

Term Sheet

Letter of Access

“Fast-Track” term sheet for the purchase of a letter-of-access to the active substance dossier of ACT.Global

February 2019

This is a non-binding term sheet between the Recipient as defined by the signature page and ACT.Global A/S, with business offices located at Kajakvej 2-4, 2770 Kastrup, Denmark (“Seller”).

Whereas, Purchaser and Seller are both in the business of selling biocidal active substances and/or products within the European Union which are subject to EU Regulation 528/2012 (“the BPR”).

Whereas Purchaser wishes to obtain certain information from the Seller in support of its application for inclusion as an approved active substance supplier and/or in support of its application as an authorized importer, distributor or reseller of a biocidal product, purposes of which are regulated under the BPR.

Whereas Seller owns a complete dossier on the use of *free radicals generated in-situ* that has been accepted and validated by a Competent Authority as part of the active substance approval and product authorization process under the BPR (“Dossier”).

Whereas Seller is willing to permit referral to the Dossier and the information contained therein under the terms that follows.

1. “Product” shall mean a unique biocidal active substance, product or solution within a specific Product Type (as defined in the BPR) and sold / to be sold within a specific Member State.
2. Purchaser hereby requests to purchase Product(s) for authorizations for a fee as set out in Appendix A.
3. Purchaser shall make payment for the authorizations via bank transfer as set out in Appendix B and upon Seller’s confirmation of payment receipt, Seller will issue a Letter-of-Access (“LOA”) to Purchaser with a copy to ECHA via R4BP, that details the specific authorizations granted.
4. Purchaser requests and Seller agrees that consequential rights under BPR §95(4) shall be restricted and not extend to Purchaser’s customers or other third Parties.
5. Purchaser shall fully indemnify Seller from any and all damages arising from Purchaser’s use of the authorization.
6. Purchaser agrees to notify Seller within 30 days as to which of Purchaser’s Products are covered by the purchased authorizations.

7. Purchaser and Seller agree to enter into a Confidentiality Agreement whose form is as substantially laid out in Appendix C.
8. Purchaser acknowledges that Seller has expended considerable effort and cost in developing the Dossier and its public disclosure would pose irreparable harm to Seller such that any remedies available to Seller may be insufficient to provide fair compensation.
9. Purchaser upon payment of the stipulated fee, agrees to waive its right of dispute and arbitration under BPR §63.
10. Authorizations to refer to the Dossier are limited to the number of Product authorizations purchased.
11. Authorizations to refer to the Dossier are personal to the Purchaser and may not be transferred, assigned or sold.
12. Authorizations shall be used only for purposes defined in the BPR.
13. Authorizations convey no right of ownership to the Dossier or the information contained therein and Purchaser expressly recognizes that Seller is the exclusive owner of the Dossier and its information.
14. Authorizations once allocated to a Product and such Product has been submitted to ECHA for approval/authorization, becomes non-transferrable to other Products.
15. Authorizations do not grant the Purchaser with a right to view, copy or receive copies of the Dossier or the information contained therein.
16. Seller assumes no responsibility for the suitability of the Dossier information to support Purchaser's intended purpose.
17. Seller is under no obligation to update the Dossier in the event a Competent Authority requests additional information or testing.
18. The Parties agree that the imputed value of the Dossier is €6M and that the Seller is entitled to fair, transparent and non-discriminatory cost recovery from purchasers of authorizations. In the event that Seller receives more cost recovery than the imputed value of the Dossier, Seller agrees to retroactively adjust purchase prices and issue a refund to Purchaser.
19. The Parties agree that this Term Sheet is non-binding and the consideration and exchange of rights described herein will have no effect until substantially captured and formalized in a purchase Agreement that is duly executed by the authorized representatives of each Party.



Appendix A

Product Authorization Fee Schedule

Please note that the scope of each LoA that ACT.Global offers are subject to the following limits

- A single specific named product
- A specific legal entity
- Time limited
- And selected by the matrix below

Examples

- A company wishes to sell or produce a biocidal product in product type X in three countries. They can acquire a LoA for 70,000 Euro.
- A company wishes to sell or produce a biocidal product in product type X, Y, and Z in five countries. They can acquire a LoA for 233,000 Euro.

		# Countries				
		1	3	5	8	28
# PTs	1	47,000	116,000	136,000	155,000	217,000
	2	62,000	155,000	181,000	207,000	289,000
	3	70,000	174,000	203,000	233,000	326,000
	5	85,000	213,000	249,000	284,000	398,000
	9	112,000	279,000	326,000	372,000	512,000

All prices in Euro.



Appendix B

Bank Transfer Information



Appendix C

Mutual Non-Disclosure Agreement

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Letter of access confidentiality agreement
Monday, March 11, 2019

Between ACT.Global and The Recipient - see Appendix D



Parties

- (1) ACT.Global A/S, incorporated and registered in Denmark with company number 35035044, whose registered office is at Kajakvej 2, DK-2770 Kastrup, Denmark. Hereinafter referred to as "ACT".
- (2) The "Recipient" as defined in Appendix D.

When ACT and Recipient are taken together, it shall be referred to as Party or Parties as the circumstances apply.

Background

- (A) The Parties intend to enter into discussions relating to the Purpose, which will involve the disclosure of confidential information from ACT to Recipient.
- (B) The Parties have agreed to comply with this agreement in connection with the disclosure and use of Confidential Information (the "Agreement").

Agreed terms

1. Interpretation

1.1. Definitions:

Authorized Disclosure: A Recipient may disclose some or all of the Confidential Information received by it to any of its Authorised Persons, provided that such disclosure is made only to such persons and to the extent reasonably necessary for the Purpose and is made under no less strict obligations of confidentiality than those set out in this Agreement.

Business Day: a day other than a Saturday, Sunday or public holiday in Denmark when banks in Copenhagen are open for business.

Confidential Information: has the meaning given in clause 2.

Discloser: ACT, being the Party that discloses its Confidential Information, directly or indirectly, to the Recipient.

Affiliate: Unidirectional definition of Affiliate (Parent to Subsidiary – Down Only) An Affiliate ("Affiliate") means any entity that (a) controls, is controlled by, or is under common control with Recipient, or (b) is the surviving entity as a result of a merger with Recipient. Control ("Control") means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of an entity or possession of the right to vote more than fifty percent (50%) of the voting interest in the ordinary direction of the entity's affairs

Purpose: the purchase of a Letter of Access to ACT's active substance dossier and the rights granted therein, authorizing Purchaser to use such LoA in the furtherance of Purchaser's business interests regarding the placing onto the EU market of a

product or substance requiring authorization under the Biocidal Product Regulation EU 528/2012..

Recipient: being the Party that receives Confidential Information, directly or indirectly, from the Discloser.

Representative(s): in relation to each Party:

- (a) its officers, employees, and agents that need to know the Confidential Information for the Purpose;
- (b) its professional advisers or consultants who are engaged to advise that Party in connection with the Purpose;
- (c) its contractors and sub-contractors engaged by that Party in connection with the Purpose.

1.2. Interpretation.

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.
- (d) A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (e) Reference to a Party includes reference to that Party as well as any member of its Affiliate.

2. Confidential Information

2.1. **Confidential Information** means all confidential information relating to the Purpose which the Discloser or its Representatives directly or indirectly discloses to the Recipient or its Representatives after the date of this Agreement. This includes:

- (a) the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;
- (b) the terms of this Agreement;
- (c) all confidential or proprietary information relating to:
 - (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Discloser; and

- (ii) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Discloser;
- (d) any information, findings, data or analysis derived from Confidential Information; and
- (e) any other information that is identified as being of a confidential or proprietary nature.

but excludes any information referred to in clause 2.2.

2.2. Information is not Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient or its Representatives in breach of this Agreement (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);
- (b) it was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser;
- (c) it was, is, or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not under any confidentiality obligation in respect of that information;
- (d) it was lawfully in the possession of the Recipient before the information was disclosed by the Discloser; or
- (e) it is developed by or for the Recipient independently of the information disclosed by the Discloser; or
- (f) the Parties agree in writing that the information is not confidential.

3. Confidentiality obligations

3.1. In return for the Discloser making Confidential Information available to the Recipient, the Recipient undertakes to the Discloser that it shall:

- (a) keep the Confidential Information confidential;
- (b) not use or exploit the Confidential Information in any way except for the Purpose;
- (c) not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this Agreement;
- (d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be the property of the Discloser;

- (e) not use, reproduce, transform or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means outside its usual place of business;
 - (f) apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use;
 - (g) keep a written record of:
 - (i) any document or Confidential Information received from the Discloser in tangible form; and
 - (ii) any copies made of the Confidential Information;
 - (h) ensure that any document or other records containing Confidential Information shall be kept at its premises and shall not remove or allow those documents and records to be moved from those premises.
- 3.2. The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Discloser from time to time) to safeguard the Confidential Information from unauthorised access or use.

4. Permitted disclosure

- 4.1. The Recipient may disclose the Confidential Information to its Representatives on the basis that it:
- (a) informs those Representatives of the confidential nature of the Confidential Information before it is disclosed; and
 - (b) that those Representatives comply with the confidentiality obligations in clause 3.1 as if they were the Recipient and if the Discloser so requests, procure that any relevant Representatives enters into a confidentiality Agreement with the Discloser on terms equivalent to those contained in this Agreement.

4.2. The Recipient shall be liable for the actions or omissions of the Representatives in relation to the Confidential Information as if they were the actions or omissions of the Recipient.

5. Mandatory disclosure

5.1. Subject to the provisions of this clause 5, the Recipient may disclose Confidential Information to the minimum extent required by:

- (a) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;
- (b) the laws or regulations of any country to which its affairs are subject.

5.2. Before the Recipient discloses any Confidential Information pursuant to clause 5.1 it shall, to the extent permitted by law, give the Discloser as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with clause 5.2, the Recipient shall take into account the Discloser's requests in relation to the content of this disclosure.

5.3. If the Recipient is unable to inform the Discloser before Confidential Information is disclosed pursuant to clause 5.1 it shall, to the extent permitted by law, inform the Discloser of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

6. Breach

6.1. A Party in breach of any of its obligations as contemplated by this Agreement shall indemnify and hold harmless the Party not in breach for any and all losses, damages, expenses and legal costs sustained as a consequence of such breach.

6.2. In the case of any breach of this Agreement, the Receiving Party shall, without prejudice to any other rights of the Disclosing Party, including the right to claim damages for any loss or cost accrued by ACT.Global as a consequence of the breach, be liable to pay liquidated damages in the amount of EUR 100,000 for each breach of any obligation contained in the Agreement. For continuing breaches longer than 30 calendar days, it shall be considered as one breach and hence liquidated damages shall be payable for each such 30-days period. For any proven loss exceeding the amount of the liquidated damages, the Disclosing Party shall be entitled to receive damages in accordance with applicable law.

6.3. Each Party acknowledged that any breach of this Agreement could cause irreparable damage to the other Party and that monetary compensation would not

be adequate. Therefore, without prejudice to any rights and remedies otherwise available to the Parties, each Party shall be entitled to seek equitable relief by way of specific performance, injunction or otherwise without the placing of security of the other Party breaches or threatens to breach any provisions of this Agreement.

- 6.4. The Parties hereto shall be deemed to be responsible for any breach committed by their respective affiliates, employees or external advisors. Similarly, the Parties shall be responsible in the event that a breach is committed by any former employee.

7. Return or destruction of Confidential Information

- 7.1. If so requested by the Discloser at any time by notice in writing to the Recipient, the Recipient shall promptly:
- (a) destroy or return to the Discloser all documents and materials (and any copies) containing, reflecting, incorporating or based on the Discloser's Confidential Information;
 - (b) erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form; and
 - (c) to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third Parties; and
 - (d) certify in writing to the Discloser that it has complied with the requirements of this clause 7.1.
- 7.2. Nothing in clause 7.1 shall require the Recipient to return or destroy any documents and materials containing or based on the Confidential Information that the Recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Recipient pursuant to this clause 7.2.

8. Reservation of rights and acknowledgement

- 8.1. The Discloser reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Discloser to the Recipient does not give the Recipient or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this Agreement.
- 8.2. Except as expressly stated in this Agreement, the Discloser makes no express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.
- 8.3. The disclosure of Confidential Information by the Discloser shall not form any offer by, or representation or warranty on the part of, the Discloser to enter into any further Agreement with the Recipient in relation to the Purpose or the development or supply of any products or services to which the Confidential Information relates to.

9. Inadequacy of damages

Without prejudice to any other rights or remedies that the Discloser may have, the Recipient acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement. Accordingly, the Discloser shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this Agreement by the Recipient.

10. No obligation to continue discussions

Nothing in this Agreement shall impose an obligation on the Discloser to continue discussions or negotiations in connection with the Purpose, or an obligation on the Discloser, or its Affiliate Company to disclose any information (whether Confidential Information or otherwise) to the Recipient.

11. Ending discussions and duration of confidentiality obligations

- 11.1. If the Discloser decides not to continue to be involved in the Purpose with the Recipient, it shall notify the Recipient in writing immediately and the Recipient must make no further Use of the Confidential Information.
- 11.2. Notwithstanding the end of discussions between the Parties in relation to the Purpose pursuant to clause 11.1, each Party's obligations under this Agreement shall continue in full force and effect for as long as ACT.Global is selling LoA's.
- 11.3. The end of discussions relating to the Purpose shall not affect any accrued rights or remedies to which either Party is entitled.

12. TERMINATION

- 12.1. Upon the expiry or termination of this Agreement (howsoever caused) or upon receipt by the Recipient of an earlier written demand from the Discloser:
 - (a) the Recipient must return or procure the return to the Discloser (or destroy or procure the destruction as the Discloser may require) of any and all documents and other materials and media containing the Confidential Information together with all copies;
 - (b) if the Discloser requires, the Recipient must provide the Discloser with a signed certificate or such other evidence as the Discloser may reasonably require duly signed or executed by an officer of the Recipient confirming that the Recipient has complied with all of its obligations under this Agreement as to return, destruction and deletion of Confidential Information and media;

- (c) the Recipient must delete or procure the deletion of all electronic copies of Confidential Information; and
- (d) certify in writing to the Discloser that it has complied with the requirements of this clause 12.

13. No partnership or agency

- 13.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 13.2. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

14. General

- 14.1. **Assignment and other dealings.** Neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 14.2. **Entire Agreement.**
 - (a) This Agreement constitutes the entire Agreement between the Parties and supersedes and extinguishes all previous Agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (b) Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 14.3. **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 14.4. **Waiver.** No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.5. **Severance.** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent

necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

14.6. A Recipient's obligations under this clause extend to procuring the compliance with this Agreement of any of its Authorised Persons who have been in receipt of Confidential Information.

14.7. Notices.

- (a) Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing, addressed to that Party at its registered office or such other address as that Party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received:
 - if delivered personally, when left at the address referred to in the clause *Parties*;
 - if sent by pre-paid first class post on the 5th Business Day after posting;
 - if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or,
 - if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.8. **Third Party rights.** No one other than a Party to this Agreement shall have any right to enforce any of its terms.

14.9. **Governing law.** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of the Kingdom of Denmark.

14.10. **Jurisdiction.** Each Party irrevocably agrees that the courts of Denmark shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

Appendix D

Parties

This Agreement has been signed using the online form ACT.Global and is digitally shared and valid upon signature, and both Parties accept the terms in

Term Sheet Letter of Access

and

Letter of access confidentiality Agreement

Signed by Carsten Jensen

For and behalf of ACT.Global A/S

Date:

Signed by Signee

For and behalf of Recipient

Date:

Recipient Company Name: [FULL COMPANY NAME]

The Company number: [NUMBER]

The Company is registered in: [COUNTRY]

The Company is registered at: [REGISTERED OFFICE ADDRESS]

Name of Signee: [FULL NAME]

Title of Signee: [ROLE &/OR FUNCTION]