

Arsenic Consortium

Data sharing agreement under REACH

Between

The Members of the Arsenic Consortium represented by the REACH Orphan Substances Consortium BVBA acting as the Consortiums Secretariat and duly empowered for the purpose hereof by the Lead Registrant, PPM Pure Metals GmbH, with offices located at Am Bahnhof 1, 38685 Langelsheim, Germany to act in the name of the Lead Registrant for Letter of Access management,
(hereinafter referred to as "**Data Owner**")

and

CMK, s.r.o. with offices located at Sandricka 30, 966 81 Zarnovica, SLOVAKIA

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

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

1. Preamble

Whereas the Data Owner has prepared the REACH Joint Registration Dossier on the Substance(s) for submission to the European Chemicals Agency ("ECHA") as required by Regulation (EC) N° 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH");

Whereas the Data Owner has the authority to grant the right to refer to the Registration dossier;

Whereas the Grantee desires to refer to the Joint Registration Dossier, only for purposes of EU REACH requirements, via a right to refer as required by article 10 of REACH;

Whereas the Data Owner is willing to provide such rights in accordance with the terms and conditions of this Agreement (hereinafter the "**Purpose**").

THE PARTIES HAVE AGREED UPON THE FOLLOWING:

Article I. Definitions

Terms written in capital letters are defined in the Preamble above, in this Article 1 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:

Affiliate: Any legal entity controlling, controlled by, or under common control with, either directly or indirectly, a Party or in case of an only representative, the affiliate of the non-EU manufacturer or in case of a third representative, the affiliate of the legal entity represented. For these purposes, "control" shall refer to: (i) the possession, directly or indirectly, of the power to direct the management or policies of a person, whether through the ownership of voting rights, by contract or otherwise; or (ii) the ownership, directly or indirectly, of 50 % or more of the voting rights or other ownership interest of a person.

Dossier: the REACH Joint Registration Dossier on arsenic metal as submitted by the Lead Registrant to the European Chemicals Agency ("ECHA") as required by REACH

Substance(s): arsenic, CAS 7440-38-2, as defined in Annex 2.

Article II. License and deliverables

1. In consideration for the payment made by the Grantee as set forth in Article III, Data Owner agrees to grant to the Grantee the following:

- a. an Access Token and the Joint Submission Name which shall enable the Grantee to participate to the Dossier,
- b. The non-exclusive and non-terminable Right (License) to Refer to the Core Data in the Dossier (including any updates – see article III.5) for the purpose of registration of the Substance pursuant to REACH;
- c. To the extent prepared by the Data Owner, information on Guidance on Safe Use and a copy of the Safety Data Sheet;
- d. Agreed classification and labelling;
- e. List of uses covered in the registration dossier.

2. Data Owner shall provide to the Grantee the deliverables as described in Article II.1 within 10 days of receipt of payment of the compensation stipulated in article III.1.

3. Nothing in this Agreement shall oblige the Data Owner to provide or to file any additional data with ECHA and/or any other authority.

4. The Grantee shall only be entitled to exert the rights as defined in Article II for the tonnage band specified in Annex 3. Should the Grantee seek to exert these rights for a higher tonnage band, the Grantee shall first be required to pay such additional charges as specified in Article III.

5. The Grantee agrees with the classification and labeling of the Substance as stated in the Dossier upon submission.

6. This letter of access does not grant access for use for read-across purposes for other substances under REACH.

Article III. Compensation and reimbursement

1. In consideration for the licenses granted under Article II, the Grantee will pay to the Data Owner 22.313€ within 1 (one) month after receipt of an invoice issued by the Data Owner.
2. Indirect taxes, including but not limited to Value Added Tax (VAT), Goods and Service Tax (GST), service tax, business tax, as applicable pursuant to the relevant tax law, shall be borne by the Grantee. However, the Grantee is entitled to withhold any payment of indirect taxes unless the Data Owner has provided payer with a sufficient invoice for purposes of indirect taxation.
3. The Grantee shall not receive the Access Token nor be entitled to exert the rights referred to in Article II until full payment has been received by the Data Owner.
4. In the event that the Grantee requires an amendment to the tonnage band specified in Annex 3, it shall notify the Data Owner of this fact and shall pay such additional fee as is specified by the Data Owner on the difference between the amount previously paid and the cost associated with the higher tonnage band.
5. The Grantee agrees to pay to the Data Owner a pro rata share of the costs of any future updates that are required to be made to the Registration dossier.
6. It is understood and accepted that the Grantee is responsible for the payment of its own registration fee required by ECHA in relation to the Dossier.
7. The Data Owner will re-calculate in Dec 2020 the actual cost of the Dossier per tonnage band considering the total number of registrants at that time. Potential reimbursements will then be made to the Grantee if contributions have been received from the Grantee, larger than the finally calculated share AND if the potential reimbursement exceeds 1000€.

Article IV. Ownership of Information

1. This Agreement does not grant any ownership rights or change existing ownership rights to the Dossier or any of the Studies in the Dossier provided under this Agreement, on whatever form and whenever, by the Data Owner.
2. Neither this Agreement nor any disclosure of Studies used in the Dossier 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. The Grantee shall not disclose the Access token to any third party (including an affiliate to the Grantee).

Article V. Legal entity change

The consent of the other Party shall not 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 Substance 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 VI. Liabilities

1. The Data Owner gives no warranty for acceptance by the ECHA of the Dossier or any data it contains.

2. None of the Parties 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 wilful 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 Grantee. 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.

Article VII. 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 arbitration rules of the CEPANI shall be applicable. The place of any hearing shall be Brussels and the language of the arbitration shall be English.

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

3. 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.

4. 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 Grantee

Represented by: _____

Name: Dr. ĽUBOŠ BEŇO

Title: CEO

Date: 22/07/2019

CMK, S.R.O.
Sandricka 30
966 81 ZARNOVICA
SLOVAKIA

For: the Data Owner

Represented by: 

Name: Karine Van de Velde

Title: As consortium, secretary
general

Date: 25/7/2019

Annex 1 – DOSSIER submitted by the lead registrant

EU REACH Joint registration dossier of Arsenic metal for the 10-100t band

Annex 2 – SUBSTANCE(S)

Arsenic metal CAS 7440-38-2 EINECS 231-148-6

Annex 3 – TONNAGE BAND of Grantee

1-10T

