



International Tungsten Industry Association

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[Only Representative]

[Address]

[Date]

Dear Sirs

Only Representative Letter of Access for the registration of certain specified Substance(s) under REACH

The purpose of this Letter Agreement is to set out the terms on which the International Tungsten Industry Association ("ITIA") on behalf of the Tungsten REACH Consortium (the "**Consortium**") and the Lead Registrant(s) for the Substance(s) listed in Appendix 2 will grant access to the Registration Dossier to enable [] (the "**Only Representative**") to participate in the joint submission of the Registration Dossier on behalf of [] (the "**Company**") a Non-EU Manufacturer within the meaning of REACH. By signature hereof the Only Representative hereby agrees to the terms contained in this Letter Agreement which shall become effective on signature by ITIA, subject to receipt of the sums referred to in paragraph 2.1 below, on a timely basis.

Please see Appendix 1 for a list of defined terms used in this Letter Agreement.

1. GRANT AND DELIVERABLES

1.1 In consideration for the payment made by the Only Representative as set forth in paragraph 2 below, ITIA hereby agrees to grant to the Only Representative the following:

- (a) an Access Token, which shall enable the Only Representative to participate in the joint submission of the Registration Dossier on behalf of the Company;
- (b) the right to refer to the Core Data in the Registration Dossier (including any updates) for the purpose of registration of the Substance(s) pursuant to REACH;
- (c) access to the chemical safety report for the Substance(s) registered at or above 10 tonnes as submitted by the Lead Registrant and, if applicable, information on exposure scenarios;
- (d) any other necessary information on substance identification for the registration of the Substance(s);
- (e) to the extent prepared by the Consortium, information on guidance for safe use and a copy of the safety data sheet;

- (f) agreed classification and labelling; and
 - (g) a full list of uses for the Substance(s) to be covered by the registration.
- 1.2 Any rights or information provided under this Letter Agreement to the Only Representative are granted solely in favour of it on behalf of the Company and are not transferable to any other entity or person without prior written consent of ITIA.
 - 1.3 For the avoidance of doubt, the Only Representative is not authorised to use the Access Token or rights granted under this Letter Agreement for the benefit of any other Non-EU Manufacturer except the Company. In the event that the Only Representative wishes to represent any entity other than the Company, it shall be obliged to enter into a separate Letter of Access Agreement in respect of each such Non-EU Manufacturer.
 - 1.4 The Only Representative's right to refer to the Registration Dossier and Information or Studies contained therein is solely for use in complying with REACH, and neither the Only Representative nor the Company is authorised to use such information for any other purpose.
 - 1.5 For the avoidance of doubt, this Letter Agreement does not give the Only Representative and/or the Company the right to receive any copies of the Registration Dossier nor to inspect or view the Registration Dossier or any related specific document in whole or in part save as specifically required by REACH. Nothing in this paragraph shall prevent the Only Representative or the Company from accessing or reviewing the documents that are published on the internet pursuant to Article 119 of REACH.
 - 1.6 Nothing in this Letter Agreement shall require the Consortium or the Lead Registrant to provide or to file any additional data with the European Chemicals Agency and/or any other competent authority.
 - 1.7 The Only Representative shall only be entitled to participate in the joint submission of the Registration Dossier for the Tonnage Band specified in Appendix 2. Should the Only Representative seek to rely on the Registration Dossier for a higher Tonnage Band, the Only Representative shall first be required to pay such additional charges as are specified in paragraph 2.3 below.
 - 1.8 The Only Representative and the Company agree with the classification and labelling of the Substance(s) as stated in the Registration Dossier upon submission.
- 2. **PAYMENT**
 - 2.1 The Only Representative agrees to pay to ITIA for the benefit of the Consortium a payment of [] which shall relate to the specific Substance(s) and Tonnage Bands set out in Appendix 2.
 - 2.2 The Only Representative shall not receive the Access Token nor be granted any of the rights referred to in paragraph 1.1 above, until full payment has been received by ITIA. All bank and other charges in connection with such payment shall be paid by the Only Representative and the Only Representative hereby acknowledges that failure to comply with this provision will result in a delay in provision of the Access Token and granting of the rights referred to in paragraph 1.1 above until such failure is rectified.

- 2.3 In the event that the Only Representative requires an amendment to a Tonnage Band specified in Appendix 2, it shall notify ITIA of this fact and shall pay such additional fee as is specified by the Consortium based on the difference between the amount previously paid and the cost associated with the higher Tonnage Band.
- 2.4 The Only Representative agrees to pay to ITIA for the benefit of the Consortium a pro rata share of the costs of any future updates that are required to be made to the Registration Dossier.
- 2.5 If at the end of the Consortium activities there will be money left, the ITIA will arrange refund* to the Company in a pro rata manner based on the Company's contribution. [*Note: Refund will only be made if the amount to be refunded is US\$200 or more excluding bank charges]

3. **CONFIDENTIALITY**

- 3.1 In the event the Only Representative receives or accesses any Studies and/or Information in accordance with this Letter Agreement, the Only Representative shall take all reasonable measures to protect the secrecy of and prevent disclosure or unauthorised use of such Studies and/or Information. The Only Representative shall prevent the Studies and/or Information from falling into the public domain and protect the Studies and/or Information from falling into the possession of unauthorised third parties. Such measures include, but shall not be limited to, the highest degree of care that the Only Representative uses to protect its own confidential information.
- 3.2 The Only Representative agrees that any Studies and/or Information received or accessed in accordance with this Letter Agreement are not to be disclosed to the Company unless, (a) such disclosure is required in order for the Only Representative or the Company to comply with their obligations under REACH, and (b) the Only Representative has entered into a confidentiality agreement with the Company preventing the Company from disclosing any Studies and/or Information received from the Only Representative to any third party.
- 3.3 In the event of unauthorised disclosure, loss or theft of any documents, items of work in progress, or any work products embodying the Studies and/or Information, the Only Representative shall notify immediately ITIA and shall cooperate fully with the requests of the Consortium in remedying the same.
- 3.4 The Only Representative shall not be subject to the obligations of this paragraph 3 with respect to the Studies and/or Information which: (a) are or become known publicly through no wrongful act of the Only Representative; (b) were already known to the Only Representative at the time of disclosure hereunder as shown by prior written records; (c) are learned by the Only Representative from a third party under no obligation to the Consortium; (d) are independently developed by an employee, agent, or consultant of the Only Representative with no knowledge of disclosure hereunder; or (e) are approved for release by written authorisation of ITIA pursuant to the provisions of this Letter Agreement.
- 3.5 The Only Representative shall not disclose to any third party (including an affiliate of the Only Representative or the Company) the Access Token.

4. COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

- 4.1 The Only Representative acknowledges that any and all copyright and other intellectual property rights subsisting in or used in connection with the Core Data, Studies, Information or the Registration Dossier are and shall remain the property of ITIA or its licensor, and the Only Representative shall not during or after expiry or termination of this Letter Agreement in any way question or dispute the ownership thereof by ITIA or its licensor.
- 4.2 The Only Representative acknowledges that such copyright and other intellectual property rights belonging to ITIA or in its legitimate possession may only be used by the Only Representative in accordance with this Letter Agreement.

5. LIMITATION OF LIABILITY

- 5.1 To the maximum extent permitted by law, ITIA, the Consortium and the Consortium members hereby exclude all liability arising in contract or otherwise for any direct, indirect or consequential loss or damage sustained by the Only Representative or the Company by virtue of the exercise of any rights under this Letter Agreement including the right to refer to the Studies and/or Information.
- 5.2 To the maximum extent permitted by law, the Lead Registrant, ITIA and the Consortium hereby exclude all liability for, and the Only Representative shall indemnify the Lead Registrant, ITIA and the Consortium against and hold harmless from, all liabilities and claims (including reasonable legal fees and expenses in defending against such liabilities and claims) howsoever arising against the Lead Registrant in connection with: (a) the contents of any REACH registration document submitted on behalf of the Only Representative; and (b) any import, sale, manufacture or use of the substances in the EEA by the Company; other than liabilities attributable to the gross negligence or wilful misconduct of the Lead Registrant or Consortium.

6. CONSORTIUM MEMBERSHIP RIGHTS

This Letter Agreement does not give any Consortium membership rights to the Only Representative or give the Only Representative any right to refer to the Consortium vis-à-vis third parties.

7. CHANGE OF ONLY REPRESENTATIVE

In the event that the Company wishes to appoint a different natural person or legal entity to act as its only representative in place of the Only Representative under this Letter Agreement, ITIA agrees that it will enter into a new Letter Agreement on the same terms as this Letter Agreement with the replacement only representative. Such new Letter Agreement shall be for no additional consideration save for (a) an administrative fee of 100 Euros, and (b) an additional fee if the Company and the replacement only representative require additional substances or increased Tonnage Bands than those specified in Appendix 2. On signature of such new Letter Agreement, this Letter Agreement shall terminate.

8. AMENDMENTS

No amendments to or changes or modifications of this Letter Agreement may be made except in writing signed by a duly authorised representative of each of the parties hereto.

9. GOVERNING LAW AND DISPUTES

- 9.1 This Letter Agreement is governed by, and all disputes arising under or in connection with this Letter Agreement shall be resolved in accordance with, the laws of England.
- 9.2 The parties irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Letter Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 9.3 The Only Representative agrees that relief by way of injunction is an appropriate remedy for any breach by it of the confidentiality provisions in paragraph 3 of this Letter Agreement.

Yours faithfully,

.....

Burghard Zeiler, Secretary General, ITIA

Received and agreed,

.....

[] on behalf of the Only Representative

APPENDIX 1

Defined Terms

"Access Token" means the token to be provided by ITIA to the Only Representative under the terms of this Letter Agreement to enable access to the Only Representative to participate in the joint submission of the Registration Dossier;

"Core Data" means data to be submitted jointly by registrants pursuant to REACH and which includes:

- (a) classification and labelling of the Substance(s);
- (b) summaries of information derived from the application of REACH Annexes VII to XI;
- (c) robust study summaries derived from the application of REACH Annexes VII to XI, if so required under REACH Annex I;
- (d) testing proposals where required by the application of REACH Annexes IX and X; and
- (e) guidance on safe use.

"Information" means Studies, other tests, data and any information in any form whatsoever held by the Consortium on the Substance(s). It also includes all study summaries, robust study summaries, statistics, information, data or conclusions that could be deduced from such Studies, other tests, data and information which might be written, oral or visual information;

"Lead Registrant" means the same as that stated in REACH Article 11(1);

"Non-EU Manufacturer" means any natural or legal person established outside the Community who manufactures a substance outside the Community

"REACH" means Regulation EC 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals;

"Registration Dossier" means a technical dossier of a Substance which includes the Core Data;

"Study" means a report in written or electronic form on tests, or other examinations (including tests on vertebrate animals), which relate to intrinsic Substance properties or to the exposure assessment and risk characterization in the chemical safety report and as such, are of relevance for registration pursuant to REACH; this also includes study summaries and robust study summaries of the report(s);

"Substance(s)" means those substance(s) set out in Appendix 2;

"Tonnage Band" means the specified tonnage band of the Substance(s) manufactured in or imported into the EU as set out in Appendix 2.

Any definition specified in Article 3 of REACH shall have the same meaning in this Letter Agreement.

APPENDIX 2

NAMES/EINECS NUMBERS OF THE SUBSTANCES, TONNAGE BAND AND LEAD REGISTRANT

[illegible]