affiliates or subsidiaries for the duration of this agreement the non-exclusive worldwide right to use the Mark only on those test kits which have received the *Performance Tested<sup>SM</sup>* status in accordance with AOAC-RI's Program and Procedures and only in accordance with the terms of this Agreement and for no other use or purpose. AOAC-RI further grants to LICENSEE the right to distribute its products under Distributor's name provided the Distributor executes a copy of Exhibit C LICENSEE sends that executed copy to AOAC-RI prior to the Distributor's distribution of LICENSEE'S products, and AOAC-RI approves Exhibit C, which approval will not be unreasonably withheld.

4. Term. Initial "Term" of this agreement is from the effective date of this agreement until December 31<sup>st</sup> of the same calendar year. Use of the certification mark for the initial term is included in the application fee. This agreement shall automatically renew for successive one-year periods unless modifications are made and/or unless either party provides written notice of termination at least forty-five (45) days prior to the effective date of such termination. Upon Modifications to kits, a newly signed Certification Mark License Agreement will be prompted. Provisional status: AOAC-RI reserves the right to grant provisional certification from 90 days. Thereafter, the term shall expire on December 31<sup>st</sup> and shall automatically renew as described.

5. Territory. The authority to use the Mark extends throughout the world either directly or indirectly by any affiliates of LICENSEE.

6. LICENSEE's Warranties and Responsibilities. LICENSEE warrants and represents to the best of its knowledge that (a) the test kits which receive the *PERFORMANCE TESTED<sup>SM</sup>*

status and which use the Mark conform to all laws in the area which the test kits are sold or distributed, (b) that the test kits are safe if properly used in accordance with LICENSEE's written instruction and that all legally necessary disclosures to the public have been included in the packaging associated with the test kits, (c) that the test kits sold or distributed to the public will comply with AOAC-RI's Program and Procedures. LICENSEE will comply with reasonable changes to AOAC-RI's Program and Procedures within a period of, not more than three (3) months from the date of receipt of written notification to LICENSEE of such changes, and LICENSEE will not challenge AOAC-RI's rights under its Program and Procedures or under this Agreement.

7. AOAC-RI Standards and Quality Control. The LICENSEE shall make certain that the test kits upon or in relation to which it uses the Mark at all times conform to the specifications upon which the product was approved, and agrees that if AOAC-RI subsequently determines in its total and reasonable discretion, after discussion with LICENSEE, that LICENSEE's system of control and inspection to which the test kits are subjected or that the specifications of the test kit need to be changed or altered in anyway, then within sixty (60) days following receipt of written notice by AOAC-RI, LICENSEE shall change its control and inspection procedures or change the specifications for the test kits, and all future test kits produced shall comply with the new controls, procedures and specifications. AOAC-RI shall have the right to request samples of the test kits for testing, which shall be provided within ten (10) business days from receipt of the written request, and shall have the right to inspect during regular business the LICENSEE's production facilities of the test kits on five (5) business days' written notice in order to assure AOAC-RI that the provisions of this Agreement are being observed. If at any time the test kits shall fail to conform with the standards of quality and specifications as set forth in AOAC-RI's Program and Procedures, AOAC-RI shall so notify the LICENSEE by registered/certified mail. In the event LICENSEE does not demonstrate to AOAC-RI's reasonable satisfaction within (20) days of notice from AOAC-RI that such nonconformity was determined by error or that such nonconformity has been corrected, LICENSEE shall immediately cease to use the Mark on undistributed test kits

and notify all distributors and customers who may have substandard test kits using the Mark by registered/certified mail within 30 days from the date of receipt of written notification of a request by AOAC-RI to rescind the certification mark. LICENSEE shall not sell test kits using the Mark until the standards of quality and specifications required hereunder have been met to AOAC-RI's satisfaction, provided however, in the event that AOAC-RI changes its Programs or Policies, or determines that LICENSEE needs to change its control and inspection system or the specifications of the test kit, then kits sold prior to the date of such written notification by AOAC-RI shall not be considered substandard. The costs of the samples, and the costs of testing and any compliance with this provision shall be borne solely by LICENSEE.

8. Confidentiality of Information. All technical information provided by or to AOAC-RI and the LICENSEE in connection with this Agreement shall be treated as confidential and not disclosed to the public, and any technical or proprietary information provided by either party shall remain the property of the provider of that information and shall not be permitted to be used for any other test kit without the prior written consent of the originating party of that information, unless that information shall become publicly available by means other than the violation of this paragraph by AOAC-RI or LICENSEE.

9. Protection of the Mark. LICENSEE acknowledges the validity, inherent distinctiveness and acquired distinctiveness of the Mark and agrees not to challenge the same. LICENSEE also agrees that any and all rights that may be acquired by the use of the Mark by LICENSEE shall inure to the sole benefit of AOAC-RI. LICENSEE agrees not to use the Mark or any similar mark as part of its trade name, trademark, service mark, certification mark, collective mark or any other designation unless such use is authorized under this Agreement. LICENSEE further agrees to refrain from causing or assisting any person to do any of the things for which LICENSEE is prohibited.

10. Advertising and Packaging. LICENSEE is authorized to use the Mark for marketing and packaging, provided that it refrains from stating or suggesting directly or indirectly, other than through use or explanation of the mark, that AOAC-RI is endorsing the test kits and obtains

AOAC-RI's prior written consent, which shall not be unreasonably withheld, to the advertising and packaging. If AOAC-RI does not respond within ten (10) days from the receipt of a written request for such consent, it shall be deemed to have consented to such request. Any denial of consent shall be in writing and shall set forth in reasonable detail the reasons therefore.

11. Royalty. AOAC-RI shall charge no royalties for LICENSEE's authorized use of the Mark for the term of this Agreement.

12. Insurance. LICENSEE shall either maintain at its own expense in full force and effect at all times during which the test kits bearing the Mark are being sold and for three (3) years thereafter, with an insurance carrier having a rating of A, VII or better in Best's Insurance Reports, at least one million dollars (\$1 million) products liability insurance policy with respect to the test kits, or provide evidence acceptable to AOAC RI that LICENSEE maintains a professionally administered risk management program of sufficient credibility and resources to ensure an adequate level of product liability protection. LICENSEE shall name AOAC-RI and AOAC INTERNATIONAL as additional insured and will endeavor to provide at least thirty (30 days) prior written notice to AOAC-RI and AOAC INTERNATIONAL of the cancellation or any substantial modification to the policy that LICENSEE would effect AOAC-RI or AOAC INTERNATIONAL.

13. LICENSEE's Indemnity. LICENSEE shall defend, indemnify and hold AOAC-RI, AOAC INTERNATIONAL and their respective representatives, employees, officers, directors and agents harmless against all claims, suits, cost, damages, judgments, attorney's fees, settlements or expenses incurred, (hereafter collectively 'claims') caused by, arising from or relating to any breach of this Agreement by LICENSEE, 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 test kits approved by AOAC-RI under its Program and Procedures, provided such claims are not caused by nor result from any act or omission of AOAC-RI.

14. Unauthorized Use of the Mark by LICENSEE. LICENSEE acknowledges that if it engages in any unauthorized use of the Mark, its right to continue using the Mark shall cease immediately, that irreparable injury will occur if its use continues, and that AOAC-RI shall be entitled to temporary, preliminary, and permanent injunctive relief, plus an award for damages, costs, and reasonable attorneys' fees arising from or relating to such unauthorized use or reference to the Mark, including the filing and obtaining the injunctive relief described above.

15. Termination or Non-Renewal. All rights and licenses granted by AOAC-RI to LICENSEE shall terminate immediately and LICENSEE shall refrain immediately from using the Mark upon any termination of this Agreement. However, LICENSEE's obligations under Paragraphs 8, 12, 13, 14, 16, 17, 18, and 19 of this Agreement shall continue indefinitely beyond termination or non-renewal.

16. Governing Law. This Agreement shall be interpreted according to the laws of Commonwealth of Virginia, and the United States Arbitration Act.

17. Binding Arbitration and Consent to Maryland Federal Court. Both parties agree that any contractual dispute arising from, relating to or concerning this Agreement shall be submitted to binding arbitration by the American Arbitration Association ("AAA") at its Washington, D.C. office, providing however, in the event that AOAC-RI claims the LICENSEE has engaged in the unauthorized use of the Mark, AOAC-RI may file a complaint immediately in a federal court in the State of Maryland for a temporary, preliminary, and permanent injunction. LICENSEE consents to the personal jurisdiction and service of process from and the venue in all federal courts in the State of Maryland.

18. Notice. All notices, demands, waivers, consents and requests which may be or are required to be given by either party to the other under the terms of this Agreement shall be in writing, and shall be sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follow:

If to LICENSEE:

With a copy to:

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If to AOAC RI:

Ms. Deborah McKenzie  
Managing Director  
AOAC Research Institute  
481 North Frederick Avenue, Suite 500  
Gaithersburg, MD 20877-2417

With a copy to:

Mr. John J. Dabney  
McDermott Will & Emery, LLP  
600 Thirteenth Street, NW  
Suite 210  
Washington, DC 20005-3096

19. Miscellaneous

a. Execution in Counterparts. For the convenience of the parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

b. Assignment of Rights or Agreement. Neither the Agreement nor any rights granted herein may be assigned, directly or indirectly, by any party hereto without the prior written consent of the other party, which may be denied in the other party's total discretion unless such assignment is to an affiliate, parent or successor to either party, in which case the consent to the assignment shall not be unreasonable withheld. This Agreement shall be binding upon and inure to the benefit of any assignee permitted hereunder.

c. Bankruptcy. If either party shall become bankrupt or insolvent, or if either party's business shall be placed in the hands of a receiver or trustee, whether by voluntary act of such party or otherwise, this Agreement shall, at the option of the other party, immediately terminate.

d. Severability. If any clause, provision or term of this Agreement is declared illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Agreement shall not be affected and that, in lieu of any such clauses, provision or term, there shall be added as a part hereof a substitute clause, provision or

term as similar in substance to such illegal, invalid or unenforceable clause, provision or term as may be possible.

e. Waiver. Any waiver by any party of any right arising from any breach of any term of this Agreement shall not be construed as a continuing waiver of any other breach of the same term or any other term of this Agreement by the other party.

f. Independent contractors. The parties are independent contractors, and nothing herein contained shall constitute or be construed to create a partnership, agency or joint venture between the parties.

g. Amendment. No amendment or modification of this Agreement shall be valid and binding upon the parties unless made in writing and signed by the Manager of AOAC-RI and an authorized representative of LICENSEE.

h. Prior drafts. The parties acknowledge and agree that no interpretation of this agreement shall be based on any additions, deletions, or modifications to any prior draft of this Agreement, and that AOAC-RI shall not be bound or precluded in the future by virtue of making any of the foregoing changes.

i. Multiple Performance Tested<sup>SM</sup> Kits: This Agreement shall apply to all test kits owned by the LICENSEE and granted *Performance Tested<sup>SM</sup>* status.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

**For the AOAC Research Institute:**

**For the Licensee**

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

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

Name: Deborah McKenzie

Name: \_\_\_\_\_

Title: Managing Director

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

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

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

**Exhibit A: Program Policies and Procedures (attached)**

Modified January 2010

Exhibit B: *PERFORMANCE TESTED*<sup>SM</sup> Certification Mark



**Exhibit C: Addendum to Certificate Mark License Agreement between  
AOAC Research Institute and Licensee.**

ADDENDUM TO CERTIFIED MARK LICENSE AGREEMENT BETWEEN AOAC-  
RI AND \_\_\_\_\_ (LICENSEE).

For good and valuable consideration, the receipt of which is hereby  
acknowledged, both parties agree as follows:

1. \_\_\_\_\_ (hereafter "Distributor") warrants and represents it  
has read a copy of the Certified Mark License Agreement between AOAC-RI and  
\_\_\_\_\_ (Licensee) and agrees to be bound by all of the same  
terms and conditions as Licensee.
2. Distributor acknowledges that its foregoing warranty and representation is a  
necessary condition for AOAC-RI's granting Distributor the right to use its  
Certification Mark pursuant to those terms and conditions.
3. Distributor also agrees to provide such other information and assurances that  
AOAC-RI requires in order to accept this Addendum, which acceptance will not  
be unreasonably withheld.

**Submitted by Distributor**

Name \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

**Accepted by AOAC-RI**

Name \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_