

DATED [insert date] 2010

- (1) **COBALT REACH CONSORTIUM LIMITED**
- (2) **[COMPANY NAME]**

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**REACH**

**LETTER OF ACCESS AGREEMENT**

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**K&L Gates LLP**  
110 Cannon Street London EC4N 6AR  
Tel: +44 (0)20 7648 9000  
Fax: +44 (0)20 7648 9001  
Ref: NXB/REACH

This Letter of Access Agreement (the "**Agreement**") is made by and between:

Cobalt REACH Consortium Limited ("**CoRC**") acting on behalf of the *[Blue/Green/Red]* Cobalt Reach Consortium (the "**Consortium**") as the Consortium's Secretariat and duly empowered by the Consortium Members to sign this Agreement;

and

*[insert company name]* with registered office located *[insert company address]* hereinafter referred to as the "**Company**".

The Consortium and the Company being collectively referred to as the "**Parties**" or individually as the "**Party**".

WHEREAS Regulation No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("**REACH**") requires entities that manufacture or import chemical substances in quantities of one tonne or more per year in or into the European Union ("**EU**") to prepare and submit jointly to the European Chemicals Agency ("**ECHA**") a Registration Dossier, as defined below;

WHEREAS certain Core Data incorporated into the Registration Dossier needs to be submitted by the Lead Registrant as defined below, on behalf of the other registrants;

WHEREAS having a common interest in fulfilling the requirements laid down by REACH, companies have agreed to form the Consortium (each Company a "**Consortium Member**", and together the "**Consortium Members**") in order to share human and financial resources involved in complying with REACH and to develop and collate Studies and/or Information, each as defined below, required to complete the Core Data for the Registration Dossier;

WHEREAS the Company requires access to the Core Data developed by the Consortium related to the Substance(s) listed in Appendix 1 hereto;

WHEREAS pursuant to the provisions of the *[Blue/Green/Red]* Cobalt REACH Consortium Agreement ("**Consortium Agreement**"), the Consortium agrees to grant to the Company such access to the Core Data and the right to refer to the Core Data as is necessary to register the Substance(s) pursuant to REACH.

**IT IS AGREED AS FOLLOWS:**

## 1. DEFINITIONS

**"Affiliates"** means the companies listed in Appendix 2, being either any legal entity controlling, controlled by, or under common control with the Company, or any legal entity which the Company could formally represent;

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

- (a) classification and labelling of the Substances;
- (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;
- (e) chemical safety reports where applicable; and
- (f) guidance on safe use.

The scope of the Core Data shall correspond to the requirements of REACH applicable to entities manufacturing or importing the specified highest tonnage band of the Substance(s) as shown in Appendix 1;

**"Funding Structure Document"** means the document provided by the Consortium to the Company and made available on the Consortium's website, which sets out the funding principles that have been adopted by the Consortium and which will be applied to calculate the fees payable by the Company under this Agreement. That document may be amended from time to time and the version applicable under this Agreement is dated November 2008, version no 2.2;

**"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 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);

**"Letter of Access"** means the standard form Letter of Access which appears at Appendix 3 of this Agreement;

**"Registration Deadline"** means the date when the Registration Dossier for the Substance(s) shall be submitted to ECHA. Such dates have been specified by ECHA and the relevant deadline for each substance shall be determined by the Consortium, as shown in Appendix 1;

**"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);

**"Substances"** means those Substances that are covered by the Cobalt REACH Consortium and are listed in Appendix 1;

**"Tonnage Band"** means the specified tonnage band of the substance to be manufactured in or imported into the EU by the Company and/or its Affiliates as set out in Appendix 2.

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

## 2. GRANT

2.1 In consideration for the payment made by the Company as set forth in Section 3, the Consortium hereby agrees to grant to the Company and its Affiliates, sufficient access, including the right to refer to the Core Data, in order to enable the Company and its Affiliates to register the Substance(s) identified in Appendix 1 pursuant to REACH, subject to the express terms of this Agreement.

2.2 The Company shall only refer to the Core Data in the Registration Dossier for the purpose of registration of the Substance(s) pursuant to REACH and for no other purpose.

2.3 The right to refer as set out in Section 2.1 above is granted solely in favour of the Company and its Affiliates identified in Appendix 2 and is not transferable to any other entity or person without prior written consent of the Consortium.

2.4 Unless otherwise agreed in writing or required for compliance with the Company's obligations under REACH, the Company is not authorised to receive any copies of the Registration Dossier nor is it authorised to inspect or view the Registration Dossier or any related specific document in whole or in part. Nothing in this Section 2.4 shall prevent the Company or its Affiliates from accessing or reviewing the documents that are published on the internet pursuant to Article 119 of REACH.

2.5 For the avoidance of doubt each legal entity (i.e. the Company and each of its Affiliates) seeking to refer to the Core Data shall be required to sign a separate Letter of Access for each Substance and the rights granted by the Consortium under that Letter of Access shall only ever be for the benefit of one legal entity and the specified Substance(s). In signing such Letter of Access, each Affiliate will agree to be bound by the terms of this Agreement as if it were the Company under this Agreement.

### 3. **COMPANY AND AFFILIATES**

3.1 The Company agrees that it shall enter into such agreements or undertakings with its Affiliates such as to require the Affiliates to comply with the obligations set forth in this Agreement.

3.2 Company agrees that in the event that any of its Affiliates breach the terms of this Agreement, the Company shall be jointly and severally liable with its Affiliates for any such breach as if the Affiliate were a party to this Agreement. All remedies that would have been available to the Consortium in respect of any breach of this Agreement by the Company shall be available to the Consortium in respect of any breach by an Affiliate, including the right to pursue injunctive relief. Company further agrees to take all steps requested by the Consortium to cooperate with the Consortium in any action required to enforce this Agreement in case of breach by an Affiliate.

### 4. **PAYMENT**

4.1 The Company confirms that prior to signing this Agreement it has supplied CoRC with all the information required in Appendix 2 and that if there are any changes or amendments required to be made to the information as supplied to CoRC during the term of this Agreement it will notify CoRC of those changes as soon as reasonably practicable.

4.2 The payment made by the Company to the Consortium shall consist of: (a) an advance payment accounting for the overall tonnage band of the Substances; and (b) a further payment to be calculated with reference to each individual Substance as shown in Appendix 2 and as described below.

(a) The advance payment for the right to refer to the Core Data shall be based on the highest Tonnage Band corresponding to the total aggregated tonnage of cobalt contained in all the Substances manufactured in the EU and/or imported into the EU per year by the Company and its Affiliates;

(i) if the Company is manufacturing in or importing into the EU a total tonnage of Substance(s) below 100 tonnes cobalt per year, the Company shall pay CoRC, for the benefit of the Consortium, an initial deposit as a fixed fee of Euros 2000;

- (ii) if the Company is manufacturing in or importing into the EU a total tonnage of Substance(s) of 100 tonnes cobalt or more but below 1000 tonnes cobalt per year, the Company shall pay CoRC, for the benefit of the Consortium, an initial deposit as a fixed fee of Euros 10,000;
    - (iii) if the Company is manufacturing in or importing into the EU a total tonnage of Substance(s) of 1000 tonnes cobalt or more per year, the Company shall pay CoRC, for the benefit of the Consortium, an initial deposit as a fixed fee of Euros 20,000.
  - (b) The Company shall pay the advance payment upon signing the Agreement and within 45 days of receipt of a first invoice and as a minimum at least four weeks before the relevant Registration Deadline (noting that invoicing can take up to two weeks).
  - (c) The Company shall make the remaining payment with respect to each individual Substance in accordance with the Funding Structure Document within 45 days of the second invoice and as a minimum at least two weeks before the relevant Registration Deadline (noting that invoicing can take up to two weeks).
- 4.3 Following the submission of the Registration Dossier for a Substance(s) by the Lead Registrant, the Company agrees to make additional payments to CoRC for the benefit of the Consortium, where:
- (a) the payments made by the Company as described in 4.1 are less than its share of the actual costs incurred by the Consortium for preparing and submitting the Registration Dossier for the Substance(s), in which case the Company shall pay to the Consortium the difference between the amounts paid under Section 4.1 and its share of the actual amount incurred by the Consortium;
  - (b) the Company requires an increase to a Tonnage Band specified in Appendix 2, in which case it shall notify CoRC of this fact and 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; or
  - (c) ECHA requires further testing on the Substance(s) and the Consortium undertakes to carry out the work needed to comply with ECHA's requirement. Any additional costs incurred by the Consortium pursuant to this Section 4.3(c) shall be divided equally between all registrants of the relevant Substance(s) according to principles as described in Section 4.5.
- 4.4 The Company shall make additional payments pursuant to Section 4.3 within 45 days of receipt of the invoice from the Consortium.

4.5 If following the submission of the Registration Dossier for a Substance(s), the payments made by the Company, as described in Section 4.1, materially exceed the Company's share of the actual costs incurred by the Consortium, including the Consortium's reasonable administrative costs, then the Consortium agrees to repay the difference to the Company. A review of the costs by the Consortium Steering Group and a Financial Audit will take place prior to the re-funding of any overpayments. The repayments will take place within 45 days of the date that the actual costs are determined and approved for re-payment.

4.6 All payments shall be calculated in a fair, transparent and non-discriminatory manner by the Consortium's trustee, pursuant to the cost sharing principles described in the Funding Structure Document.

## 5. **DELIVERY**

5.1 Upon settlement of all invoices pursuant to Section 4.1, the Consortium shall deliver to the Company:

(a) a Letter of Access as provided in Appendix 3 for the Company and each Affiliate, and any necessary information on substance identification for the registration of the Substance(s), including, without limitation, information on the Safety Data Sheet according to the requirements of REACH, agreed classification and labelling and a full list of uses for the Substance according to what is known by the Consortium; and

(b) a token for submission.

5.2 The Letter of Access shall state that the Company (or one of its Affiliates) has the right to take part in the joint submission of the Registration Dossier as prepared by the Consortium and submitted by the Lead Registrant. The Letter of Access shall cover any updates of the Registration Dossier made by the Consortium and Lead Registrant.

5.3 Following payment under this Agreement, as required by REACH and ECHA, the Lead Registrant shall identify the Company (or Affiliate) in the Registration Dossier of the Substance(s) as participating in the joint submission of the Registration Dossier.

5.4 Nothing in this Agreement shall require the Consortium to provide or to file any additional data with ECHA and/or any other competent authority.

## 6. **CONFIDENTIALITY**

6.1 In the event the Company (including any of its Affiliates) receives or accesses any Studies and/or Information in accordance with this Agreement, the Company and its Affiliates shall take all reasonable measures to protect the secrecy of and prevent

disclosure or unauthorised use of such Studies and/or Information. The Company 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 Company uses to protect its own confidential information.

- 6.2 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 Company shall notify immediately the Consortium and shall cooperate fully with the requests of the Consortium in remedying the same.
- 6.3 The obligation of confidentiality on the Company and its Affiliates in relation to the Studies and/or Information shall remain in effect until the Consortium decides to publicly disclose any such Studies and/or Information and the obligation of confidentiality shall at all times remain subject to any conditions the Consortium may impose under the provisions of this Agreement.
- 6.4 The Company shall not be subject to the obligations of Section 6 with respect to Studies and/or Information which:
- (a) are or become known publicly through no wrongful act of the Company; or
  - (b) were already known to the Company at the time of disclosure hereunder as shown by prior written records; or
  - (c) are learned by the Company from a third party under no obligation to the Consortium; or
  - (d) are independently developed by an employee, agent, or consultant of the Company with no knowledge of disclosure hereunder; or
  - (e) are approved for release by written authorisation of the Consortium pursuant to the provisions of this Agreement.
- 6.5 The Company shall not disclose to any third party other than members of the Consortium and its own Affiliates, the fact that it has been granted an Access Token under this Agreement.

## **7. COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS**

- 7.1 The Company acknowledges on behalf of itself and its Affiliates 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 the Consortium, and the Company shall not during or after expiry or



termination of this Agreement in any way question or dispute the ownership thereof by the Consortium.

- 7.2 The Company acknowledges on behalf of itself and its Affiliates that such copyright and other intellectual property rights belonging to the Consortium may only be used by the Company in accordance with this Agreement.

## 8. **LIMITATION OF LIABILITY**

- 8.1 To the maximum extent permitted by law, CoRC and/or the Consortium Members hereby exclude all liability arising in contract or otherwise for any direct, indirect or consequential loss or damage sustained by the Company by exercising its rights under this Agreement including the right to refer to the Studies and/or Information.

- 8.2 To the maximum extent permitted by law, CoRC, the Lead Registrant and the Consortium hereby exclude all liability for, and the Company shall indemnify the Lead Registrant 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 Registration document submitted on behalf of the Company;
- (b) any import, sale, manufacture or use by the company of the substances in the EEA,

other than liabilities attributable to the gross negligence or wilful misconduct of the Lead Registrant or Consortium.

9. **TERM AND TERMINATION**

9.1 Subject to section 9.2 below, this Agreement shall commence on the Effective Date and survive until the earlier of (a) such time as all the Core Data licensed hereunder becomes publicly known and made generally available without violation of this Agreement; or (b) twelve (12) years from the date of the Lead Registrant submitting a Registration Dossier for the Substance.

9.2 This Agreement shall remain in full force and effect until the Parties have completed and settled all their obligations and contractual liabilities, including, without limitation, the expiration of possible disputes or lawsuits arising under this Agreement.

9.3 This Agreement may be terminated upon mutual agreement between the Parties and recorded in writing by each of them.

9.4 This Agreement may also be terminated by:

- (a) the Consortium if the Company does not fulfil its obligations under Sections 2, 3, 4, or 6;
- (b) the Company if the Consortium does not fulfil its obligations under Section 5,

where one Party serves written notice of breach on the other and the breaching party does not remedy the situation within two weeks of the date that the notice is served.

9.5 Upon termination of this Agreement, the Company shall immediately stop referring to the Information and Studies for which the Company has not paid a fee pursuant to Section 3 of this Agreement.

10. **INJUNCTIVE RELIEF AND ASSISTANCE WITH LITIGATION**

10.1 The Company acknowledges and agrees that any breach of this Agreement by it or its Affiliates would cause immediate and irreparable injury to CoRC, the Consortium and its Members. Should the Company or any of its Affiliates violate any of the terms and conditions of this Agreement, CoRC acting on its own behalf and/or on behalf of the Consortium and any of its Members, or any Consortium Member individually, shall be entitled, in addition to any other remedies that may be available, in law, equity or otherwise, to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach without the necessity of proving actual damages.

10.2 In the event that CoRC (acting on its own behalf and/or on behalf of the Consortium or any of the Consortium Members) decides to take action against one or more Affiliates as a consequence of a breach or anticipated breach of the Letter of Access or this Agreement by an Affiliate, Company agrees that it will provide CoRC with all

reasonable assistance to enable CoRC to prevent such a breach, to seek an injunction or to bring an action for damages should a breach have occurred.

11. **RIGHTS OF THIRD PARTIES**

11.1 A Consortium Member may enforce the terms of the Agreement against the Company under the Contract (Rights of Third Parties) Act 1999.

11.2 The consent of any Consortium Member is not necessary for any variation (including any release or compromise in whole or in part of any liability) or termination of this Agreement.

12. **CONSORTIUM MEMBERSHIP RIGHTS**

This Agreement does not give any Consortium membership rights to the Company or its Affiliates or give the Company any right to refer to the Consortium vis-à-vis third parties.

13. **WAIVER**

Failure by a Party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of this Party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the Party's rights to take subsequent action.

14. **HEADINGS**

The headings of the terms and conditions herein contained are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.

15. **SEVERABILITY**

In the event that any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

16. **AMENDMENTS**

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.

17. **GOVERNING LAW AND DISPUTES**

17.1 This Agreement is governed by, and all disputes arising under or in connection with this Agreement shall be resolved in accordance with, the laws of England.

17.2 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 Agreement or its subject matter or formation (including non-contractual disputes or claims).

18. **EFFECTIVE DATE**

This Agreement shall take effect on signature by both parties.

19. **ENTIRE AGREEMENT**

19.1 This Agreement together with Appendix 1-3 shall contain the entire agreement between the Parties and shall (save where there has been a fraudulent misrepresentation) supersede any prior oral or written agreements, understandings, commitments, or representations between the Parties, relating to the same subject matter.

19.2 CoRC shall not be liable to any other Party or third party for loss or damage arising from or in connection with any representations, agreements, statements or undertakings made prior to the date of this Agreement, other than those expressly incorporated or referred to in this Agreement.

20. **COUNTERPARTS**

Each undersigned Party shall execute two (2) signature pages, retain one for its file and communicate the other to the other Party.

21. **NOTICES**

All notices, demands, payments, submissions and other communications required to be given under this Agreement must be given in writing and shall be deemed to have been duly given and delivered one(1) business day after sending if sent by fax, and two (2) business days after posting, if sent by registered post to the Parties at the following locations:

For Consortium: Cobalt Reach Consortium Limited  
167 High Street  
Guildford, Surrey,  
GU1 3AJ, United Kingdom  
Tel: 44 (0) 1483 578877  
Fax: 44 (0)1483 510 473

For Company: [ ADDRESS ]

Each Party may give written notice of change of address or fax and after such notice has been received by the other Party, any notice or request shall thereafter be given to such Party at the changed address.

**IN WITNESS WHEREOF** the undersigned hereby execute this Agreement as of the date first above mentioned by the signatures of their respective duly authorized officers or agents.

FOR: [CONSORTIUM]

By: .....  
(Signature)

.....  
(Name and Title)

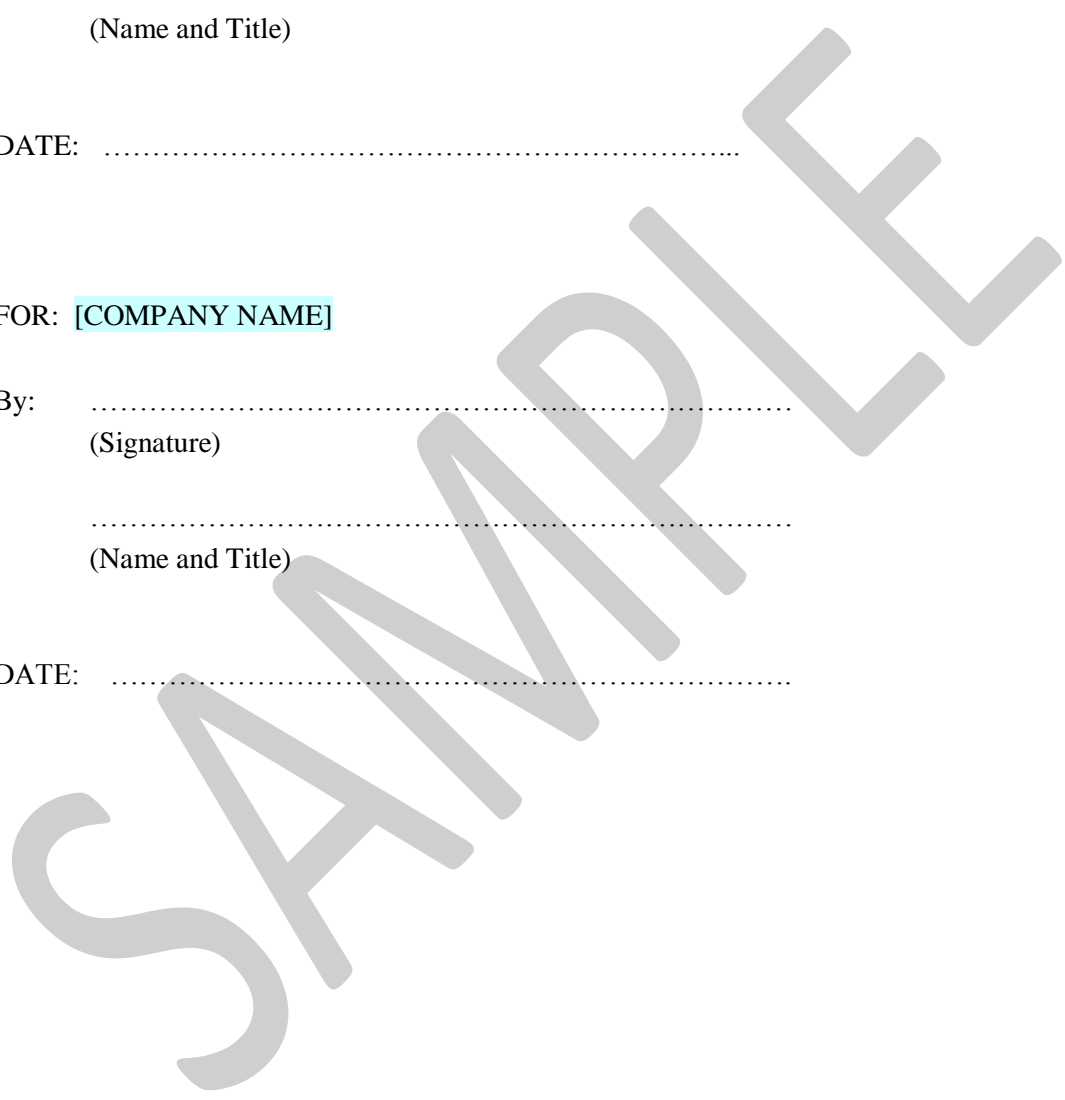
DATE: .....

FOR: [COMPANY NAME]

By: .....  
(Signature)

.....  
(Name and Title)

DATE: .....



**APPENDIX 1**

**LIST OF COBALT CONSORTIUM SUBSTANCES AND REGISTRATION  
DEADLINE**

*(to be filled in by the Secretariat)*

<b>Name of Cobalt Substance</b>	<b>EINECS Number</b>	<b>Highest Tonnage Band identified for Core Dossier</b>	<b>Registration Deadline identified by Consortium</b>	<b>Lead Registrant</b>

## APPENDIX 2

### COMPANY DETAILS & AFFILIATES

*(to be filled in by Company)*

<b>Company Name</b>	<b>Address</b>	<b>Legal Entity UID</b>
Company		
[Affiliate]		
[Affiliate]		
[Affiliate]		

#### **Further Information to be provided to the Secretariat:**

Total annual EU tonnage (tonnes Cobalt contained) for Company and Affiliates (three-year average as required by REACH)

Total annual EU tonnage (tonnes Cobalt contained) for each cobalt substance (three-year average as required by REACH)

Total annual EU tonnage (tonnes Cobalt contained) for each on-site isolated or transported isolated intermediate under strictly controlled conditions (three-year average as required by REACH)

List of manufacturing facilities for Company and each Affiliate

Confirmation of the tonnage bands to be used for REACH Registration (for substance and/or intermediate under strictly controlled conditions)



**APPENDIX 3**

**LETTER OF ACCESS FOR COMPANY**

European Chemicals Agency

Helsinki, Finland

**Letter of Access for the registration of certain Cobalt Substances under REACH**

Dear Sirs,

This is to confirm that CoRC, on behalf of the Cobalt REACH Consortium and Lead Registrant has agreed to grant [*Company*] the right to refer to and participate in the joint submission of the Registration Dossier and any updates thereto, to be submitted by the Lead Registrant in support of the registration under REACH of the Substance(s) listed in Annex 1, at the Tonnage bands set out therein.

**SIGNED**

.....

Cobalt Reach Consortium Ltd for and on behalf of the Cobalt REACH Consortium

.....

For and on behalf of [*insert name of Company*]

**ANNEX 1**

**SUBSTANCE(S) AND TONNAGE BAND**

<b>Name of Cobalt Substance (*)</b>	<b>EINECS Number</b>	<b>REACH Band</b>	<b>Tonnage</b>	<b>REACH Registration Deadline</b>

**Note: \* should also indicate whether registration will be as Substance or as Intermediate under strictly controlled conditions.**

SAMPLE

## LETTER OF ACCESS FOR AFFILIATE

European Chemicals Agency

Helsinki, Finland

### Letter of Access for the registration of certain Cobalt Substances under REACH

Dear Sirs,

This is to confirm that CoRC, on behalf of the Cobalt REACH Consortium and Lead Registrant has agreed to grant [*Affiliate*] the right to refer to and participate in the joint submission of the Registration Dossier and any updates thereto, to be submitted by the Lead Registrant in support of the registration under REACH of the Substance(s) listed in Annex 1, at the Tonnage bands set out therein.

In consideration of the grant of the rights under this Letter of Access, [*Affiliate*] confirms that it agrees to be bound by the terms of the Letter of Access Agreement dated [ ] 2010 as if it were the "Company" under that Agreement and the Consortium reserves the right to take action against [*Affiliate*] to enforce any relevant provisions of that Agreement in the event that [*Affiliate*] is or may be in breach of those provisions.

**SIGNED**

.....

Cobalt Reach Consortium Ltd for and on behalf of the Cobalt REACH Consortium

.....

For and on behalf of [*insert name of Affiliate*]

## ANNEX 1

### SUBSTANCE(S) AND TONNAGE BAND

<b>Name of Cobalt Substance (*)</b>	<b>EINECS Number</b>	<b>REACH Tonnage Band</b>	<b>REACH Registration Deadline</b>

**Note: \*** should also indicate whether registration will be as Substance or as Intermediate under strictly controlled conditions.