

**Sphera Compliance Limited**

**and**

**[Manufacturer Name]**

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**BOMCHECK SUBSTANCES DECLARATION WEB DATABASE  
ACCESS AGREEMENT**

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Sample Manufacturer Agreement

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**THIS ACCESS AGREEMENT** between:

- (1) **Sphera Compliance Limited**, company registration number 9701701, whose registered office is situated at 4 Coleman Street, 6th Floor, London, England, EC2R 5AR ("**Sphera**"); and
- (2) [**Manufacturer Name**], with registered office at .....  
(the "**Manufacturer**")

together the "**Parties**".

**WHEREAS:**

- (A) Sphera has developed a substances declarations web database ([www.bomcheck.net](http://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 Sphera'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 Sphera substances declarations web database located at [www.bomcheck.net](http://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](http://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, Sphera hereby grants to the Manufacturer a non-exclusive, non-transferable, world-wide, royalty-free licence to access the Database and use the Data during the term in accordance with this Agreement.

2.2 Sphera shall provide the Manufacturer with a login and password to enable the Manufacturer to access the Database. The Manufacturer shall change its password upon request at the end of each quarter.

2.3 The Manufacturer may use a Comma Separated Values (CSV) parts list to select supplier data from the Database. Sphera warrants that the Manufacturer's parts list is and will not be stored on the Database and that there is no possibility for one Manufacturer to see another Manufacturer's parts list. In addition, the Manufacturer may choose to use its parts list to create an assembly part number on the Database. In this case, the list of part numbers which are included in the assembly part number is stored on the Database. The Manufacturer may choose to make the list of part numbers in an assembly part number confidential and in that case

Sphera warrants that another Manufacturer who logs into the Database can not and will not have to access the parts list for the assembly part number.

- 2.4 Sphera 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, Sphera 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, Sphera 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, Sphera 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 pilot the use of the Database with a limited number of Suppliers. On successful completion of the pilot to the satisfaction of the Manufacturer, the Manufacturer shall use reasonable endeavours to request its hardware Suppliers (including Suppliers on the Manufacturer's Approved Supplier Lists or equivalent) to join the Database, at the discretion of the Manufacturer. As a minimum, the Manufacturer shall send the letter provided in Schedule 1, or an equivalent letter, to these Suppliers as part of a phased implementation approach. This letter is provided as a draft email which the Manufacturer can edit and send to suppliers that are not already members of the Database by using the 'Invite suppliers to join BOMcheck' tools which are provided in a Super User Account. 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 Sphera for such Suppliers to be granted free membership of the Database. Sphera 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 the Data does not originate from Sphera and has been uploaded and made available on the Database by the Suppliers and that the use of the Data requires the Manufacturer to exercise its own skill and judgement. As a consequence, Sphera makes no warranties (express or implied) as to the accuracy or completeness of the Data or its fitness for purpose or for any use of the Data and Sphera 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, or under an equivalent assignment contract at 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 PREFERENTIAL RATES TO JOIN THE DATABASE AS A SUPER USER

- 4.1 The Manufacturer shall be entitled to the preferential rates in 4.2 to join the Database as a Supplier and appoint multiple Authorised Individual Super Users at the Manufacturer, provided that the Manufacturer provides all contact details in one spreadsheet, so that Sphera can set up all accounts for these Authorised Individuals Super Users at the same time. Access to the Database as a Supplier is subject to the member rules for Suppliers published on [www.bomcheck.net](http://www.bomcheck.net).
- 4.2 The preferential rate for accounts for between 6 and 10 Authorised Individual Supplier Users at the Manufacturer shall be 250 Euros per person per year. The preferential rate for accounts for between 11 and 20 Authorised Individual Super Users shall be 200 Euros per person per year. The preferential rate for accounts for more than 20 Authorised Individual Super Users shall be 150 Euros per person per year.

## 5 TERM AND TERMINATION

- 5.1 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, either Party may terminate this Agreement for convenience on three (3) months' written notice.
- 5.2 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.
- 5.3 Upon termination of this Agreement in accordance with this Clause 5, Sphera shall disable the Manufacturer's login and password and the Manufacturer shall immediately cease accessing and using the Database.
- 5.4 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.

5.5 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.

## 6 WARRANTIES

6.1 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 reasonable care and skill, 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.
- (d) it shall comply with all applicable laws, statutes, ordinances and regulations and any applicable industry standards and practices.
- (e) it has implemented all appropriate and effective IT security measures.

6.2 Sphera warrants that it shall at all times comply with the latest version of the BOMcheck IT Security Policy which is published at <https://www.bomcheck.net/account/download/docs/BOMcheck%20Information%20Security%20Policy.pdf>

## 7 INTELLECTUAL PROPERTY

7.1 The Manufacturer acknowledges that Sphera has spent and continues to spend considerable time and resources on the selection and arrangement of the Database as an original intellectual creation. Accordingly, Sphera 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).

7.2 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 Sphera 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 Sphera or the Owner, as the case may be, of any such rights.

7.3 The Manufacturer shall not during or after the termination of this Agreement abuse or permit the abuse of such Sphera 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 Sphera.

7.4 Any trademarks or logos (the "Trademarks") displayed on the Database are either the property of, or used with permission by Sphera. Any Trademarks displayed on the Database may not be used without the written permission of Sphera or such third party that may own the Trademarks.

7.5 Sphera and the Database, and the use thereof by Manufacturer, will not infringe or misappropriate any third party intellectual property rights or violate any duty of confidentiality Sphera has to a third party.

**8 COSTS**

8.1 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.

**9 LIMITATION OF LIABILITY**

9.1 Subject to Clause 9.2, 9.3 and 9.4, Sphera's total aggregate liability to the Manufacturer arising in connection with the performance of this Agreement shall not exceed 50 thousand Euros (€50,000) in any twelve (12) month period.

9.2 Subject to clause 9.3, neither party shall be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

- (a) loss of profits (whether direct or indirect);
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) any indirect or consequential loss.

If any of the above sub-clauses to this clause 9.2 is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such sub-clause will be deemed to be severed from this Agreement and this will not affect the remainder of this clause 9.2 and any other part of this Agreement which will continue in full force and effect.

9.3 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.

9.4 The Manufacturer shall at all times during and after the term of this Agreement indemnify Sphera and keep Sphera indemnified against all losses, costs, damages, expenses and other liabilities (including reasonable legal fees) incurred by Sphera arising from any wilful or gross negligent breach by the Manufacturer of Clause 3.4, Clause 3.5 and Clause 7 of this Agreement.

9.5 The Manufacturer acknowledges that the licence to use the Database and the Data under this Agreement is provided at no cost to the Manufacturer and the Manufacturer confirms that the limitations and exclusions on Sphera's liability contained in this Agreement are fair and reasonable.

**10 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).

**11 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.

## 12 ANNOUNCEMENTS

- 12.1 Subject to Clause 12.2, 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.
- 12.2 Sphera shall be entitled to disclose the fact that the Manufacturer is a participant in the Database. Sphera shall publish a list of all participating Manufacturers on its website [www.bomcheck.net](http://www.bomcheck.net) which shall be visible only for Authorized Individuals with login credentials. Manufacturer's name may appear in a list of client names presented in the same format (block type or logo) of the other companies identified in such a list, but no description or endorsement of the company's products or services may be used.

## 13 NOTICES

- 13.1 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.

- 13.2 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 13.1.

## 14 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 with the exception of assignments within the J&J group of companies. The requirement of written form may only be waived in writing by the other Party.

## 15 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.

## 16 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

## 17 COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument. Electronically executed or electronically transmitted (including via fax) signatures shall have the full force and effect of original signatures.

## 18 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.

## 19 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.

## 20 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.

## 21 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 file a claim before the competent court.

## 22 PROVISIO

The obligation to fulfil this Agreement is subject to the proviso that the fulfilment 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, Sphera and the Manufacturer agree to be bound by the Agreement as set out above.

**Sphera Compliance Limited**

**[Manufacturer]**

For and on behalf of Sphera Compliance Limited

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

***Dr Aidan Turnbull***

**23 February 2021**

.....

Date of Signature

Date of Signature

Sample Manufacturer Agreement

## SCHEDULE 1: Letter for Manufacturer to send to Suppliers

[Supplier Name]  
[Supplier address]

[Date]

Dear Valued Supplier to [Manufacturer Name]

### **RE: Request to provide standardised, high quality compliance declarations for RoHS, REACH and other substance regulations around the world by using BOMcheck**

You have probably had similar requests from other customers and so you will know that [Manufacturer Name] is required to comply with an increasing number of substance regulations around the world in order to sell our products. We are asking all our important suppliers to join thousands of suppliers worldwide who are using BOMcheck to provide standardised, high quality compliance declarations for millions of parts.

[www.BOMcheck.net](http://www.BOMcheck.net) is an industry collaboration sharing one web database system to manage supply chain compliance. The web system is easy to use and enables you to create and share standardised high quality compliance declarations. You can manage your data securely in the web database and download and email your declarations data to any customers not already on BOMcheck in industry standard IPC 1752A XML, PDF or Excel formats. *“BOMcheck has the simplest input interface we have seen and provides extensive help and data checking to reduce errors and highlight potential issues while you are working on your part declarations ”* said GE Healthcare’s newsletter to suppliers.

Training is available in several different formats. You can use the detailed training videos published in the Assistant tool on [www.BOMcheck.net](http://www.BOMcheck.net) to quickly learn the data entry tools and rely on the expert chemicals guidance to identify which materials and parts are at risk of containing regulated substances. You can also join free monthly live training webinars by using the weblinks published on the sidebar on [www.BOMcheck.net](http://www.BOMcheck.net) under “Join live training webinar”.

The Regulatory Compliance Declaration tool provides concise chemicals guidance which suppliers can rely on to identify materials and parts which are at risk of containing regulated substances. If the REACH Candidate List guidance indicates that your materials and parts are not at risk (for example, because the substance is used in PVDF plastic and your parts do not contain this type of plastic) then you can claim compliance without additional efforts. Senior Product Development Engineer at Belden Wire & Cable B.V said *“BOMcheck helps me to respond to the rapidly increasing list of REACH Candidate List substances and to keep my declarations up-to-date”*.

All substances in the Full Materials Declaration tool are colour coded to show the substances that are regulated today around the world and the substances that are at risk of becoming regulated in the next few years. The confidentiality tools enable you to restrict access to your Regulatory Compliance Declarations and/or Full Materials Declarations to certain customers, and to add new customers to these confidentiality settings at any time. You can also attach test reports or other documentation to support your material declaration. Spheramental Compliance Engineer at Wurth Elektronik said *“We appreciate the standardized Full Material Declaration and Regulatory Compliance Declaration, the option to add evidence documents (for example, MSDS’s, lab analysis reports, etc.) to support the material declaration, and the automatic updates to our Regulatory Compliance Declarations.”*

When you login you can review the customer requests and send response messages in BOMcheck to accept or reject the parts lists. If you accept a request, the 'wizard' tools show you how to download the parts list and make declarations for the part numbers, or map the customer part numbers to your already-declared part numbers. Material Data Manager at WAGO Kontakttechnik GmbH & Co. KG said *“BOMcheck is a very important tool for WAGO that makes it possible to answer the ever-increasing number of customer requests quickly and efficiently.”*

You can set up a Supplier Account and use BOMcheck free of charge for a 90 day trial period by following the registration instructions at [www.BOMcheck.net/account/register](http://www.BOMcheck.net/account/register). After the 90 day trial period has ended, suppliers with a total annual business turnover of more than 3 million Euros per year pay a subscription of 300 Euros per year to use BOMcheck. You can pay the annual subscription fee by credit card online, or you can



request invoice details from [admin@bomcheck.net](mailto:admin@bomcheck.net) and pay by wire transfer. Small suppliers with a total annual business turnover of less than 3 million Euros can apply for a free Supplier Account by emailing a signed statement to *[Manufacturer Name]*.

Once you have set up a Supplier Account we will send you the list of part numbers that we want you to declare in BOMcheck.

Thank you for your cooperation in this important matter. We really appreciate your efforts because this will enable us to maintain a long term business relationship with your company as one of our valued suppliers.

Yours sincerely

Sample Manufacturer 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 Sphera and for companies who become members of BOMcheck. Accordingly, Sphera 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, Sphera 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.