

Insert Date:

Insert Only Representative name:

Vanadium Consortium Reference Number:

## AGREEMENT ON LETTER OF ACCESS

### for the registration of [insert Substance Name] under the REACH Regulation 1907/2006/EC

The three Parties:

The Vanadium Reach Consortium constituted for the registration of various substances including [insert Substance Name, as listed in Annex 1] under the REACH Regulation 1907/2006/EC<sup>1</sup> (hereafter referred to as “the Vanadium Consortium”), duly empowered by the Consortium Members to sign this agreement on their behalf, and

The “Only Representative” [insert name] , represented by [...] with a registered office located [...], having the following identification number [VAT in Europe for example], on behalf of the Company [...] (Non-EU Community manufacturer within the meaning of REACH, referred to as the “Company”), duly empowered by Statute/Proxy to sign this agreement (“**Agreement**”) on their, Company’s, behalf, and collectively referred to as “Only Representative”:

AGREE AS FOLLOWS:

1. The Vanadium Reach Consortium shall grant right to refer to the data, studies and summaries, waiving argumentations, reasoning of testing proposals and/or assessments, specified in detail in Annex 1 to this Agreement which are in the legal possession of and submitted by the Vanadium Reach Consortium Members in support of the registration under the REACH Regulation of [insert Substance Name, as listed in Annex 1] (joint submission dossier hereinafter collectively referred to as the “Dossier”) to the Only Representative. Furthermore, the Vanadium Consortium shall grant to the Only Representative an “Access Token” and the “Joint Submission Name” which shall enable the Only Representative to participate in the joint submission of the Dossier on behalf of the Company. Annex 1 may be amended from time to time as agreed between the Vanadium Consortium and the Only Representative.

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<sup>1</sup> Official Journal L 136 of 29 May 2007, p. 3

2. The Only Representative shall pay to the Vanadium Consortium a fair, transparent and non-discriminatory fee as negotiated between the two sides. The fee being a deposit payment in accordance with Clauses 3 and 5.m) shall amount to **EUR [...]** and relates to the Substance(s) and the Tonnage Band(s) as listed in Annex 1. This amount is subject to VAT rules applicable for this kind of service. The Only Representative shall pay the deposit payment in full to the Vanadium Consortium within 1 (one) month of execution by the Only Representative of this Agreement. The Only representative shall pay all other invoices issued by the Vanadium Consortium to the Only Representative, in accordance with this Agreement, within 1 (one) month of the date of the invoice to the Vanadium Consortium in order to obtain and retain the rights of access granted under this Agreement for the benefit of the Company.
3. The cost structure for the Letter of Access is based on the cost sharing provisions set out in Annex 2 of this Agreement and the funding principles of the Vanadium Consortium. Costs are to be covered the following way:
  - a) by deposit payment which depends on the Substance(s) and the Tonnage Band(s) as listed in Annex 1.
  - b) by adjustment of the account (noting that there is a possibility for refunds as well as extra costs) as set out in Annex 2.

These costs are shared between an estimated number of co-registrants, per substance and tonnage band. A deposit invoice is issued on that basis. Should there be more (or less) co-registrants asking for a Letter of Access, the sharing will be adjusted and a final credit note or invoice will be issued. The Cost-Sharing Model, including the Reimbursement Mechanism, applicable under this Agreement are further set out in Annex 2 of this Agreement. If the Only Representative and the Company have any questions regarding the Cost-Sharing Model and/or the Reimbursement Mechanism applicable under this Agreement, or if it is uncertain about any relevant aspect regarding these issues, the Only Representative or the company shall immediately inform the Vanadium Consortium of that question or issue in writing and allow the Vanadium Consortium to respond to that issue. The Only Representative and the Company shall not refer any issue or claim to the ECHA or other relevant party without first raising and making every effort to resolve that issue with the Vanadium Consortium.

4. The Only Representative shall receive from the Vanadium Consortium a signed Letter of Access and any necessary information on substance identification for the REACH registration of **[insert Substance Name]**, as listed in Annex 1] on behalf of the Company within four weeks upon receipt of full payment by the Vanadium Consortium. Furthermore, the Only Representative shall also receive from the Vanadium Consortium the Access Token needed to REACH register this substance on behalf of the Company assuming that the Access Token has been released by ECHA to the lead registrant of this substance.
5. The Parties agree that the right of the Only Representative to refer to the Dossier is subject to the following restrictions:

- a) The Only Representative is allowed to refer to the Dossier and information and/or studies contained therein for the sole purpose of registration of **[insert Substance Name]**, as listed in Annex 1] under the REACH Regulation for the sole and exclusive benefit of the Company, and neither the Only Representative nor the Company are authorised to use it for any other purpose.
- b) This right of referral is solely granted in favour of the Only Representative for the benefit of the Company<sup>2</sup> and is not transferable to any other entity or person without prior written consent of the Vanadium Consortium.
- c) If Only Representative represents more than one non-EU entity within the SIEF, the Only Representative is not authorised to use the Access Token or rights granted under this Letter of Access for the benefit of any other Non-EU company except the Company named on page 1 of this document and shall be obliged to enter into a separate Letter of Access in respect of each such Non-EU company [and each of its Affiliates].
- d) The Dossier to which the Only Representative is allowed to refer for the benefit of the Company, covers only the documents listed in Annex 1 to this Agreement as well as, if applicable, access to the Chemical Safety Report for the substance registered at or above 10 tonnes as submitted by the Lead Registrant and information on exposure scenarios.
- e) The Only Representative is entitled to participate in the joint submission of the Dossier for the tonnage band specified in Annex 1 to this letter for the benefit of Company. If the Only Representative and the Company require an update to a higher tonnage band, the Only Representative and the Company will inform the Vanadium Consortium and pay the additional fee beforehand.
- f) It is the individual responsibility of the Only Representative and the Company to critically assess the Information that is generated or that is made available. The Only Representative and the Company assume the full responsibility for its own use of the Information so developed or received. No warranty for acceptance by the Agency of the Joint Registration Dossier or any data it contains is given.
- g) Notwithstanding anything to the contrary under this Agreement, the Only Representative and the Company remain individually responsible to comply with REACH, in particular, but not limited to, in relation to the individual submission of the information required of every registrant under Article 11(1) of REACH.
- h) Unless otherwise agreed, the Only Representative and the Company are not authorised to receive any copies of the Dossier nor is authorised to inspect or view the Dossier or any related specific document in whole or in part except the

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<sup>2</sup> For the avoidance of doubt – no rights to refer to the information/Dossier as described in this Agreement on Letter of Access, are granted to affiliates of Company or affiliates of the Only Representative. REACH registration is legal entity specific. In the same way, rights to refer to data granted under this Agreement on Letter of Access is legal entity specific and does not cover or include affiliates of Company or affiliates of the Only Representative. Should an affiliate entity of Company wish to obtain rights to refer to the information/Dossier as described in this Agreement on Letter of Access, the affiliate should sign and obtain a separate agreement on the letter of access.

- documents that are published on the Internet pursuant to Article 119 of the REACH Regulation.
- i) In any case, the Only Representative and the Company shall not disclose to any third party (including an affiliate of the Company or an affiliate of the Only Representative) the confidential and/or proprietary information received from the Vanadium Consortium without the prior written consent of the Vanadium Consortium, except if such communication is made to the European Chemicals Agency or any other competent authorities in strict accordance with the REACH Regulation.
  - j) In any case, the Only Representative and the Company shall not disclose to any third party (including an affiliate of the Company or an affiliate of the Only Representative) the “Access Token”.
  - k) To the extent permitted by law, the Vanadium Consortium shall not be liable in contract or otherwise for any direct, indirect or consequential loss or damage, including loss of profit or of business, sustained by the Only Representative or the Company by exercising its rights under this agreement.
  - l) This Agreement shall not grant any property rights whatsoever (including -but not limited to- intellectual property rights) on the Dossier or any part of it to the Only Representative and the Company.
  - m) The Letter of Access shall not cover any updates of the Dossier made by the Vanadium Consortium. The Only Representative agrees to contribute to the costs incurred due to registration updates as requested by the European Chemical Agency in the future as set out in Annex 2, for the tonnage band as specified in Annex 1.
  - n) Nothing in this Agreement shall require the Vanadium Consortium to provide or to file any additional data with the European Chemicals Agency and/or any other competent authority.
  - o) The Only Representative is not authorised to modify in any way whatsoever the Dossier nor any related specific document in whole or in part.
  - p) The Only Representative and the Company agree with the classification and labelling of the substances as stated in the Dossier upon submission.
6. The Vanadium Consortium and any of its members shall have the right to enforce this Agreement against the Only Representative and the Company.
  7. No amendments to or changes or modifications of this Agreement may be made except in writing signed by a duly authorised representative of each of the Parties.
  8. Any and all disputes, controversies or claims relating to this Letter of Access and any legal issues arising from it shall be governed exclusively by Austrian law without regard to its conflict of law rules. The parties submit any and all disputes or claims relating to this Letter of Access to the exclusive Jurisdiction by Arbitration after the Rules of Reconciliation and Arbitration of the Federal Chamber of Commerce, Vienna (“Wiener Regeln”). One Arbitrator shall execute such Arbitration in English

Language, the venue of which Arbitration shall be Vienna. The relevant award is final and binding upon the Parties.

9. This Agreement does not grant the Only Representative or the Company any membership rights to the Vanadium Consortium.
10. (Assignment) No rights of assignment are expressly granted under this Agreement. In the event that the Company or the Only Representative wish to assign or pass on their rights and privileges granted under this Agreement, they shall inform the Vanadium Consortium in writing, setting out the reasons for the request to assign. In the event that the Company wishes to change or replace its REACH only representative, and the Company wishes to ensure the rights and privileges granted under this Agreement are assigned to a new REACH only representative, the Vanadium Consortium shall make reasonable efforts to effectuate that transfer and assignment of rights and privileges. Should the Company terminate its appointment of the Only Representative as the REACH only representative for the Substance, all rights and privileges granted under this Agreement to the Only Representative shall immediately cease. The Only Representative shall not rely upon, benefit or attempt to benefit from the rights and privileges granted under this Agreement. The Only Representative shall inform the ECHA, and update its registration for the Substance, in accordance with Article 22(1)(i) REACH and provide the Vanadium Consortium documentary proof of such update. The Only Representative shall destroy all information and records relating to this Agreement of a confidential nature within 1 month of a request by the Vanadium Consortium and provide proof.

Each undersigned Party shall execute two (2) signature pages, retain one for its file and communicate the other to the other Party. By signing and executing this Agreement, the Only Representative and the Company each hereby agree to adhere to the terms and conditions set out in this Agreement. This Agreement will become effective on signature by the Vanadium Consortium after full payment has been received.

**FOR VANADIUM CONSORTIUM:**

**By:** \_\_\_\_\_  
(Signature)

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**By:** \_\_\_\_\_  
(Signature)

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**FOR COMPANY:**

**By:** \_\_\_\_\_  
(Signature)

**NAME:**

**TITLE:**

**DATE:**

**FOR ONLY REPRESENTATIVE:**

**By:** \_\_\_\_\_  
(Signature)

**NAME:**

**TITLE:**

**DATE:**

**Annex 1**

<b>Registration</b>	<b>Tonnage band</b>	<b>Data requirements</b>	<b>Additional information as prepared by the Vanadium Consortium</b>
The Dossier will be used by the Company for REACH registration at the following tonnage band (t/y):			
Substance Name: EC Number: CAS Number:			

SAMPLE

**Annex 2: Cost sharing under this Agreement**  
**(incl. Cost-Sharing Mechanism and Reimbursement Mechanism)**

**1. Cost sharing under this Agreement**

- 1.1 The Parties agree that cost sharing under this Agreement shall adhere to all relevant EU and other law, including but not limited to relevant EU and national competition and antitrust law, and other relevant law.
- 1.2 In particular, cost sharing under this Agreement shall, to the extent it applies, adhere to Regulation 1907/2006 (“**REACH**”) and shall be determined, in a fair, transparent and non discriminatory way, in particular:
- (i) (Fair) The costs of sharing information shall be determined in a fair way. This shall include, but is not limited to, the requirement that any registrant for a substance shall only be required to share in the costs of information and/or administrative costs, that such registrant is obliged to submit to the Agency to satisfy his registration requirements under REACH. This shall also include, but is not limited to, the requirement that a specific REACH registrant cannot benefit from preferred, reduced or discounted costs for access to REACH data, as compared to comparable or similar registrant entities.
  - (ii) (Transparent) The costs of sharing information shall be determined in a transparent way. This shall include, but is not limited to, the requirement that where multiple registrants of the same substance or SIEF participants are obliged to share information in accordance with their duties under the REACH Regulation, they shall make relevant efforts to reach an agreement on data-sharing and give access to relevant data. This shall also include, but is not limited to, the requirement that a specific REACH registrant shall make every effort to resolve any question, query or issue directly with the Vanadium Consortium before referring any dispute, claim or issue to the ECHA, ECHA Board of Appeal, Commission, REACH MSCA, etc and shall disclose any such intention immediately to the Vanadium Consortium prior to any such referral.
  - (iii) (Non discriminatory) The costs of sharing information shall be determined in a non discriminatory way. This shall include, but is not limited to, the requirement that there is no arbitrary differentiation of costs for accessing or using REACH data on non-justified grounds as between specific registrants or classes of registrants
- 1.3 The Parties agree that cost sharing under this Agreement shall adhere to Regulation 2016/9 on joint submission of data and data-sharing in accordance with REACH (“**REACH Data Sharing Regulation**”) to the extent that Regulation applies to this Agreement. In particular, the Parties agree that, if and where the REACH Data Sharing Regulation applies to this Agreement:
- (i) (costs clearly defined and identifiable) in order to ensure data is shared in a transparent and effective manner, this Agreement is and shall be



structured in a way that all relevant costs are clearly described and identifiable;

- (ii) ('pay for what it needs' principle) the costs of sharing relevant data shall be determined in accordance with the requirement that the Company/Only Representative, and Vanadium Consortium members, are obliged to pay a share of the costs of data that it/they need to register the Substance;
- (iii) (Substance sameness) Compiling information for the purposes of establishing substance sameness should not be the subject of any cost sharing between previous registrants and potential registrants and the onus shall be on the Only Representative and the Company alone to ensure the substance it wishes to register is the same as the Substance as defined and registered by Vanadium Consortium members, and neither the Vanadium R.E.A.C.H. Forschungs- und Entwicklungsverein, nor members of the Vanadium Consortium, shall bear any responsibility whatsoever in this regard;
- (iv) (Substance Evaluation decisions) In the event that: (i) registrants of the Substance are required by ECHA (or the eMSCA/MSCAs via ECHA) to provide data under a Substance Evaluation decision; (ii) costs are or will be incurred in order to satisfy that ECHA decision; – the Only Representative and the Company hereby agrees to pay its share of those costs in accordance with Clause 5.m) and 5.n) of this Agreement;
- (v) (Dossier Evaluation decisions) In the event that: (i) registrants of the Substance are required by ECHA to provide data under a Dossier Evaluation decision; (ii) costs are or will be incurred in order to satisfy that ECHA decision; and (iii) the data is relevant to the registration of the Only Representative and the Company; – the Only Representative and the Company hereby agrees to pay its share of those costs in accordance with Clause 5.m) and 5.n) of this Agreement;
- (vi) (Spontaneous updates) In the event that the lead registrant of the substance and/or members of the Vanadium Consortium conclude that a spontaneous update of the REACH registration dossier for the Substance is required due to, for example, new or a change in ECHA Guidance, new legislation, new scientific data, or any other legitimate reason; – the Only Representative and the Company hereby agrees to pay its share of those costs in accordance with Clause 5.m) and 5.n) of this Agreement;
- (vii) (Agreement is clear and comprehensible) this Agreement is and shall be clear and comprehensible to all parties and shall include sections regarding (1) itemisation of the data to be shared; (2) itemisation and justification of information of administrative costs; (3) a cost-sharing model, including a reimbursement mechanism, as set out below;
- (viii) (future relevant registrants) to the extent that other agreements, outside this Agreement, are relevant to the cost sharing of data regarding the REACH registration of the Substance – the Vanadium Consortium and the Company shall make all relevant efforts to ensure (i) cost sharing of that data applies to all relevant registrants of the Substance, without discrimination, including relevant future registrants of the Substance; and

- (ii) a method of proportional redistribution applies to the benefit of the Vanadium Consortium members and/or the Company;
  - (ix) (Cessation of activities and cost sharing) The Only Representative and Company understand and accept that costs may and will be shared with registrants who have ceased activities under Article 50(2) and 50(3) REACH in accordance with Article 50(4) REACH;
  - (x) (Other future costs) Where potential future costs form part of the deposit payment – the costs shall be justified and indicated separately from other costs in this Agreement.
- 1.4 In the event that the Only Representative and/or the Company believe that cost sharing under this Agreement (including the Cost-Sharing Model, the Reimbursement Mechanism, the Reimbursement Mechanism Exercise, and/or the Cost Reimbursement Mechanism Exercise – see below) may not or does not comply with the requirements set out in Clauses 1.1-1.3, of Annex 2 of this Agreement, the Only Representative and the Company shall immediately inform the Vanadium Consortium in writing and allow the Vanadium Consortium, including Vanadium Consortium members, sufficient and adequate time to respond to that communication. The Only Representative and the Company understand and acknowledge that: (i) the Vanadium R.E.A.C.H. Forschungs- und Entwicklungsverein is an association with limited and restricted legal power and authority which cannot act without the consent of Vanadium Consortium members; and (ii) under the REACH requirements, cost-sharing must be fair and apply in objectively the same way to all co-registrants and the Only Representative and the Company cannot benefit from individual or personal discounted or subsidised fees. The Only Representative and the Company shall not refer any claim or dispute under Articles 27 or 30 REACH, or otherwise, to ECHA, or communicate with REACH Member State Competent Authorities, the Commission, or other third party before taking every possible effort to fully and proactively engage with the Vanadium Consortium and allowing the Vanadium Consortium sufficient and adequate time to respond to questions, queries or other issues. The Only Representative and the Company acknowledge and understand that, as stated in ECHA Guidance “data sharing dispute procedures must be initiated **as a last resort**, i.e. only after all possible efforts and arguments have been exhausted”.
- 1.5 For the avoidance of doubt, the Company and Only Representative fully acknowledge and accept that the Vanadium R.E.A.C.H. Forschungs- und Entwicklungsverein is an association which: (i) is not a manufacturer, importer, distributor, user, downstream user, only representative, third party representative or other entity defined under the REACH Regulation; and (ii) is not a person or entity subject to, or regulated under, REACH – and that, therefore, this Agreement involves an entity which is not subject to REACH or subject to the REACH Data Sharing Regulation.

## 2. Deposit payments and LOA cost price

- 2.1 The Only Representative and the Company understand, acknowledge and hereby accept that, in order to obtain and retain a valid REACH Letter of Access under this Agreement, the Only Representative and the Company are required to pay an initial 'deposit payment' to the Vanadium Consortium where this payment is not the cost price of the REACH Letter of Access but, instead, an initial deposit payment. The Only Representative and the Company understand, acknowledge and hereby accept that: (i) the cost price of the REACH Letter of Access shall be calculated after 1 June 2018 once the deadline for phase-in, preregistered substances of between 1-100MTpa has expired; and (ii) at an agreed time after 1 June 2018, a reimbursement mechanism exercise ("**Reimbursement Mechanism Exercise**") will be conducted meaning that:
- (a) the Vanadium Consortium and/or relevant third parties shall, on an independent basis, calculate the cost of the LOA as per each relevant registrant entity;
  - (b) the Vanadium Consortium and/or relevant third parties shall, on an independent basis, determine whether a reimbursement or a supplemental payment is required in relation to each relevant registrant entity;
  - (c) the Vanadium Consortium and/or relevant third parties shall, on an independent basis, issue a credit note or an invoice in respect to each relevant registrant entity; and
  - (d) following receipt of the credit note, or following receipt of payment of the supplemental invoice fee relevant to the Company/Only Representative in full within the relevant deadline, the Only Representative and the Company will continue to have access to the REACH registration data, and benefit from the rights under this Agreement, under terms and conditions as set out under this Agreement.
- 2.2 The Only Representative and the Company understand, acknowledge and hereby accept that: (i) the Only Representative and the Company will not have any right of access or use to the data as specified under this Agreement until [the Only Representative] has signed this Agreement and has fully paid all invoice(s) (deposits) due; and (ii) the Only Representative and the Company will lose any such rights granted under this Agreement if, at a future date, the Only Representative and the Company do not pay within one (1) month any additional invoices (deposits) as required under the terms and conditions of this Agreement.
- 2.3 In the event that the Vanadium Consortium notifies the Only Representative and the Company of the cessation of rights of access, use and/or rights to refer under this Agreement due to non payment of an invoice or otherwise, the Only Representative and the Company and its Affiliates shall:
- (i) immediately cease all use and reliance on the Dossier and information contained in the Dossier referred to in Clause 5a) of this Agreement and cease use and reliance upon the Access Token;

- (ii) update its/their REACH registration of the dossier for the Substance indicating that all rights to use and rely upon the Information have been revoked, in accordance with Article 22(1)(i) REACH;
  - (iii) provide documentary evidence and proof to the Vanadium Consortium that the Only Representative and the Company and its Affiliates have updated its/their REACH registration dossier for the Substance and notified the ECHA of that update within 1 month of such a request from the Vanadium Consortium;
  - (iv) The Only Representative and the Company shall notify its/their customers and downstream users of the cessation of rights to the Information and the impact on downstream users and provide documentary proof to the Vanadium Consortium of such notification within 1 month of such a request from the Vanadium Consortium.
- 2.4 For the avoidance of doubt, the Vanadium Consortium, together with the lead registrant of the Substance, shall determine when and how often the total costs and total income relating to REACH registration of the Substance are assessed, calculated and registrants of the Substance reimbursed or required to make supplemental payments as agreed under this Agreement (“**Cost Reimbursement Exercise**”). Registrants may request that a Cost Reimbursement Exercise is conducted however, the Only Representative and the Company understand, acknowledge and hereby accept that calculating and reimbursing costs regarding REACH registration, itself incurs costs and constitutes an administrative burden and should, therefore, be reasonably avoided if there is no or nominal overall benefit to registrants of the Substance. The Parties currently agree that in principle the Reimbursement Mechanism Exercise shall be conducted at an agreed time after 1 June 2018 with the possibility of a Cost Reimbursement Exercise being conducted after that date, if and when the factual and legal circumstances so require, in particular where: (i) a potential registrant joins this Agreement in the future; and (ii) where the costs of a Cost Reimbursement Exercise are reasonable, proportionate, appropriate and necessary for proportional redistribution to each participant of their share of costs paid. A party that requests that a Cost Reimbursement Exercise may request that it alone take on the costs of conducting the Cost Reimbursement Exercise. Otherwise the onus for proving that a Cost Reimbursement Exercise is reasonable, proportionate, appropriate and necessary, will, in principle, be on the requesting party. Where a party wishes to re-coup costs less than € 1.000,00, they will bear the administrative and accounting costs of retrieving such refunds. In the event that there are future additional registration requirements regarding the Substance, excluding those referenced in Clause 1.3 (iv)-(vi), Annex 2 of this Agreement, the Only Representative and the Company and the Vanadium Consortium shall make every effort to share and divide those costs in the same, or substantively the same way, as ‘Data Costs’ are shared under the provisions of this Agreement. Invoices issued by the Vanadium R.E.A.C.H. Forschungs- und Entwicklungsverein regarding future costs must be paid by Company/Only Representative in full within 1 (one) month – or cessation of rights under Clause [2.3] of Annex 2 (above) will apply.

- 2.5 The Only Representative and the Company understand, acknowledge and hereby accept that: (i) the Reimbursement Mechanism Exercise, and any other subsequent Cost Reimbursement Exercise, shall be calculated and applied in accordance with the Cost-Sharing Model provisions stated in this Agreement; (ii) the current deposit payment price of the LOA was set a number of years ago, when the number of registrants of the Substance was estimated, and where the current number of registrants is lower than had been envisaged and estimated.

### 3. Cost-Sharing Model

- 3.1 The Cost-Sharing Model under this Agreement shall, in principle, apply as follows:
- (i) Costs shall relate to Information Requirement Costs and Administrative Costs. 'Information Requirement Costs' shall include any cost that was required for performing an existing study or is required for performing a new study, whether relating to preparing the necessary specifications, contracting with a laboratory or monitoring its performance. Information Requirement Costs includes costs of fulfilling a REACH information requirement not involving testing studies. Information Requirement Costs include Data Costs and Other Information Costs, where 'Other Information Costs' shall include costs regarding: literature searches; review and assessment of studies conducted; preparation of the dossier; verification and validation of legitimate possession; verification and validation of suitability to satisfy REACH requirements – which may or may not equate to ECHA demands; etc. 'Administrative Costs' shall include any cost of creating and managing the data-sharing agreement and the joint submission of information between registrants of the same substance as required by REACH applicable for the data-sharing agreement. For the avoidance of doubt, regardless of how a cost item is categorised, it shall be subject to the Reimbursement Mechanism Exercise and, where relevant, the Cost Reimbursement Exercise.
  - (ii) As regards 'Data Costs', these costs shall, in principle, be aggregated as per each tonnage threshold. A registrant shall pay an equal share of the Data Costs it relies upon as per its tonnage band taking into account opt outs, usage rights, number of other registrants in the same tonnage band, intermediate SCC/substance registration, etc. The general principle would be that the Data Cost item in question would be regarded as the dividend; the number of registrants relying or using that data would be the divisor; and the cost per company would be the quotient.
  - (iii) As regards 'Other Information Costs', a registrant shall, in principle, pay a proportional and fair share of these costs. Specifically, a registrant shall be allocated a number of points proportional to the benefit it derives from its reliance on the cost item in question. This will take into account, amongst other things: the specific registrant's tonnage band; usage rights and benefits; etc. Each registrant legal entity will be allocated a number of

points. The overall number of points of all registrants relying and benefitting from the Other Information Cost item will be calculated. Each registrant shall, in principle, pay its percentage share, determined via the points system, of the overall Information Cost item in question.

- (iv) As regards 'Administrative Costs', these costs will, in principle, be divided using the same method as applicable to 'Other Information Costs', i.e.: on a legal entity specific basis, in relation to the proportional benefit that the registrant entity in question derives from its use and reliance on that cost item, determined in relation to the points system.
- (v) For the avoidance of doubt, in the event that an Only Representative represents a non-EU manufacturer or formulator, or a number of non EU manufacturers or formulators – the Only Representative is obliged to disclose the identity of the non-EU manufacturer(s)/formulator(s) who is/are represented by him to the Vanadium Consortium within 1 (one) month of execution of this Agreement by the Vanadium Consortium. Costs shall be allocated as per each individual non EU entity the REACH Only Representative acts on behalf of.
- (vi) In those cases where a specific legal entity registrant would like information on, for example, any issue regarding the Cost Sharing Model and/or Reimbursement Mechanism, and/or cost itemisation, or other issue - that entity will have the right to raise that issue with the Vanadium Consortium. The Vanadium Consortium will make best efforts to resolve and address that question or issue as soon as possible. The Company has the right to be provided with the cost itemisations included and forming part of this Agreement. The Only Representative and the Company understand and acknowledge that the Vanadium R.E.A.C.H. Forschungs- und Entwicklungsverein is an association with limited and restricted legal power and authority which cannot act without the consent of Vanadium Consortium members, and that it is not itself a person or entity subject to REACH or a person or entity subject to the REACH Data Sharing Regulation. The Only Representative and the Company also understand that in addressing questions and issues raised by the Only Representative and the Company, costs will be incurred and therefore, the Only Representative and the Company shall only raise issues and questions that are proportionate, necessary and appropriate having regard to all the facts and circumstances. Cost itemisation requests shall, as a principle, be made available free of charge upon reasonable request.

#### **4. Other issues**

- 4.1 For the avoidance of doubt, this Agreement, is an independent, stand-alone contractual agreement. It is not envisaged that other third parties join this Agreement in the future. Nor is it envisaged that this Agreement itself form part of another agreement or agreements now or in the future – which may or may not involve persons or entities subject to REACH. To the extent other contractual agreements with third parties (which relate to the cost sharing of the data for

REACH registration for the Substance) exist now or at the time of the Reimbursement Mechanism or a Cost Reimbursement Exercise are employed, the provisions of those agreements together with the provisions of this Agreement shall determine cost sharing.

- 4.2 To the greatest extent possible and allowed by law, the Company and the Only Representative, together with the members of the Vanadium Consortium, agree to waive all rights and privileges accrued or granted under Regulation 2016/9 and/or under all relevant and related legislation including REACH.
- 4.3 The Only Representative and the Company warrant that it shall take all measures necessary to comply with relevant EU law – particularly the REACH requirements, and that it shall respect, in particular, the Article 11 REACH and Article 3 REACH Data Sharing Regulation obligations regarding one substance, one joint submission as regards the Substance. Specifically, the Only Representative and Company shall, amongst other things, fully adhere to Article 3(3) paragraph 2 REACH Data Sharing Regulation (duty to inform previous registrants of separate registration) and Articles 11(3) and 19(2) REACH (opt-outs).

\* \* \*

SAMPLE