

ENVIRON UK LIMITED

and

[MANUFACTURER]

**BOMCHECK SUBSTANCES DECLARATION WEB DATABASE
ACCESS AGREEMENT**

Sample manufacturers agreement

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THIS ACCESS AGREEMENT between:

- (1) **ENVIRON UK LIMITED**, company registration number 02331163, whose registered office is situated at 6 More London Place, London, SE1 2DA ("**Environ**"); and
 - (2) [*Insert Manufacturer's name*], company registration number [*insert details*], whose registered office is situated at [*insert registered office details*] (the "**Manufacturer**")
- together the "**Parties**".

WHEREAS:

- (A) Environ has developed a substances declarations web database (www.bomcheck.net) which enables Suppliers to upload their substances declaration Data to one location for all participating Manufacturers to access.
- (B) The Manufacturer wishes to gain access to and use Environ's Database subject to the terms and conditions set out below.

IT IS AGREED BY AND BETWEEN THE PARTIES HERETO as follows:**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following expressions shall, unless otherwise specified or the context otherwise requires, have the meanings set out below:

"**Data**" means the Suppliers' substance declaration data that the Supplier wishes to make available to participating Manufacturers

"**Database**" means the Environ substances declarations web database located at www.bomcheck.net

"**Supplier**" means a company who wishes to join the Database subject to the member rules for suppliers published on www.bomcheck.net.

2 USE OF DATABASE

- 2.1 In consideration of, and subject to, the Manufacturer complying with its obligations set out in this Agreement, Environ hereby grants to the Manufacturer a non-exclusive, non-transferable licence to access the Database and use the Data during the term in accordance with this Agreement.
- 2.2 Environ shall provide the Manufacturer with a login and password to enable the Manufacturer to access the Database. The Manufacturer shall change its password at the end of each quarter.
- 2.3 Environ shall use reasonable endeavours to provide continuous access to the Database, 24 hours per day and 365 days a year, subject to the terms of this Agreement. As a minimum, Environ shall maintain synchronized access to the Database on at least one internet server in the US and another separate internet server in Europe. If one internet server becomes unavailable for any reason, this provides for continuous access to the Database on the other server(s). In addition, Environ carries out daily back-ups of all Data on the Database so that in the unlikely event that all current internet servers become unavailable the Database can be

restored onto a new server. In the unlikely event that the Database becomes unavailable or is inoperative, in full or in part for any reason, Environ shall use reasonable endeavours to rectify faults or problems or restore the Database to full operational capacity as soon as reasonably practicable. The Manufacturer acknowledges that the Database may be temporarily unavailable during such times.

3 MANUFACTURER OBLIGATIONS AND RESTRICTIONS

3.1 The Manufacturer shall use reasonable endeavours to require its hardware Suppliers (including Suppliers on the Manufacturer's Approved Supplier Lists or equivalent) to join the Database. As a minimum, the manufacturer shall send the letter provided in Schedule 1, or an equivalent letter, to these Suppliers within three (3) months of execution this Agreement. For avoidance of doubt, the Manufacturer shall not be responsible or liable in case any Supplier does not join the Database.

3.2 For hardware Suppliers (including Suppliers on the Manufacturer's Approved Supplier Lists or equivalent) where the Manufacturer provides suitable evidence that the Supplier has a total annual turnover of less than three million euros (€3,000,000), the Manufacturer shall be entitled to apply to Environ for such Suppliers to be granted free membership of the Database. Environ shall grant free membership to these Suppliers for a period of one year provided that the Manufacturer provides:

- (a) a signed statement from the Supplier that the Supplier's total annual turnover in the previous year was less than three million Euros (€3,000,000).

The Manufacturer shall be entitled to apply to renew the free membership for these Suppliers each year, provided the above conditions are met. For avoidance of doubt, the Manufacturer shall not be obliged to pay any remuneration for the free membership grant.

3.3 The Manufacturer acknowledges that use of the Data requires the Manufacturer to exercise its own skill and judgement. As a consequence, Environ makes no warranties (express or implied) as to the accuracy or completeness of the Data or its fitness for purpose and expressly excludes any and all related liability in respect thereof.

3.4 The Manufacturer undertakes to take all necessary steps to prevent any person who is not an employee of the Manufacturer from using the Manufacturer's login and password to access the Database.

3.5 The Manufacturer is expressly prohibited from using or reproducing the Data for any commercial purpose including, but not limited to,

- (a) building commercial databases;
- (b) commercial reselling, redistributing or reproduction of the Data.

4 TERM AND TERMINATION

4.1 This Agreement shall commence on the date of execution of this Agreement and shall continue for an initial period of twelve (12) months ("**Initial Period**") unless terminated earlier in accordance with this Agreement. Following the Initial Period, the Manufacturer may terminate this Agreement for convenience on three (3) months' written notice.

4.2 Each Party can terminate this Agreement immediately by notice in writing if:

- (a) the other Party commits a material breach of any of its obligations under this Agreement which is incapable of remedy;
 - (b) the other Party is in material breach or continuing breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) within a period of 30 days after receiving written notice;
 - (c) the other Party becomes subject to an administration order; a receiver or administrative receiver or similar is appointed over, or an encumbrancer takes possession of any of the other Party's assets or property; or the other Party enters into an arrangement or composition with its creditors, ceases or threatens to cease to carry on business, becomes insolvent; or any similar event occurs in any other relevant jurisdiction.
- 4.3 Upon termination of this Agreement in accordance with this Clause 4, Environ shall disable the Manufacturer's login and password and the Manufacturer shall immediately cease accessing and using the Database.
- 4.4 Termination of this Agreement shall be without prejudice to the accrued rights of the Parties and shall not affect any rights or liabilities of either Party existing prior to the date of termination.
- 4.5 Any provision of this Agreement which expressly or by implication is intended to come into force on or after termination will remain in full force and effect notwithstanding the termination of the Agreement.

5 WARRANTIES

- 5.1 Each Party warrants to the other Party that:
- (a) it has full capacity and authority to perform its obligations pursuant to this Agreement;
 - (b) it shall discharge its obligations under this Agreement with all due skill, care, and diligence in accordance with its own established internal procedures; and
 - (c) it has obtained and shall keep in force all necessary consents, licences and permissions to enable it to perform its obligations pursuant to this Agreement.

6 INTELLECTUAL PROPERTY

- 6.1 The Manufacturer acknowledges that Environ has spent and continues to spend considerable time and resources on the selection and arrangement of the Database as an original intellectual creation. Accordingly, Environ owns the copyright, database rights and all other intellectual property rights in the selection and arrangement of the Database and in the electronic materials necessary for its operation (without prejudice to the rights of the various Suppliers in the Database).
- 6.2 The Manufacturer acknowledges that the intellectual property rights subsisting in or used in connection with the Database (including the manner in which it is presented or appears) and all information, documentation and manuals relating thereto are (unless another owner is specified therein) the property of Environ or such other third party as the case may be (the "Owner") and the Manufacturer shall not during or at any time after the expiry of this Agreement in any way question or dispute ownership by Environ or the Owner, as the case may be, of any such rights.
- 6.3 The Manufacturer shall not during or after the termination of this Agreement abuse or permit the abuse of such Environ or Owner intellectual property rights nor adopt

any trade mark, trade name or commercial designation that includes or is similar to or may be mistaken for the whole or any part of any trade mark, trade name or commercial designation used by Environ.

- 6.4 Any trademarks or logos (the “**Trademarks**”) displayed on the Database are either the property of, or used with permission by Environ. Any Trademarks displayed on the Database may not be used without the written permission of Environ or such third party that may own the Trademarks.

7 COSTS

- 7.1 Unless otherwise agreed between the Parties, each Party shall bear its own costs, charges and expenses relating to the negotiation, preparation, execution and implementation by it of this Agreement.

8 LIMITATION OF LIABILITY

- 8.1 Subject to Clause 8.3, each Party's total aggregate liability to the other arising in connection with the performance of this Agreement shall not exceed one million Euros (€1,000,000) in any twelve (12) month period. Notwithstanding the foregoing, no Party shall be liable to the other Party for loss of profits, business, contracts or for any indirect or consequential loss caused in any way by any act or omission committed in connection with this Agreement (whether arising from negligence, breach of contract, statutory duty or otherwise).
- 8.2 Nothing in this Agreement is intended and nor shall it be construed as an attempt by any Party to exclude or limit its liability for any liability which cannot be excluded or limited under applicable law, including without limitation its liability for death or personal injury caused by its negligence or for its fraudulent misrepresentation.
- 8.3 The Manufacturer shall at all times during and after the term of this Agreement indemnify Environ and keep Environ indemnified against all losses, costs, damages, expenses and other liabilities (including reasonable legal fees) incurred by Environ arising from any wilful or gross negligent breach by the Manufacturer of Clause 3.4, Clause 3.5 and Clause 6 of this Agreement.

9 NO PARTNERSHIP

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties, or to authorise any Party to act as agent for the other. No Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

10 ANTITRUST GUIDELINES

The Parties acknowledge that industry forums which are designed to share information can give rise to “Antitrust risk”, in particular in relation to allegations of collusion by participants in the same market. Accordingly, the Parties agree to comply with the Antitrust Guidelines contained in Schedule 2.

11 ANNOUNCEMENTS

- 11.1 Subject to Clause 11.2, neither Party shall make any announcement relating to this Agreement or its subject matter without the prior written approval of the other Party

except as required by this Agreement or any applicable law or by any court, legal or regulatory authority.

- 11.2 Environ shall be entitled to disclose the fact that the Manufacturer is a participant in the Database. Environ shall publish a list of all participating Manufacturers on its website www.bomcheck.net.

12 NOTICES

- 12.1 Any notice to be given under this Agreement by either Party shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally or by sending it by pre-paid recorded delivery or registered post or by fax to the address and for the attention of the relevant Party. Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of pre-paid recorded delivery or registered post, forty eight (48) hours from the date of posting; and
- (c) in the case of fax, at the time of transmission.

Notices shall be delivered or sent to the addresses of the Parties set out at the beginning of this Agreement or to any other address notified in writing by either Party to the other for the purposes of receiving notices.

- 12.2 For the avoidance of doubt, operational communications may be by e-mail, but any notice of failure, breach or termination shall be subject to the provisions of Clause 12.1.

13 ASSIGNMENT

This Agreement and all the rights, benefits and obligations of the Parties may not be assigned, transferred or novated without the prior written consent of the other Party. The requirement of written form may only be waived in writing by the other Party.

14 SEVERABILITY

If any of the terms in this Agreement is judged to be illegal or unenforceable, that term will, to that extent, be deemed not to form part of the Agreement and the enforceability of the remainder will not be affected.

15 FORCE MAJEURE

Neither Party will be liable to the other Party for any delay in or any failure to perform its obligations (other than payment of money) as a result of any act of god, war, terrorism, riot, or civil commotion but only to the extent that the same was not caused by the Party seeking relief. If such delay or failure continues for at least sixty (60) days, either Party will be entitled to terminate this Agreement by notice in writing

16 COUNTERPARTS

This Agreement may be executed in any number of counterparts (each of which taken together shall be deemed to constitute one and the same agreement and

each of which individually shall be deemed to be an original) with the same effect as if the signatures on each counterpart were the same original document.

17 **VARIATION**

No amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the Parties hereto. The requirement of written form may only be waived in writing by both Parties.

18 **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements and understandings between the Parties in connection with the subject matter hereof.

19 **NO WAIVER**

No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

20 **APPLICABLE LAW AND DISPUTE RESOLUTION**

This Agreement and all rights and obligations of the Parties hereto shall be governed and construed in accordance with the laws of England and Wales.

If any dispute arises in connection with this Agreement, the responsible representatives of the Parties shall attempt, in fair dealing and in good faith, to settle such dispute. Each Party can request from the other Party that on both sides a senior representative becomes involved in the negotiations. Each Party is at any time entitled to terminate the settlement negotiations and to have recourse to an Alternative Dispute Resolution (ADR) proceeding set forth in the following section through written notification to the other Party.

If the Parties are not able to reach an amicable settlement pursuant to the preceding section they shall try to agree on an appropriate ADR proceeding (for example mediation, conciliation, expert determination, dispute board, adjudication). If they do not reach agreement on the appropriate ADR proceeding within 14 days after failure of the settlement negotiations or if the dispute is not settled through an ADR proceeding within a period of two months after initiation of the ADR proceeding each Party may initiate an arbitration proceeding pursuant to the following section.

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules. The seat of arbitration shall be London. The procedural law of this seat applicable to international arbitration proceedings shall apply where the Rules are silent. However, no Party shall be required to give general discovery of documents, but may only be required to produce specific, identified documents which are relevant to the dispute, in accordance with the Rules. The language to be used in the arbitration proceedings shall be English.

21 **PROVISO**

The obligation to fulfill this Agreement is subject to the proviso that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.

By signature of this Agreement, Environ and the Manufacturer agree to be bound by the Agreement as set out above.

ENVIRON UK LIMITED

[Manufacturer]

.....
For and on behalf of ENVIRON UK LIMITED

.....
For and on behalf of *[Manufacturer]*

Dr Aidan Turnbull

Name

.....
Name

Principal: Head of WEEE, RoHS and EcoDesign

Designation

.....
Designation

.....
Date of Signature

.....
Date of Signature

Sample manufacturers agreement

SCHEDULE 1: Letter for Manufacturer to send to Suppliers

[Supplier Name]
[Supplier address]

[Date]

Dear [name]

RE: Complying with EU REACH obligations by joining the BOMcheck substances declarations web database

From 28 October 2008 when the first Candidate List of substances of very high concern (SHVC) was published, Article 33 (1) of the EU REACH Regulation 1907/2006 places a legal obligation on all EU suppliers to inform [Manufacturer name] whether the components or assemblies supplied to us contain any of these substances of very high concern in concentrations > 0.1% w/w. Similarly, [Manufacturer name] is required to inform our EU customers whether our products contain > 0.1% w/w of these substances. The European Chemicals Agency (ECHA) will add more substances to this list every 6 months from August 2009 and the disclosure obligations start immediately every time a new updated list is published.

From June 2009, Article 67 of REACH places a legal obligation on all EU suppliers to comply with the substance restrictions listed in Annex XVII of the EU REACH Regulation when they supply components or sub-assemblies to [Manufacturer name]. Similarly, [Manufacturer name] is required to comply with these substance restrictions when we supply our products in the EU.

[Manufacturer name] does not want to receive REACH compliance information individually from each of our suppliers every six months. Instead, we require all of our suppliers (including Suppliers on the [Manufacturer name] Approved Supplier Lists) to notify whether you will comply with these REACH obligations by joining BOMcheck - the centralised, open-access substances declarations web database (www.BOMcheck.net). BOMcheck is an industry-wide initiative which is led by the European trade association COCIR (www.cocir.org) and has been developed by ENVIRON. Membership of the COCIR trade association includes Siemens, Philips, GE, Agfa, Hitachi, Toshiba, IBM, Intel and Canon.

BOMcheck is a regulatory compliance tool designed specifically to enable suppliers to provide declarations for REACH, RoHS and other restricted substances legislation. The benefits to suppliers include:

- **Expert guidance to create substances declarations for your parts lists.** BOMcheck is the only declaration tool which guides you through where the REACH and RoHS substances are found in hardware and electrical and electronic equipment, and any exemptions that apply. Upload your declarations with minimum effort by creating a single substance declaration for a list of part numbers which are manufactured using the same set of materials, and then attaching the list of part numbers.
- **Keep up-to-date as new substances are added to REACH and RoHS.** BOMcheck e-mails suppliers immediately when new substances are added to REACH and when the RoHS exemptions change, and provides detailed guidance. Suppliers can update the substances declarations for their parts lists, submit new declarations or withdraw declarations at any time.
- **Attach your electronic signature to the substances declarations.** BOMcheck sets up electronic signature arrangements for the supplier so that, under the US regulations, the supplier's electronic records on BOMcheck are equivalent to paper records with handwritten signatures. Suppliers can make their substances declarations confidential to certain manufacturing customers, or viewable by all manufacturing customers who are members of BOMcheck. Suppliers can also attach PDF test reports to support their substances declarations.
- **Inform your manufacturing customers.** Manufacturing customers such as Siemens and Philips access supplier substance declarations data directly from BOMcheck. This saves suppliers time and costs. Suppliers can also e-mail their data directly to any manufacturing customer who is not on BOMcheck yet.

In return for these benefits, suppliers pay a low-cost subscription of 300 Euros year in the first year and a reduced annual renewal fee in subsequent years. We believe that this represents excellent value for money.

Many suppliers are also manufacturers and have their own supply chains, for example an assembly supplier who purchases components to go into the assembly. These suppliers can set up a free manufacturer account with ENVIRON and use BOMcheck to manage their own supply chains, provided that they forward this letter to their own suppliers.

Please give us notice by returning to us a signed copy of this letter whether you will join BOMcheck. When you join BOMcheck you will conclude a separate contract with ENVIRON by following the instructions at www.BOMcheck.net. Further details are available at www.bomcheck.net/suppliers.

We look forward to your cooperation in this important matter.

Yours sincerely

Our company will / will not join BOMcheck (delete as applicable)

Notified by [*supplier name*]

.....
[signature]

.....
[name]

.....
[title]

Sample manufacturer's agreement

SCHEDULE 2: AntiTrust Guidelines

Industry forums which are designed to share information can give rise to breaches of competition law, in particular in relation to allegations of collusion by participants in the same market. A violation of the competition laws (also known as antitrust laws) can have serious consequences for Environ and for companies who become members of BOMcheck. Accordingly, Environ and all companies (both manufacturers and suppliers) who become members of BOMcheck (collectively "Members") agree to comply with the following guidelines in connection with participation in BOMcheck. Prior to any and all meetings associated with BOMcheck, or subgroups thereof, Environ and the Members in that meeting shall be reminded of these guidelines and their obligation of compliance herewith.

1. BOMcheck and its committees or activities shall not be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, between and among competitors with regard to their prices, terms or conditions of sale, distribution, volume of production, territories, customers, or credit terms.
2. In connection with participation in BOMcheck, there shall be no discussion, communication, agreement or disclosure among Members that are actual or potential competitors, regarding their prices, discounts or terms or conditions of sale or licensing of products or services, pricing methods, profits, profit margins or cost data, production plans, market shares, sales territories or markets, allocation of territories or customers, or any limitation on the timing, cost or volume of their research, production or sales.
3. Each Member of BOMcheck is obligated and expected to exercise its independent business judgment in pricing its services or products, dealing with its customers and suppliers, and choosing the markets in which it will compete.
4. Members of BOMcheck, in connection with their participation in BOMcheck, shall not enter into any agreement or understanding among themselves to refrain, or to encourage others to refrain, from purchasing any raw materials, product, equipment, services or other supplies from any supplier or vendor or from dealing with any supplier or vendor.
5. Members of BOMcheck, in connection with their participation in BOMcheck, shall not attempt to prevent any person from gaining access to any market or customer for goods and services, or attempt to prevent any person from obtaining a supply of goods or services or otherwise purchasing goods or services freely in the market.
6. Membership of BOMcheck is open to all companies who are manufacturers or suppliers in the electronics industry. No applicant for Membership of BOMcheck by a manufacturer or supplier in the electronics industry shall be denied Membership for any anti-competitive purpose. No Member shall be excluded from any committee or working group of BOMcheck for an anti-competitive reason.
7. The substance declaration information requested by BOMcheck shall at all times reflect current and reasonably foreseeable regulatory requirements and industry scientific information. No substance declaration information requested by BOMcheck shall be based upon any effort or purpose to unreasonably reduce or eliminate competition in the sale, supply and furnishing of products and services.
8. In conducting any meeting of the steering group, the Members or any committee, the chair or secretary of each such meeting shall prepare and follow a formal agenda. Minutes of all such meetings shall be maintained, accurately reflecting the subjects discussed and action taken at such meetings.
9. During the course of any activities in relation to BOMcheck, Members must refrain from disclosing information to any other Member that is not reasonably related to the legitimate purposes of such activities.