



The International Antimony Association vzw (i2a) will offer, to non-members, Letters of Access to each of its REACH dossiers on terms set out in this Agreement. This procedure will be executed as soon as the Technical Completeness Check of the registration file, submitted by the Lead Registrant, has been completed by ECHA.

**Agreement on Letter of Access (LoA)**

**For the registration of antimony trioxide under REACH**

**According to REACH Regulation (EC) No 1907/2006**

Between

**The International Antimony Association,** vzw, (i2a), Avenue de Broqueville 12, 1150 Brussels, Belgium

(hereinafter referred to as "**Data Owner**" or "**i2a**")

and

**Company** : .....

**Address** : .....

.....

.....

.....

Acting both in its name and on its behalf as well as in the name and on behalf of the companies listed in Annex 2 thereto (hereinafter referred to as the "Affiliates" (i.e. all legal entities listed in Annex 2 to this Agreement), being either any legal entity controlling, controlled by, or under common control with the Company, or any legal entity which the Company could represent as Only Representative or as Third Party Representative);

(hereinafter referred to as "**the Grantees**")

Hereinafter referred individually to as "**the Party**" or collectively to as "**the Parties**".

## Preamble

Whereas:

(1) REACH Regulation (EC) N° 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (the “REACH Regulation” or “REACH”) provides that any manufacturer and importer of a substance, in quantities of one tonne or more per year, shall submit a registration of the substance to the European Chemicals Agency (“ECHA”), subject to definitions and conditions prescribed by the Regulation;

(2) The International Antimony Association VZW (“i2a”) was founded on 1 January 2008 for the purposes of; inter alia, the Joint Submission of a registration of antimony trioxide.

(3) There is no separate REACH consortium for antimony trioxide, i2a has been appointed by its members to act as Secretariat for all REACH matters and has been duly authorized to act on its members’ behalf on all matters relating to this Agreement, including its signature.

(4) The members of i2a who have pre-registered antimony trioxide in accordance with the requirements of the Regulation jointly hold rights via i2a to information and/or studies and/or study summaries and/or waiving arguments and/or reasoning of testing proposals and/or assessments and/or tools on the physico-chemical, human health and environmental properties and relevant Classification of antimony trioxide (a compilation of knowledge hereinafter called ‘the Dossier’) and therefore i2a is called ‘Data Owner’;

(5) Guidance on data-sharing issued by ECHA in relation to the Regulation states that “parties sharing data must make every effort to ensure that the costs of sharing the information are determined in a fair, transparent and non-discriminatory way” (article 27(3) and 30.1)”;

(6) The fee structure set out in this Agreement takes account of this requirement and recognizes the investment made by the relevant members of i2a in the development of the Dossier and the work done on the EU Risk Assessment Report of antimony trioxide;

(7) The Substance Information Exchange Forum (“the SIEF”) for antimony trioxide, established by the process set out in the Regulation, has or has been deemed to have appointed Campine NV, a Member of i2a, as Lead Registrant for the Joint Submission;

(8) On creation of the Joint Submission by the Lead Registrant, a security token was issued by ECHA to the Lead Registrant to be shared with other participants in the Joint Submission;

(9) The Dossier of the Data Owner may be of use to meet the requirements of the REACH Joint Registration of Antimony trioxide for submission to the European Chemicals Agency (“ECHA”) in accordance with the Regulation;

(10) The Grantees desire to refer to the Dossier only for registration purposes under REACH Regulation requirements, via a right to refer to the Dossier of the Data Owner as required by article 10 of REACH;

(11) The Data Owner is willing to provide such rights on the Dossier in accordance with the terms and conditions of this Agreement.

(12) No amendments to or changes or modifications of this Agreement may be made except in writing signed by a duly authorized representative of both Parties.

(13) This Agreement does not give any i2a membership rights to the Grantees.

THE PARTIES HAVE AGREED UPON THE FOLLOWING:

### **Article I. Definitions**

Terms written in capital letters are defined in the Preamble above, in this Article I or in other parts of this Agreement. To the extent not otherwise defined in this Agreement, any definition specified in REACH, in particular in Article 3, shall apply to this Agreement:

**Affiliates:** All legal entities listed in Annex 2 to this Agreement.

**Studies:** the study/ies, data and information listed in Annex 1, copy(ies) of the study summary(ies) and/or robust study summary(ies) which have been provided by the Data Owner.

**Substance:**

Antimony trioxide (CAS 1309-64-4 / EINECS 215-715-0).

### **Article II. License and sub-license**

1. In consideration of the payment of the fee calculated in accordance with Article III of this Agreement by the Grantees to the Data Owner, the Data Owner shall grant to the Grantees, by Letter of Access in the terms set out in Annex 1 to this Agreement:
  - a) Access to the Chemical Safety Report (CSR) for the Substance registered at or above 10 tonnes as submitted by the Lead Registrant;
  - b) Access to a valid security token granted by ECHA to the Lead Registrant for antimony trioxide which shall enable the Grantees to participate in the joint submission of the Registration Dossier;
  - c) The right to participate in the Joint Submission;
  - d) The right to refer to the Dossier for the sole purpose of supporting the Grantees' registration of antimony trioxide in accordance with the REACH Regulation;
  - e) Agreed classification and labeling.
2. The Applicant Grantees shall provide i2a for inclusion in this Agreement under Annex 2:
  - a) The names of all the Affiliates to which the rights conferred by the Letter of Access shall exclusively apply.
  - b) In case of an Only Representative (OR): the full name of the non European producer and its respective Affiliates for which this Letter of Access will be used.
  - c) The average annual tonnage of Antimony trioxide produced in or imported into the EU by each Applicant Grantees (including those of Affiliates) in the 3 (three) calendar years prior to the date of signature of this Agreement (the "tonnage").
3. On receipt of the signed Agreement i2a will issue an invoice to the Applicant Grantees for the agreed fee in accordance with Article III.
4. Within 14 (fourteen) days of receipt of full payment of this invoice, the Data Owner shall issue a "Letter of Access" in the form attached hereto as Annex 1 along with the information described in Article II (1).
5. The Applicant Grantees confirms that, by receiving a copy of the CSR submitted by the Lead Registrant, it has been notified by i2a of the list of identified uses of Antimony trioxide and

associated exposure scenarios and agrees with the stated Classification and Labeling. i2a shall not be required to provide to the Applicant Grantees any information related to a process, use or exposure not covered by this list. Nothing in this Agreement shall require i2a to provide or to file any additional data with the ECHA and/or any other competent authority. i2a shall also not provide the Grantees any further assistance for filling in the company-specific parts of their IUCLID file.

6. The Grantees do NOT have the right to sub-license their rights to SIEF participants or other Affiliates not included in this Agreement under obligation to register under REACH.
7. In case the Grantees is an Only Representative, the rights afforded to the Grantees and i2a and the duties to be undertaken by the Grantees and i2a shall apply as if the non-EU legal entity represented by the OR were itself the Grantees.
8. The Letter of Access shall cover any updates of the Dossier made by i2a and the Lead Registrant **IF** the linked potential fees to these updates are duly paid by the Grantees in line with Article III(6).
9. The Grantees are not authorized to receive any copies of the Dossier nor are they authorized to inspect or view the Dossier or any related specific document in whole or in part except (i) the documents that are published on the internet pursuant to Article 119 of the REACH Regulation, and (ii) the Chemical Safety Report (CSR) in line with Article II(1) of this Agreement.
10. It shall be the responsibility of the Grantees to check that the antimony trioxide that he intends to register is the same as the antimony trioxide as defined by i2a in the REACH Dossier of antimony trioxide.

### **Article III. Compensation**

1. In consideration for the licenses granted under Article II, the Grantees will compensate the Data Owner.
2. The compensation for these licenses will be effective by the payment to the Data Owner of the relevant fees as explained in Art III (4). Payment is due within 1 (one) month after receipt of an invoice issued by the Data Owner. If the payment has not been made by the Grantees by the due date, the license mentioned under Article II will not be sent to the Grantees which will cause a delay in the provision of the Token and granting rights as described in Article II(1) until full payment is received.
3. All payments due hereunder shall be net payments, i.e. free of any bank or transfer charges or similar charges and without deduction of any taxes, levies or other dues payable. If payer is required to withhold any tax or to make any other deduction from any such payments, then the said payments shall be increased to the extent necessary to ensure that, after making of the required deduction or withholding, payee receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made (gross-up amount). If upon application of the beneficiary any withholding tax can be reduced, or refunded, or an exemption from withholding tax is granted, payer shall file on behalf of payee for such reduction, refund or exemption.

4. The fees for a Letter of Access depend on the tonnage of antimony trioxide produced/imported by the Grantees and its Affiliates covered by this Agreement. A fee is required per substance and per legal entity. For a substance for which a REACH registration is required in the < 10T band; the fee will be fixed at 16.000€. For substances for which a REACH registration is required in the 10-99T band, a fixed fee of 32.000€ will be charged. For substances for which a REACH registration is required in the 100-999T band, a fixed fee of 75.000€ will be charged. For higher tonnage bands, the LoA fee will be equal to the membership fee for that specific tonnage band. Membership fees are updated biannually. As of February 2011 (and updated each February of the following years), on top of the LoA fee, an interest rate will be charged equal to the 12-month Euribor rate + 2%.

Penalty charges (to be defined by the Board of Directors of i2a) shall be invoiced to the Grantees who provided the Association the wrong information on tonnages/tonnage bands. The Association reserves the right to have an independent audit conducted of the tonnages declared by the Grantee for itself or for any Affiliate. If the Grantee is found to have deliberately under-reported their tonnage, this will be considered as a material breach of this Agreement and Article VII will be used to terminate this Agreement and all charges of the independent audit will then be charged to this Party.

5. The Grantees shall only be entitled to participate in the joint submission of the Dossier for the tonnage band specified in annex 3. Should the Grantees seek to rely on the Dossier for a higher tonnage band, the Grantees shall first be required to pay additional charges as are specified in paragraph 4 above. The Grantees shall immediately notify i2a of this tonnage change and pay the difference between the amount previously paid and the cost associated with the higher tonnage band.

6. Should the Dossier need to be significantly updated or study proposals included in the Dossier have to be worked out further based on ECHA's advice, the Grantees accept to pay at that moment their fair share of the costs encountered, based on the same cost-sharing principles as described in Article III (4). If the Grantees refuse to pay their fair share of these potential future costs, the Data Owner will consider this as a material breach of this Agreement and Article VII will be used to terminate this Agreement.

#### **Article IV. Representations**

The Data Owner holds rights on the "Dossier" and has the authority to grant rights to refer to, use and copy the Dossier.

#### **Article V. Ownership of Information**

1. This Agreement does not grant the Grantees or its Affiliates any property rights whatsoever in the Dossier or does not change existing ownership rights to any of the Studies used in this Dossier under this Agreement, on whatever form and whenever, by the Data Owner.
2. Neither this Agreement nor any disclosure of Studies or the Dossier itself shall vest any present or future rights in any patents, trade secrets or property rights and no license(s) other than the(se) specified under article II are granted.
3. Nothing in this Agreement shall give the Grantees or its Affiliates the right to assign, transfer or grant to any third party the rights conferred by this Agreement and by the Letter of Access without the expressed written permission of i2a on behalf of its members.

## **Article VI. Confidentiality of Information**

1. The Grantees shall not disclose to any third party any information contained in or derived as a result of this Agreement (including the Token). Legal entities or Affiliates not mentioned in annex 2 of this Agreement will be considered as third parties.
2. i2a shall keep confidential any data such as production or import tonnage disclosed by the Grantees to it for the purpose of this Agreement, and shall not disclose to any of the Members of i2a or to any other party such data or any information from which such data can be calculated.

## **Article VII. Term & Termination**

1. The Data Owner shall have the right to enforce this Agreement against the Grantees (either the Company or any of its Affiliates listed in Annex 2 of this Agreement). The Grantees accept to guarantee the Data Owner against any breach of this Agreement by one of their Affiliates.
2. This Agreement and the license granted hereunder will have no expiration, except as provided under Paragraphs 3 and 4.
3. This Agreement and the license provided hereunder shall expire once the Studies used in the Dossier are no longer protected and may be used without restrictions under the applicable law. The Parties acknowledge that the period of protection under the REACH Regulation currently is twelve years after the first submission to the European Chemicals Agency.
4. Either Party may terminate this Agreement and the licenses granted under this Agreement, if the other Party is in material breach of any representation, warranty, covenant, or agreement contained in this Agreement, after providing written notice to the other Party of such intent and reason for termination. This termination will be effective fifteen (15) calendar days after the date of sending the notice, unless before the end of that period the other Party cured the breach identified in the notice. If the breach is cured in the specified period and the breaching Party receives written acknowledgement from the non-breaching Party that the breach has been cured, then the notice of termination will be void and of no effect.
5. Upon termination of this Agreement under the paragraph 4 due to the Grantees' breach:
  - (a) All Data received in whatever form (including the CSR) will be immediately returned by the Grantees to the Data Owner;
  - (b) The Grantees will withdraw any Letter of Access for the right to refer to the Dossier that was submitted to any regulatory agency;
  - (c) The Grantees will have no claim against the Data Owner, for compensation of loss of business or goodwill for any other damages that may result from such termination of this Agreement. The Grantees shall also not be entitled to a refund of any part of the fee paid.

## **Article VIII. Legal entity change**

The written consent of the other Party shall be required in case a Party assigns, transfers or delegates its rights and obligations under this Agreement to any of its Affiliates or to a legal successor in ownership by sale, division, merger or consolidation of all or substantially the whole of the business relevant to the Substances referred to in this Agreement, subject to acceptance by the assignee of the terms of this Agreement, to be notified in written to the other Party without undue delay.

## **Article IX. Liabilities**

1. The Data Owner gives no warranty for acceptance by the ECHA of the Joint Registration Dossier or any data it contains.
2. None of the Parties (nor the Lead Registrant who will submit the Dossier to the ECHA on behalf of all registrants) shall be held liable for any direct, indirect or consequential loss or damage incurred by any Party in connection with the activities contemplated in this Agreement, unless caused by gross negligence or willful misconduct.
3. Nothing in this Agreement will be deemed to be a representation or warranty by the Data Owner of the accuracy, safety, or usefulness for any purpose of any technical information, techniques, or practices at any time made available by the Data Owner to the Grantees. The Data Owner will have no liability whatsoever should any part of the Dossier be questioned in any manner or considered inaccurate, incomplete or insufficient for the purposes of inclusion in any REACH registration.
4. If a Company would request a Letter of Access close to the registration deadline, the obligations of the Data Owner shall only be obligations of best effort (and not an obligation of result). Neither the Data Owner nor the Lead Registrant can be held liable for the Company failing to meet his registration deadline in this case.

## **Article X. Dispute resolution and applicable law**

1. The Parties shall first attempt to settle amicably any dispute arising out of this Agreement. Any dispute shall be resolved by arbitration, ousting jurisdiction by ordinary courts, by a panel of three arbitrators. Each party to the dispute will nominate one arbitrator. These two arbitrators will then designate a third arbitrator who will also act as chairman. The arbitration decision shall be binding on the parties. The place of any hearing shall be Brussels and the language of the arbitration shall be English.

Each Party may at any time request from any competent judicial authority any interim or conservatory measure.

2. This Agreement shall be governed by the laws of Belgium, without regard to any principle of conflict or choice of laws that would cause the application of the laws of any other jurisdiction.
3. If at any time any provision of this Agreement is or becomes invalid or illegal in any respect, this shall have no effect on the validity of the remaining contractual provisions. The invalid

provisions are to be replaced, backdated to the time of their becoming ineffective, by provisions which come closest to achieving their objective.

The Parties by their duly authorized representatives, sign this Agreement in duplicate; with each Party receiving one of the signed originals hereof.

For: The Grantees

Represented by:

Name:

Title:

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

For: the Data Owner

Represented by:  
KV Consulting Services BVBA \_\_\_\_\_

Name: Karine Van de Velde of KV Consulting Services BVBA

Title: i2a Secretary General

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

**Annex 1 - Letter of Access to the Joint Submission REACH Registration Dossier of Antimony Trioxide**

Dear Sirs,

Subject to the terms and in consideration of the compensations set forth in the Agreement on Letter of Access for Registration under REACH dated .../.../2010 between COMPANY ..... and the Data Owner (hereinafter 'the Agreement'), by this letter, the Data Owner (i2a), grants by this Letter of Access (LoA) the Grantees, mentioned in that Agreement, the license to refer to the REACH Registration Dossier of antimony trioxide, solely for the purpose of preparing a REACH<sup>1</sup> registration dossier on Antimony trioxide (CAS 1309-64-4) for submission to the European Chemicals Agency.

This LoA is made in compliance with the terms and conditions of the above mentioned Agreement.

**GRANTEES:** Company XXX (*including. nominated Affiliates in Annex 2*)

.....  
**SUBSTANCE:** Antimony Trioxide

**DOSSIER:** The REACH Registration Dossier of Antimony Trioxide.

Along with this LoA, the Grantees will receive:

- A copy of the CSR (Chemical Safety Report) (in case tonnage is higher or equal to 10T)
- Valid security token and Joint Submission (JS) name that will enable the Grantees to become part of the JS.

Sincerely,

For:           The Data Owner

Signature:

Name:         Karine Van de Velde

Title:         i2a Secretary General

Duly authorized by i2a

Date:

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<sup>1</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC; OJ 2006, L 396/1.

**Annex 2 – Full names of the legal entities represented by the Grantees and therefore being entitled to use the Letter of Access for antimony trioxide:**

The undersigned provides this annex to the Agreement on Letter of Access.

Date	
Name of the Grantees	
Represented by (name and title)	
VAT number (in EU)	
Full name of the Affiliates of the Grantees covered by this Agreement, including the pre-registration number of each legal entity:	
Company Name, Address and Local Contact Person, incl.telephone and email	
<b>In case the Grantees is an Only-Representative:</b>	
Full name of the non-EU company represented by the Grantee:	
Other Affiliates of the non-EU company covered by this Agreement:	
Signature(s)	
Name(s)	
Title(s)	

**Annex 3 – Average annual tonnage of Antimony trioxide produced in or imported into the EU by the Applicant (including those of Affiliates) in the three calendar years prior to the date of signature of this Agreement:**

Substance	Tonnage
Antimony trioxide	
Signature(s)	
Name(s)	
Title(s)	

The tonnages on which the fees for Letters of Access are based are the averages of the three years prior to the date of formal registration (within REACH IT). As an example, for LoAs to dossiers required by the end of November 2010, the tonnages are the averages of 2007, 2008 and 2009.

Where the Applicant is an EU based producer/importer, the tonnage shall be the total of its own EU production and imports into the EU plus any such production or imports of the Affiliates. Where the Applicant is an Only Representative, the tonnage shall be the total import into the EU by the represented non-EU legal entity and all Affiliates.