

**TERMS AND CONDITIONS OF USE AND SERVICE OF THE ECHA SUBMISSION PORTAL (Version 3.0 – 14/02/2020)**

**PLEASE READ THE FOLLOWING TERMS AND CONDITIONS GOVERNING THE USE OF ECHA SUBMISSION PORTAL CAREFULLY BEFORE USING IT. TO AGREE TO THE TERMS OF SERVICE CLICK "AGREE". IF YOU DO NOT AGREE TO THE TERMS OF SERVICE CLICK "REJECT". ACCESS TO THE ECHA SUBMISSION PORTAL IS SUBJECT TO PRIOR ACCEPTANCE OF THESE TERMS AND CONDITIONS.**

**N.B.** By way of derogation to Section 4 (a) of these Terms and Conditions, Parties are permitted to use the test version of the ECHA Submission Portal for the purpose of submitting notifications in connection to the forthcoming Substances of Concern In articles as such or in complex objects (Products) ("SCIP") database, as established by the Waste Framework Directive. This will be confined to testing and evaluation purposes only. Any data submitted will not be processed. All submitted data will be deleted before the October 2020 SCIP database release.

These Terms and Conditions, in particular those regarding ECHA's liability, S2S functionality and any warranties, will otherwise continue to apply mutatis mutandis.

**1. Definitions**

- (a) Unless otherwise expressly stated to the contrary, terms used herein shall bear the following meanings:

<b>Appointed Body</b>	means the body which is designated with responsibility for the application of Article 45 of the CLP Regulation and related legislation
<b>Client System</b>	means any information/electronic system used by a Party for automated submission of PCN Data via the system to system functionality.
<b>CLP Regulation</b>	means Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006;
<b>Communication</b>	means any document made available to the Party within a defined period of time;
<b>Consent</b>	means any freely given, specific, informed and unambiguous indication of the Data Subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;
<b>Data Subject</b>	means an identified or identifiable natural person;

<b>ECHA</b>	means European Chemicals Agency established in Helsinki, Finland in 2007;
<b>ECHA Account</b>	means the online platform ECHA has put in place for creating individual user accounts, which enable Parties to create subscriptions to ECHA's IT services and applications. Within ECHA Account, the Legal Entity Manager can grant and revoke access rights to ECHA's IT services and applications for Users from its own group;
<b>ECHA Submission Portal</b>	means the central IT system that includes the official ECHA Submission Portal web application, the S2S Functionality and website as prescribed for submission of data required under Article 45 of the CLP Regulation and for access to any communication related to such submission. The system underpins the requirements of the CLP Regulation and related legislation;
<b>Other Proprietary Rights</b>	means rights other than intellectual property rights, including, but not limited to, possible rights to use and disclose the names of persons and legal entities subject to the CLP Regulation and other related legislation.
<b>Party</b>	means any legal entity that has been signed up into the ECHA Submission Portal to get access rights and to be allowed to submit PCN data;
<b>PCN data</b>	means any data, information or communication submitted in order to meet the requirements set out in the CLP Regulation and related legislation;
<b>Personal Data</b>	means any information relating to an identified or identifiable natural person;
<b>S2S Functionality</b>	means a functionality allowing direct automated transmission of PCN data to the ECHA Submission Portal from a Parties' electronic/information system using the dedicated S2S Interface with the use of the S2S Key generated by the functionality;
<b>S2S Interface</b>	means the dedicated interface specifying the form and requirements the Client System has to follow to ensure an automated transmission of PCN data via the S2S Functionality to ECHA;
<b>S2S Key</b>	means a generated identifier allowing the Party to use the S2S Functionality;

**Terms and Conditions** means these terms and conditions as amended from time to time and in force;

**User** means the person(s) whom the Party has nominated and authorised to have access to and use the ECHA Submission Portal.

- (b) Headings are for ease of reference only and do not form part of these Terms and Conditions. Words denoting the singular include the plural and vice versa, words denoting one gender include all genders and words denoting persons include corporations and vice versa.

## 2. The ECHA SUBMISSION PORTAL Service

ECHA Submission Portal provides a Party with an online platform to review and/or submit PCN data to ECHA. Moreover, ECHA Submission Portal also serves as the sole means by which ECHA provides Parties with the possibility to access any Communications related to their use of the ECHA Submission Portal and the submission of PCN data.

## 3. Acceptance and Acknowledgement of the Terms and Conditions

- (a) Access to and use of ECHA Submission Portal is granted to the Party subject to and in accordance with these Terms and Conditions.
- (b) In order to access ECHA Submission Portal, the Party shall first log into ECHA Submission Portal by using its registered user ID(s) and user password(s) created in ECHA Account for ECHA IT applications and services. Use of ECHA Account, to the extent it is necessary to access the services provided by ECHA Submission Portal, shall be considered as forming part of the ECHA Submission Portal and covered by these Terms and Conditions. If the Party does not have a registered user ID(s) and user password(s), the Party shall create a user account in ECHA Account, consisting of a user ID and user password, and it will need to provide the requisite information.
- (c) Before signing-up into ECHA Submission Portal, each User has to read and agree to these Terms and Conditions by clicking on the 'Accept' button by using his/her user ID and user password. If a Party nominates more than one User, this obligation applies to every single User. ECHA reserves the absolute right, at its sole discretion, to vary these Terms and Conditions in any way and at any time, and the Users of the Party will be requested to read and accept the amended Terms and Conditions upon their first attempt to login to ECHA Submission Portal after the variations have been made. By logging-in and/or continuing to use the ECHA Submission Portal, the Users of the Party specifically accept these Terms and Conditions as varied.
- (d) Additional requirements specifically tied to the use of the S2S Functionality apply and are addressed in dedicated Section X below.

#### 4. Conditions of Use

- (a) A Party is entitled to use ECHA Submission Portal with a view to meeting and/or ascertaining its legal commitments under Article 45 of the CLP Regulation and related legislation or those of the companies it is representing. ECHA Submission Portal must not be used for any other purposes.
- (b) The Party agrees that any Users applying the user ID(s) and user password(s) to login to the ECHA Submission Portal are acting on behalf of the Party and have the legal authority to do so. A reference in these Terms and Conditions to the Users of the Party logging onto the ECHA Submission Portal, or continuing to use the ECHA Submission Portal, or otherwise accessing the ECHA Submission Portal, shall include any such act done by any person using the user ID(s) and/or user password(s) of the Party (whether authorised by the Party or not).
- (c) The Party agrees to keep the details of its Users up-to-date at any time. To this end, ECHA may require the Users to confirm their details on a yearly basis.

#### 5. Technical Support

- (a) The Party acknowledges that any functions offered in by ECHA Submission Portal are subject to Section 7 of these Terms and Conditions.
- (b) The ECHA Submission Portal includes helpdesk and technical support services. Requests may be made via the information request forms on ECHA's contact page. Any information supplied by ECHA for technical support purposes may only be used by the Party for the purpose of using the ECHA Submission Portal and may not be used for other purposes. ECHA is only responsible for providing the requested information within a reasonable timeframe, taking into account the complexity of the question and/or of the information requested by the Party. All the actions taken by ECHA will be performed according to the information delivered by the Party. To such effect, ECHA will not accept any responsibility if such information contains errors or omissions. The Party is absolutely responsible for the data delivered in any request for information.
- (c) Under the Terms and Conditions and subject the purposes thereof, ECHA and the Appointed Bodies shall be permitted to access, reproduce, review, use, extract, and store any of the information submitted to the ECHA Submission Portal within the limitations imposed on them by Article 45 CLP and in line with any other Union legislation. Except for confidential information and Personal Data, ECHA and the Appointed Bodies shall also be permitted to cite, create derivative works, publish or otherwise make available PCN data to the public in line with their institutional duties and objectives including but not limited to, the implementation of the CLP Regulation and related legislation.
- (d) The Party acknowledges that regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents applies to PCN data. Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies may apply to PCN data.

## 6. Delivery of PCN Data and Warranties

- (a) All PCN data shall be provided to ECHA in a virus-free electronic format according to the format and procedures specified by ECHA from time to time or in such other manner as may be determined and promulgated by ECHA from time to time.
- (b) ECHA and the Party acknowledge that the Internet is, due to unpredictable traffic congestion, malicious third parties and other reasons, an inherently unreliable medium of communication and that such unreliability is beyond the Party's or ECHA's control. ECHA and the Party recognize that it is impossible to maintain flawless security. ECHA uses its utmost efforts to ensure that ECHA Submission Portal will perform correctly. ECHA shall not be liable for any unauthorised access to ECHA Submission Portal by any third party or for failures, errors or delays relating to Party's Internet connections.
- (d) The Party declares, warrants and undertakes to ECHA that:
- (i) any PCN data submitted by it is true, up to date and accurate and not misleading or false;
  - (ii) any PCN data submitted to ECHA through the ECHA Submission Portal by means of the Party's account shall be deemed to be submitted by the Party;
  - (iii) it is the owner of the necessary intellectual property rights in the PCN data it has submitted or is duly authorised by the owner of such intellectual property rights to use the PCN data for the purposes of fulfilling its obligations under the CLP Regulation.
  - (iv) all information provided to ECHA in relation to its application to become a Party and all information which may subsequently be provided for the maintenance of its status as a Party from time to time is complete, correct and up to date;
  - (v) its registration for use of the ECHA Submission Portal and its acceptance and performance of its obligations under these Terms and Conditions have been duly authorised with all necessary corporate or third party approvals obtained and do not violate the constitutive documents of the Party or any law, regulation or other agreement binding on the Party;
  - (vi) these Terms and Conditions constitute a legally binding and enforceable contract;  
and
  - (vii) in relation to its using the ECHA Submission Portal, it shall comply with all applicable laws and regulations including, without limitation, all procedures and directions notified or published by ECHA.

## 7. DISCLAIMER AND LIMITATION OF LIABILITY

**(a) This provision is without prejudice to Article 101 of the REACH Regulation concerning the liability of ECHA.**

**(b) The Party acknowledges that any use of or reliance upon any part of the ECHA Submission Portal shall be at its sole risk. The Party further acknowledges that**

use of the ECHA Submission Portal is provided on an "AS IS" and "AS AVAILABLE" basis and without warranty or condition of any kind, either expressed or implied.

- (c) ECHA assumes no responsibility or liability of any kind for any submission made through the ECHA Submission Portal. By logging onto and/or continuing to use the ECHA Submission Portal and/or by providing Users with passwords to be used for submission of PCN data, the Party is fully responsible for all PCN data provided to ECHA through the ECHA Submission Portal. ECHA shall not be liable or responsible (whether in tort, contract or otherwise) for any claim for any losses or damages of any kind (whether direct or indirect, including but not limited to any loss of profit, loss of revenue, loss of anticipated savings or loss of goodwill) whatsoever and howsoever arising in connection with, arising out of or in any way related to the ECHA Submission Portal or any related system or software including any mishandling, omission, non-delivery, delay, negligent or unauthorised use of the ECHA Submission Portal or of the Party's registered user ID(s) and user password(s).
- (d) ECHA accepts no responsibility or liability of any kind for the accuracy, completeness or reliability of the content or format of any PCN data at any time before or after submission made through the ECHA Submission Portal. It is the sole responsibility of the Party to ensure that all PCN data is accurate and compliant with all applicable legal provisions and that such data has been approved for submission by the Party.
- (e) ECHA accepts no responsibility or liability of any kind for the protection of PCN data from the point it is transmitted from ECHA to the relevant Appointed Body(ies). Article 45 of the CLP Regulation places full responsibility for providing all guarantees for maintaining the confidentiality of such information on the Member States appointed bodies. ECHA shall not be held liable for any damage the Party may suffer in connection to any action or inaction of the Appointed Bodies.
- (f) ECHA shall not be liable for any action taken or for any failure, hindrance or delay in the performance in whole or in part of its obligations under these Terms and Conditions if such action, failure, hindrance or delay arises out of causes beyond the control of ECHA. Such causes may include, but shall not be limited to, acts of force majeure, labour disputes, mechanical breakdowns, computer or system failures or other failures of equipment, failures of or defects in computer or system software, computer damage due to unauthorised programming routines, unavailability of or restrictions on any communication media for whatever reason, interruptions of power supplies, any law, decree, regulation or order of any government, competent authority, supranational bodies or any court or tribunal and any other causes beyond the control of ECHA.
- (g) The Party irrevocably and unconditionally agrees to defend, indemnify in full and hold ECHA harmless from and against all liabilities, damages, claims, actions, costs and expenses (including legal fees) in connection with or arising out of the receipt, or transmission or publication or storage or possession of any PCN data through the ECHA Submission Portal and/or the Party's breach of these Terms and Conditions and/or its improper use of the ECHA Submission Portal.

## 8. Intellectual Property Rights and Other Proprietary Rights

- (a) Save for any intellectual property rights which the Party may have in relation to any PCN data, the Party acknowledges that the contents and materials of the ECHA Submission Portal (including the organisation and layout of the website) are proprietary to ECHA or third parties and the copyright, database rights, list rights other intellectual property rights and other proprietary rights in them belong to ECHA or third parties. Accordingly, disclosure and/or use of such information may require prior consent from the concerned owner.
- (b) The Party acknowledges that the ECHA Submission Portal and related systems and software are proprietary to ECHA. The Party shall not tamper with, modify, decompile, reverse engineer or otherwise alter the ECHA Submission Portal or any of the related software and the Party shall not attempt to gain unauthorised access to any part of the ECHA Submission Portal. ECHA is entitled to deny the Party's access to all or any part of the ECHA Submission Portal if the Party performs any of the above acts or if ECHA at any time reasonably suspects that the Party has performed or attempted to perform any of them.

## 9. Privacy

- (a) The Party consents (and has obtained the Consent of each Data Subject) that the Personal Data provided by it may be processed by ECHA, other EU institutions, bodies or agencies and the Appointed Authorities for the purpose of implementing the CLP Regulation and other relevant EU legislation, and fulfilling the Party's obligations under these legislations.
- (b) The Party (and User(s)) will be requested to provide certain Personal Data such as name, mailing address, e-mail address, and other data such as country, area as well as any other information requested.
- (c) The Party must obtain the Consent of the Data Subject, or have other legal grounds, before it submits any Personal Data of that Data Subject to ECHA Submission Portal as described in these Terms and Conditions.
- (d) ECHA is committed to ensure the right to privacy. For ECHA's personal data protection policy and more information on personal data protection, the Party shall refer to ECHA's webpage on personal data protection  
(<http://echa.europa.eu/about-us/the-way-we-work/personal-data-protection>).
- (e) For the exercise of data protection rights or for any general enquiry relating to the overall privacy policy, the Party (and User(s)) may contact ECHA via the forms on ECHA's contact page.

## 10. Notification of Communications

- (a) The Party expressly acknowledges and agrees that ECHA Submission Portal and the Communications available in it are the sole means by which ECHA will notify it of its communications and reports related to the submission. For this purpose, ECHA Submission



Portal contains a special page (i.e. submission report) that can be accessed by every User, containing information related to the submission and it's processing by ECHA and other Communications.

- (b) Communications are received when they are accessed for the first time by any User of the Party to which they are addressed.
- (c) The date of notification of Communications is the date when they are made available in the User accounts of the Party via the ECHA Submission Portal.
- (d) The Party expressly agrees that receipt of Communications will be presumed seven calendar days after the date of their notification if none of its User(s) have accessed them in the meantime. Therefore, the Party agrees that its User(s) will login and review any received Communications in their account(s) on a regular basis.
- (e) Without prejudice to the aforementioned, ECHA may implement an automated email alert system notifying the User(s) regarding Communications notified in the ECHA Submission Portal. Such emailing system, if implemented, shall be complementary to the notification procedure described within this section and the Party shall in any case be obliged to monitor for incoming notifications as set forth herein.

## **11. S2S Functionality**

- (a) The Party acknowledges and accepts that the use of S2S Functionality requires the Party to generate its own unique S2S Key. The Party remains solely responsible for the protection, use, security and management of the S2S Key. ECHA shall not be held liable or responsible for any damages or otherwise the Party or its affiliates may suffer in connection to any abuse or misuse of the S2S Key.
- (b) The Party accepts that ECHA may, from time to time, invalidate existing S2S Keys, including the S2S Key generated by the Party and require the Party to generate a new S2S Key in order to continue the use of the S2S Functionality. ECHA may also invalidate the Party's S2S Key if the S2S Key's use where ECHA considers it reasonably necessary for the protection of the integrity, security, operation or maintenance of the ECHA Submission Portal or any related systems or software. ECHA shall not be liable to the Party or any third party for any claims of any kind related to such termination, restriction or suspension of the ECHA Submission Portal.
- (c) The Party accepts that it is its obligation to ensure that the configuration of the Client System is fully in line, up to date and compatible with any requirements or specifications as part of the S2S Interface and necessary to utilise the S2S Functionality. ECHA shall not be responsible or liable for any errors in the automated transmissions through the S2S Functionality due to failure to correctly configure and synchronise the Client System.
- (d) ECHA may, from time to time, change the S2S Interface and the related requirements and specifications. It is the obligation of the Party to ensure that the Client System is up to date before the use of the S2S Functionality. ECHA shall not be held responsible and/or liable for any damage caused by the failure of the Party to ensure the Client System is up to date and compatible with the S2S Interface.
- (e) It is the obligation of the Party to verify that any PCN Data transmitted through the S2S Functionality was transmitted correctly and that the submission fully complies with the applicable legal requirements. ECHA does not accept any responsibility and shall not be



held liable for any damages caused by incorrect transmission of any PCN Data through the S2S Functionality.

- (f) The Party acknowledges that ECHA may, if necessary, restrict the use of the S2S Functionality or limit the speed of transmission and/or the amount of PCN Data transmitted through the S2S Functionality in order to protect the operation or integrity of its IT systems, e.g. in cases where the use of the S2S Functionality is causing strain on ECHA's IT system and/or available IT resources.

## **12. Modification, Discontinuance or Termination**

- (a) ECHA reserves the right to modify or discontinue, temporarily or permanently, the ECHA Submission Portal (or any part or feature thereof) at any time after giving prior notification to the Party if it is practicable, or otherwise, without any prior notification if such notification is not practicable. ECHA may terminate or suspend the Party's access to all or part of the ECHA Submission Portal with effect from any time as it considers appropriate for any reason including, without limitation, breach of these Terms and Conditions or any other terms or conditions as prescribed by ECHA from time to time.
- (b) When exercising its discretion under this section, ECHA will take into account all the relevant circumstances and any obligations of the Party under the CLP Regulations and related legislation. In particular, ECHA shall be entitled, in its sole discretion, to temporarily suspend all or part of the ECHA Submission Portal in order to upgrade or modify the ECHA Submission Portal or any related systems or software and/or to restrict the Party's access to and use of the ECHA Submission Portal where ECHA considers it reasonably necessary for the operation or maintenance of the ECHA Submission Portal or any related systems or software. ECHA shall not be liable to the Party or any third party for any claims of any kind related to such termination, restriction or suspension of the ECHA Submission Portal.

## **13. Miscellaneous Provisions**

- (a) If any provision herein is held to be invalid or unenforceable to any extent, then such provision will be interpreted, construed and reformed to the extent reasonably required to render it valid, enforceable and consistent with its original intent. Each provision of these Terms and Conditions is severable, and if one or more provisions are declared invalid or unenforceable, the remaining provisions of these Terms and Conditions will remain in full force and effect.
- (b) These Terms and Conditions are not intended to contravene any mandatory requirements laid down in applicable mandatory regulations nor to exclude liability for matters, which may not be excluded under such regulations.
- (c) The Terms and Conditions shall be governed by and construed in accordance with the laws of Finland, excluding its choice of law provisions and principles.
- (d) Any dispute, controversy or claim arising out of or relating to these Terms and Conditions, or the breach or validity thereof shall be settled by the courts of Helsinki, Finland.