1 January 2011

REACH BORON CONSORTIUM AGREEMENT

Having regard to

Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 ("REACH")

and

the Registration of boron and certain other substances thereunder

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APPENDICES

THE AGREEMENT

This Agreement, creating the REACH Boron Consortium, is made by and among the undersigned Parties, listed in APPENDIX 7 of the present Agreement (**"Members"**).

1. PREAMBLE

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council, of 18 December 2006, concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals, (hereafter **"the REACH Regulation"** or **"REACH"**), aimed at ensuring a high level of protection for human health and the environment, whilst ensuring the efficient functioning of the internal market and stimulating innovation and competitiveness in the chemical industry;

Having regard in particular to the Registration requirements imposed by the REACH Regulation on Manufacturers and Importers of Substances as such, in Mixtures or in Articles, and the financial and human effort implied by this obligation and the limited time to ensure compliance;

Having regard to the requirements of the REACH Regulation to share certain of the data required for Registration purposes; and to make joint submissions of Core Data when there are multiple Registrants;

Having regard to the fact that the REACH Regulation will affect directly or indirectly Manufacturers and Importers established both within and outside the EU;

Having regard to the obligations under the REACH Regulation to consider all stages of the life-cycle of the Substance resulting from the manufacture and Identified uses; and the specific duties and obligations imposed on Downstream Users of Substances as well as Manufacturers and Importers;

Having regard to the possibility within the REACH Regulation to apply a grouping and read-across approach to the assessment of structurally related Substances;

The Parties, having a common interest in fulfilling the requirements laid down by the REACH Regulation, agree to form a Consortium open to any other eligible entity, whether or not established in the EU, in order to share human and financial resources involved in complying with this Regulation and to develop and collate, in a timely and efficient manner, the sets of Information required for Registration.

2. DEFINITIONS

2.1 REACH DEFINED TERMS

Any terms defined in Article 3 of the REACH Regulation shall have the same meaning in this Agreement, including but not limited to the definitions of Agency, Manufacturer, Importer, Intermediate, Downstream user, Registrant, Study summary

and Robust Study summary. For ease of reference the definitions contained in Article 3 of the REACH Regulation are reproduced in APPENDIX 6.

2.2 CONSORTIUM AGREEMENT DEFINED TERMS

Furthermore, in this Agreement, the following terms shall have the following meanings:

"Administrative Costs" the costs of administering the Consortium, as more fully described in 9.1.1.1;

"Affiliate" a Party's ultimate controller and any company which is directly or indirectly controlled by that ultimate controller; and, in the case of a dual listed group of companies, includes the other holding company and any company which is directly or indirectly controlled by the other holding company and/or the ultimate controller and the other holding company;

For the purposes of this definition a particular entity is:

- directly controlled by another entity if that latter beneficially owns or controls 50% or more of the shares carrying the right to vote at the general meeting (or its equivalent) of the particular entity, has the right to exercise a dominant influence over the entity either by virtue of provisions contained in the entity's memorandum or articles of association (or equivalent constitutional document) or by virtue of a contract or has the right to appoint or remove 50% or more of the Directors (or equivalent supervisory body) of the particular entity; and

- indirectly controlled by an entity (hereinafter called "Parent") if a series of entities exists, beginning with the Parent (or Parents) and ending with a particular entity, in which each entity of the series, except the Parent or Parents, is directly controlled by one or more entities earlier in the series;

“Agreement”	this Agreement, including any annexes or appendices;
“Assembly”	the body comprising all Members as more fully described in 6.1;
“Chemical Safety Report”	the report described in Article 14 of the REACH Regulation;
"CLP Regulation"	means Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures;
“Confidential Business Information”	in accordance with Article 39.2 of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), all information which cumulatively: • is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; • has commercial value and is marked as secret;
“Consortium”	a temporary association of the Members for the purpose of assisting them to obtain the Registration;
“Core Data”	data to be submitted jointly by Registrants pursuant to the REACH Regulation and which includes: • classification and labelling of the Substances covered by this Agreement; • summaries of Information derived from the application of Annexes VII to XI to the REACH Regulation; • Robust Study summaries derived from the application of Annexes VII to XI, if so required under Annex I to the REACH Regulation;

- testing proposals where required by the application of Annexes IX to X to the REACH Regulation;
- Chemical Safety Reports (where appropriate);
- guidance on safe Use of the Substances listed in APPENDIX 1;

The scope of the Core Data shall correspond to the requirements of the REACH Regulation applicable to Member(s) Manufacturing or Importing the Substance(s) covered by this Agreement;

"Disclosing Party" any natural or legal person that discloses Information within the framework of this Agreement;

"Effective Date" the date on which this Agreement comes into effect, as more specifically provided in 11.1.1;

"EU" the territory of the European Union, which comprises the current twenty-seven member states, as well as any future member state of the EU, as well as Iceland, Lichtenstein and Norway, all being European Economic Area countries;

"Information" Studies, other tests, and data related to the preparation of the Registration Dossier made available by a Member pursuant to 8.1.1, or licensed from third parties pursuant to 8.1.4 or developed pursuant to 8.2.1. It also includes:

- all statistics, information, data or conclusions that could be deduced from such Studies, other tests, data and information which might be written, or visual information;
- Registration Dossiers;
- technical dossiers comprising Studies, including test results, Study Summaries, proposals for testing, classification and labelling, guidance on

safe Use, plus a Chemical Safety Report (where appropriate); and

- draft Registration Dossiers, interim and working documents related to the preparation of the Registration Dossiers, know-how, technical information, research, methods, practices, procedures, processes, and formulae;

"Initial Contribution" monies contributed upon joining the Consortium by every Member as set forth in APPENDIX 4;

"Lead Registrant" as defined in Article 11(1) of the REACH Regulation;

"Letter of Access" a letter granting the rights to refer to a full Registration Dossier or a Study submitted to the Agency or to demonstrate legitimate possession of the Registration Dossier or the Study, or a copy thereof, by a Member or third party;

"Material Breach" a breach of a substantial obligation of this Agreement by a Party, including but not limited to:

- provision of inaccurate information to the Secretariat pursuant to 5.1.1.3;
- breach of:
    - an obligation related to payment;
    - an obligation to provide existing Studies and Information. Deliberate or reckless provision of inaccurate Studies or Information also constitutes a Material Breach;
    - an obligation of confidentiality, including obligations contained in 7 (confidentiality) and APPENDIX 2 to this Agreement;
    - an obligation under 10 (liability); or

- an obligation under 12.1 (compliance with competition laws);

"Member" an EU Manufacturer, Non-EU Manufacturer, Importer or Only Representative which is a Party to this Agreement and:

- has an interest in the scope and the purpose of this Agreement; and
- is required to Register on its own or through an Only Representative Substances listed in APPENDIX 1 under the REACH Regulation; and
- is not an Affiliate of another Member (save in circumstances where the Assembly has specifically approved such Membership pursuant to 5.1.1.5); and
- is an EU-based entity that is acting as an Only Representative for one or more of its Affiliates located outside the EU which will be required to Register one or more Substances listed in APPENDIX 1;

("Membership" shall have a corresponding meaning);

"Minor Breach" any breach of the Agreement that is not a Material Breach;

"Mixture" means a mixture or solution composed of two or more Substances;

"Non-EU Manufacturer" a natural or legal person established outside the EU who manufactures a Substance on its own or in Mixtures or in Articles, formulates a Mixture or produces an Article that is imported into the EU;

"Only Representative" a natural or legal person established in the EU who has been appointed by a Non-EU Manufacturer to pre-register or Register its Substance in accordance with Article 8 of the REACH Regulation;

"Party"	a party to this Agreement;
"Receiving Party"	any Party to this Agreement to which Information is made available in any manner within the framework of this Agreement;
"Registration"	submission of the relevant parts of a Registration Dossier to the Agency as described in Title II of the REACH Regulation (and "Register" shall have a similar meaning);
"Registration Dossier"	a technical dossier (including a Chemical Safety Report where applicable) as required by the REACH Regulation;
"Secretariat"	Boron Consortium Services Ltd.;
"SIEF"	a Substance Information Exchange Forum as contemplated in the REACH Regulation;
"SIEF Formation Facilitator"	the entity pre-registering a Substance which initiates and conducts discussions after pre-registration, and facilitates the exchange of the information and data required under REACH;
"Steering Committee"	the committee which provides strategic guidance on the development of the work plan of the Consortium, established in the event there are 10 Members in the Consortium or more. As more fully set forth in 6.2.2, it will be responsible for advising the Consortium on the resources (human and budget), for the strategic and policy aspects and will play the role of referee in cases of disagreement or misunderstanding at the level of the Technical Working Group. It is composed in accordance with 6.2.1;
"Study"	an investigation, test, or other examination, which relates to intrinsic properties or to the exposure assessment or to the risk characterization of the Substance, and which, as such, is of relevance for Registration of the Substance pursuant to the REACH Regulation; a Study as defined also includes all statistics, Information, data or conclusions that could

	be deduced from such a Study, and the report of that Study in written or electronic form;
"Study Costs"	expenses relating to the cost of Studies, as more fully described in 9.1.1.2;
"Substance"	a Substance that conforms to the definition contained in Article 3(1) of the REACH Regulation and is listed in APPENDIX 1 to this Agreement;
"Technical Working Group"	the group which provides technical guidance on the development of the work plan and support for the activities of the Consortium. It is composed in accordance with 6.3.1;
"Trustee"	any independent consultant, including, but not limited to a law firm or other professional firm appointed pursuant to 6.5;
"Tonnage"	the deemed annual tonnage[s] of boron and/or phosphorus contained in all Substances and Mixtures manufactured in or imported into the EU by a Member and its Affiliates and calculated in accordance with APPENDIX 4.

3. PURPOSE AND SCOPE OF THE CONSORTIUM

3.1 REACH COMPLIANCE

The Members have entered into this Agreement in order to comply jointly with the requirements of the REACH Regulation for the Substances covered by this Agreement.

3.2 NOT-FOR-PROFIT

The activities of the Consortium shall be conducted on a not-for-profit basis.

3.3 TIMELY ACHIEVEMENT

The Parties to the Agreement shall make all reasonable efforts to ensure the appropriate and timely achievement of the Consortium's purposes.

3.4 PRE-REGISTRATION AND REGISTRATION

In particular, the Members shall collectively, for the purposes set out below:

3.4.1 Pre-registration of Substances

3.4.1.1 share, for the sake of consistency and establishment of sameness, the names and identity codes of the Substances they have pre-registered;

3.4.1.2 identify the name(s) of other Substance(s) for which available Information is relevant for performing adaptations to the testing requirements, i.e. use of results from (Q)SAR models (Section 1.3 of Annex XI to the REACH Regulation) and read-across approach (Section 1.5 of Annex XI to the REACH regulation).

3.4.2 Registration of Substances

3.4.2.1 compile and assess all relevant existing Studies and identify data gaps;

3.4.2.2 prepare proposals for new testing needed to fill data gaps related to the requirements specified in Annexes VII and VIII to the REACH Regulation, and have such tests performed;

3.4.2.3 prepare proposals for testing required to fill data gaps related to the requirements specified in Annexes IX and X to the REACH Regulation; these proposals to be submitted to the Agency at the time of Registration of the Substance(s);

3.4.2.4 prepare the Core Data and ensure their reliability, relevance and adequacy;

3.4.2.5 address technical issues in relation to REACH Registration;

3.4.2.6 develop read-across approaches, as appropriate, based on data from tested Substances and/or surrogate data;

3.4.2.7 assess opportunities for exposure-based waivers from testing requirements;

3.4.2.8 develop hazard classification and labelling in accordance with the CLP Regulation (and, where applicable, with the Globally

Harmonised System (**"GHS"**) of classification and labelling of chemicals) and agree on notification procedures to ECHA;

3.4.2.9 coordinate, for each Substance, the joint submission of the Core Data, the Chemical Safety Report (where applicable) and the guidance on safe Use of the Substance by the Lead Registrant;

3.4.2.10 identify candidate Lead Registrants for each Substance to be Registered;

3.4.2.11 prepare the Core Data to be submitted by the Lead Registrants and Members to the Agency for each Substance by not later than the earliest Registration deadline applicable to any of the Members pursuant to the REACH Regulation;

3.4.2.12 ensure strict adherence to any working deadline or procedures set by the Assembly or the Steering Committee under this Agreement in view of the strict deadlines set by the REACH Regulation for the submission of the Core Data required for each Substance;

3.4.2.13 jointly prepare and submit a Chemical Safety Report for all Substances in quantities of 10 tonnes or more per year per Registrant. In this regard:

3.4.2.13.1 the Members shall provide the Trustee or the Secretariat with the Information relating to Substance Uses and exposure in order to identify the Uses of a Substance to be covered by the Chemical Safety Report;

3.4.2.13.2 the Members shall prepare and through the Lead Registrants submit the Chemical Safety Reports jointly, unless (a) there are irreconcilable differences with respect to the risk management, risk assessment or safe use of the Substance or (b) particular downstream uses or processes are considered Confidential Business Information.

3.4.3 **Evaluation by the Agency of the Registration Dossier and Authorisation**

3.4.3.1 in case of need, respond collectively to any request for further Information that may be made by the Agency in the context of Chapter 1 of Title VI of the REACH Regulation;

3.4.3.2 review the scope of the Consortium Agreement following submission by June 2013 of the initial Registration Dossiers for the Phase-in Substances to be Registered pursuant to Article 23(1) of the REACH Regulation, and shall decide whether or not to extend it with a view to co-operation during any Authorisation process or any other follow-up process.

4. SUBSTANCES COVERED

The Substances covered by this Agreement are boron and the boron compounds, if any, and phosphorus as listed in APPENDIX 1. The list is not exhaustive and may be amended from time to time by decision of the Assembly on the recommendation of the Steering Committee if formed.

5. MEMBERSHIP

5.1 ADMISSION OF NEW MEMBERS

5.1.1 Admission of new Members

5.1.1.1 Subject to 5.1.1.5 any natural or legal person who meets all the criteria for Membership listed and defined in 2.2 may become a Member.

5.1.1.2 The Assembly shall consider all applications for Membership and shall accept every application which meets all the criteria thereof, save where:

5.1.1.2.1 the applicant has previously been a Member and failed to comply with its obligations hereunder; or

5.1.1.2.2 the Assembly is entitled upon reasonable grounds and after consultation with legal counsel to refuse Membership;

provided that refusal of an application for Membership must in no circumstances constitute a breach of any applicable competition law.

5.1.1.3 Every applicant for Membership shall provide to the Secretariat the Tonnages of boron and/or phosphorus contained in Substances and Mixtures produced in and/or imported into the EU by such applicant and its Affiliates. For the purposes of determining the

Member's payment obligations pursuant to 9.3 and 9.4, the Tonnages of boron and/or phosphorus contained in Substances and Mixtures produced in and/or imported into the EU by Affiliates of the Member shall be attributed to the Member. The Secretariat shall be entitled to require proof of the information provided pursuant to this clause upon written request to the applicant, which shall include the right to audit such information, including the identity of the Affiliates of the Member, in appropriate circumstances.

5.1.1.4 Membership shall be conferred upon execution of this Agreement and payment of the fees and compensation required by this Agreement, in accordance with 9 and APPENDIX 4.

5.1.1.5 An Affiliate of a Member shall only be entitled to Membership if the Assembly is satisfied that there are special and compelling circumstances which justify the admission of the Affiliate to Membership in addition to the Member of which it is an Affiliate. In such an instance the Tonnage of the Affiliate shall be allocated to the Affiliate and shall be deducted from the Tonnage of the Member for the purposes of determining their respective voting rights and financial contributions;

5.1.1.6 Each entity admitted as a Member shall be listed at APPENDIX 7, which shall be updated by the Secretariat upon admission of each new Member.

5.1.2 **Commitment of new Members**

To become a Member, an applicant must be subject to the REACH Regulation's requirements and by signing this Agreement undertakes to abide by all the terms and conditions as set out in this Agreement, including, without limitation, payment of the compensation described in 5.1.3.

5.1.3 **Payments Due upon Joining the Consortium as a new Member and for acquisition of new Affiliates**

5.1.3.1 All new Members joining after the Effective Date shall be obligated to pay all amounts due, including payments due for prior years in which the Consortium operated and the Initial Contribution, pursuant to the cost sharing formula set out in APPENDIX 4, except as provided in 5.2.

5.1.3.2 A new Member that acquires Membership in the Consortium or acquires a new Affiliate pursuant to 5.2.1.1, 5.2.1.2 or 5.2.1.3 shall, with respect to prior year payments and the Initial Contribution, only be obliged to pay additional compensation as specified pursuant to 5.2.1.1.3, 5.2.1.2.4. or 5.2.1.3.2. (For the avoidance of doubt, except as provided in 5.2.1.1.4 and 5.2.1.3.3, all future contributions due from such Member for future years shall be determined on the new Member's Tonnage in the same manner as any other Member pursuant to the cost sharing principles set forth in APPENDIX 4.)

5.1.3.3 The new Member shall have the rights and obligations attached to its status of Member from the first date of payment of its contributions.

5.2 ASSIGNMENT OF MEMBERSHIP, ACQUISITIONS OF NEW AFFILIATES AND SALE OF AFFILIATES

5.2.1 Assignment of Membership

A Member shall be entitled to assign all (but not a part only) of its rights and obligations under this Agreement in the following circumstances:

5.2.1.1 Acquisition, merger or absorption of a Member by or with a third party

Membership can only be assigned if the Assembly is satisfied that:

5.2.1.1.1 the assignee meets all the requirements for Membership; and

5.2.1.1.2 there are no grounds for refusal of Membership as set out in 5.1.1.2; and

5.2.1.1.3 where the acquisition, merger or absorption involves a third party that manufactures Substances in, or imports Substances into, the EU and which has not joined the Consortium as a Member, the assignee shall pay such additional retrospective contribution, if any, based on the difference between the contributions previously determined for the Tonnages reported by the existing Member and the contributions that would have been

due based on the total Tonnage of the combined entities.

5.2.1.1.4 In the case of a merger where the merger occurs between a Member and an entity that previously purchased and fully paid for a Letter of Access, no further payment shall be due from the combined entity. The combined entity's Tonnage shall not include the third party's Tonnage for the purposes of the reconciliation set forth in Appendix 4.

5.2.1.2 Acquisition, merger or absorption of a Member by or with another Member

Membership may be assigned without the prior approval of the Assembly to another Member, provided that:

5.2.1.2.1 neither the assignor nor the assignee may be in breach of any of its obligations pursuant to this Agreement;

5.2.1.2.2 the Member which absorbs the other Member or the new entity formed following the merger of the two Members shall only have one voting right;

5.2.1.2.3 when a Member becomes an Affiliate of another Member, all the rights and obligations of one Affiliate shall be automatically assigned to the other of them. However, in such case, the voting right belonging to the assignor is not assigned to the assignee and shall cease to exist; and

5.2.1.2.4 subject to the payment of all outstanding amounts due by both existing Members, there shall be no further contributions required with respect to the Initial Contribution or the 2011 minimum contribution pursuant to the cost sharing principles set forth in APPENDIX 4; however, if, as a result of a combination pursuant to 5.2.1, the combined Tonnage of the Members exceeds 100 tonnes, then the new Member will make such contributions as required pursuant to this Agreement for 2010 based on the combined Tonnage.

5.2.1.3 Acquisition of a new Affiliate

5.2.1.3.1 Where a Member acquires a new Affiliate, the new Affiliate shall have all the rights of an Affiliate pursuant to this Agreement, so long as the Member makes any additional contribution as required by 5.1.3.2.

5.2.1.3.2 Within 60 days of completing the acquisition of the new Affiliate, the Member shall pay such additional retrospective contribution, if any, based on the difference between the contributions previously determined for the Tonnages reported by the Member and the contributions that would have been due based on the Member's Tonnage including the new Affiliate.

5.2.1.3.3 Where the new Affiliate previously purchased and fully paid for a Letter of Access, no further payment shall be due from the Member, and the new Affiliate's Tonnage shall not be included in the Member's total Tonnage for the purposes of the reconciliation set forth in Appendix 4.

5.2.1.4 Spin-off or sale of Affiliates

5.2.1.4.1 In case of (a) a spin-off by a Member of an Affiliate or (b) the sale by a Member of an Affiliate to a company that is not directly or through an Affiliate, a Member, the Affiliate (or one of its new Affiliates) shall be entitled to join the Consortium as a new Member within two months of the completion of the spin-off or sale.

(a) In case of a spin-off, the Affiliate becoming the new Member shall pay such contributions on its Tonnage, including the Initial Contribution and contributions due for prior years, as any other new Member pursuant to 5.1.3.1.

(b) In case of a sale of an Affiliate to an entity that directly or through an Affiliate manufactures Substances in, or imports Substances into, the

EU and is not a Member of the Consortium, either directly or through an Affiliate, the new Member shall pay such contributions on its total Tonnage, including the Initial Contribution and contributions due for prior years, as any other new Member pursuant to 5.1.3.1.

5.2.1.4.2 In the case of a sale or spin-off under this section, the existing Member shall be entitled to retain its Membership.

5.2.2 **Notification to Assembly**

A Party which wishes to assign its rights and obligations in pursuant to 5.2.1 must notify the Assembly in writing at least sixty (60) days in advance of the date of such proposed assignment. If the assignment is pursuant to 5.2.1.2.3 the notification must indicate which Party will retain its Membership.

5.3 TERMINATION OF MEMBERSHIP

5.3.1 **Withdrawal**

A Member may withdraw from the Consortium by sending to the Secretariat written notice thereof at least 60 days prior to withdrawal.

5.3.2 **Failure to comply with criteria for Membership**

A Member must notify the Secretariat immediately in writing if its circumstances change such that it no longer complies with the criteria for Membership listed and defined in 2.2, and its Membership will be deemed to have terminated automatically with effect from the date on which it ceased so to comply.

5.3.3 **Assignment**

A Member which has assigned its rights and obligations pursuant to 5.2 shall cease to be a Member immediately upon such assignment becoming effective.

5.3.4 **Expulsion**

5.3.4.1 A Member may be expelled from the Consortium by decision of the Assembly upon the recommendation of the Secretariat, such

recommendation to be approved by the Steering Committee if formed:

5.3.4.1.1 in the event of a Material Breach that has not been remedied within 30 days after formal notice has been sent to it by Registered letter with return receipt:

5.3.4.1.2 in the event of a Material Breach when inaccurate information has been provided to the Secretariat and/or confidentiality obligations have been breached under this Agreement, it shall not be necessary to give notice to remedy,

provided that the defaulting Member shall have been afforded a reasonable opportunity to submit reasons in writing why it should not be expelled from the Consortium and the Assembly or the Secretariat shall have consulted with external legal counsel.

5.3.4.2 Expulsion of a defaulting Member shall be without prejudice to any other legal or other remedy that may be available to any Party pursuant to this Agreement or in law.

5.3.5 **Consequences of termination of Membership**

5.3.5.1 Upon termination of Membership pursuant to 5.3.1, 5.3.2, 5.3.3 or 5.3.4 the rights and obligations of the Member in question shall cease to exist, save in respect of:

5.3.5.1.1 any outstanding amounts due and payable to the Consortium or any Members;

5.3.5.1.2 the confidentiality provisions set out in this Agreement;

5.3.5.1.3 any liability incurred pursuant to 10.1 during the time that it was a Member;

5.3.5.2 The Members shall be entitled to make use of the data made available by the former Member in accordance with the provisions specified in this Agreement provided that such data has been the subject of compensation as set out herein.

5.3.5.3 The former Member shall pay its contribution to the Consortium expenses, including all payments related to Studies agreed on during the time of its Membership; provided that a Member which has given written notice of withdrawal shall not be obliged to pay any contributions determined after the date of such notice to be payable by all Members.

5.3.5.4 A withdrawing or expelled Member shall not be entitled for any reason whatsoever to claim back any monies paid pursuant to this Agreement during the time of its Membership.

5.3.5.5 The former Member, except if it has been expelled for breach of its payment obligations, shall have the right to refer, under the terms and conditions set out in the Letter of Access, to the results of the Studies and the full reports prepared by the Consortium for which it has paid compensation pursuant to this Agreement, even if such results are available after the date of termination of its Membership. The amount of any further compensation required for the former Member to obtain the right to refer to the entire Registration Dossier shall be determined by the Assembly pursuant to the terms of this Agreement.

5.3.5.6 The former Member shall have no right in respect of the Registration Dossier (including no right to refer to the Registration Dossier prepared by the Consortium for the purpose of Registration). If the withdrawing or expelled Member wishes to submit a Registration Dossier jointly with the Members, it must do so in accordance with the provisions governing the joint submission of data under Article 11 of the REACH Regulation. Except as provided in 5.3.5.5, any former Member that seeks to participate in the joint submission of the Registration Dossier shall pay the normal costs required for obtaining a Letter of Access as offered to any other third party.

6. ORGANISATION OF THE CONSORTIUM

6.1 ASSEMBLY

The Members shall meet in an Assembly in order to make the decisions set out in 6.1.1.6, 6.1.2 or any other decisions delegated to the Assembly under this Agreement.

6.1.1 Composition of the Assembly

6.1.1.1 The Assembly shall comprise all the Members. Each Member shall designate one natural person to act as the representative of that Member in the Assembly.

6.1.1.2 The designated representative of the Member shall have authority to commit the Member in decisions to be taken by the Assembly; and must be able to produce duly executed original proof of such appointment.

6.1.1.3 Each Member shall be entitled to replace its representative, either temporarily or permanently, provided that:

6.1.1.3.1 the replacing representative complies with the criteria set out in 6.1.1.2; and

6.1.1.3.2 the Member must promptly notify the Secretariat in writing of such replacement, whereafter the Secretariat shall promptly advise the other Members thereof.

6.1.1.4 Each Member or its representative shall participate in Assembly meetings in person or by conference call.

6.1.1.5 The Secretariat shall serve as secretary of the Assembly and shall delegate one or more of its officers to the Assembly for the purpose. The Secretariat shall have no voting rights on the Assembly.

6.1.1.6 Members of the Assembly shall elect by majority vote a chairman for a period of one year at a time. Upon expiry of such period the chairman may seek re-election. The chairman shall co-ordinate the Assembly with the assistance of the Secretariat.

6.1.2 **Role of the Assembly**

6.1.2.1 The Assembly shall take decisions in connection with the following:

6.1.2.1.1 approval of the Core Data before joint submission to the Agency;

6.1.2.1.2 approval of the Chemical Safety Report before joint submission to the Agency;

6.1.2.1.3 modification of any provision as well as the Appendices to this Agreement, if and when needed;

6.1.2.1.4 expulsion of a Member, subject to 5.3.4.1;

6.1.2.1.5 nomination of the candidate Lead Registrant/s upon the recommendation of the Secretariat;

6.1.2.1.6 annual ratification of the strategic programme of the Consortium;

6.1.2.1.7 approval of the annual budget and any unbudgeted expenditure;

6.1.2.1.8 approval of working and finance plans prepared by the Secretariat;

6.1.2.1.9 approval of the annual accounts;

6.1.2.1.10 establishment of the Steering Committee in accordance with 6.2 in the event that there are 10 Members in the Consortium or more, and coordination and supervisions of its activities.

6.1.2.2 Until such time as the Steering Committee is established pursuant to 6.2 the Assembly shall also take decisions in connection with the following:

6.1.2.2.1 management of the financial resources of the Consortium, including budget, funding collection and accounts;

6.1.2.2.2 establishment of a Technical Working Group pursuant to 6.3.1;

6.1.2.2.3 coordination of and guidance for the preparation of the Registration Dossier for the Substances covered by APPENDIX 1, including following proposals by the Technical Working Group, the acceptance of relevant and reliable existing Studies and Information and any decisions to develop new Studies and Information;

6.1.2.2.4 approval of testing programs;

6.1.2.2.5 appointment of external consultants to perform technical and scientific tasks and as proposed by the relevant Technical Working Group (when a budget is required);

6.1.2.2.6 coordination and supervision of activities of the Steering Committee, the Secretariat, the Technical Working Group and the Lead Registrant/s;

6.1.2.2.7 arbitration in cases of disagreement or disparities within or between the Steering Committee and the Technical Working Group;

6.1.2.2.8 decisions regarding admission of any new Member;

6.1.2.2.9 recommendations with respect to expulsion of a Member in accordance with 5.3.4.1 before the decision to expel the Member is taken pursuant to 6.1.2.1.4;

6.1.2.2.10 in the case of uncertainty as to whether an entity satisfies the definition of Affiliate set forth in 2.2, shall make a determination at the request of a Member, whether an entity satisfies such definition or whether it is appropriate to deem that such entity satisfies the definition for the purposes of this Agreement;

6.1.2.2.11 review and approval of each of the following stages of work after completion by the Technical Working Group:

(a) process for defining data gaps, including the development of waivers and use of surrogate and read-across data;

(b) defining test plans;

(c) analysis of tests results;

(d) compilation of Core Data;

(e) nomination of the candidate Lead Registrants to the Assembly pursuant to 6.6.1;

(f) submission of Core Data to the Agency;

(g) response to request(s) for further information by the Agency; and

6.1.2.2.12 establishing guidelines under which the Secretariat can grant Letters of Access to the Registration Dossier, including financial terms;

6.1.2.2.13 appointing legal or technical experts to provide assistance on an ad hoc or continuing basis;

6.1.2.2.14 approving the participation of other interested parties at meetings of the Technical Working Group as observers, subject to the written agreement of such interested parties to the confidentiality provisions contained in 7.1, 7.2 and APPENDIX 2.

6.1.3 **Delegation of powers**

The Assembly shall delegate the decision making pursuant to 6.1.2.2 to the Steering Committee when it is established pursuant to 6.2. The Assembly shall be entitled to delegate in writing any other tasks listed in 6.1.2 to the Steering Committee provided all the decisions taken by the Steering Committee are subject to 6.1.5.

6.1.4 **Meetings of the Assembly**

6.1.4.1 Ordinary Meetings

6.1.4.1.1 The Assembly shall hold ordinary meetings at least every six months.

6.1.4.1.2 In the event the Steering Committee is established pursuant to 6.2, Ordinary Meetings of the Assembly shall be held at least once a year and Ordinary Meetings of the Steering Committee shall be held pursuant to 6.2.3 at least every six months.

6.1.4.1.3 No business will be transacted at an ordinary meeting other than the items specified on the agenda. The Assembly may, however, with the consent of Members representing 50% or more of the total votes

present or represented at the meeting, bring forward any business which it considers requires decision or action by the Members.

6.1.4.2 Extraordinary Meetings

6.1.4.2.1 Extraordinary Meetings of the Assembly will be convened:

(a) at the request of the chairman of the Assembly; or

(b) at the request of at least one third of the Members.

6.1.4.3 Organisation of Meetings

6.1.4.3.1 Meetings of the Assembly shall be held following written notice given by the Secretariat for Ordinary Meetings and upon written notice given by the Secretariat on behalf of the chairman of the Assembly or of a majority of Members for Extraordinary Meetings. The notice shall indicate the venue of the meeting and/or telephone conference details and shall also include where possible a draft Agenda for the Meeting.

6.1.4.3.2 The notice period for Ordinary and Extraordinary Meetings shall be four weeks from issue of notice by the Secretariat, unless a shorter period is agreed by all Members.

6.1.4.3.3 A Member's written submission on agenda matters received by the Secretariat 24 hours in advance of the opening of the Meeting, shall be taken into consideration by the Assembly.

6.1.4.3.4 One or more representatives of the Secretariat, the Steering Committee and the Technical Working Group shall attend Ordinary Meetings of the Assembly, as appropriate, to report on their activities.

6.1.4.4 Minutes

Minutes of the Assembly meetings shall be prepared by the Secretariat which shall forward copies of them within 4 weeks to all Members. Members must notify the Secretariat within 2 weeks after dispatch of the minutes if there is anything contained in the minutes with which they disagree. Failure to do so will indicate acceptance of the minutes.

6.1.5 **Procedure at meetings**

6.1.5.1 Physical/non-physical meetings

Members of the Assembly or their representatives may attend meetings in person or by conference call except when meetings must be held in person pursuant to any specific provisions of this Agreement.

6.1.5.2 Quorum

6.1.5.2.1 Where the decisions are to be taken pursuant to 6.1.2.1, the requirements for a quorum shall be as follows:

(a) a meeting of the Assembly can be held and any decisions taken in connection with this meeting will be valid if a quorum of Members representing 50% of the total votes are present or represented at the meeting;

(b) if a quorum is not achieved within 30 minutes of the scheduled starting time of the meeting (unless the Members present agree unanimously to extend that period), the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case the Secretariat shall convene a subsequent meeting at least 3 weeks later and shall provide written notice of that fact to all Members;

(c) if at such subsequent meeting a quorum is not present within 30 minutes from the time appointed for the meeting (unless the Members present agree unanimously to extend that period), those Members present shall be entitled

to deliberate and take decisions as if a quorum were present;

(d) the chairman may, with the consent of the Members present at any meeting at which a quorum is present (and shall if so directed by such Members), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place;

(e) Members may be represented at each meeting by another Member, the chairman or the Secretariat provided the latter is able to show at the start of each such meeting an original proxy duly signed by the former. There shall be no limit to the number of proxies an individual representative may hold.

6.1.5.2.2 Where decisions are to be taken in relation to 6.1.2.2, the requirements for a quorum shall be as follows:

(a) 50% plus one of the Members present or represented at the meeting;

(b) if a quorum is not achieved within 30 minutes of the scheduled starting time of the meeting, the Secretariat shall convene another Assembly meeting at least 3 weeks later (the "Second Meeting") and shall provide written notice of that fact to all Members;

(c) the Assembly shall be entitled to take decisions even if a quorum is not achieved at the Second Meeting;

(d) Members may be represented at each meeting by another member provided the latter is able to show at the start of each such meeting an original proxy duly signed by the former.

6.1.5.3 Voting rights

6.1.5.3.1 Each Member or their representative shall be entitled to one vote on any decision taken at the Assembly meeting.

6.1.5.3.2 If a Member has not declared its annual tonnage to the Trustee by the time the Assembly meeting takes place, such Member will not be entitled to vote in the Assembly meeting.

6.1.5.3.3 Each representative shall have no right to vote regarding decisions concerning a Substance in respect of which the Member/s which he/she represents has/have no obligation to Register pursuant to the REACH Regulation.

6.1.5.3.4 The Assembly Members shall strive for consensus.

6.1.5.3.5 In the case of equality of votes the chairman shall have a casting vote.

6.1.5.3.6 Decisions shall be taken by a majority of 50% + 1 vote of the votes of Members present or represented at the meeting except:

(a) Decisions to expel a Member from the Consortium, which must be taken by a majority of 75% of votes by the Members present or represented at the meeting, and

(b) Decisions pursuant to 6.1.2.1.1 must be taken by a majority of 75% of the votes of all the Members present or represented at the meeting. (For avoidance of doubt, such decisions once taken with the required number of votes shall be binding on all Members, unless the Members who voted against the decision or were not present at the meeting at which such decision was taken can demonstrate that such decision discriminates unfairly against any or all of them).

6.2 STEERING COMMITTEE

In the event that there are 10 or more Members in the Consortium, the Assembly shall establish a Steering Committee. The Steering Committee shall consist of elected representatives of the Members. Should the number of Members fall under 10 for a period of 6 months or more, the Steering Committee shall be dissolved.

6.2.1 Composition of the Steering Committee

6.2.1.1 The Steering Committee shall be elected by the Members in accordance with 6.2.1.3 and shall be composed of no fewer than **five** and no more than seven members elected by the Members of the Consortium.

6.2.1.2 If two or more Affiliates are Members pursuant to 5.1.1.5, only one such Member will be eligible for election to the Steering Committee.

6.2.1.3 A Member will only be entitled to stand as a candidate for membership of the Steering Committee if it has employees with sufficient technical expertise to make a positive contribution to the work of the Technical Working Group.

6.2.1.4 The first election of members of the Steering Committee shall take place as soon as there are 10 or more Members of the Consortium and elections shall take place at the meetings of the Assembly no less than once each calendar year thereafter.

6.2.1.5 Steering Committee members shall be entitled to appoint others to represent them at Steering Committee meetings, such appointment to be notified to the Secretariat in writing confirming of their attendance at the Steering Committee meeting.

6.2.1.6 The members of the Steering Committee and their representatives shall:

6.2.1.6.1 serve in their respective positions for no compensation or remuneration whatsoever; and

6.2.1.6.2 in carrying out their functions as members of the Steering Committee in good faith take into account the interests of all Members, irrespective of whether or not

such Members are represented on the Steering Committee.

6.2.1.7 The Secretariat shall serve as secretary of the Steering Committee and shall delegate one or more of its officers to the Steering Committee for the purpose. The Secretariat shall have no voting right on the Steering Committee.

6.2.1.8 Members of the Steering Committee shall elect by majority vote a chairman for a period of one year. The chairman shall coordinate the Steering Committee and organize its work with the assistance of the Secretariat.

6.2.2 **Role of the Steering Committee**

The Steering Committee members shall take the necessary decisions relating to the Consortium and its objectives as listed in 6.1.2.2. The Steering Committee shall perform any other tasks delegated to it by the Assembly, including, but not limited to the tasks as listed in Sections 4, 5, 6.3, 6.5, 6.6, 7.2.6, 8.1.3, 8.1.4, 8.2, 8.3,9, 11.2 and APPENDICES 2 and 3.

6.2.3 **Meetings of the Steering Committee**

The Steering Committee shall hold Ordinary and Extraordinary meetings for the decisions taken within its discretion pursuant to 6.1.4 and 6.1.5.

6.2.4 **References to the Steering Committee**

All further references to the Steering Committee in this Agreement shall only apply if and when the Steering Committee has been established.

6.3 **TECHNICAL WORKING GROUP**

6.3.1 **Composition**

6.3.1.1 In order to pursue the purposes of the Consortium, the Assembly shall establish a Technical Working Group, composed of suitably qualified representatives of the Members. All Members shall be entitled to nominate suitably qualified persons for appointment to the Technical Working Group, such nominations to be made to the Assembly or the Steering Committee through the Secretariat.

6.3.1.2 The participants in the Technical Working Group and their representatives shall serve in their respective positions for no compensation or remuneration whatsoever.

6.3.2 **Role**

6.3.2.1 The activities of the Technical Working Group may include the following:

6.3.2.1.1 finalising the initial list of Substances to be covered by this Agreement and developing preparatory groupings of these Substances, to be specified in APPENDIX 1;

6.3.2.1.2 submitting proposals for updating the list of Substances to the Assembly or to the Steering Committee for final approval by the Assembly if/when necessary;

6.3.2.1.3 advising Members on Registration requirements for their Substances;

6.3.2.1.4 identifying and recommending to the Assembly or to the Steering Committee potential Lead Registrants for the Substances;

6.3.2.1.5 assisting in the preparation of the technical aspects of the working plan and estimating the financial resources required to comply with REACH requirements;

6.3.2.1.6 determining cost allocation for risk assessment in the different Substance groups and advising the Assembly or the Steering Committee;

6.3.2.1.7 overseeing the execution of the working plan, especially with regard to timing and taking corrective actions when/if necessary;

6.3.2.1.8 reviewing and evaluating existing Studies and Information, including any submitted by third parties to the Trustee or to the Secretariat, and proposing to the Assembly or to the Steering Committee, which of the submitted Studies and Information will be

necessary for the purpose of Registration of one or more of the Substances;

6.3.2.1.9 determining, where appropriate, the financial value of existing Studies and Information, and advising the Secretariat and the Assembly or the Steering Committee regarding proposed payments to Members for submitted Studies and/or Information and proposed payments to third parties for Studies to be acquired;

6.3.2.1.10 preparing the Technical Dossier for Registration, including the determination of data gaps, waivers and surrogate data and any proposals for further testing where data gaps may need to be filled with tests listed in REACH Annexes IX and/or X;

6.3.2.1.11 preparing the Chemical Safety Report and the guidance on safe Use;

6.3.2.1.12 preparing harmonised classification and labelling in accordance with the EU rules on classification and labelling;

6.3.2.1.13 preparing proposals for further testing and Information gathering for approval by the Assembly or the Steering Committee;

6.3.2.1.14 advising on the selection of external laboratories to conduct the testing programme;

6.3.2.1.15 supervision of performance of the testing programme and Information gathering and maintaining financial control (actual spending against budget) and reporting on these matters to the Assembly or to the Steering Committee;

6.3.2.1.16 assessing new information and the results of new Studies; and

6.3.2.1.17 regularly communicating progress on all of the above, and any other activities related to REACH and the Registration of the Substances, to the Assembly or to the Steering Committee.

6.3.2.2 The Secretariat shall provide the Technical Working Group with such administrative and technical support as is necessary to enable the Technical Working Group to fulfil its functions.

6.3.3 **Chairman of the Technical Working Group**

The chairman of the Technical Working Group shall be elected by its members for an initial period of one year. The chairman may be re-elected for a period to be decided by the Technical Working Group. The chairman of the Technical Working Group shall co-ordinate and shall organize the work of the Technical Working Group with the assistance of the Secretariat, and supervise reporting to the Assembly and/or Steering Committee.

6.3.4 **Technical sub-committees**

The Technical Working Group shall be entitled to create one or more technical sub-committees, for example in relation to a specific Substance or group of Substances or to pursue the acquisition and/or assessment of particular Information.

6.4 THE SECRETARIAT

The Secretariat shall conduct all normal business of the Consortium in the framework of this Agreement, other than activities which shall be the exclusive competence of the Assembly or the Steering Committee and shall in particular:

6.4.1 follow up the legislative and technical development of the REACH Regulation and inform the Technical Working Group and the Assembly or the Steering Committee about relevant new developments;

6.4.2 follow up progress in the activities of the Consortium and report the progress as well as the financial aspects related to these activities to the Assembly or the Steering Committee;

6.4.3 provide administrative support to the Assembly and/or the Steering Committee and the Technical Working Group;

6.4.4 supervise external consultants and experts appointed by the Assembly or the Steering Committee and/or the Technical Working Group;

6.4.5 co-ordinate and provide guidance for data collection concerning Substances covered in 4 hereof;

6.4.6 prepare budget proposals;

6.4.7 prepare annual accounts;

6.4.8 prepare reports for the Assembly or the Steering Committee on the achievement of the purposes of the Consortium as defined in 3 hereof;

6.4.9 prepare minutes of Assembly and Steering Committee;

6.4.10 appoint external consultants to perform technical and scientific tasks as and when appropriate;

6.4.11 grant Letters of Access to the Registration Dossier pursuant to the terms and conditions established by the Assembly or the Steering Committee as provided by 6.1.2.2.11(g);

6.4.12 collect and compile Members' tonnage data pursuant to 5.1.1.3, such data to be treated as Confidential Business Information; and

6.4.13 represent the Consortium externally within the mandate given pursuant of this Agreement.

6.5 THE TRUSTEE

6.5.1 The Assembly shall in case of need through the Secretariat appoint an appropriately qualified independent third party to perform the functions of the Trustee.

6.5.2 The Trustee shall be able to:

6.5.2.1 guarantee independence and absence of conflicts of interest;

6.5.2.2 demonstrate appropriate ability and capacity to receive, record and aggregate Confidential Business Information and Information on the basis of stringent procedures that will protect the confidentiality thereof; and

6.5.2.3 comply with the provisions of APPENDIX 3.

6.6 LEAD REGISTRANT

6.6.1 Nomination

6.6.1.1 The Assembly taking into account any advice provided by the Steering Committee, if formed, shall nominate an applicant for Lead Registrant from amongst the Members for each Substance listed in APPENDIX 1. Nomination of a prospective Lead Registrant must be supported by a majority of the votes of the representatives of the Members present at the meeting of the Assembly.

6.6.1.2 All Members agree to support the Lead Registrant for the Substance in the decision within the SIEF appointing the Lead Registrant.

6.6.1.3 In the event that a person other than a Member is appointed as the Lead Registrant for the Substance under REACH, the Members will seek to work with that Lead Registrant in a manner consistent with the spirit of the Agreement to the greatest extent possible.

6.6.2 **Non-preferential treatment and confidentiality**

6.6.2.1 When nominated within the Consortium, the Lead Registrant shall continue to be subject to all the rights and obligations of a Member under this Agreement.

6.6.2.2 The nominated Lead Registrant shall strictly abide by the confidentiality obligations set out in 7 and APPENDIX 2 of this Agreement.

6.6.3 **Submission of Registration Dossier**

6.6.3.1 The nominated Lead Registrant shall, if subsequently appointed as such by the members of the SIEF, submit the Registration Dossier to the Agency on behalf of the Members (including their Affiliates concerned by the Substance to be Registered) and the other members of the SIEF and in the format specified by the Agency, on the date determined by the Assembly. The nominated Lead Registrant shall ensure that all confidential Information in the Registration Dossier is marked as such and shall submit to the Agency any requested justification for non-disclosure of Registration Dossier Information.

6.6.3.2 The Members shall prepare and submit the Chemical Safety Report jointly, unless (a) there are irreconcilable differences with respect to risk management, risk assessment or safe use of the Substance or (b) particular downstream uses are considered Confidential

Business Information. In such a case, the Member concerned shall inform the Secretariat and the Lead Registrant of its decision within a reasonable period which is at least sufficient to enable amendments of the Registration Dossier prior to its submission to the Agency.

6.6.4 **Communications received from the European Chemicals Agency (ECHA)**

The nominated Lead Registrant shall forward within five business days of receipt any communications received from the Agency to the Members through the Secretariat.

6.6.5 **Appeals**

The nominated Lead Registrant shall use all reasonable efforts to make any appeals under the REACH Regulation in the case of any rejection, objection, or request by the Agency relating to the Members' compliance with the requirements of the REACH Regulation. This does not preclude the right of any Member, to which a decision of the Commission is directed, to make an appeal under REACH, subject to prior notification to the Secretariat and the Lead Registrant.

7. CONFIDENTIALITY

7.1 CONFIDENTIAL BUSINESS INFORMATION

7.1.1 Nothing contained in this Agreement shall oblige any Party to disclose any information which it considers to be Confidential Business Information.

7.1.2 Each Member shall not, and shall procure that its Affiliates, officers, directors, employees, agents and consultants do not (and, in the case of a Member which is an Only Representative, the Non-EU Manufacturer which has appointed it, as well as the latter's Affiliates, officers, directors, employees, agents and consultants) disclose Confidential Business Information to any person not expressly authorized to receive such information under this Agreement. This obligation extends to the Secretariat and the Trustee, as well as, if relevant, any other external technical, scientific, financial or legal consultant.

7.1.3 Persons not expressly authorized to access Confidential Business Information under this Agreement include, where appropriate, but without limitation, any third party to this Agreement or any Party to this Agreement which has not shared the cost of a Study in accordance with the cost sharing formula agreed upon in 9.3 and APPENDIX 4 of this Agreement.

7.1.4 Members may provide the Trustee in confidence with Confidential Business Information relating to Uses of and exposure to a Substance for the purpose of producing a Chemical Safety Report in respect thereof. The Trustee shall thereafter:

7.1.4.1 receive and compile information on all Uses from Members;

7.1.4.2 identify Uses common to all the Members; and

7.1.4.3 inform each Member of the Uses which are peculiar to that Member;

in order to enable a decision to be taken on the production of one or more Chemical Safety Reports.

7.2 INFORMATION

7.2.1 The Parties to this Agreement and their Affiliates shall not disclose and shall protect the confidentiality of Information in accordance with the terms and conditions set out in APPENDIX 2.

7.2.2 Information disclosed to the Trustee is subject to a higher degree of confidentiality as set out in APPENDIX 3.

7.2.3 Each Member shall, and shall procure that its Affiliates, officers, directors, employees, agents and contractors (and, in the case of a Member which is an Only Representative, the Non-EU Manufacturer which has appointed it, as well as the latter's Affiliates, officers, directors, employees, agents and consultants) shall, maintain in strict confidence and not disclose any Information to any third party (with the exception of necessary submission to the Agency, the European Commission and/or state or public authorities, including judicial and arbitral tribunals or except as otherwise provided by law, regulations or this Agreement) without the prior written authorisation of the Assembly.

7.2.4 The non-disclosure obligation covers Information that is disclosed by a Party to the Trustee or any other external technical, scientific, financial or legal consultant.

7.2.5 Persons not expressly authorised to access Information under this Agreement include, where appropriate, but without limitation, any third party to this Agreement or any Party to this Agreement which has not shared the cost of a Study in accordance with the cost sharing formula agreed upon in 9.3 and APPENDIX 4 of this Agreement.

7.2.6 This obligation of confidentiality is subject to applicable EU laws and shall remain in effect until the Assembly decides on any public disclosure of the Information and subject to consent to disclosure by individual owners of the Information who have provided it to the Consortium (if any) as well as any conditions the Assembly may impose.

8. DATA SHARING

8.1 EXISTING STUDIES AND INFORMATION

8.1.1 Obligation to provide existing Studies and Information

8.1.1.1 The Parties to this Agreement undertake to provide the Secretariat or, when a higher degree of confidentiality is required, to provide the Trustee with any existing Studies or Information of interest for achieving the purposes of the Consortium.

8.1.1.2 The existing Studies provided shall meet the criteria set out in the Technical Guidance Document provided by the European Commission.

8.1.1.3 Each Party shall inform the Secretariat or the Trustee of any Studies or Information that cannot be made public, in particular pursuant to Article 119 of the REACH Regulation.

8.1.1.4 Upon receipt of the existing Studies and existing Information, the Secretariat and the Trustee, as the case may be, shall provide the Assembly or the Steering Committee with a list of these Studies and Information. The Assembly or the Steering Committee shall then select, under the guidance of the Technical Working Group, the Studies and Information which will be necessary for the purpose of Registration.

8.1.2 Ownership of existing Studies

The ownership in intellectual property rights applicable to existing Studies or Information made available in accordance with this Agreement shall be unaffected by the provision of such Studies or Information to the Secretariat or the Trustee pursuant to 8.1.

8.1.3 Use of existing Studies

8.1.3.1 The Parties shall have the right to use the Study or Information jointly for the purpose of complying with the requirements of the REACH Regulation, provided that they have shared the cost of the Study or Information in accordance with the cost sharing formula agreed upon in 9.3 and Appendix 4 of this Agreement.

8.1.3.2 This right shall extend to Affiliates of these Parties.

8.1.3.3 The Party who granted the right to use its existing Studies or Information to the other Parties may grant a right for such Parties to use or refer to these Studies or Information, for purposes other than REACH requirements.

8.1.3.4 For the avoidance of doubt the Secretariat shall be authorized to grant a Letter of Access to third parties for the entire Registration Dossier which may include the right to refer to such Studies or Information, such authorization to be subject to guidelines established pursuant to 6.1.2.2.12.

8.1.4 **Licence of existing Studies from third parties**

8.1.4.1 Subject to budgetary constraints, the Assembly may decide to license from any third party existing Studies or Information that can assist in satisfying Registration requirements. Such a license shall be concluded by the Secretariat on behalf of the Members, under the conditions agreed by the Assembly.

8.1.4.2 The Parties to this Agreement shall have the right to use such jointly licensed Study or Information for the purposes of complying with REACH requirements to the extent that they share individually the license costs in accordance with the cost sharing formula agreed upon in this Agreement.

8.1.4.3 As a condition of licensing any Study or Information, the license to be concluded must provide that the same right to use such Study or Information for the purposes of complying with REACH requirements shall extend to Affiliates of Members.

8.1.4.4 Where a Study or Information is licensed from a third party, the Assembly, through the Secretariat, shall ensure that this license includes the right to grant Letters of Access to third parties to the Registration Dossier which includes the right to refer to such Studies or Information.

8.2 DEVELOPMENT OF NEW STUDIES

8.2.1 Ownership of new Studies or new Information

8.2.1.1 The Assembly can authorise the development of new Studies and Information.

8.2.1.2 Each Member shall have joint ownership of the Studies or Information generated or developed by the Consortium, as long as it has paid compensation with respect to such Studies or Information pursuant to this Agreement.

8.2.1.3 Each Member authorises the other Members and their Affiliates to use the new Studies or Information and authorises the Assembly to license the right to refer to the new Studies or Information to third parties pursuant to the provisions of the Agreement.

8.2.2 Use of new Studies and new Information

All Members shall use the new Studies and/or Information only for (a) the purposes of REACH Registration, (b) internal purposes and (c) compliance with other regulatory requirements in other jurisdictions inside and outside the EU, and shall not have the right to license such Studies or Information to a party other than a Member, except as otherwise provided herein.

8.2.2.1 Use by Affiliates of a Member

Affiliates of a Member shall have the right to use the new Studies and Information without any additional payment thereof, inter alia for the purpose of fulfilment of their obligations pursuant to the REACH Regulation or compliance with other regulatory requirements inside or outside the EU.

8.2.2.2 Use by third parties

In accordance with 8.2.1.3, the Assembly may through the Secretariat give to third parties the right to refer to new Studies and Information in support of the Registration of chemical Substances in the EU and/or for any other regulatory purposes in or outside the EU under the terms and conditions and subject to the appropriate license fee that the Assembly shall determine. The Secretariat at the direction of the Assembly shall execute appropriate Letters of Access.

8.3 LETTER OF ACCESS TO REGISTRATION DOSSIER

8.3.1 The Secretariat shall be authorized to grant a Letter of Access to the Registration Dossier with respect to the Substances listed in APPENDIX 1.

8.3.2 The Letter of Access shall be granted subject to any guidelines established by the Assembly pursuant to 6.1.2.2.12.

8.3.3 The power granted under 8.3.1 to the Secretariat shall survive the dissolution of the Consortium. Any funds received by the Secretariat after dissolution shall be the property of the Secretariat and shall be used by the Secretariat for the ongoing administrative costs associated with REACH.

8.3.4 The authority granted to the Secretariat pursuant to 8.3.1 shall terminate with respect to each Substance 12 years after the Registration of that Substance.

9. FINANCIAL RIGHTS AND OBLIGATIONS

9.1 EXPENSES/COSTS

9.1.1 The Consortium expenses will comprise:

9.1.1.1 Administrative Costs, including:

9.1.1.1.1 costs incurred by the Secretariat in performing its obligations hereunder;

9.1.1.1.2 remuneration of the Secretariat;

9.1.1.1.3 remuneration of the Trustee;

9.1.1.1.4 remuneration of external experts; and

9.1.1.1.5 remuneration of external accountants, auditors, lawyers;

9.1.1.2 Study Costs, including:

9.1.1.2.1 expenses related to the use of Studies or Information provided by the Members (financial value of a Study). The Assembly shall approve the financial value of an existing Study made available by a Party pursuant to this Agreement on the basis of an evaluation of the

scientific quality and relevance of the Study in relation to the achievement of the purpose of the Consortium. The Assembly may take into account the actual cost or the replacement value of the Studies, including the Administrative cost of preparing and implementing the testing programme;

9.1.1.2.2 expenses related to the procurement of new Studies and Information decided by the Assembly;

9.1.1.2.3 expenses related to Studies or Information licensed from third parties;

9.1.1.3 costs of joint submission of Core Data.

9.1.2 Consortium expenses shall not include any charges against the Consortium for any overhead expenses or charges of the offices of the Members or their Affiliates for time which may be expended in connection with the activities of the Consortium by any of the Members or their officers, employees or representatives or of their Affiliates, except as may be approved by the Assembly (excluding any representative of the interested Party).

9.2 **ACCOUNTS/ANNUAL BUDGET**

9.2.1 The Secretariat shall

9.2.1.1 be responsible for the accounts of the Consortium. It shall establish the annual accounts of the Consortium and submit them to the Assembly up to the end of each calendar year by March of the following year; and

9.2.1.2 establish an annual budget proposal for the next year, including if necessary advance payments to be made by the Members, and submit this proposal to the Assembly after approval by the Steering Committee if formed. The budget proposal shall be circulated by the Secretariat among the members of the Assembly at least two months before the end of each financial year for pre-approval examination.

9.2.2 If there is an excess of funds during a certain year, this excess shall be carried over to the following year and applied towards funding of that following year's budget, provided that the Consortium still exists.

9.2.3 The annual budget shall include a contingency for unbudgeted expenses of €50.000, expenditure of which may be approved by the Assembly.

9.2.4 The Secretariat shall maintain full and accurate books, records and accounts that shall, in reasonable detail, accurately and fairly reflect the cost sharing accounts of the Members and all transactions within the framework of the Consortium.

9.3 COST SHARING

9.3.1 The Members shall share the costs of the Consortium by means of contributions approved annually by the Assembly on proposals from the Secretariat according to the budget. The financial year shall extend from 1 January to 31 December of each year.

9.3.2 The Members shall bear the Consortium expenses jointly as follows:

9.3.2.1 Administrative Costs and Study Costs shall be allocated among Members on a pro rata Tonnage basis. Notwithstanding the financing mechanism set forth in APPENDIX 4, a Member's ultimate contribution shall be based on its pro rata Tonnage, subject to the minimum amounts specified in APPENDIX 4;

9.3.2.2 When a service or an activity only benefits a certain group of Members, the costs of that service or activity shall be paid only by the Members benefiting from such service or activity;

9.3.2.3 The costs associated with the submission of Core Data for boron and phosphorus shall be shared pro rata to their Tonnage[s] thereof among all Members that manufacture Substances in, or import Substances into, the EU. Costs related to all other Substances shall be split between the Members registering the particular Substance.

9.3.3 The funding and cost sharing principles to be used by the Consortium are listed in APPENDIX 4.

9.4 PAYMENT

9.4.1 Upon evaluation of cash flow and working capital requirements, the Secretariat shall issue contribution invoices to Members on a timely basis such that the Consortium can meet its financial obligations.

9.4.2 Members may reasonably be requested by the Secretariat from time to time to pay, and shall pay within a reasonable period to the Secretariat, further contributions to meet additional unbudgeted costs, provided such unbudgeted costs have been approved by the Assembly. Payment of such costs shall be allocated among the Members in accordance with 9.3 and APPENDIX 4.

9.4.3 Each invoice shall be paid within 30 days of it being issued by the Secretariat.

9.4.4 If payment of an invoice has not been received within 30 days after issuance pursuant to 9.4.1 or 9.4.2, the Secretariat shall notify the Member that such invoice remains outstanding and overdue. Upon approval of the Assembly, the Secretariat may, in its discretion, charge such Member interest at a rate of 3% above the one month Euro LIBOR rate as published in the Financial Times for the date of the invoice in question.

9.5 AUDIT OF THE ACCOUNTS

The accounts of the Consortium shall be subject to external and independent audit on a yearly basis, based on recognized accounting standards and procedures. These audits must result in an annual financial statement being made available to all the Members.

10. LIABILITY

10.1 LIABILITY OF MEMBERS

10.1.1 Liability to other Members

10.1.1.1 The liability of each Member for the expenses and liabilities of the Consortium shall be several and not joint.

10.1.1.2 The Members shall exercise due care and diligence vis-à-vis other Members in observing the rights and obligations related to, or arising out of this Agreement.

10.1.1.3 Subject to 10.1.1.4:

10.1.1.3.1 each Member agrees not to take any legal or other action against any other Member for liabilities arising in connection with the matters contemplated by this Agreement in case of Minor Breach if the accumulated amount of a claim or claims is less than €50.000;

10.1.1.3.2 no Member shall be responsible to another for indirect or consequential loss or damage such as, but not limited to loss of profit or loss of revenue.

10.1.1.4 The threshold and limit of liability set out in 10.1.1.3 do not apply in case of wilful misconduct or Material Breach.

10.1.2 **Liability to third parties**

Each Member shall be solely liable to third parties and shall indemnify any other Member against and hold any other Member harmless from all liabilities and claims (including reasonable attorneys fees and expenses in defending against such liabilities and claims) in connection with any loss, damage or injury to third parties resulting from its own fault or negligence.

10.1.3 **Liability related to the use of Studies**

The Members shall not be held liable for misuse of data developed under the Consortium program by one or more Members.

10.1.4 **Liability related to the provided Studies**

Any Member who knowingly or recklessly provides inaccurate Studies under 8.1.1 shall indemnify the receiving Member/s for any loss, damage or injury caused thereby.

10.1.5 **Liability related to the fulfilment of the REACH Regulation requirements**

Each Party to this Agreement is and remains responsible for complying with its rights and obligations under the REACH Regulation in as much as these rights and obligations are not expressly transferred to the Consortium in accordance with this Agreement. This applies, in particular, to Information which is to be submitted to the Agency within the pre-registration and Registration Dossier in due time by each Member, as well as to communication with Downstream users in the supply chain.

10.2 **LIABILITY OF THE SECRETARIAT**

10.2.1 **Secretariat's liability to third parties**

The Secretariat shall act solely in its capacity as representative of the Members and shall bear no individual responsibility or liability for its actions taken in

this capacity, with the exception of intentionally unlawful acts or gross negligence incompatible with its mandate.

10.2.2 **Secretariat's liability to Members**

The Secretariat is accountable to the Assembly alone and shall bear no individual responsibility or liability for its actions taken in its capacity as Secretariat, with the exception of wilful misconduct, fraud or gross negligence incompatible with its mandate.

10.3 LIABILITY OF THE STEERING COMMITTEE AND TECHNICAL WORKING GROUP

The Steering Committee and the Technical Working Group shall act solely in their capacities as defined herein and shall bear no individual responsibility or liability for their actions taken in such capacity, with the exception of wilful misconduct, fraud or gross negligence incompatible with its mandate.

10.4 LIABILITY OF THE TRUSTEE

The Trustee shall be responsible for any breach of its obligations as set out in this Agreement, with particular reference to APPENDIX 3.

10.5 LIABILITY OF THE LEAD REGISTRANT

To the greatest extent possible under the laws of the relevant jurisdiction, the nominated Lead Registrant shall not be liable for, and the Members shall indemnify the nominated Lead Registrant against and hold it harmless from, all liabilities and claims (including reasonable attorneys' fees and expenses in defending against such liabilities and claims) against the nominated Lead Registrant in connection with the matters contemplated by this Agreement other than liabilities attributable to the gross negligence or wilful misconduct of the nominated Lead Registrant or a breach by the nominated Lead Registrant of the confidentiality provisions contained in 6.6.2.

11. DURATION OF THE AGREEMENT

11.1 ENTRY INTO EFFECT AND TERM

11.1.1 This Agreement shall be deemed to have entered into force on 1 November 2010.

11.1.2 This Agreement shall expire on the date after which the last Registration Dossier of the Substances listed on APPENDIX 1 is submitted to the Agency.

11.1.3 The Agreement may be extended beyond the date specified in 11.1.2 for successive periods of 12 months if recommended by the Assembly and approved by the Assembly.

11.2 EFFECTS OF DISSOLUTION

11.2.1 Before dissolution or termination of the Agreement and the Consortium, any remaining joint and several rights and obligations of Members resulting from this Agreement and in relation to third parties shall be settled by the Assembly. After payment of all expenses and liabilities as authorised by the Assembly, any balance remaining of amounts paid by the Members or amounts derived from the granting of licenses to third parties, shall either be (i) returned to the Members in a pro rata manner based upon the Members' respective share in the Consortium expenses as at the time of termination, or (ii) distributed as otherwise directed by the Assembly which shall take into account any advice received from the Steering Committee if formed.

11.2.2 The provisions relating to the obligations of confidentiality, data ownership, ownership of intellectual property rights, settlement of disputes as well as those provisions of this Agreement which by their nature extend beyond the expiration or earlier termination of the Agreement will survive and remain in effect.

12. GENERAL PROVISIONS

12.1 COMPLIANCE WITH COMPETITION LAWS

12.1.1 Neither this Agreement nor anything contained in this Agreement is intended to restrict competition in any manner whatsoever. The Parties expressly undertake to comply with applicable rules on competition law, in particular but not limited to Articles 101 and 102 of the Treaty on the Functioning of the European Union, as well as any applicable national laws.

12.1.2 The exchange of information required to operate this Agreement shall be limited to what is necessary for achieving the purpose of the Consortium.

12.1.3 In particular, each Member agrees not to disclose to any other Member any information that relates in any way to production capacities, production volumes, sales volumes, import volumes, market shares, clients, pricing information or future business plans.

12.1.4 Should it become apparent at any time that, notwithstanding their commitment, this Agreement or any provision thereof, or activity or decision of the

Consortium can have a potentially restrictive effect on open and fair competition, in breach of any statutory provision, each Party to this Agreement undertakes to take the steps necessary to remedy that situation immediately so that it is lawful.

12.2 REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to each other Party that:

12.2.1 it is a duly organised, validly existing entity and is in good standing under the laws of the jurisdiction of its formation, and that it has all requisite power and authority to enter into and to perform its obligations under this Agreement;

12.2.2 execution, delivery, and performance of this Agreement have been duly authorised, and do not and will not;

12.2.2.1 contravene any law, rules, regulation, order, or decree applicable to it; or

12.2.2.2 contravene its organizational rules or documents;

12.2.3 this Agreement is a legal and binding obligation of that Party, enforceable against that Party in accordance with its terms, except to the extent enforceability is modified by bankruptcy, reorganisation and other similar laws affecting the rights of creditors generally and by general principles of equity; and

12.2.4 there is no litigation pending or, to the best of its knowledge, threatened to which such Party or any of its Affiliates is a party that, if adversely determined, would have a material adverse effect on the financial condition, prospects, or purposes of the Consortium, or that Party's ability to perform its obligations under this Agreement.

12.3 SEVERABILITY

If any one or more of the provisions of this Agreement or any part or parts of it, shall be declared or adjudged to be illegal, invalid or unenforceable under any applicable law, such illegality, invalidity or unenforceability shall not vitiate the remainder of this Agreement, and this Agreement shall be construed as if such illegal, invalid and unenforceable passages were omitted.

12.4 **NO PARTNERSHIP**

No Member shall be deemed an employee, agent, partner, or joint venturer of any other. Except as authorised by this Agreement, no Member shall make any commitment, by contract or otherwise, binding upon any other Member nor represent that it has any authority to do so. Except as expressly authorised by this Agreement, neither the Consortium, nor any Member, whether acting through the Assembly or the Steering Committee or otherwise, shall have the authority to act for or to assume any obligation or responsibility on behalf of any other Member.

12.5 **NOTICES**

12.5.1 Except as expressly set forth to the contrary in this Agreement, all notices, requests or consents provided for or permitted to be given under this Agreement must be in writing and must be delivered to the recipient in person, by courier or mail or by facsimile and a notice, request or consent given under this Agreement is effective:

12.5.1.1 upon receipt if sent by personal delivery, mail or courier; or

12.5.1.2 upon the sender's receipt of electronic confirmation of transmission, if sent by facsimile during business hours on a Business Day or (if not sent during business hours or on a Business Day, on the next succeeding Business Day).

12.5.2 All notices, requests and consents to be sent to a Party must be sent to or made at the address(es) given by that Party upon signature of this Agreement or such other address as that Party may specify by notice in writing to the Secretariat who shall circulate it to other Members.

12.6 **LEGAL STATUS**

12.6.1 This Agreement shall not be interpreted or regarded as creating either a company (including a company in fact or a company in participation) or a legal person.

12.6.2 The rights, duties, obligations and liabilities of the Parties under this Agreement shall be several and not joint or collective. It is not the intention of the Parties to create, nor shall this Agreement be deemed or construed to create, a partnership, joint venture or association.

12.6.3 This Agreement shall not be deemed or construed to authorise any Party to act as an agent, servant or employee for any other Party for any purpose whatsoever except as explicitly set forth in this Agreement.

12.7 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes all prior contracts or agreements among such parties with respect to such matters, whether oral or written. There are no understandings, obligations, representations or warranties except as herein provided and no rights are granted except as expressly set forth herein.

12.8 EFFECT OF WAIVER OR CONSENT

A waiver or consent, express or implied, to or of any breach or default by any Party in the performance by that Party of its obligations with respect to this Agreement is not a consent or waiver to or of any other breach or default in the performance by that Party of the same or any other obligations of that Party with respect to this Agreement. Failure on the part of a Party to complain of any act of any Party or to declare any Party in default with respect to this Agreement, irrespective of how long that failure continues, does not constitute a waiver by that Party of its rights with respect to that default until the applicable limitation period has expired.

12.9 GOOD FAITH

Each Party shall perform its obligations under this Agreement in good faith and shall not do anything which would prejudice the objectives of the Consortium.

12.10 DISPUTE RESOLUTION

Except for the purpose of obtaining injunctive or other provisional relief in a court of competent jurisdiction, all disputes, controversies or claims which may arise between the Parties in connection with the interpretation of any provision of this Agreement or its validity or enforceability, or its breach or termination, or the performance or non performance of any obligations hereunder shall be resolved as follows:

12.10.1 The Parties shall endeavour to settle all disputes, controversies or claims which do not require urgent injunctive or other provisional relief by an amicable effort on the part of the Parties. An attempt to arrive at a settlement shall be deemed to have failed as soon as one of the Parties so notifies the other Party in writing.

12.10.2 If an attempt at settlement has failed, the Parties will (unless otherwise agreed) submit the dispute, controversy or claim to non-binding mediation, before a

single mediator, chosen jointly by the Parties. If the Parties have agreed not to submit the dispute, controversy or claim to mediation, or if it cannot be resolved by mediation, the dispute, controversy or claim shall (unless otherwise agreed) be finally settled by three arbitrators in accordance with the London Court of International Arbitration Rules, London.

12.10.3 The decision of the arbitrators shall be final and binding. The costs of arbitration shall be awarded by the arbitrators. The arbitrators shall decide which Party(ies) shall pay particular costs of arbitration including out-of-court costs incurred by the parties in accordance with the outcome of the arbitration. The language of the arbitration proceedings shall be English. The venue of arbitration shall be London.

12.10.4 During the period of any arbitration proceedings, the Parties shall continue to perform their respective obligations under this Agreement insofar as the circumstances will allow it but without prejudice to a final adjustment in accordance with the arbitral award.

12.11 **LAW**

All disputes or claims relating to the Consortium and any legal issues arising from the Agreement shall be governed exclusively by English law without regard to its conflict of laws rules.

12.12 **COUNTERPARTS**

This Agreement will be executed in a number of counterparts, which shall together constitute a single agreement. Each undersigned Member shall execute two (2) signature pages, retain one for its file and communicate the other to the Secretariat.

IN WITNESS WHEREOF, the undersigned, by their duly authorised representatives, have executed and delivered this Agreement.

SIGNED AT _____ THIS ___ DAY OF _____

AS WITNESS: MEMBER:

_____ _____

Signature Authorised Signature

Witness' name	Name of Member
	Name of Signatory

APPENDIX 1: SUBSTANCES COVERED BY THE AGREEMENT

Reference name	Formula	EINECS Number	CAS Number
Group I			
Boron	B	231-151-2	7440-42-8
Phosphorus	P	231-768-7	7723-14-0
Group II			

APPENDIX 2: CONFIDENTIALITY

1. OBLIGATIONS OF THE RECEIVING PARTY

1.1 The Receiving Party agrees:

1.1.1 not to disclose and to protect the confidentiality of the Information (including any notes, summaries, reports, analyses or other material derived by the Receiving Party, its Affiliates or its or their Representatives (defined below) in whole or in part and in whatever form maintained (collectively, "Notes");

1.1.2 to use the Information and Notes only for the purpose of this Agreement as contemplated hereby;

1.1.3 to treat the Information and Notes with the same degree of care as it treats its own Confidential Business Information, which shall be at least a reasonable standard of care, to prevent disclosure of the Information and Notes, except to its Affiliates and its or their officers, directors, employees, agents and contractors (collectively, "Representatives"), to the extent necessary for the fulfilment of the obligations of the Receiving Party and its Affiliates pursuant to the REACH Regulation;

1.1.4 that prior to disclosing any Information and Notes to its Affiliates or its or their Representatives as provided above, such Affiliates and their Representatives will be advised of the confidential nature of the Information and/or Notes, and will be provided a copy of this APPENDIX and directed to abide by its terms;

1.1.5 to be responsible for any breach of this APPENDIX by it, its Affiliates or its or their Representatives;

1.1.6 not to copy or otherwise reproduce nor duplicate the Information or Notes in whole or in part where such copying, reproduction or duplication has not been specifically authorised by this Agreement or otherwise approved in writing by the Assembly or the Secretariat.

1.2 Obligations in 1.1 above shall continue for 12 years from the date of Registration of each of the Substances listed in APPENDIX 1.

1.3 Nothing herein is intended to, and shall not limit or abridge the protection of any trade secret under applicable trade secrets law, and trade secrets shall be maintained as such until they fall into the public domain.

1.4 The Receiving Party acknowledges that the covenants of non-disclosure and non-use in this Agreement shall be effective in every county and territory in the world.

1.5 In the event of loss or theft of any Information and Notes, the Secretariat must be notified by the Receiving Party who shall take all reasonable action and cooperate fully in remedying same.

2. EXCEPTION TO CONFIDENTIALITY PROTECTION

2.1 Notwithstanding 1.1:

2.1.1 the Receiving Party may provide its customers, to the extent that it is necessary to comply with the Receiving Party's legal obligations, with (i) Safety Data Sheets as defined in the REACH Regulation, (ii) relevant Exposure scenarios or (iii) other available and relevant Information about the Substance covered by this Agreement, that is necessary to enable appropriate risk management measures to be identified and applied, but only so long as the Receiving Party's customer does not manufacture, import into the EU or sell such Substances;

2.1.2 the Receiving Party may disclose the Information if and to the extent that such disclosure is required by law or court order, provided that the Receiving Party notifies the Disclosing Party and the Secretariat; and

2.1.3 the Receiving Party and its Affiliates may use the Information to achieve compliance with laws and regulations in other non EU jurisdictions provided that the confidentiality of the Information and Notes is guaranteed and in compliance with the Agreement. Any disclosure of the Information for purposes of compliance with non-EU regulatory requirements that could result in public disclosure of the Information or Notes shall only be permissible after prior approval from the Assembly.

2.2 Confidentiality protection shall not apply to those particular portions of Information disclosed by the Disclosing Party if such Information:

2.2.1 is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its Affiliates or its or their Representatives to which it has been made available;

2.2.2 was available on a non-confidential basis prior to its disclosure to the Receiving Party;

2.2.3 is or becomes available to the Receiving Party, its Affiliates or its or their Representatives on a non-confidential basis from a source other than the Disclosing Party when such source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation with the Disclosing Party;

2.2.4 was independently developed by the Receiving Party, its Affiliates or its or their Representatives, without reference to the Information, and the Receiving Party can prove such independent development of the Information with written documentation;

2.2.5 is approved by the Assembly for release in compliance with Article 119 of the REACH Regulation (as amended or replaced) on electronic public access with the decision for submission of a Registration Dossier; or

2.2.6 is approved for public disclosure by written authorisation of the Assembly, subject to any directions of the Assembly with respect to the extent, timing, and manner in which the Information shall be publicly disclosed.

3. **NO LICENCE AND INDEMNITY**

3.1 Nothing in this Agreement is intended to and shall not grant any right to the Receiving Party under any patent, copyright or any other intellectual property right, nor shall this Agreement grant the Receiving Party any rights in or to the Information except as expressly set forth in the Agreement.

3.2 The Receiving Party acknowledges and agrees that any breach of the confidentiality provisions of the Agreement and particularly this APPENDIX 2 would cause immediate and irreparable injury to the Consortium and the Members. Should the Receiving Party violate any of the terms and conditions of confidentiality in this Agreement, the Members shall be entitled, in addition to any other remedies that maybe available, in law, in equity or otherwise, to obtain injunctive relief against the threatened breach of the confidentiality provisions of the Agreement or the continuation of any such breach, without the necessity of proving actual damage.

APPENDIX 3: TRUSTEE UNDERTAKINGS

When a higher degree of confidentiality is required by a Disclosing Party, this Disclosing Party may disclose Information or Confidential Business Information to the Trustee only and the Trustee shall treat such information as follows.

1. DISCLOSURE PROCEDURE

1.1 Any Information or Confidential Business Information disclosed to the Trustee shall be marked prominently on each page "Extremely Confidential – BUSINESS SECRETS OF [NAME OF DISCLOSING PARTY]".

1.2 Information or Confidential Business Information provided to the Trustee may only be included as an Annex to any Registration Dossier or Study after the Assembly has approved the relevant Information/Confidential Business Information/Registration Dossier, but without the Assembly seeing such information. The Trustee may make a non-confidential summary of this extremely confidential information if s/he considers it necessary for other Members to see some of it for the purpose of Registration of the Substances covered by this Agreement. In particular, the Trustee shall aggregate any Information or Confidential Business Information provided to the Trustee so that it does not enable any Member to infer the sales, market shares, market or sales performance or trends therein of any other Member. The Trustee shall give the Disclosing Party reasonable opportunity to comment on any such summary the Trustee may make, before it is distributed. The Trustee may seek the advice of legal counsel before releasing such a summary to the Members.

2. OBLIGATIONS OF THE TRUSTEE

The Trustee is responsible for receiving, collecting, recording and aggregating any information, including confidential and proprietary information, as well as sensitive business secrets and other information which if disclosed to another Member(s) might be regarded as a breach of competition law, and thereafter circulating and disclosing sufficient and appropriate information, following the procedures in 1 above, as required for the purposes of the Agreement.

APPENDIX 4: FUNDING PRINCIPLES

1. FINANCING STRUCTURE

1.1 The costs for the submission of the Boron and Phosphorus (Group 1 Substances) Registration Dossiers shall include all administrative costs, costs of consultants, costs of preparing the IUCLID 5 data set and any other study costs. Costs in respect of other substances listed in APPENDIX 1 (Group 2 Substances) if any shall only include those additional costs required for the preparation of the specific registration dossier and any study specific to that substance.

1.2 Those Members required to Register any of the Substances under APPENDIX 1 shall pay the following:

1.2.1 Each Member shall pay Initial Contribution(s) to facilitate the operations of the Consortium, which shall be based on the Member's highest annual Tonnages in the two years prior to the date of becoming a Member.

1.2.1.1 The Initial Contribution for a Member with annual Tonnage of boron greater than 100 tonnes shall be €40,000.

1.2.1.2 The Initial Contribution for a Member with annual Tonnage of boron of 100 tonnes or less shall be €25,000.

1.2.1.3 The Initial Contribution for a Member with annual Tonnage of phosphorus greater than 100 tonnes shall be €40,000.

1.2.1.4 The Initial Contribution for a Member with annual Tonnage of phosphorus of 100 tonnes or less shall be €25,000.

1.2.2 Further Contributions

1.2.2.1 For each of the years 2011, 2012 and 2013, each Member shall pay an annual contribution based on the tonnage criteria in 1.2.1. Such contributions will be based on the financing requirements of the Consortium for the year in question. Any consortium member whose tonnage of boron and/or phosphorus is less than 5 tonnes shall not be required to pay any further contribution in respect of such substance(s) beyond those levied prior to January 1st 2013.

1.2.2.2 For 2011 such contributions shall be determined and advised to members no later than June 30th of that year.

1.2.2.3 For the years 2012 and 2013, such contributions shall be determined and advised to members no later than November 30th of the year prior to the year in question.

1.2.3 In the event there are additional or unforeseen costs incurred by the Consortium in any year prior to reconciliation as set forth in 1.3 which cannot be satisfied based on the contributions per 1.2.2.2 and 1.2.2.3, Members shall make additional contributions in an amount sufficient to satisfy such additional costs as determined by the Secretariat and approved by the Assembly or the Steering Committee.

1.2.4 Any member joining the consortium after December 31st 2012 shall pay a delay premium of €15,000 in the case of boron and €8,000 in the case of phosphorus. Any such premiums shall be distributed to fully paid-up existing consortium members pro rata to their tonnages of boron and/or phosphorus.

1.3 Reconciliation of Contributions: it is the intent of this Agreement that all costs incurred in the registration of the Substances generally should be shared pro rata on the basis of Members' [including their Affiliates] total Tonnages for the years 2010, 2011 and 2012. Each Member shall identify its Tonnage of Group 1 and Group 2 Substances for such years and provide this information to the Secretariat on a timely basis in accordance with guidelines to be approved by the Assembly or the Steering Committee and issued by the Secretariat. The Secretariat shall determine from these data (i) the pro rata percentage share of each Member of the Tonnage and (ii) the pro rata percentage share of each Member of the tonnage of each Group 2 Substance as may be applicable.

1.3.1 Reconciliation of contributions for Boron (Group 1 Substance): total costs for the submission of the final Registration Dossier for Boron (excluding costs specific to Group 2 Substances as provided in 1.1 above) shall be determined after the submission of the final Registration Dossiers. A calculation of the pro rata contribution of each Member shall be performed by the Secretariat based upon (a) the total costs in accordance with 1.1 hereinabove less Letter of Access fees for the Boron Registration Dossier received by that point in time (subject to any adjustments that may be required thereto) (b) multiplied by each Member's pro rata percentage share of the Tonnage as determined and advised by the Secretariat. Based upon this calculation, the Secretariat shall issue invoices to those Members that are required to make an

additional payment, if any. As free cash is or becomes available the Secretariat shall reimburse on a proportionate basis funds to each Member that paid greater than its pro rata percentage share of the Tonnage, subject to a minimum payment obligation for each Member, such minimum amount to be determined by the Steering Committee and approved by the Assembly in due time**.** (For the avoidance of doubt, such reimbursements shall only be made to the extent, in the judgment of the Secretariat as approved by the Assembly or the Steering Committee there are adequate excess funds available to make such payments without jeopardising any remaining obligations of the Consortium.)

1.3.2 Reconciliation of contributions for Phosphorus (Group 1 Substance): total costs for the submission of the final Registration Dossier for Phosphorus (excluding costs specific to Group 2 Substances as provided in 1.1 above) shall be determined after the submission of the final Registration Dossiers. A calculation of the pro rata contribution of each Member shall be performed by the Secretariat based upon (a) the total costs in accordance with 1.1 hereinabove less Letter of Access fees for the Phosphorus Registration Dossier received by that point in time (subject to any adjustments that may be required thereto) (b) multiplied by each Member's pro rata percentage share of the Tonnage as determined and advised by the Secretariat. Based upon this calculation, the Secretariat shall issue invoices to those Members that are required to make an additional payment, if any. As free cash is or becomes available the Secretariat shall reimburse on a proportionate basis funds to each Member that paid greater than its pro rata percentage share of the Tonnage, subject to a minimum payment obligation for each Member, such minimum amount to be determined by the Steering Committee and approved by the Assembly in due time**.** (For the avoidance of doubt, such reimbursements shall only be made to the extent, in the judgment of the Secretariat as approved by the Assembly or the Steering Committee there are adequate excess funds available to make such payments without jeopardising any remaining obligations of the Consortium.)

1.3.3 Reconciliation of contributions for Group 2 Substances: those Members that Register any Substance(s) listed in APPENDIX 1 other than Boron and Phosphorus shall split the costs specifically attributable to the registration of such Substance(s), as provided in 1.1 above on a pro rata tonnage basis. Such pro rata contributions shall be determined using the formula set forth in 1.3.1 above, applied to each individual Substance. Each Member's contribution so determined shall be subject to a minimum contribution per additional Substance, such minimum amount(s) to be determined by the Steering Committee and approved by

the Assembly in due time. Any contribution arising from this reconciliation shall first be satisfied from any reimbursement due pursuant to 1.3.1, with any unmet contribution to be invoiced to the Member along with the invoices to be issued pursuant to 1.3.1.

2. REGISTRATION COSTS

Each Member shall be responsible for its own REACH registration costs.

APPENDIX 5: RECOMMENDATIONS FOR COMPLIANCE WITHCOMPETITION LAW

Each Member of the REACH Boron Consortium is liable for ensuring strict compliance with competition. The following advice, which does not constitute an exhaustive list, should be implemented by each Party, whether in the context of Consortium meetings or social gatherings incidental to these meetings.

Supervise strictly

- Ensure that the actual activities of the Consortium are in line with its purposes, structures and authorities, as described in the Agreement
- Restrict cooperation to the purpose and scope defined in the Agreement
- Ensure legal counsel is present at each meeting
- Limit meeting discussions to agenda topics
- Provide each attendee who accompanies you with a copy of this checklist
- Have a copy of these rules available for reference at all meetings
- Consult with internal or external legal counsel if you have any doubt as to the application of these guidelines or any Consortium activity

Keep detailed records

- Ensure that the agenda and the minutes accurately reflect the matters which occur
- Make sure that data is exchanged on a need to know basis and only for the objectives pursued by the Consortium
- Archive the agenda, the minutes and any relevant documents and ensure that they can be made available on request
- Ensure that any individual company data is reviewed by legal counsel prior to disclosure

Be vigilant

- Object to any discussion or meeting activities which appear to contravene this checklist

- Require those activities to be stopped so that a check can be made by legal counsel
- Dissociate from such discussion or activity and from the attendees who conduct them
- Leave any meeting in which they continue and have it recorded in the minutes
- Ensure that data which is commercially sensitive is not shared between competitors, but placed in confidential annexes by legal counsel
- Involve the Trustee for exchange of information likely to affect competition

APPENDIX 6: ARTICLE 3 OF THE REACH REGULATION

Article 3

Definitions

For the purposes of this Regulation:

1. Substance: means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;

2. Mixture: means a mixture or solution composed of two or more substances;

3. Article: means an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition;

4. Producer of an article: means any natural or legal person who makes or assembles an article within the Community;

5. Polymer: means a substance consisting of molecules characterised by the sequence of one or more types of monomer units. Such molecules must be distributed over a range of molecular weights wherein differences in the molecular weight are primarily attributable to differences in the number of monomer units. A polymer comprises the following:

    5.1.1 a simple weight majority of molecules containing at least three monomer units which are covalently bound to at least one other monomer unit or other reactant;

    5.1.2 less than a simple weight majority of molecules of the same molecular weight.

    In the context of this definition a "monomer unit" means the reacted form of a monomer substance in a polymer;

6. Monomer: means a substance which is capable of forming covalent bonds with a sequence of additional like or unlike molecules under the conditions of the relevant polymer-forming reaction used for the particular process;

7. Registrant: means the Manufacturer or the Importer of a substance or the producer or Importer of an article submitting a Registration for a substance;

8. Manufacturing: means production or extraction of substance in the natural state;

9. Manufacturer: means any natural or legal person established within the Community who manufactures a substance within the Community;

10. Import: means the physical introduction into the customs territory of the Community;

11. Importer: means any natural or legal person established within the Community who is responsible for import;

12. Placing on the market: means supplying or making available, whether in return for payment or free of charge, to a third party. Import shall be deemed to be placing on the market;

13. Downstream user: means any natural or legal person established within the Community, other than the Manufacturer or the Importer, who uses a substance, either on its own or in a preparation, in the course of his industrial or professional activities. A distributor or a consumer is not a Downstream User. A re-Importer exempted pursuant to Article 2(7)(c) shall be regarded as a Downstream User;

14. Distributor: means any natural or legal person established within the Community, including a retailer, who only stores and places on the market a substance, on its own or in a preparation, for third parties;

15. Intermediate: means a substance that is manufactured for and consumed in or used for chemical processing in order to be transformed into another substance (hereinafter referred to as "synthesis"):

    15.1.1 non-isolated intermediate: means an intermediate that during synthesis is not intentionally removed (except for sampling) from the equipment in which the synthesis takes place. Such equipment includes the reaction vessel, its ancillary equipment, and any equipment through which the substance(s) pass(es) during a continuous flow or batch process as well as the paperwork for transfer from one vessel to another for the purpose of the next reaction step, but it excludes tanks or other vessels in which the substance(s) are stored after the manufacture;

    15.1.2 on-site isolated intermediate: means an intermediate not meeting the criteria of a non-isolated intermediate and where the manufacture of the intermediate and the synthesis of (an)other substance(s) from that

intermediate take place on the same site, operated by one or more legal entities;

15.1.3 transported isolated intermediate: means an intermediate not meeting the criteria of a non-isolated intermediate and transported between or supplied to other sites;

16. Site: means a single location, in which, if there is more than one Manufacturer of (a) substance(s), certain infrastructure and facilities are shared;

17. Actors in the supply chain: means all Manufacturers and/or Importers and/or Downstream Users in a supply chain;

18. Agency: means the European Chemicals Agency as established by this Regulation;

19. Competent authority: means the authority or authorities or bodies established by the Member States to carry out the obligations arising from this Regulation;

20. Phase-in substance: means a substance which meets at least one of the following criteria:

20.1.1 it is listed in the European Inventory of Existing Commercial Chemical substance (EINECS);

20.1.2 it was manufactured in the Community, or in the countries acceding to the European Union on 1 January 1995 or on 1 May 2004, but not placed on the market by the Manufacturer or Importer, at least once in the 15 years before the entry into force of this Regulation, provided the Manufacturer or Importer has documentary evidence of this;

20.1.3 it was placed on the market in the Community, or in the countries acceding to the European Union on 1 January 1995 or on 1 May 2004, before entry into force of this Regulation by the Manufacturer or Importer and was considered as having been notified in accordance with the first indent of Article 8(1) of Directive 67/548/EEC but does not meet the definition of a polymer as set out in this Regulation, provided the Manufacturer or Importer has documentary evidence of this;

21. Notified substance: means a substance for which a notification has been submitted and which could be placed on the market in accordance with Directive 67/548/EEC;

22. Product and process orientated research and development: means any scientific development related to product development or the further development of a substance,

on its own, in preparations or in articles in the course of which pilot plant or production trials are used to develop the production process and/or to test the fields of application of the substance;

23. Scientific research and development: means any scientific experimentation, analysis or chemical research carried out under controlled conditions in a volume less than 1 tonne per year;

24. Use: means any processing, formulation, consumption, storage, keeping, treatment, filling into containers, transfer from one container to another, mixing, production of an article or any other utilisation;

25. Registrant's own use: means an industrial or professional use by the Registrant;

26. Identified use: means a use of a substance on its own or in a preparation, or a use of a preparation, that is intended by an actor in the supply chain, including his own use, or that is made known to him in writing by an immediate Downstream User;

27. Full study report: means a complete and comprehensive description of the activity performed to generate the Information. This covers the complete scientific paper as published in the literature describing the study performed or the full report prepared by the test house describing the study performed;

28. Robust Study summary: means a detailed summary of the objectives, methods, results and conclusions of a full study report providing sufficient information to make an independent assessment of the study minimising the need to consult the full study report;

29. Study summary: means a summary of the objectives, methods, results and conclusions of a full study report providing sufficient information to make an assessment of the relevance of the study;

30. Per year: means per calendar year, unless stated otherwise, for phase-in substance that have been imported or manufactured for at least three consecutive years, quantities per year shall be calculated on the basis of the average production or import volumes for the three preceding calendar years;

31. Restriction: means any condition for or prohibition of the manufacture, use or placing on the market;

32. Supplier of a substance or a preparation: means any Manufacturer, Importer, Downstream User or distributor placing on the market a substance, on its own or in a preparation, or a preparation;

33. Supplier of an article: means any producer or Importer of an article, distributor or other actor in the supply chain placing an article on the market;

34. Recipient of substance or a preparation: means a Downstream User or a distributor being supplied with a substance or a preparation;

35. Recipient of an article: means an industrial or professional user, or a distributor, being supplied with an article but does not include consumers;

36. SME: means small and medium-sized enterprises as defined in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

37. Exposure scenario: means the set of conditions, including operational conditions and risk management measures, that describe how the substance is manufactured or used during its life-cycle and how the Manufacturer or Importer controls, or recommends Downstream Users to control, exposures of humans and the environment. These exposure scenarios may cover one specific process or use or several processes or uses as appropriate;

38. Use and exposure category: means an exposure scenario covering a wide range of processes or uses, where the processes or uses are communicated, as a minimum, pursuant to the brief general description of use;

39. Substance which occur in nature: means a naturally occurring substance as such, unprocessed or processed only by manual, mechanical or gravitational means, by dissolution in water, by flotation, by extraction with water, by steam distillation or by heating solely to remove water, or which is extracted from air by any means;

40. Not chemically modified substance: means a substance whose chemical structure remains unchanged, even if it has undergone a chemical process or treatment, or a physical mineralogical transformation, for instance to remove impurities;

41. Alloy: means a metallic material, homogenous on a macroscopic scale, consisting of two or more elements so combined that they cannot be readily separated by mechanical means.

APPENDIX 7: MEMBERS OF THE REACH BORON CONSORTIUM

ArcelorMittal Sourcing [B and P]
Salzgitter Flachstahl GmbH [B and P]
GfE MIR GmbH [B and P]
Meca-Trade Oy [B and P]
Showa Denko Europe GmbH [B]
H.C. Starck GmbH [B]
FESIL SALES GmbH [P]
Roba Holding BV [B and P]
Cronimet Noble Alloys Handelsges. mbH [B]
London & Scandinavian Metallurgical Co. Ltd. [B]
PCC Rokita SA [P]
Höganäs Sweden AB [P]
Thermphos International BV [P]