

AGREEMENT GOVERNING USE OF VOHC® SEAL

THIS AGREEMENT is made this day of _____, by
and between the Veterinary Oral Health Council® ("VOHC") and _____
("Company").

BACKGROUND

- A. VOHC is the owner of registered service mark seals denoting VOHC's scientific acceptance programs ("VOHC Registered Seal").
- B. VOHC also approves certain statements about accepted products to be used in conjunction with the VOHC Registered Seal or alone (hereafter, "VOHC Seal" shall refer both to these statements and the VOHC Registered Seal).
- C. The Company has submitted tests on a product known as _____ ("Product") for scientific review by VOHC (the Company's "Testing Materials").
- D. Based on a review of the tests, VOHC has determined that Product meets its applicable standards as set forth in VOHC's Protocols ("Product Standards"). The Company has also agreed to comply with VOHC's Advertising Standards with respect to Product (hereafter, VOHC's Product Standards and Advertising Standards, as they may be interpreted, modified and amended from time to time, shall be referred to as "VOHC Standards").
- E. The Company desires to use the VOHC Seal, as specifically authorized by VOHC, in connection with Product within the Territory (as defined below), and VOHC is willing to permit such use within the Territory subject to all the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and intending to be legally bound, the parties agree as follows:

1. (a) The Company and VOHC acknowledge that, at the time the Company submitted its application for the use of the VOHC Seal, it paid to VOHC a review fee of _____ which is fully earned and nonrefundable.

(b) The Company shall also pay a maintenance fee in the amount of _____ on the first and second anniversary dates of this Agreement. So long as this Agreement is Automatically Renewed, the Company shall continue to pay a maintenance fee on each subsequent anniversary date, in an amount to be determined by VOHC in accordance with procedures set forth below.

(c) If this Agreement terminates or is suspended in whole or in part for any reason, prior to expiration of its term, no part of any fee shall be refundable.

2. Subject to the terms and conditions of this Agreement, the Company is authorized to use the VOHC Seal to designate Product acceptance as “_____” for a period of three years from the date hereof world-wide (the “territory”). The Company has represented that its Testing Materials are, as of the date of this Agreement, true, accurate, current and complete and acknowledges that, in granting it use of the VOHC Seal, VOHC specifically relies, among other things, on this representation.

3. VOHC retains all ownership rights in the VOHC Seal.

4. Unless it is expressly authorized to do so in writing by VOHC, and then only in

the form and manner specified by VOHC (as set forth in Attachment A), the Company shall refrain from:

(a) using or referring in any way to the VOHC's name, abbreviation, symbols, or any other form or reference which may be interpreted to mean Veterinary Oral Health Council (collectively "VOHC References") on or in connection with Product or its labeling, containers, packaging, package inserts, or advertising, promotional or other copy or materials (collectively, "Product Related Materials");

(b) making any statements or representations about the VOHC Seal or its meaning or using any words or statements in conjunction with it (together with Product Related Materials, the "Submitted Materials");

(c) altering the VOHC Seal in any way; and

(d) using the VOHC Seal outside the territory.

5. The Company shall submit all Submitted Materials to VOHC for review and approval prior to use. VOHC will ordinarily restrict its review of Submitted Materials to those parts that contain VOHC References or describe the dental effects of the Product. Once VOHC approval of Product Related Materials is granted, the Company may change these materials without seeking additional approval by VOHC, provided there is no change in the VOHC References or the description of the dental effects of the Product. Notwithstanding the foregoing, VOHC shall have the right to require approval of all Submitted Materials, in its sole discretion, upon written notice to the Company. VOHC shall use its best efforts to promptly review all Submitted Materials. If notice of approval or disapproval has not been given by VOHC within 30 days, then approval of the

Submitted materials will be automatic. The Company shall use its best efforts to provide VOHC with adequate lead time to make such a review.

6. The Company acknowledges that VOHC may issue statements about Product's acceptance and, if requested to do so by VOHC, will make commercially reasonable efforts to use such a statement in connection with the VOHC Registered Seal.

7. The Company assumes full and complete responsibility for its use of the VOHC Seal and for any use of the VOHC Seal in connection with Product. So long as it uses the VOHC Seal, the Company will remain familiar with all VOHC Standards and will ensure that Product, and the activities undertaken with respect to the Product, do not constitute a VOHC Standards Violation, as hereinafter defined. The Company may obtain copies of VOHC Standards upon request to VOHC and will receive notification of any change in VOHC Standards applicable to it or to Product. Notwithstanding the foregoing, if there is any variation between the terms of this Agreement and VOHC Standards, the terms of this Agreement shall prevail.

8. If the Product or the process by which it is created changes in any way (a "Product Change"), the Company shall notify VOHC in writing of the change. In its sole discretion, VOHC reserves the right to evaluate any Product Change that, in its view, significantly affects the dental effectiveness or safety of the Product.

9. The Company represents and agrees that it has and will continue to comply in all material respects with all applicable government regulations relating to the manufacture and distribution of Product ("Governmental Regulations").

10. The Company shall notify VOHC in writing within ten (10) business days of its

receipt of knowledge of (a) any voluntary or involuntary withdrawal of Product from the marketplace or recalls, or (b) lawsuits, adverse court judgments or administrative findings relating to Product's safety or effectiveness (each item listed in (a) and (b) hereinafter referred to as an "Adverse Event").

11. The Company agrees that it will cooperate with and assist VOHC in ascertaining the facts if an Adverse Event occurs or if VOHC reasonably believes that Product is not in compliance with Governmental Regulations or VOHC Standards (an "Incident of Noncompliance"), including sharing such information that Company acquires regarding the Adverse Event or the Incident of Noncompliance. The Company shall also take and report to VOHC on any corrective action (including but not limited to batch recall) as is necessary to correct any Incident of Noncompliance or hazard that is found to exist with respect to the Product.

12. The occurrence of any of the following events or conditions shall constitute a breach of this Agreement by the Company:

(a) If the Company fails to timely pay any maintenance fee. In the event of such a breach, VOHC shall have the right to terminate this Agreement upon thirty (30) days written notice to the Company; provided, however, that the Company shall have the right to cure such a default by delivering payment to VOHC prior to expiration of the thirty (30) day default period.

(b) If at any time the Company or Product fails to meet VOHC Standards; except that any change in VOHC's Product Standards shall only apply to Product upon the expiration of the initial three-year term of this Agreement (such a failure is otherwise

referred to herein as a "VOHC Standards Violation");

(c) If in its sole judgment VOHC determines that its grant of the Seal to the Product is no longer appropriate due to a Product Change, an Adverse Event, or the failure to comply with a Governmental Regulation;

(d) If any representation by the Company, set forth in this Agreement, proves to be false;

(e) If the Company uses the VOHC Seal outside the Territory;

(f) If the Company fails to comply with any of its other obligations under this Agreement; or

(g) If a voluntary or involuntary petition in bankruptcy is filed by or with respect to the Company, if an arrangement or composition is made with creditors of the Company, if a receiver of the business of the Company is appointed, or if there is a voluntary or involuntary liquidation of the business of the Company.

13. If the Company breaches this Agreement, VOHC shall have the right to terminate or suspend all or any part of this Agreement, including without limitation the Company's right to use the VOHC Seal.

14. In the event of a breach of this Agreement by the Company, VOHC shall also have the right to notify sellers and purchasers of the Product, authorities, potential users of the Product, and others of any VOHC Standards Violation, of any improper or unauthorized use of the VOHC Seal or VOHC References, when in the judgment of VOHC such notification is necessary in the interest of public safety, the veterinary dental profession, or for VOHC's protection. The Company agrees to give VOHC a list of

sellers and purchasers of Product, at VOHC's request, which may only be used by VOHC for the purpose of such a notification.

15. The Company agrees that if it fails to comply in any respect with paragraphs 4 or 5 of this Agreement or if a breach described in paragraph 12 (b), (c) or (d) takes place (each individually referred to as an "Enjoinable Event"), its continued use of the VOHC Seal or VOHC References, on or in connection with Product, including but not limited to in its promotion, advertising, sale, delivery, shipment, or distribution (the "Enjoinable Conduct"), would mislead the public. The Company agrees that an Enjoinable Event would cause irreparable injury to VOHC and could not be adequately compensated in money damages. For these and other reasons, the Company agrees that, if an Enjoinable Event occurs, VOHC may seek any relief which may be deemed appropriate including, but not limited to, a temporary restraining order or a preliminary or permanent injunction (together, "injunctive relief") which may be issued at the instance of VOHC restraining the Company and its officers and agents from engaging in Enjoinable Conduct. Such injunctive relief shall not, however, restrain the sale and delivery of Product already bearing a proper VOHC Seal and, at the time of delivery, meeting the applicable VOHC Product Standards. The granting or issuance of such injunctive relief shall not affect the right of VOHC to compensatory and punitive damages for breach of this Agreement and shall be in addition to, and not in lieu of, any other rights and remedies provided by this Agreement, or available at law or in equity.

16. If VOHC withdraws the service of reviewing the Company's Product, or all products generally, or if the Company withdraws Product from the market, then either

party may, without cause, terminate the rights and authority conferred by this Agreement upon not less than sixty (60) days written notice to the other party.

17. Upon termination, suspension or expiration of this Agreement, for any reason, with or without cause, the Company shall:

(a) lose all rights under this Agreement, including but not limited to its right to use the VOHC Seal or VOHC References on or in connection with Product or Product Related Materials;

(b) remove from Product and Product Related Materials any VOHC Seals or VOHC References; and

(c) if requested by VOHC, turn over to it any unused VOHC Registered Seals. VOHC shall notify the Company, by registered or certified mail, of the effective date of any such a termination, suspension or expiration (the "Effective Date of Termination") and, if different, the date or dates when the requirements set forth in (a), (b) and (c), above, will take effect. Ordinarily, the Company will have six months from the Effective Date of Termination to use existing supplies, but VOHC reserves the right to require a shorter time frame if VOHC, in its sole discretion, deems it necessary from the standpoint of safety and efficacy of the Product, public safety, the interests of VOHC or the veterinary dental profession, or if the reason for termination, suspension or expiration is an Enjoinable Event. The foregoing does not in any way limit the actions that VOHC may take in the event of a breach of this Agreement.

18. This Agreement may be renewed for a one-year period ("Automatic Renewal"), if VOHC sends written notification of its interest in doing so to the Company not less than

90 days prior to the Agreement's expiration date and the Company sends to VOHC written acceptance of the proposed Automatic Renewal, without modification of its terms, not less than 45 days prior to the expiration date, together with an affidavit attesting to the fact that there has been no change to Product or the process by which it is created. VOHC's automatic renewal notice may specify a change in the maintenance fee but may not alter any other terms of the Agreement. The parties contemplate that renewal on any basis other than an Automatic Renewal shall likewise be for a period of one year.

19. The Company agrees to hold VOHC harmless and to defend and indemnify VOHC against any and all loss, expense, liability or damage, including reasonable attorneys' fees, costs and expenses, arising out of the Company's breach of this Agreement (including but not limited to any actions for breach of this Agreement), any claims arising out of the exercise by VOHC of any rights reserved to it under this Agreement, any claims that Product is unsafe, hazardous or ineffective, any claims of injury or other damage caused by the Product, its labeling or instructions on use, or any other claim against VOHC relating to Product, by a third party or otherwise. For purposes of this paragraph, "VOHC" shall include VOHC as a corporate entity, together with its members, officers, directors, consultants, employees and agents.

20. The Company acknowledges and agrees that VOHC may utilize outside consultants in its review of products. VOHC will refrain, without the Company's prior authorization in writing, from voluntarily disclosing to third parties (other than consultants) secret information which is obtained by VOHC from the Company, and

designated as such by the Company, unless already known to VOHC, already available to the public, or subsequently acquired by VOHC from other sources. Prior to disclosure of such information to a consultant, VOHC will obtain from the consultant a confidentiality undertaking as restrictive as or more restrictive than VOHC's confidentiality undertaking, set forth in this paragraph. VOHC shall not be liable to the Company for any damages resulting from the acts or omissions of a VOHC consultant, including but not limited to its failure to abide by its confidentiality undertaking.

21. The rights running to the Company under this Agreement may not be assigned to or acquired by any other person, firm, corporation or other entity without VOHC's prior written authorization, which shall not be unreasonably withheld.

22. Any notice required under this Agreement shall be sufficient if sent to the party to be notified at its last known address by US certified mail, recognized overnight courier, facsimile transmission or electronic mail. Any notice period shall be deemed to commence, and any written action shall be deemed complete, upon receipt if sent by registered or certified mail, return receipt requested, carrier, facsimile or electronic mail.

23. Subject only to VOHC's rights under paragraph 15 of this Agreement, any dispute or controversy between VOHC and Company, arising out of or relating to this Agreement, shall be decided only by arbitration in the Commonwealth of Pennsylvania in accordance with the commercial arbitration rules then in effect of the American Arbitration Association, before a panel of three (3) arbitrators, one of whom shall be selected by VOHC, one of whom shall be selected by Company and one of whom shall be selected by the arbitrators already selected.

24. Any court proceeding arising out of or relating to this Agreement, filed pursuant to paragraph 15 or otherwise, may be filed in state or federal court in the County of Philadelphia and the Company specifically consents to the jurisdiction of these courts over the Company.

25. The construction, validity and performance of this Agreement shall be governed in all respects by the laws of the Commonwealth of Pennsylvania.

26. This Agreement is for the sole and exclusive benefit of the Company and VOHC. No third party may rely upon any provision of this Agreement for any purpose.

27. All rights granted to VOHC under this Agreement are cumulative. A failure by VOHC to enforce rights granted to it by this Agreement shall not constitute a waiver of those rights by VOHC.

28. If any part of this Agreement is unenforceable, all other parts of the Agreement shall remain in full force and effect without regard to the invalid portions.

29. This Agreement, together with any referenced documents, constitute the entire agreement between the parties with respect to the matters described herein, and supersede all other prior or contemporaneous agreements or understandings, written or oral, with respect to these matters.

30. This Agreement can only be modified by a writing signed by all parties to this Agreement.

By: _____

[Name of Authorized Agent]

[Title of Authorized Agent]

[Address of the Company]

Veterinary Oral Health Council®

By:

Colin E. Harvey, BVSc, FRCVS
Director, Veterinary Oral Health Council
VHUP #3113, 3900 Delancey Street
Philadelphia, Pennsylvania 19104-6010

Advertising Standards

Manufacturers may include the VOHC Seal in advertisements, provided that the following conditions are met:

1. All advertisements for products that have been awarded the VOHC Seal must be submitted for review to the VOHC, whether the advertisement includes the VOHC Seal or not.
2. Whenever used in advertisements or other materials, the VOHC Seal is to be used as provided by the VOHC, including the TM or ® symbol, as appropriate.
3. Advertisements for products awarded the VOHC Seal must not violate AVMA Principles of Veterinary Medical Ethics.
4. By submitting advertising copy that includes the VOHC Seal, advertisers certify that the advertising copy and the product are in accord with applicable government laws and regulations.
5. Comparative statements in advertisements for products awarded the VOHC Seal must be fair and substantiated, and will be reviewed. The studies upon which such comparative statements are made must be conducted on representatives of the population for whom the product is intended, and all relevant studies must be considered.
6. The advertiser and the product for products awarded the VOHC Seal must be clearly identified in the advertisement. Advertisements that simulate editorial content must be clearly labeled **Advertisement** at the top of the advertisement.
7. For products awarded the VOHC Seal, advertisements that include guarantees must be truthful and substantiated, and conditions and limitations must be included or clearly indicate where the full text of the guarantee can be examined before purchase.
8. Advertisements for products awarded the VOHC Seal must not quote names, statements or writings of any person or group without their express written consent.
9. Advertisements and other materials for products awarded the VOHC Seal are to reflect the point of view that control of plaque and calculus (tartar) is an important part of the control of periodontal disease, and that veterinary examination and professional treatment are encouraged.



ATTACHMENT A

Camera ready art will be provided to the Company upon execution of the Agreement.

