

## Appendix 6: Review Agreement

# PROPRIETARY METHODS WARRANTIES, INDEMNITY, and GOVERNING RULES AGREEMENT

This Agreement is entered into by and between AOAC INTERNATIONAL (AOAC), a District of Columbia Not-for-Profit Corporation, and the AOAC Research Institute (AOAC-RI), a Virginia Not-for-Profit Corporation, with their principal places of business at 481 N. Frederick Ave, Suite 500, Gaithersburg, MD 20877-2417, and \_\_\_\_\_ (Company).

WHEREAS, AOAC and the AOAC-RI are U.S. Internal Revenue Service recognized 501(c)(3), tax-exempt, scientific and educational associations;

WHEREAS, AOAC and the AOAC-RI, maintain and administer voluntary programs for evaluating, approving, and publishing validated analytical methodology; including the AOAC *Official Methods of Analysis*<sup>SM</sup> program and the AOAC *Performance Tested Methods*<sup>SM</sup> program;

WHEREAS, the evaluation, approval, and publication of an analytical method under these programs primarily or substantially involves scientists and their employers (collaborators) acting in a volunteer capacity;

WHEREAS, the Company claims to own and voluntarily seeks to initiate the evaluation, approval, and publication of a proprietary analytical method known as

\_\_\_\_\_ (The Method) under the AOAC *Performance Tested Methods*<sup>SM</sup> program; and

WHEREAS, AOAC and the AOAC-RI and their volunteer collaborators, other program volunteers, officers, directors, employees, and contractors (AOAC, Et.Al.) are subject to potential liability because of the proprietary nature of The Method; including, but not limited to, the risk of patent, copyright and trade secret infringement claims; and product liability claims.

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, IT IS AGREED AS FOLLOWS:

Section 1. Warranties. The parties represent and warrant to each other that each has the right to enter into this Agreement with the other. The Company specifically represents and warrants that it is the owner of all rights, titles, and interests in The Method and that it is not aware of any rights of a third party (including patent rights) that would be infringed by Company submission of The Method to AOAC, Et.Al.; by the publication, license or use of The Method; or by AOAC, Et.Al. evaluating, approving, or publishing The Method under the AOAC *Official Methods of Analysis*<sup>SM</sup> or *Performance Tested Methods*<sup>SM</sup> programs.

Section 2. Agreement to Indemnify. The Company does hereby agree to indemnify and hold harmless AOAC, Et.Al. from and against any and all litigation, losses, claims, demands, actions, damages, expenses, liabilities and obligations of any kind and description, including any reasonable attorney fees incurred by AOAC, Et.Al., arising out of or relating to the evaluation, approval, and publication, and matters directly related thereto, now and in the future, of The Method under the AOAC *Official Methods of Analysis*<sup>SM</sup> or *Performance Tested Methods*<sup>SM</sup> programs.

Section 3. Warranties As To Insurance. During the period of evaluation, approval, and publication, now and in the future, of The Method under the AOAC *Official Methods of Analysis*<sup>SM</sup> or *Performance Tested Methods*<sup>SM</sup> programs, The Company represents and warrants that it shall acquire and maintain, at its sole cost and expense, comprehensive general liability insurance, product liability insurance, and advertising liability insurance; including coverage for patents, copyright, trademark and trade secret infringement claims. This insurance coverage shall provide protection of not less than \$5,000,000.00 and shall include AOAC, Et.Al. as additional, named insureds. Prior to or upon execution of this Agreement, The Company shall furnish to AOAC, Et.Al., proof of said coverage. Further, The Company agrees to provide AOAC, Et.Al., at least thirty (30) days advanced written notice prior to any

termination, reduction or modification of coverage of said insurance coverage. The Company's purchase and maintenance of insurance or furnishing of the proof of such insurance shall not relieve The Company of any of its obligations under this Agreement.

Section 4. Notice of Claims. AOAC, Et.Al., agree to give prompt notice to The Company of the initiation of any claims as to which indemnity may be sought and may permit The Company (at The Company's expense) to assume the defense of any such claim or any litigation resulting therefrom; provided that counsel for The Company, who shall conduct the defense of said claim or litigation, shall be reasonably satisfactory to AOAC, Et.Al., and AOAC, Et.Al., shall have the right to independent counsel to advise AOAC, Et.Al., and to participate in such defense; provided, further, that the failure by AOAC, Et.Al., to give notice as provided herein shall not relieve The Company of its obligations under Section 2 herein except to the extent that the failure results in an omission of actual notice to The Company and The Company is damaged solely as a result of the failure to give notice.

Section 5. Governing Rules and Dispute Resolution. During the period of evaluation, approval, and publication, now and in the future, of The Method under the AOAC *Official Methods of Analysis*<sup>SM</sup> or *Performance Tested Methods*<sup>SM</sup> programs, the parties agree to abide by the then current policies and procedures governing the AOAC *Official Methods of Analysis*<sup>SM</sup> or *Performance Tested Methods*<sup>SM</sup> programs, including the policies and procedures governing any dispute resolution.

For any dispute arising out of or relating to this Agreement not addressed by the then current AOAC *Official Methods of Analysis*<sup>SM</sup> or *Performance Tested Methods*<sup>SM</sup> programs policies and procedures, the parties shall attempt in good faith to resolve the dispute promptly by negotiation between executives. If such a dispute has not been resolved within 60 days of a party's request for negotiation, either party may initiate arbitration as provided hereinafter.

Any dispute arising out of or relating to this Agreement which has not been resolved by a non-binding procedure as provided herein, shall be settled by arbitration in accordance with the then current Center for Public Resources Rules for Non Administered Arbitration of Business Disputes by a sole arbitrator. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. " 1-16, and judgement upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be Washington, D.C. The arbitrator is not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any right to recover such damages with respect to any dispute resolved by arbitration.

Section 6. Survival of Obligations. The obligations of the parties under this Agreement shall survive any implied expiration of the term of this Agreement.

**For AOAC Research Institute**

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

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

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

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

**For The Company**

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

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

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

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