

**THE COBALT REACH CONSORTIUM AGREEMENT  
(RED)**

**AMONG**

**THE UNDERSIGNED MANUFACTURERS AND IMPORTERS  
(REGULAR MEMBERS)**

**AND**

**THE UNDERSIGNED DOWNSTREAM USERS  
(ASSOCIATE MEMBERS)**

**AND**

**THE COBALT DEVELOPMENT INSTITUTE  
(SECRETARIAT OR TRUSTEE)**

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## 1. PREAMBLE

Having regard to Regulation 1907/2006/EC on Registration, Evaluation, Authorisation and Restriction of Chemicals (hereafter the “REACH Regulation”), 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 to the registration requirements imposed by the REACH Regulation on Manufacturers and Importers of Substances as such, in preparations or in articles, and the financial and human effort implied by this obligation and the limited time to ensure compliance;

Having regard to the obligation for joint submission and data sharing under the REACH Regulation;

Having regard to the fact that the REACH Regulation will affect directly or indirectly Manufacturers, Importers and Downstream Users established within or outside the European Union;

Having regard to information that has already been generated by the Cobalt Development Institute in the context of the CDI HS&E database, or as a result of any activity already undertaken by the Cobalt Development Institute in preparation for the implementation of the REACH Regulation;

The Parties, having a common interest in fulfilling the requirements laid down by the REACH Regulation, wish to form a Consortium open to any other eligible party, in order to share human and financial resources involved in complying with the REACH Regulation and to file a harmonised set of data for registration;

## 2. DEFINITIONS

Any definition specified in Article 3 of the REACH Regulation shall have the same meaning in this Consortium Agreement, including the definitions of Substance, Manufacturer, Importer or Downstream User.

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

“Affiliate” means an enterprise which has any of the following relationships with a Regular Member: (a) the Regular Member owns, directly or indirectly, 50% or more of the shareholders’ voting rights in another enterprise; (b) the Regular Member has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise; (c) the Regular Member has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association; (d) a Regular Member, which is a shareholder in or a member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, at least 50% of shareholders’ or members’ voting rights in that enterprise; (e) an enterprise jointly owned by two or more Regular Members; (f) an enterprise that owns 50% or more of the shares or voting rights of a Regular Member; (g) an enterprise that is directly or indirectly owned 50% or more by an enterprise that directly or indirectly owns 50% or more of a Regular Member; or, (h) in the case of a Regular Member that is either part of a dual listed group or is held directly or indirectly 50% or more by an enterprise that is part of a dual listed group, the other dual listed enterprise and all enterprises that are directly or indirectly held 50% or more by such enterprise.

“Agency”	This refers to the European Chemicals Agency (ECHA) to whom the Registration Dossier must be submitted;
“Associate Member”	means a natural or legal person that represents the interests of Downstream Users of Consortium Substances which can contribute to the objective pursued by the Consortium, in particular by providing scientific and technical data and data on use, and which is a Party to the present Consortium Agreement or is admitted as new Associate Member by the Steering Group
“Authorisation”	shall mean the process set up under REACH Title VII Chapter 1 by which the use of registered substances of very high concern (SVHC) and their placing on the market may require authorisation. Substances requiring authorisation will be included in the REACH Regulation Annex XIV. For the purposes of this Consortium Agreement, Authorisation process will only cover stages up to the listing of the substances in Annex XIV in accordance with REACH Article 58 and will not cover applications for authorisation or beyond;
“Candidate List”	shall mean a list of substances that have been officially identified in the EU as being SVHC due to their hazardous properties in relation to the environment and/or human health, as per REACH Article 59;
“Competent Authority”	shall mean the Agency, the Member State competent authority or the European Commission;
“Consortium Member”	means an Associate Member or a Regular Member;
“Consortium Substances”	means those Substances listed in Appendix 1
“Core Data”	means data to be submitted jointly by registrants pursuant to the REACH Regulation and which includes: <ul style="list-style-type: none"><li>• classification and labelling of the Consortium Substances;</li><li>• summaries of information derived from the application of Annexes VII to XI to the REACH Regulation;</li><li>• Robust Study summaries derived from the application of Annexes VII to XI to the REACH Regulation, if so required under Annex I to the REACH Regulation.</li><li>• testing proposals where required by the application of Annexes IX and X to the REACH Regulation.</li><li>• chemical safety reports.</li><li>• guidance on safe use.</li></ul> The scope of the Core Data shall correspond to the requirements of the REACH Regulation applicable to Regular Member(s) manufacturing or importing the specified highest tonnage band of Consortium Substance(s);
“Disclosing Party”	means any natural or legal person that discloses Information in the framework of this Consortium Agreement;
“Downstream User”	means an enterprise that uses a Consortium Substance for any use specified in APPENDIX 2;
“Executive Committee”	means a sub-committee of the Steering Group appointed in accordance with Article 6.1.5 to act within the powers granted

to them by the Steering Group as set forth in Article 6.1.5;

“Funding Principles”	means the principles set forth in article 9.3;
“Funding Structure Document”	means the document of November 2008, and any further versions amending such document, provided by the Consortium Secretariat to the Consortium Members and made available on the Consortium’s website, which sets out the funding principles that have been adopted by the Consortium and which are applied to calculate the fees payable under this Agreement;
“HS&E”	This refers to the CDI Health Safety and Environmental Committee who has conducted an extensive programme of research on both the effects and the exposure of cobalt to human health and the environment (“HS&E Activities”);
“Importer”	means an enterprise that imports a Consortium Substance into the EU;
“Information”	means Studies, other tests, data and any information in any form whatsoever made available by a Consortium Member pursuant to article 7.4, or licensed from third parties pursuant to article 7.5 or developed pursuant to article 8.1 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, oral or visual information;
“Lead Registrant”	means the same as that stated in Article 11(1) of the REACH Regulation;
“Manufacturer”	means an enterprise that produces or has a bona fide intent to produce a Consortium Substance in the EU;
“Minor Negligence”	means any breach of this Consortium Agreement that is not a Serious Material Breach;
“Non-EU Manufacturer”	means a Manufacturer which is not established in the EU;
“Observer”	means a natural or legal person which may have an interest in participating in the activity of the Consortium, including Manufacturers or Importers of Substances which are not covered by the scope of this Consortium Agreement. Observers are appointed by the Steering Group at its sole discretion and may participate in the Consortium under conditions to be established by the Steering Group on a case by case basis;
“Only Representative”	means a natural or legal person established in the European Community appointed by a non-EU Manufacturer to register under the REACH Regulation one or more Consortium Substances (cf. Article 8 of the REACH Regulation);
“Prioritisation”	shall mean prioritisation of the substances from the Candidate List by the Agency to determine which one of those substances should be proposed for inclusion in the REACH Regulation Annex XIV as per REACH Title VII Chapter 1;
“REACH Annex XIV”	shall mean Annex XIV to the REACH Regulation, as amended from time to time, which sets out the list of substances subject to Authorisation as under the REACH Regulation;
“Receiving Party”	means any Party to this Agreement to which Information is made

	available in the framework of this Consortium Agreement;
“Registration Dossier”	means technical dossier and chemical safety report where applicable as required by the REACH Regulation;
“Regular Member”	means an EU Manufacturer, a non-EU Manufacturer or an Importer which: <ul style="list-style-type: none"><li>- has an interest in the scope and the purpose of this Consortium Agreement;</li><li>- is required to register a Consortium Substance under the REACH Regulation on its own or, in the case of a non-EU Manufacturer, has decided to appoint an Only Representative to register a Consortium Substance it exports to the EU;</li><li>- is a Party to the present Consortium Agreement or is admitted as a new Regular Member by the Steering Group; and</li><li>- is not an Affiliate of another Regular Member or has no Affiliate which is a Regular Member. At all times, only one Affiliate of the same group may be a Regular Member.</li></ul>
“Restriction”	shall mean the process set up under REACH Title VIII by which Member States, or the Agency on request of the European Commission, can propose restrictions on the manufacture, use or placing on the market of substances registered under REACH. Restricted substances are included in the REACH Regulation Annex XVII;
“Secretariat”	means the Cobalt Development Institute, a subsidiary or successor entity;
“Serious Material Breach”	means a breach of a substantial obligation of this Consortium Agreement by a Party, including but not limited to, breach of: <ul style="list-style-type: none"><li>- any obligation related to payment;</li><li>- an obligation to provide existing Studies and Information;</li><li>- an obligation of confidentiality, including obligations under Appendix 3 to this Consortium Agreement;</li><li>- obligations under article 10 (liability) of this Consortium Agreement;</li><li>- obligations under article 12.1 (compliance with competition laws) of this Consortium Agreement;</li></ul> including deliberately providing inaccurate Studies or Information pursuant to this Consortium Agreement.
“Steering Group”	means the Group which provides strategic guidance on the development of the work plan of the Consortium. 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 Working Group. It is composed in accordance with article 6.1.1;
“Study”	means a report in written or electronic form on tests, or other examinations (including tests on vertebrate animals), which relate



to intrinsic Substance properties or to the exposure assessment and risk characterisation in the chemical safety report and as such, are of relevance for registration, Authorisation and Restriction; this also includes study summaries and Robust Study summaries of the report(s);

"Technical Guidance Document"	This refers to the guidance developed under REACH Implementation Project (RIP) 3.2;
"Trustee"	means the Cobalt Development Institute;
"Working Group"	means the group which provides technical guidance and support for the activities of the Consortium. It is composed in accordance with article 6.3.1.

### **3. PURPOSE AND SCOPE OF THE CONSORTIUM**

The Consortium Members have become Parties to this Consortium Agreement in order to comply jointly with the requirements of the REACH Regulation for the Consortium Substances.

The activities of the Consortium shall be conducted on a not-for-profit basis. In addition, it is the intention of the Parties that nothing in this Consortium Agreement shall prejudice the not-for profit character of the Cobalt Development Institute. If any provision of this Consortium Agreement tends or threatens to affect its not-for-profit character, the Parties agree to take such steps as may be required, including amending this Consortium Agreement, to ensure that the Cobalt Development Institute remains unaffected in its not-for-profit status.

The Parties to the Consortium Agreement undertake to use all reasonable efforts to ensure the appropriate and timely achievement of the Consortium purposes.

In particular, the Consortium Members undertake to pursue collectively the following purposes:

#### **3.1. PURPOSES RELATED TO SUBSTANCE REGISTRATION**

- a) Compile and assess existing studies not involving vertebrate animals;
- b) Prepare proposals for new testing not involving vertebrate animals and have such tests performed;
- c) In order to limit the number of such studies, to identify, propose and perform jointly vertebrate animal studies for the purpose of registration, under the REACH Regulation, upon prior approval by the Agency;
- d) Prepare Core Data;
- e) Address technical issues in relation to REACH registration;
- f) Develop read-across approach based on surrogate data;
- g) Assess opportunities for exposure-based waivers;
- h) Develop a hazard classification and labelling in accordance with the existing and future European Union rules;
- i) Coordinate the submission of the Core Data of the relevant Consortium Substance by the Lead Registrants;
- j) Ensure that the Lead Registrants and Regular Members register the Core Data in sufficient time before the deadline determined in the REACH Regulation for the Regular Member with the highest tonnage band; and

k) Assist with preparation of Registration Dossiers

### **3.2. PURPOSES RELATED TO EVALUATION BY THE AGENCY OF THE REGISTRATION DOSSIER**

Cooperate with a view to facilitating responses to any request for further information made by the Agency in the context of Title VI chapter 1 of the REACH Regulation.

### **3.3. PURPOSE RELATED TO AUTHORISATION**

#### **3.3.1. Activities Covered by Agreement**

Participate in and contribute to the public consultations and carry out any related activities in the context of Authorisation as far as the Consortium Substances are concerned, such as:

- (a) conducting new Information and Studies and providing any new relevant Information and Studies to Competent Authorities on Consortium's own initiative or as per Competent Authorities' request;
- (b) providing any other technical information to Competent Authorities or any other parties participating in the public consultations with the Secretariat acting as the Trustee when necessary;
- (c) meeting with Competent Authorities, other stakeholders or various industry associations;
- (d) drafting relevant position statements and/or other documents in relation to the Consortium Substances being put on the Candidate List, recommended for Prioritisation or listed in REACH Annex XIV.

#### **3.3.2. Activities Not Covered by Agreement**

Any further activities carried out after Consortium Substances have been listed in REACH Annex XIV, such as applications for authorisation, shall not be covered by this Consortium Agreement.

#### **3.3.3. Confidentiality Obligations**

For the avoidance of doubt, unless consent by Consortium Members has been given, the provisions relating to the obligations of confidentiality in this Consortium Agreement shall continue to apply when sharing Information and Studies with Competent Authorities.

### **3.4. PURPOSE RELATED TO RESTRICTION**

Participate in and contribute to the public consultations and carry out any related activities in the context of Restriction as far as the Consortium Substances are concerned, such as:

- (a) conducting new Information and Studies and providing any new relevant Information and Studies to Competent Authorities on Consortium's own initiative or as per Competent Authorities' request;

- (b) providing any other technical information to Competent Authorities or any other parties participating in the public consultations with the Secretariat acting as the Trustee when necessary;
- (c) meeting with Competent Authorities, other stakeholders or various industry associations;
- (d) drafting comments and/or other documents in relation to dossier(s) and the suggested restrictions prepared by the Competent Authorities under REACH Annex XV for the Consortium Substances.

## **4. SUBSTANCES COVERED**

### **4.1. SUBSTANCES COVERED BY AGREEMENT**

The Consortium Substances covered by this Consortium Agreement are those listed in Appendix 1 of the Agreement. The Secretariat may clarify the description of a particular Consortium Substance at the direction of the Working Group.

### **4.2. ADDING OR REMOVING SUBSTANCES**

The Secretariat may add or remove Consortium Substances to/from Appendix 1 if and when recommended by the Steering Group. When Consortium Substances are removed from Appendix 1, such substances shall be subsequently listed in Appendix 1A.

### **4.3. STEERING GROUP DECISION TO ADD OR REMOVE SUBSTANCES**

The Steering Group shall decide on adding and/or removing Consortium Substances by qualified majority in accordance with Article 6.1.4.

### **4.4. SUBSTANCES NO LONGER TO BE REGISTERED**

Only Consortium Substances that will not be registered by at least one Consortium Member can be moved to Appendix 1A. The Consortium shall not submit Registration Dossiers to the Agency for substances listed in Appendix 1A and the Consortium shall not carry out any other activities related to the registration of such substances as per article 3.1. Provisions of the Consortium Agreement related to confidentiality, data sharing, read across and liability shall continue to apply in relation to the substances listed in Appendix 1A.

## **5. MEMBERSHIP**

### **5.1. ADMISSION OF NEW CONSORTIUM MEMBERS**

#### **5.1.1. Admission of new Regular Members**

Any natural or legal person complying with the definition of Regular Member in Article 2 may become a Regular Member.

Admission of a new Regular Member shall be decided by the Steering Group.

### **5.1.2. Admission of new Associate Members**

Any natural or legal person that meets all the criteria for Associate Membership listed in Article 2 may become an Associate Member.

Admission of a new Associate Member shall be decided by the Steering Group.

### **5.1.3. Commitment of new Consortium Members**

To become a Regular Member or Associate Member, an applicant must be subject, either directly or indirectly, to the REACH Regulation's requirements, and shall sign a commitment to abide by all the terms and conditions as set out in this Consortium Agreement including to pay the compensation stated in article 5.1.4. However, such compensation is not due from a new Regular Member, subject to any outstanding debts or obligations pursuant to article 5.3, if it acquired such capacity pursuant to article 5.2 or pursuant to paragraphs two and three of this article.

If an Affiliate of a Regular Member is spun off to form a standalone legal entity, the former Affiliate may, provided it meets the requirements of Section 5.1, become a new Regular Member within [two] months from the date on which it ceases to be an Affiliate of the Regular Member without paying any compensation or Advantage Compensation pursuant to article 5.1.4.

If an Affiliate of a Regular Member is acquired in the context of acquisition, merger or absorption by an enterprise which is not a Regular Member or an Affiliate of a Regular Member, the enterprise or its Affiliate may, provided it meets the requirements of Section 5.1, become a new Regular Member within [two] months from the effective date of the acquisition. If the acquiring enterprise, including its existing Affiliates, other than the acquired Affiliate, does not produce and/or import any of the Consortium Substances into the EU, the enterprise, or its Affiliate, may become a new Consortium Member without prior authorisation of the Steering Group and without paying any compensation or Advantage Compensation pursuant to article 5.1.4. If the acquiring enterprise, including its existing Affiliates, other than the acquired Affiliate, produces and/or imports any of the Consortium Substances into the EU, the enterprise, or its Affiliate, may become a new Consortium Member with prior authorisation of the Steering Group and shall pay (i) compensation and (ii) an Advantage Compensation pursuant to article 5.1.4. with respect to the volume of Substances produced and/or imported into the EU before the effective date of the acquisition.

### **5.1.4. Compensation due to existing Consortium Members**

Pursuant to the Funding Principles defined in this Consortium Agreement, any new Consortium Member shall pay a portion of the expenses incurred by the Consortium since it has been in existence up to the date of the new Consortium Member becoming a Party to this Consortium Agreement, by means of a proportionate reimbursement to the other Consortium Members. The portion of expenses to be reimbursed shall be calculated in accordance with the Funding Principles in article 9.3.

The new Consortium Member shall pay an additional "Advantage Compensation" to the existing Consortium Members to compensate for access to the know-how already acquired by them at the date of accession of the new Consortium Member.

The Steering Group shall determine the amount of this Advantage Compensation according to the Funding Principles.

The new Consortium Member shall have the rights and obligations attached to its status of Regular or Associate Member from the date of payment of its portion of expenses and Advantage Compensation.

## **5.2. ASSIGNMENT OF MEMBERSHIP**

### **5.2.1. Assignment of Regular Membership**

A Regular Member cannot assign any part of its rights or obligations under this Consortium Agreement. However, its entire rights and obligations under this Consortium Agreement, constituting its "Regular Membership", may be assigned under the following terms and conditions:

- Assignment in the context of acquisition, merger or absorption of a Regular Member by or with a third party, with prior authorisation of the Steering Group

Regular Membership may be assigned to a third party only if such third party meets the conditions stated in article 5.1.

Regular Membership cannot be assigned without the prior authorisation of the Steering Group in the context of the acquisition, absorption or merger of the Regular Member by or with a third party.

- Assignment in the context of the acquisition, merger or absorption of a Regular Member by or with another Regular Member without prior authorisation of the Steering Group

Regular Membership may be assigned, without the prior authorisation of the Steering Group, in the context of the acquisition, absorption or merger of a Regular Member by or with another Regular Member.

In case of absorption or merger, the Regular Member which absorbs another Regular Member or the new entity formed following the merger of the two Regular Members shall only have one voting right.

In the case of an acquisition, when a Regular Member becomes an Affiliate of another Regular Member, all the rights and obligations of such Affiliate shall be automatically assigned to the other Regular Member. However, in such case, the voting rights belonging to the former (i.e. the Affiliate) are not assigned to the latter and shall cease to exist.

- Assignment of Regular Membership to an Affiliate of the Regular Member without prior authorisation of the Steering Group

Regular Membership may be assigned, without the prior authorisation of the Steering Group, by a Regular Member to its Affiliate, so long as the Affiliate satisfies the conditions for a Regular Member set out in article 2 of this Consortium Agreement. Upon such assignment, the enterprise making the assignment shall become an Affiliate and the enterprise to which the Regular Membership is assigned will be assigned all the rights and obligations of Regular Membership.

#### **5.2.2. Assignment of Associate Membership**

Assignment of Associate Membership must be approved in writing by the Steering Group prior to such assignment including in the context of the absorption or merger of the Associate Member by or with a third party or by or with another Associate Member.

#### **5.2.3. Notification to the Steering Group**

For any assignment to be effective, as referred to in article 5.2.1 the Consortium Member shall notify the membership of which is to be assigned in writing to the Steering Group at least 60 days in advance.

#### **5.2.4. Request for prior authorisation of the Steering Group**

When the prior authorisation of the Steering Group is required pursuant to articles 5.2.1 and 5.2.2, the Regular Member shall ask for authorisation at least 60 days prior to the foreseen assignment date.

### **5.3. WITHDRAWAL AND EXPULSION**

#### **5.3.1. Withdrawal of a Consortium Member**

A Consortium Member may withdraw from the Consortium by sending to the Secretariat written notice thereof at least 6 months prior to withdrawal.

**5.3.2. Expulsion of a Consortium Member that does not meet the membership conditions**

A Consortium Member may be expelled from the Consortium by decision of the Steering Group if it no longer meets the membership conditions applicable to it.

**5.3.3. Expulsion of a Party for breach**

Without prejudice to any other legal remedy, a Party may be expelled from the Consortium by decision of the Steering Group in the event of a Serious Material Breach that has not been repaired within 30 calendar days after receiving formal notice by registered letter with return receipt from the Secretariat.

**5.3.4. Consequences of withdrawal and expulsion**

In the event of withdrawal or expulsion pursuant to articles 5.3.1, 5.3.2, and 5.3.3 the withdrawing or expelled Party remains bound by its obligations as set out in article 10.1 and to the confidentiality commitments as set out in this Consortium Agreement.

The Parties to this Consortium Agreement shall be entitled to make use of the data made available by the Party which has withdrawn or has been expelled, under the conditions specified in this Consortium Agreement and provided that such data has been the subject of compensation under the conditions set out in this Consortium Agreement.

The withdrawing or expelled Consortium Member pursuant to articles 5.3.1, 5.3.2 and 5.3.3 shall pay its contribution towards the Consortium expenses, including all payments related to Studies agreed on, during the time of its membership.

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

The withdrawing or expelled Consortium Member, except if it has been expelled for breach of its payment obligations, shall have access to the results of the Studies and the full reports prepared by the Consortium for which it paid compensation pursuant to this Consortium Agreement, even if such results are available after the effective date of withdrawal or expulsion.

The withdrawing or expelled Consortium 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. In case the withdrawing or expelled Consortium Member wishes to submit a Registration Dossier jointly with the Regular Members, it must obtain the necessary authorisation from the Steering Group pursuant to article 8.2.3.

**5.3.5. Additional Consequences of withdrawal after the registration of the Consortium Substances**

Without prejudice to article 5.3.4, in the event the Consortium Member withdraws from the Consortium after the Registration Dossier is submitted to the Agency, such Consortium Member shall be required to pay any additional monies related to the update of the Registration Dossier after its withdrawal, if and when required by the REACH Regulation or the Agency, or due to the development of new data or information for the substance by the Consortium after the withdrawal.

If the withdrawing Consortium Member terminates its registration of the relevant Consortium Substance with the Agency and notifies the Consortium accordingly, the Consortium Member will have no further financial obligations to the Consortium in relation to further updates of the Registration Dossier for the relevant Consortium Substance other than those monies due in relation to Section 5.3.4.

In accordance with the Funding Principles and the Funding Structure Document, the withdrawing Consortium Member may be entitled to reimbursement of some of the monies remaining in its account after the registration of the relevant Consortium Substance.

## **6. ORGANISATION OF THE CONSORTIUM**

### **6.1. STEERING GROUP**

In order to take decisions on the overall organisation of the Consortium, Regular Members shall meet in a Steering Group.

#### **6.1.1. Composition of the Steering Group**

- Participants in the Steering Group

Each Regular Member shall appoint only one authorised representative to the Steering Group. This representative shall have authority to commit the Regular Member in Steering Group decisions. The representative must be able to produce a duly executed proxy signed by the represented Regular Member.

Substitutes for representatives may also be appointed in writing by the Regular Members.

Replacements of representatives as well as substitutes may also be appointed in writing by the Regular Members.

The participants in the Steering Group and their representatives shall serve in their respective positions for no compensation or remuneration whatsoever from the Consortium.

The Secretariat shall serve as secretary of the Steering Group and shall delegate one or more of its representatives or employees to the Steering Group. The Secretariat shall have no voting right on the Steering Group.

- Chairman and Vice-chairman of the Steering Group

Members of the Steering Group shall elect by majority vote a Chairman and a Vice-chairman for a period of one year. Both the Chairman and the Vice-Chairman may be re-appointed by the Steering Group upon the expiry of their current terms of appointment. The Chairman shall coordinate the Steering Group and organise its work with the assistance of the Secretariat.

The Vice-Chairman shall replace the Chairman when he/she is unavailable.

#### **6.1.2. Role of the Steering Group**

Within the Steering Group, Regular Members shall take the necessary decisions relating to the Consortium and its objectives and shall in this regard particularly, but not exclusively, deal with the following:

- a) Management of financial resources of the Consortium, including budget, funding collection and accounts;
- b) Coordination of and guidance for the preparation of each Registration Dossier for the Consortium Substances, including the acceptance of the existing Studies and Information, the decision to license Studies and Information to and from third parties and the decision to develop new Studies and Information;
- c) Approval of testing programs;
- d) Appointment of external consultants to perform technical and scientific tasks and as proposed by the relevant Working Group (when requiring a budget);
- e) Approval of the Core Data before joint submission to the Agency;

- f) Coordination and supervision of activities of the Secretariat, the Working Group and the Lead Registrant;
- g) Arbitration in cases of disagreement or disparities within the Working Group;
- h) Amendment of the Consortium Agreement in light of legislative and technical adaptation of the REACH Regulation's requirements and any amendment thereof, including the entry into force of the REACH Regulation (in particular the establishment of the SIEF) or the entry into force of the Regulation implementing the Globally Harmonised System (GHS);
- i) Modification of any provision as well as the Appendixes of this Consortium Agreement, if and when needed;
- j) Decision regarding access of any new Regular or Associate Member;
- k) Decision on the expulsion of a Party;
- l) Adequate communication to and between all Parties involved;
- m) Appointment and termination of the appointment of the Lead Registrant;
- n) Approval of budget;
- o) Approval of annual accounts;
- p) Allocation of Consortium expenses to the Consortium Members pursuant to the Funding Principles; and
- q) Decision to add the Consortium Substances to Appendix 1 or move the Consortium Substances to Appendix 1A pursuant to article 4.2 and article 4.3.

The Steering Group shall approve working and finance plans prepared by the Secretariat concerning the planned activities until submission of the Registration Dossier, in particular concerning the development of Information.

The Steering Group may appoint legal or technical experts to provide assistance on an *ad hoc* or regular basis.

The Steering Group may approve the participation of other interested parties at meetings of the Steering Group and/or of the Working Group as Observers, subject to the execution of a non-disclosure agreement and on such terms and conditions as the Steering Group shall determine.

Associate Members and Observers may be informed about identified uses which will be covered by a Registration Dossier and may be given an opportunity to request the inclusion of additional uses. Such requests may be taken into consideration by the Steering Group if appropriately substantiated.

Where the Steering Group has taken a decision, agreed to conclude agreements with third parties or agreed to sign licence agreements pursuant to Article 7.5 and/or Article 8 of this Consortium Agreement, the Steering Group may instruct the Secretariat to sign such agreements on behalf of all Consortium Members.

### **6.1.3. Meetings of the Steering Group**

#### **▪ Ordinary Meetings**

Ordinary meetings in person of the Steering Group shall be held every 6 months to review, on the basis of the technical and financial progress reports of the Secretariat, the progress according to the work schedule and the development of the costs. In exceptional circumstances Steering Group Members may participate in the meetings by electronic means including video or telephone conference provided that those present at the meeting in person agree.

Ordinary meetings in person of the Steering Group shall also be held to approve, after completion by the Working Group, each of the following stages:



- a) Process for defining data gaps, including the development of waivers and use of surrogate data;
- b) Defining test plans;
- c) Analysis of test results;
- d) Compilation of Core Data;
- e) Designation of the Lead Registrants;
- f) Submission of Core Data to the Agency;
- g) Response to request(s) for further information by the Agency;

The review shall include a financial report of the collective work completed during the relevant stage.

- Extraordinary meetings

Extraordinary meetings of the Steering Group may be convened at the request of the Chairman of the Steering Group or of a majority of the Regular Members.

- Organisation of Meetings

Meetings of the Steering Group shall be held upon written notice given by the Secretariat for ordinary meetings and upon written notice given by the Secretariat on behalf of the Chairman of the Steering Group or of a majority of Regular Members for extraordinary meetings.

The notice period shall be 3 calendar weeks from issue of notice by the Secretariat, unless a shorter period is agreed by all Regular Members.

When meetings of the Steering Group are to be held in person, the Secretariat's notice shall also indicate the address of the meeting place.

A Member's written opinion on Agenda matters received by the Secretariat at least 24 hours in advance of the opening of the meeting shall be taken into consideration by the Steering Group.

- Minutes

Minutes of the Steering Group meetings shall be prepared by the Secretariat which shall, once signed by the Chairman of the Steering Group, forward copies of them promptly to all Regular Members.

Decisions of the Steering Group that constitute an agreed amendment to this Consortium Agreement shall be set out in a separate document the title of which shall be "Amendment to the Consortium Agreement" followed by the date of the Steering Group meeting by which it was decided. This document shall be duly executed by all of the Regular Members and, if they are affected by the amendment, by the Secretariat, the Trustee or the Associate Members.

#### **6.1.4. Decision procedures**

- Physical / non-physical meetings

Except when meetings shall be held in person pursuant to other provisions of this Consortium Agreement, decisions of the Steering Group may be taken by means of a document to be circulated and signed by all of the Regular Members.

Except for the main meetings to be held every 6 months the Regular Members may attend other Steering Group meetings by means of video conference or teleconference in exceptional circumstances provided the Regular Members attending in person agree as outlined in 6.1.3.above.

- Quorum

A meeting of the Steering Group can be held if a quorum of 50% plus one of the Regular Members eligible to vote on the matters presented to the meeting is present or represented at the meeting.

If the above mentioned quorum is not achieved, the Secretariat shall convene another Steering Group meeting at least 3 calendar weeks later (the “Second Meeting”).

A Second Meeting of the Steering Group can be held and have powers to take decisions even if the above mentioned quorum is not met during the Second Meeting.

The Steering Group can deliberate on and take decisions related to points h) and i) of article 6.1.2 only if all of the Regular Members are present or represented at a Steering Group meeting. If the decisions related to points h) and i) of article 6.1.2 affect rights and obligations of the other Parties to this Consortium Agreement, these Parties shall also be present or represented at the Steering Group meeting. However, in the case where all the Parties are not present or represented, the Parties who were absent from the meeting may be given the opportunity of approving the proposed decision related to point h) and i) by signing, together with the Parties who attended the meeting, a document circulated after such meeting and containing a detailed description of the proposed decision. If such decision is unanimously agreed and such document signed by all Parties prior to the approval of the minutes of such meeting, the decision shall immediately come into effect.

Regular Members may assign a proxy to another Regular Member to represent them and vote for them at the meeting. Such proxy shall be given in writing, including by email, and made available to the Secretariat a reasonable time prior to the meeting.

Each Regular Member may represent only one other Regular Member. Notwithstanding the foregoing, the Chairman of the Steering Group shall have a right to hold proxies on behalf of an unlimited number of Regular Members.

Each Regular Member assigning the proxy may identify how their vote should be taken with respect to issues identified in the agenda as circulated by the Secretariat prior to the meeting. The vote shall be taken accordingly by the Regular Member holding the proxy, including the Chairman.

- Voting rights

Each Regular Member is entitled through its authorised representative to one vote on any decision taken at a Steering Group meeting. However, a Regular Member shall have no voting right regarding decisions concerning a Consortium Substance in respect of which such Regular Member or any of its Affiliates have no obligation to register pursuant to the REACH Regulation, including but not limited to decisions related to testing programs, to the specific content of the Registration Dossier and to decisions referred to in article 6.1.2 b) to g), article 6.1.3 and article 6.4 of this Consortium Agreement.

The Regular Members shall strive for consensus.

In the case of equality of votes, the motion shall fail.

Associate Members have no voting rights on the Steering Group except as to matters affecting the rights or obligations of Associate Members under Article 6.1.2 h) and i). Only one representative of all Associate Members may participate in the meetings of the Steering Group as a guest without voting rights, except as provided above. This representative shall be elected by the other Associate Members by simple majority. Where the representative of the Associate Members is required to vote on matters under Article 6.1.2 h) and i) the representative will consult with the other Associate Members and cast his vote according to the majority decision of the Associate Members.

- Unanimity / Qualified majority

Except where otherwise provided in this Consortium Agreement, decisions shall be taken by a majority of at least 50% plus one vote of Regular Members present or represented at the meeting and eligible to vote on the matters presented except:

- Decisions related to points j), k), n), o), p) and q) of article 6.1.2, which shall be taken by a qualified majority of at least 66% of the Regular Members present or represented at the meeting and eligible to vote, and

- Decisions related to points h) and i) of article 6.1.2 which shall be taken by unanimity of the Regular Members who are eligible to vote and shall be approved by the other Parties to this Consortium Agreement if they affect their rights and obligations.

#### **6.1.5. Delegation of Powers to Executive Committee**

The Steering Group may delegate its certain responsibilities and decision making powers to an Executive Committee for such periods as determined by the Steering Group from time to time. The Executive Committee may be comprised of between minimum of 3 and maximum of 10 Regular Members and shall include the Chairs and Vice-Chairs of the Steering Group and the Working Group, Regular Members that volunteer as candidates for the Lead Registrants, and Regular Members making the largest contribution to the Consortia in terms of share of the costs or through active participation. The Executive Committee members shall be nominated by the Steering Group and agreed upon in accordance with the procedures set forth in Article 6.1.4.

- **Decision making authority**

The Steering Group may delegate its certain responsibilities and decision making powers to the Executive Committee and the Executive Committee shall have the power to take over such responsibilities and decisions in relation to the following matters:

- a) Decisions as described in 6.1.2. (a), which shall be consistent with the existing budgets as approved by the Steering Group;
- b) Decisions as described in 6.1.2. (f), (g) and (l);
- c) Decisions as described in 6.1.2. (b), (c), and (d), which shall be consistent with the existing budgets as approved by the Steering Group;
- d) Appointment of legal or technical experts to provide assistance on an ad hoc or regular basis;
- e) Approval of the participation of other interested parties at meetings of the Steering Group and/or of the Working Group as Observers, subject to the execution of a non-disclosure agreement and on such terms and conditions as the Executive Committee or the Steering Group shall determine;
- f) Taking into consideration the requests of the Associate Members and the Observers to include additional identified uses to be covered in a Registration Dossier;
- g) Approval of the matters as described in 6.1.3. (a), (c), (d), (f) and (g);
- h) Approval of the matters as described in 6.1.3. (b), which shall be consistent with the existing budgets as approved by the Steering Group;
- i) Any additional matters delegated to the Executive Committee by the Steering Group in writing from time to time.

- **Meetings and voting rights**

The Executive Committee shall meet from time to time upon one weeks notice. The meetings of the Executive Committee can be held if a quorum of 50% plus one of the Regular Members from the Consortium sitting on the Executive Committee is present or represented at the meeting. The decisions taken by the Executive Committee shall be taken by a majority vote.

A Regular Member sitting on the Executive Committee shall have no voting right regarding decisions concerning a Consortium Substance in respect of which such Regular Member or any of its Affiliates have no obligation to register pursuant to the REACH Regulation, unless the decision is relevant to the Regular Member due to the intended application of read across or otherwise, including but not limited to decisions related to testing programs, to the specific content of the Registration Dossier and to

decisions referred to in Article 6.1.2 (b) to (g) and Article 6.1.3 and Article 6.4 of this Consortium Agreement.

- Reporting

The Executive Committee shall prepare reports for the Steering Group on all decisions taken by it.

- Revocation of powers

The Steering Group can withdraw delegated decision making powers at any time and can change the constitution of the Executive Committee by appointing and removing Regular Members as well as changing the number of the Regular Members on the Executive Committee.

## **6.2. ROLE OF THE SECRETARIAT**

The Secretariat shall be responsible for daily management and external representation of the Consortium within the mandate given by the Steering Group.

It shall conduct all normal business of the Consortium in the framework of this Consortium Agreement, to the exclusion of activities which shall be the exclusive competence of the Steering Group, and shall in particular:

- a) Follow up the legislative and technical development of the REACH Regulation and inform the Working Group and Steering Group about relevant new developments;
- b) 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 Steering Group;
- c) Provide technical and administrative support to the Steering Group and the Working Group;
- d) Supervise external consultants and experts appointed by the Steering Group;
- e) Coordinate and provide guidance for data collection concerning Consortium Substances;
- f) Establish budget proposals;
- g) Establish annual accounts; and
- h) On the instructions of the Steering Group, execute decisions, sign agreements with third parties and licence agreements pursuant to Article 7.5 or Article 8 of this Consortium Agreement on behalf of all Consortium Members. The Secretariat can delegate this right to a duly authorised representative of the Secretariat.

The Secretariat shall prepare reports for the Steering Group on the achievement of the purposes as defined in article 3.

## **6.3. WORKING GROUP**

### **6.3.1. Composition**

In order to pursue the purposes stated in article 3, the Steering Group shall establish a “Working Group”, composed of one or more representatives of each Regular Member. Each Regular Member shall make its best efforts to appoint qualified representatives different from those it appointed to participate in the Steering Group.

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

### **6.3.2. Role**

The activities of the Working Group may include the following actions:

- a) Estimate financial resources required to comply with REACH requirements;
- b) Prepare the technical dossier for registration, including the determination of data gaps, waivers and surrogate data;
- c) Prepare the chemical safety report and the guidance on safe use;
- d) Prepare harmonised classification and labelling in accordance with the applicable EU rules including the Globally Harmonised System (GHS) of classification and labelling of chemicals when implemented by the EU;
- e) Prepare proposals for further testing and data gathering;
- f) Advise on the selection of external laboratories to conduct the testing programme;
- g) Supervise performance of the testing programme;
- h) Advise on potential new Members to join the Working Group; and
- i) Consider requests of Observers or Associate Members for inclusion of additional uses in APPENDIX 2.

The Working Group may call on the Secretariat to assist the Working Group with the work entrusted to it, but only so long as the costs involved fall within the budget of the Working Group as approved by the Steering Group.

### **6.3.3. Chairman of the Working Group**

- Appointment

The Steering Group shall appoint the Chairman and the Vice-chairman of the Working Group for a period of one year. Both the Chairman and Vice-chairman may be re-appointed for a period to be decided by the Steering Group upon the expiry of their current term of appointment.

- Role

The Working Group Chairman shall coordinate and organise the work of the Working Group with the assistance of the Secretariat, and supervise reporting to the Steering Group.

The Vice-chairman shall replace the Chairman when he/she is unavailable.

## **6.4. LEAD REGISTRANT**

### **6.4.1 Appointment**

The Steering Group will appoint a Lead Registrant from amongst the Regular Members for each Consortium Substance whenever possible under the REACH Regulation. The Lead Registrant's appointment shall be terminated upon a vote of the Steering Group. Both decisions to appoint or to terminate the appointment of a Lead Registrant will be taken by a qualified majority of 66 % of the votes of the Regular Members present or represented at the meeting of the Steering Group.

If the Lead Registrant is not a Regular Member, an agreement shall be concluded between the Consortium Members and this Lead Registrant which will cover all issues related to the submission of the Registration Dossier.

### **6.4.2 Non-preferential treatment and confidentiality**

Each Lead Registrant shall continue to be subject to all rights and obligations of a Regular Member under this Consortium Agreement.

Each Lead Registrant shall strictly abide by the confidentiality obligations set out in article 7.1 and Appendix 3 of this Consortium Agreement. In addition, the Lead Registrant shall not disclose to any

third party and/or the other Consortium Members any information included in the Registration Dossier by the Trustee other than where required by the REACH Regulation.

#### **6.4.3. Submission of Registration Dossier**

The Lead Registrant shall submit the Registration Dossier to the Agency, on behalf of the Regular Members (including their Affiliates concerned by the Consortium Substance to be registered) and in the format specified by the Agency, on the date determined by the Steering Group. The 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. The Lead Registrant shall delegate to the Working Group the preparation of the Registration Dossier and any information or document to be submitted to the Agency.

Nevertheless, the Regular Members may submit the chemical safety report and the guidance on safe use individually. In such case, the Regular Member shall inform the Secretariat and the Lead Registrant of its decision within a reasonable period at least sufficient to enable amendments of the Registration Dossier prior to its submission to the Agency.

Each Regular Member shall receive through the Secretariat a copy of the common part of the Registration Dossier related to its tonnage band and/or Consortium Substance, excluding confidential information, as submitted by the Lead Registrant.

All of the costs and expenses associated with the preparation of the Registration Dossier will be paid for by the Consortium Members pursuant to the Funding Principles set out in article 9.3.

#### **6.4.4. Liability**

To the greatest extent possible under the laws of the relevant jurisdiction, the Lead Registrant shall not be liable for, and the Regular Members shall indemnify the Lead Registrant against and hold harmless from, all liabilities and claims (including reasonable legal fees and expenses in defending against such liabilities and claims) against the Lead Registrant in connection with the matters contemplated by this Consortium Agreement other than liabilities attributable to the gross negligence or wilful misconduct of the Lead Registrant or breach of confidentiality provisions contained in article 6.4.2 above by the Lead Registrant .

#### **6.4.5. Communications received from the Agency**

The Lead Registrant shall forward within five (5) business days any communications relating to any joint Registration for a Consortium Substance received from the Agency to the Regular Members that participate in such joint Registration – through the Secretariat.

#### **6.4.6. Appeals**

The 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 Consortium Members compliance with the requirements of the REACH Regulation. This does not preclude the right of any Regular Member, to which a decision of the European Commission is directed, to make an appeal under REACH, subject to prior notification to the Secretariat and the Lead Registrant.

### **6.5. ROLE OF MANAGEMENT BODIES IN RELATION TO AUTHORISATION AND RESTRICTION**

#### **6.5.1. Role**

The Steering Group, the Executive Committee and the Secretariat shall be involved in any decisions related to Authorisation as per Article 3.3 and Restriction as per Article 3.4 and shall particularly, but not exclusively, deal with the following:

- (a) the Steering Group or, when delegated, the Executive Committee, shall approve the Consortium's participation in and the scope of contribution to any public consultations;
- (b) the Steering Group shall approve the working and finance plans prepared by the Secretariat concerning the planned activities in relation to Authorisation and/or Restriction, in particular concerning the development of new Information and Studies;
- (c) the Steering Group shall establish a project team to deal with ongoing matters in relation to Authorisation and/or Restriction as per Article 6.5.2;
- (d) the Secretariat shall provide any other necessary support, and shall supervise the work of the external consultants and experts appointed by the Steering Group and/or the Executive Committee;
- (e) the Executive Committee shall monitor the work of the project team and Secretariat and the corresponding budgets allocated for activities related to Authorisation and/or Restriction.

Any decisions taken by the Steering Group or the Executive Committee in relation to Article 3.3 and Article 3.4 of the Consortium Agreement shall be taken by a majority vote.

#### **6.5.2. Project Team**

In order to pursue the purposes stated in Article 3.3 and Article 3.4, the Steering Group shall establish a project team or a number of project teams, if required, composed of Regular Members who are manufacturers, importers or downstream users.

The participants in the project team and their representatives shall serve in their respective positions without compensation or remuneration from the Consortium.

The project team may call on the Secretariat to assist the project team with the work entrusted to it, but only so long as the costs involved fall within the budget of the project team as approved by the Steering Group.

The project team shall work on a collaborative basis and shall strive for consensus but may take its decisions by a qualified majority of at least 66% of the Regular Members if a quorum of 50% plus one of the Regular Members eligible to vote on the matters presented to the meeting is present or represented at the meeting.

## **7. DATA SHARING**

### **7.1. CONFIDENTIALITY**

The Parties to this Consortium 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 3.

Information disclosed to the Trustee is subject to a higher degree of confidentiality as set out in Appendix 4.

Each Party agrees, on behalf of itself and its Affiliates and their officers, directors, employees, agents, and contractors, to maintain in strict confidence and to not disclose 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 Consortium Agreement) without the prior written authorisation of the Steering Group any and

all Studies, Information and Core Data. This obligation of confidentiality covers, without limitation: (i) Studies or Information acquired, licensed, developed or contracted or obligated for or by the Consortium pursuant to this Consortium Agreement; (ii) Registration Dossier - technical dossier comprising studies, including test results, study summaries, proposals for testing, classification and labelling, guidance on safe use, plus a chemical safety report; and (iii) draft Registration Dossier, interim and working documents related to the preparation of the Registration Dossier, know-how, technical information, researches, methods, practices, procedures, processes, formulas, all statistics, information, or conclusions which could be deduced from such Studies, other tests, data and information and more generally any information with respect to Consortium Substances, that is made available, in any form whatsoever, to the Receiving Party by the Consortium and/or the Consortium Members.

This obligation of confidentiality shall remain in effect until the Steering Group decides on any public disclosure of the Information and subject to any conditions the Steering Group may impose.

### **7.2. OBLIGATION TO PROVIDE EXISTING STUDIES AND INFORMATION**

Subject to the terms of this article 7.2, Parties to this Consortium 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.

The provided existing Studies shall meet the criteria as stated by the Technical Guidance Document provided by the European Commission.

Each Party shall inform the Secretariat or the Trustee of any Studies or Information that cannot be made public pursuant to Article 119 of REACH Regulation and shall provide valid justification for keeping the same confidential.

Upon receipt of the existing Studies and existing Information, the Secretariat and, as the case may be, the Trustee shall provide the Steering Group with a list of these Studies and Information that can be made available to the Consortium. The Steering Group shall then select, under the guidance of the Secretariat, the Studies and Information which will be necessary for the purpose REACH of registration.

Consortium Members shall not be authorised to use any Studies or Information provided under article 7.2 unless they have paid appropriate compensation for such Studies or Information pursuant to article 9 of this Consortium Agreement.

Nothing in this Consortium Agreement shall be interpreted as requiring a Regular Member to disclose existing or future information including but not limited to any Studies, tests or data, where the Regular Member has a bona fide commercial concern with such disclosure and such information is not required for registration of Consortium Substances pursuant to the REACH Regulation. For avoidance of doubt, Regular Members may always withhold information on confidential downstream uses and separately submit information as part of their individual Registrations to the extent permitted by the REACH Regulation. To the extent information on such confidential downstream uses is disclosed to the Secretariat or Trustee such information will not be disclosed to the other Regular Members without the consent of the disclosing Regular Member.

### **7.3. OWNERSHIP OF EXISTING STUDIES**

Intellectual property rights applicable to an existing Study or Information made available in accordance with this Consortium Agreement shall remain with the Party which provided such Study or Information.



#### **7.4. USE OF EXISTING STUDIES**

The Parties shall have the right to use the Study or Information for the purpose of complying with the requirements of the REACH Regulation or other purposes as identified in article 8.3, provided that they have shared the cost of the Study or Information pursuant to article 9 of this Consortium Agreement.

This right shall extend to Affiliates of these Parties for so long as they remain an Affiliate of a Regular Member. Upon sale or spinoff of an Affiliate, the Regular Member shall ensure that the Affiliate (i) returns all existing Studies and Information obtained under the Consortium Agreement and (ii) agrees to maintain confidentiality pursuant to article 7.1 and Appendix 3 of this Consortium Agreement. This provision shall not affect ownership of existing Studies or Information as provided for in article 7.3 of this Consortium Agreement.

The Party who granted the right to use its existing Studies or Information to the other Parties may extend the right of other Parties to use or refer to these Studies or Information, to purposes other than REACH requirements.

#### **7.5. LICENSE OF EXISTING STUDIES FROM THIRD PARTIES**

The Steering Group 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 Steering Group on behalf of the Consortium Members, under the conditions agreed by the Steering Group.

The Parties to this Consortium Agreement shall have the right to use such jointly licensed Study or Information to the extent that they share individually the license costs pursuant to article 9 of this Consortium Agreement.

As a condition of licensing any Study or Information, the license to be concluded shall provide that the right to use such Study or Information shall extend to Affiliates of the Consortium Members.

### **8. DEVELOPMENT OF NEW STUDIES**

#### **8.1. OWNERSHIP OF NEW STUDIES OR NEW INFORMATION**

The Steering Group can authorise the development of new Studies and Information.

The Parties to this Consortium Agreement shall have joint ownership of the Studies or Information generated or developed in the framework of this Consortium Agreement, to the extent that they share individually their cost pursuant to article 9 of this Consortium Agreement.

Each Party authorises the other Parties to use the new Studies or Information and authorises the Steering Group to license the right to use new Studies or Information to third parties pursuant to the provisions of the Consortium Agreement.

#### **8.2. USE OF NEW STUDIES AND NEW INFORMATION**

##### **8.2.1. Use by Associate Members**

Associate Members shall only have the right to use new Studies and Information for the purpose of complying with the requirement of the REACH Regulation provided that they have shared in payment of the cost of the Studies or Information pursuant to article 9 of this Consortium Agreement.

##### **8.2.2. Use by Affiliates of a Regular Member**

Affiliates of a Regular Member shall have the right to use the new Studies and Information for the purpose of fulfilment of their obligations pursuant to the REACH Regulation for so long as they

remain an Affiliate of a Regular Member. Upon sale or spinoff of an Affiliate, the Regular Member shall ensure that the Affiliate (i) returns all new Studies and Information obtained under the Consortium Agreement and (ii) agrees to maintain confidentiality pursuant to article 7.1 and Appendix 3 of this Consortium Agreement. This provision shall not affect ownership of new Studies or Information as provided for in article 8.1 of this Consortium Agreement.

#### **8.2.3. Use by third parties**

The Steering Group may give to third parties the right to refer to new Studies and Information, and/or the Registration Dossier for use in support of the registration of chemical substances in the EU under the terms and conditions and subject to the appropriate license fee that the Steering Group shall determine. Such third parties shall also execute a “Letter of access for referral” in the form attached to this Consortium Agreement in APPENDIX 5.

#### **8.2.4. Use by Cobalt Development Institute (CDI)**

The CDI shall have the right to use the new Studies and Information in support of its HS&E activities, excluding any commercial activities.

#### **8.2.5. Use by withdrawing Consortium Members**

Consortium Members that withdrew from the Consortium after the registration of the relevant Consortium Substances shall be entitled to use only those Studies and Information which they have paid for. Any confidentiality requirements applicable to the use of such Studies and Information as under this Agreement shall survive and continue to apply to any withdrawn Consortium Members.

### **8.3 USING STUDIES FOR PURPOSES OTHER THAN REACH IN A NON-EU JURISDICTION**

The Parties may use the existing and any new Studies and Information owned by the Consortium Members for purposes other than REACH and for compliance with laws and regulations in other non-EU jurisdictions provided prior authorization from the Steering Group is obtained and provided that such Studies and Information will not appear in the public domain.

When granting authorization for using the Studies and Information for purposes other than REACH, the Steering Group shall respect and consider the terms and conditions of use established by the owners of such Studies and Information.

If such authorization is granted by the Steering Group, the requesting Party shall be given the necessary license(s) after presenting sufficient information that use of the studies will not materially adversely affect the regulatory position of the Consortium Substances in the EU and after paying an additional fee, if any, as determined by the Steering Group. Any fees related to such authorization shall be based on Regular Member’s annual tonnage band for a specific non-EU jurisdiction and will be determined in line with article 9.3 of this Consortium Agreement.

Notwithstanding articles 8.2.1 and 8.2.3, Associate Members, Affiliates of a Regular Member and third parties may also be granted authorization to use existing and new studies for purposes other than REACH.

## **9. FINANCIAL RIGHTS AND OBLIGATIONS**

### **9.1. EXPENSES/COSTS**

The Consortium expenses will include:

- Expenses related to the use of Studies or Information provided by the Parties (financial value of a Study): the Steering Group shall approve the financial value of an existing Study made available by a Party pursuant to this Consortium 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. This financial evaluation shall be based on the replacement value at the time of the submission to the Steering Group, including the administrative cost of preparing and implementing the testing programme.
- Expenses related to new Studies and Information decided by the Steering Group;
- Expenses related to Studies or Information licensed from third parties;
- Administrative expenses incurred by the Consortium including, in particular, cost incurred by the Secretariat, for the Trustee, for use of external legal or technical experts;
- Remuneration of the Secretariat;
- Remuneration of the Trustee;
- Remuneration of external experts; and
- Remuneration of external accountants, auditors, lawyers.

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

### **9.2. ACCOUNTS / ANNUAL BUDGET**

The Secretariat shall be responsible for the accounts of the Consortium. It shall establish the annual accounts of the Consortium and submit them for approval to the Steering Group up to the end of each calendar year by 1<sup>st</sup> April of the respective following year.

The Secretariat shall at the same time establish a budget proposal for the next year, including if necessary advance payments to be made by the Consortium Members, and submit this proposal to the Steering Group for approval. Such a budget proposal shall be circulated by the Secretariat among the Steering Group Members at least three months prior to the end of each current financial year for pre-approval examination.

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

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 Consortium Members and all transactions in connection with the Consortium.

### **9.3. FUNDING PRINCIPLES**

The Consortium Members shall bear the Consortium expenses jointly as follows: administrative expenses incurred by the Consortium shall be allocated to all Regular and Associate Members in accordance with shares to be determined by the Steering Group in a fair, transparent and non-

discriminatory proportion. When a service or an activity only benefits certain Consortium Members, the expense of that service/activity shall be paid for only by the Consortium Members benefiting from such service/ activity.

Without prejudice to paragraph 1 of this article, Regular Members shall only share the costs of those Studies and/ or Information which are required by the REACH Regulation for the registration of each of their Consortium Substances according to their tonnage band and type of substance (e.g. intermediate) and which they do not already legitimately possess.

Associate Members shall contribute to the Consortium expenses in a fair, transparent and non-discriminatory proportion determined by the Steering Group.

Cost sharing for the expenses incurred under Article 3.3 and Article 3.4 shall be agreed by the Steering Group in accordance with the Funding Principles and the Funding Structure Document. For the purpose of this Consortium Agreement, the cost sharing will not cover any activities outside the scope of Authorisation and/or Restriction as defined in the Consortium Agreement and a separate agreement and cost sharing mechanism will apply in such cases.

The Steering Group will also agree a separate cost sharing mechanism to be applied in relation to the use of Studies and Information for purposes other than REACH in any non-EU jurisdictions as identified in article 8.3.

#### **9.4. PAYMENT**

Payments will be made in accordance with the payment regime determined by decision of the Steering Group.

Consortium Members may be reasonably requested by the Secretariat from time to time to pay, and shall pay within a reasonable period to the Secretariat, additional expenses and costs, raised as administrative, technical, and/or maintenance costs of the Consortium.

#### **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 audited annual financial statement made available to all the Consortium Members in a timely manner.

### **10. LIABILITY**

#### **10.1. LIABILITY OF CONSORTIUM MEMBERS**

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

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

Each Consortium Member agrees not to take any legal or other actions against any other Consortium Member for liabilities arising in connection with the matters contemplated by this Consortium Agreement in case of Minor Negligence if the aggregated amount of a claim or claims is less than

€50,000. In any event, no Consortium 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.

The provision of the previous paragraph shall not apply in case of wilful misconduct or Serious Material Breach.

#### **10.1.1. Liability vis-à-vis third parties**

Each Consortium Member shall be solely liable vis-à-vis third parties and shall indemnify any other Consortium Member against and hold any other Consortium Member harmless from all liabilities and claims (including reasonable legal 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.

#### **10.1.2. Liability related to the use of Studies**

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

#### **10.1.3. Liability related to the provided Studies**

Any Consortium Member that knowingly provides inaccurate Studies or Information in pursuance of article 7.2 shall indemnify the receiving Consortium Member for any loss, damage or injury caused thereby.

#### **10.1.4. Liability related to the fulfilment of REACH regulation requirements**

Each Party to this Consortium Agreement is, and remains responsible for, complying with its rights and obligations according to the REACH Regulation in as much as these rights and obligations are not expressly transferred in accordance with this Consortium 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 Consortium Member, as well as to communication with Downstream Users in the supply chain.

#### **10.1.5. Liability of Consortium Members for Affiliates**

Regular Members are liable for the actions of their Affiliates with respect to any obligation arising under this Consortium Agreement.

### **10.2. LIABILITY OF THE SECRETARIAT**

#### **10.2.1. Secretariat's liability vis-à-vis third parties**

The Secretariat shall act solely in its capacity as representative of the Consortium Members and shall bear no individual responsibility or liability for its actions taken in this capacity and in accordance with the Consortium Agreement, with the exception of intentionally unlawful acts or gross negligence incompatible with its mandate.

#### **10.2.2. Secretariat's liability vis-à-vis Consortium Members**

The Secretariat shall bear no individual responsibility or liability for its actions that are made in accordance with this Consortium Agreement, with the exception of intentionally unlawful acts or gross negligence incompatible with its mandate.

### **10.3. LIABILITY OF THE TRUSTEE**

The Trustee shall bear no individual responsibility or liability for its actions that are made in accordance with this Consortium Agreement, with the exception of intentionally unlawful acts or gross negligence incompatible with its mandate as set forth in APPENDIX 4.

## **11. DURATION OF THE CONSORTIUM AGREEMENT**

### **11.1. ENTRY INTO EFFECT AND TERM**

This Consortium Agreement shall enter into force on 01/11/2007.

The Consortium Agreement shall expire 12 years after the submission of the Registration Dossiers for all Consortium Substances. The Consortium Agreement may be terminated by a unanimous decision of the Steering Group.

The Steering Group may amend the expiry date or the conditions for termination of the Consortium Agreement by unanimous decision.

### **11.2. EFFECTS OF THE DISSOLUTION**

Before dissolution or termination of the Consortium, any remaining joint and several rights and obligations of Consortium Members resulting from this Consortium Agreement and in relation to third parties shall be settled by the Steering Group. However, upon liquidation, all rights and obligations of the Consortium Members arising from this Consortium Agreement, including ownership of any intellectual property or any other assets, shall transfer to Cobalt Development Institute absolutely.

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

## **12. GENERAL PROVISIONS**

### **12.1. COMPLIANCE WITH COMPETITION LAWS**

Neither this Consortium Agreement nor anything contained in this Consortium 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 81 and 82 of the EC Treaty, as well as any applicable national laws.

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

In particular, each Consortium Member agrees not to disclose to any other Consortium 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 plan.

Should it become apparent at any time that, notwithstanding their commitment, this Consortium Agreement or any provision thereof, or activity or decision of the Consortium Members can have a potentially restrictive effect on open and fair competition, in breach of any statutory provision, each Party to this Consortium Agreement undertakes to take the steps necessary to immediately remedy that situation so that it is lawful.

## **12.2. REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to each other Party that:

- a) It is a duly organised, validly existing entity of the type described in the introduction to this Consortium Agreement 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 Consortium Agreement.
- b) Execution, delivery, and performance of this Consortium Agreement have been duly authorized, and do not and will not (i) violate any law, rules, regulation, order, or decree applicable to it, or (ii) violate its organisational rules or documents.
- c) This Consortium 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.
- d) 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 Consortium Agreement.

## **12.3. SEVERABILITY**

If any one or more of the provisions of this Consortium 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 Consortium Agreement, and this Consortium Agreement shall be construed as if such illegal, invalid and unenforceable passages were omitted.

## **12.4. NO PARTNERSHIP**

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

## **12.5. NOTICES**

Except as expressly set forth to the contrary in this Consortium Agreement, all notices, requests or consents provided for or permitted to be given under this Consortium Agreement must be in writing and must be delivered to the recipient in person, by courier or mail or by facsimile, telegram, telex, cablegram or similar transmission; and a notice, request or consent given under this Agreement is effective (a) upon receipt if sent by personal delivery, mail, courier, telegram, cablegram or e-mail or (b) upon the sender's receipt of electronic confirmation of transmission, if sent by telex or facsimile during regular business hours on a Business Day or (if not sent during regular business hours or on a Business Day, on the next succeeding Business Day). All notices, requests and consents to be sent to a Party must be sent to or made at the addresses given for that Member in Appendix 6 or such other address as that Consortium Member may specify by notice in writing to the Secretariat who shall circulate it to other Consortium Members.

The Secretariat can update the information contained in Appendix 6 as appropriate without having to formally amend the whole Consortium Agreement.

## **12.6. LEGAL STATUS**

The rights, duties, obligations and liabilities of the Parties under this Consortium Agreement shall be several and, not joint or collective. It is not the intention of the Parties to create, nor shall this Consortium Agreement be deemed or construed to create a partnership, joint venture or association with legal personality. For Belgian law purposes, the Consortium Members will be deemed as forming a factual association (“association de fait”) having no legal personality.

This Consortium 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 Consortium Agreement.

## **12.7. ENTIRE AGREEMENT**

This Consortium 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 Consortium 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 Consortium 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 Consortium 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 this Consortium Agreement in good faith in dealing with the other Parties, in the execution of their contractual obligations and shall not do anything which would prejudice the Consortium purposes.

## **12.10. DISPUTE RESOLUTION**

### **12.10.1. Confidentiality matters**

The jurisdictional venue for disputes related to confidentiality rights and obligations shall be the commercial court in Brussels, Belgium.

### **12.10.2. Other disputes**

Except for the purpose of obtaining injunctive or other provisional relief in a court of competent jurisdiction in Brussels, Belgium, disputes not related to confidentiality rights and obligations pursuant to art. 12.10.1. shall be resolved as follows:

Any and all disputes, controversies or claims which may arise between the Parties in connection with the interpretation of any provision of this Consortium Agreement or its validity or enforceability, or the breach of termination of it, or the performance or non performance of any obligations under the terms and conditions of this Consortium Agreement shall be settled by an amicable effort on the part



of the Parties concerned. 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(ies) in writing.

If an attempt at settlement has failed, the parties will submit the dispute, controversy or claim to non-binding mediation, before a single mediator, chosen jointly by the parties. If the dispute, controversy or claim cannot be resolved by non-binding mediation, the dispute, controversy or claim shall be finally settled by three (3) arbitrators in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), Paris. The complainant shall appoint one arbitrator, and if more than one complainant then the complainants shall by simple majority appoint one arbitrator and if they fail to agree the complainants' arbitrator shall be appointed by the President for the time being of the court of arbitration of the ICC. The respondent shall appoint one arbitrator, and if more than one respondent then the respondents shall by simple majority appoint one arbitrator and if they fail to agree the respondents' arbitrator shall be appointed by the President for the time being of the court of arbitration of the ICC. The two arbitrators so appointed shall then appoint the third arbitrator who shall be the presiding arbitrator.

The majority decision of the arbitrators shall be final and binding. The arbitrators shall decide by majority on which party(ies) shall pay which 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 Brussels. The arbitration shall be governed by Belgian law.

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 this Consortium and any legal issues arising from the Consortium Agreement shall be governed exclusively by Belgian law without regard to its conflict of laws rules.

#### **12.12. COUNTERPARTS**

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

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

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

**THE COBALT DEVELOPMENT INSTITUTE**

**By:** \_\_\_\_\_  
(Signature)

**David Weight** \_\_\_\_\_  
(Name)

**Title:** General Manager \_\_\_\_\_

**Date:** \_\_\_\_\_

**REGULAR MEMBER**

**Company name:** \_\_\_\_\_

**By:** \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ASSOCIATE MEMBER**

**Company name:** \_\_\_\_\_

**By:** \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## APPENDIX 1. SUBSTANCES COVERED BY THE CONSORTIUM AGREEMENT

<b>RED CONSORTIUM: open list</b>				
<b>Name of Substance</b>	<b>Formula</b>	<b>EINECS Number</b>	<b>CAS Number</b>	<b>Comments</b>
Cobalt dichloride	CoCl <sub>2</sub>	231-589-4	7646-79-9	<i>Also all hydrated forms</i>
Cobalt dinitrate [Nitric acid, cobalt salt]	Co(NO <sub>3</sub> ) <sub>2</sub>	233-402-1	10141-05-6	<i>Also all hydrated forms</i>
	Co.xHNO <sub>3</sub>	238-075-9	14216-74-1	
Cobalt sulphate	CoSO <sub>4</sub>	233-334-2	10124-43-3	<i>Also all hydrated forms</i>
Cobalt carbonate [Carbonic acid, cobalt salt]	CoCO <sub>3</sub>	208-169-4	513-79-1	
	CH <sub>2</sub> O <sub>3</sub> .xCo	231-419-9	7542-09-8	
Cobalt oxide	CoO	215-154-6	1307-96-6	
<del>Decobalt trioxide</del>	<del>Co<sub>2</sub>O<sub>3</sub></del>	<del>215-156-7</del>	<del>1308-04-9</del>	<i>Substance on-hold</i>
Tricobalt tetraoxide	Co <sub>3</sub> O <sub>4</sub>	215-157-2	1308-06-1	
Cobalt dihydroxide	Co(OH) <sub>2</sub>	244-166-4	21041-93-0	
Cobalt trihydroxide	Co(OH) <sub>3</sub>	215-153-0	1307-86-4	
Cobalt hydroxide oxide	CoO(OH)	234-614-7	12016-80-7	
Cobalt sulphide Cobalt sulfide	CoS	215-273-3	1317-42-6	
		235-751-5	12653-56-4	
Cobalt lithium dioxide	CoO <sub>2</sub> .Li	235-362-0	12190-79-3	
Reaction mass of cobalt, copper and iron	Co and Cu and Fe	231-158-0 and 231-159-6 and 231-096-4	7440-48-4 and 7440-50-8 and 7439-89-6	
<del>Reaction mass of tricobalt tetraoxide and nickel monoxide</del>	<del>Co<sub>3</sub>O<sub>4</sub> and NiO</del>	<del>215-157-2 and 215-215-7</del>	<del>1308-06-1 and 1313-99-1</del>	<i>Substance on-hold</i>
Reaction mass of cobalt sulphide, nickel sulphide and trinickel disulphide	CoS and NiS and Ni <sub>3</sub> S <sub>2</sub>	215-273-3 and 240-841-2 and 234-829-6	1317-42-6 and 16812-54-7 and 12035-72-2	

**APPENDIX 1A SUBSTANCES NO LONGER TO BE REGISTERED UNDER CONSORTIUM AGREEMENT**

<b>RED CONSORTIUM: On-Hold</b>				
<b>Name of substance</b>	<b>Formula</b>	<b>EINECS number</b>	<b>CAS number</b>	<b>Comments</b>
Dicobalt trioxide	Co <sub>2</sub> O <sub>3</sub>	215-156-7	1308-04-9	<i>Substance on-hold</i>
Reaction mass of tricobalt tetraoxide and nickel monoxide	Co <sub>3</sub> O <sub>4</sub> and NiO	215-157-2 and 215-215-7	1308-06-1 and 1313-99-1	<i>Substance on-hold</i>

## APPENDIX 2. IDENTIFIED USES (Open list)

*List of uses identified by this Consortium:*

### **Cobalt dichloride:**

- Manufacture of pigments, frits, glass and ceramic ware
- Manufacture of textile dyes
- Surface Treatment
- Fertilizers and Feed grade materials
- Water treatment chemicals, oxygen scavengers and corrosion inhibitor
- Fermentation process (reagents for scientific research, standard analysis and biogas production)
- Humidity indicators
- Chemicals (Intermediate) – feed material for other substances
  - Cobalt carboxylates and resins manufacture
  - Vitamin B12 production

### **Cobalt dinitrate:**

- Catalysts production
- Surface treatments
- Water treatment chemicals, oxygen scavenger and corrosion inhibitor
- Manufacture of other cobalt compounds during battery production
- Chemicals (Intermediate) – feed material for other substances
  - Cobalt carboxylates and resins manufacture

### **Cobalt sulphate:**

- Manufacture of pigments, frits, glass and ceramic ware
- Manufacture of dyes for textiles, leather, wood or paper industry
- Surface treatments
- Water treatment chemicals, oxygen scavenger and corrosion inhibitor
- Fertilizers and feed grade materials
- Fermentation process/biogas production
- Catalyst in synthesis process
- Chemicals (Intermediate) – feed material for other substances)
  - Cobalt carbonate manufacture

### **Cobalt carbonate:**

- Manufacture of pigments, frits, glass and ceramic ware
- Catalysts production
- Surface treatments
- Fertilizers and feed grade materials
- Fermentation process/biogas production
- Chemicals (Intermediate) – feed material for other substances

### **Cobalt oxide:**

- Manufacture of pigments, frits, glass and ceramic ware
- Alloys (magnets)
- Electronic (varistors, thermistors)
- Catalyst and catalyst precursor
- Batteries manufacture (alkaline rechargeable batteries)
- Chemicals (Intermediate) – feed material for other substances

### **Dicobalt trioxide:**

- Chemicals (Intermediate) – feed material for other substances

**Tricobalt tetraoxide:**

- Manufacture of pigments, frits, glass and ceramic ware
- Decolourising (ceramic)
- Catalysts
- Alloys (magnets)
- Electronic (varistors, thermistors)
- Chemicals (Intermediate) – feed material for other substances)

**Cobalt dihydroxide:**

- Manufacture of pigments, frits, glass, and ceramic ware
- Driers for paints and inks
- Catalyst production
- Surface treatments
- Batteries (alkaline rechargeable batteries )
- Fertilizers
- Chemicals (Intermediate) – feed material for other substances
  - cobalt carboxylate and resins manufacture

**Cobalt trihydroxide:**

- Chemicals (Intermediate) – feed material for other substances

**Cobalt hydroxide oxide:**

- Manufacture of pigments, frits, glass and ceramic ware
- Chemicals (Intermediate) – feed material for other substances

**Cobalt sulphide:**

- Catalysts
- Chemicals (Intermediate) – feed material for other substances

**Cobalt lithium dioxide:**

- Manufacture of pigments, frits, glass and ceramic ware
- Batteries production (Li-ion batteries)

**Reaction mass of cobalt, copper and iron**

- Chemicals (Intermediate) – feed material for other substances

**Reaction mass of tricobalt tetraoxide and nickel monoxide**

- Chemicals (Intermediate) – feed material for other substances

**Reaction mass of cobalt sulphide, nickel sulphide and trinickel disulphide**

- Chemicals (Intermediate) – feed material for other substances

## **APPENDIX 3. CONFIDENTIALITY**

### **APPENDIX 3.1. OBLIGATIONS OF THE RECEIVING PARTY**

The Receiving Party agrees:

- a) 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”);
- b) to use the Information and Notes only for the purpose of this Consortium Agreement as contemplated hereby;
- c) to treat the Information and Notes with the same degree of care as it treats its own confidential 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.
- d) 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.
- e) to be responsible for any breach of this Appendix by it, its Affiliates or its or their Representatives.
- f) obligations in this Appendix 3.1 shall continue for twelve (12) years from the date of registration of each of the Consortium Substances.

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.

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

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.

### **APPENDIX 3.2. EXCEPTION TO CONFIDENTIALITY PROTECTION**

Notwithstanding Appendix 3.1 the Receiving Party may provide its customers, to the extent 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 a Consortium Substance, that is necessary to enable appropriate risk management measures to be identified and applied.

Notwithstanding Appendix 3.1,

- a) 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.
- b) The Receiving Party and its Affiliates may use the Information and Notes for 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 Consortium Agreement. Any disclosure of the Information or Notes 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 Steering Group.
- c) The Receiving Party may disclose the Information to an external professional adviser to the extent necessary for the fulfilment of its legal obligations particularly under the REACH Regulation and provided that the professional advisor signs a confidentiality agreement to maintain the disclosed Information in strict confidence and not to disclose it to any third party.

Appendix 3.1 shall not apply to those particular portions of Information disclosed by the Disclosing Party if such information:

- a) 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;
- b) was available on a non-confidential basis prior to its disclosure under the terms and conditions, as provided by this Agreement, and this APPENDIX 3;
- c) 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,
- d) 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.
- e) is approved for release by the Steering Group 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
- f) is approved for public disclosure by written authorisation of the Steering Group subject to any directions of the Steering Group with respect to the extent, timing, and manner in which the Information shall be publicly disclosed.

### **APPENDIX 3.3. NO LICENCE AND INDEMNITY**

- (a) Nothing in this Consortium 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 Consortium Agreement grant the Receiving Party any rights in or to the Information except as expressly set forth in the Consortium Agreement.
- (b) The Receiving Party acknowledges and agrees that any breach of the confidentiality provisions of the Consortium Agreement and particularly this Appendix 3 would cause immediate and extremely serious injury to the Disclosing Party(ies). Should the Receiving Party violate any of the terms and conditions of confidentiality in this Consortium Agreement, the Consortium Members shall be entitled, in addition to any other remedies that may be available, in law, in equity or otherwise, to obtain injunctive relief against the threatened breach of the confidentiality provisions of the Consortium Agreement or the continuation of any such breach, without the necessity of proving actual damage.



## **APPENDIX 4. TRUSTEE UNDERTAKINGS**

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

### **APPENDIX 4.1. INFORMATION CONCERNING THE REGISTRATION DOSSIER**

Any Information disclosed to the Trustee shall be marked prominently on each page “Extremely Confidential – BUSINESS SECRETS OF [NAME OF DISCLOSING PARTY]”. That which is Information that meets the criteria stated in Appendix 3.2. shall not be considered as extremely confidential Information, even if marked as set out above.

After receiving such Information the Trustee shall first examine whether such Information is confidential. In case the REACH Regulation requires disclosure of such Information, the Trustee shall consult the Disclosing Party thereon. If certain Information must remain confidential in the opinion of the Disclosing Party, the Disclosing Party shall provide valid justification for its opinion.

The Trustee may make a non-confidential summary of this extremely confidential Information if it considers that the Information is necessary for the purpose of preparing the Registration Dossier for the Consortium Substances. The Trustee shall give the Disclosing Party reasonable opportunity to comment on any such summary the Trustee may make, before it is distributed to other Consortium Members. The Trustee may seek the advice of legal counsel before releasing such non-confidential summary to the Consortium Members.

If extremely confidential Information provided to the Trustee must be included in the Registration Dossier for the purposes of registration under the REACH Regulation, the Trustee shall prepare a non-confidential version of the Registration Dossier. The Steering Group shall approve the Registration Dossier based on the non-confidential version. If extremely confidential Information is required under the REACH Regulation to be submitted by the Lead Registrant, the Lead Registrant shall, prior to obtaining such Information, sign a confidentiality agreement with the Disclosing Party with regard to such extremely confidential Information.

### **APPENDIX 4.2. MARKET INFORMATION**

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 might be disclosed to another Member(s) and when such disclosure might be regarded as a breach of competition law.

In particular, the Trustee may be provided with information on sales values and volumes, market shares, market or sales performance for the purposes of compliance with the REACH Regulation and the provisions of this Consortium Agreement. In that circumstance, the Trustee shall, when necessary, aggregate any such information provided to the Trustee so that it does not enable any Consortium Member to infer the sales, market shares, market or sales performance or trends therein of any other Consortium Member. The Trustee may seek the advice of legal counsel on issues related to competition law arising from dealing with or the disclosure of such Information.

## APPENDIX 5. LETTER OF ACCESS FOR REFERRAL

European Chemicals Agency

[Address of Agency]

Helsinki, Finland

Letter of Access for the registration of the Substance .....[insert the short name of the Substance to be registered] under Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisations and Restrictions of Chemicals, hereinafter “REACH” -

Dear Sirs,

The Consortium<sup>1</sup> for the registration of the Substance ..... [insert the short name of the Substance to be registered] under REACH (hereinafter referred to as "the Consortium") agrees that the data, studies, summaries, waiving argumentations, reasoning of testing proposals and/or assessments specified in detail below owned by members of the Consortium and submitted by the Consortium in support of the registration under REACH of

Substance ..... [Insert the exact name of the Substance to be registered]

(Hereinafter collectively referred to as the “dossier”), may be referred by Applicant: Company XYZ in order to support applicant’s registration of the above mentioned Substance under REACH.

The dossier covers documents as follows: [if reference is restricted to certain parts of the dossier insert exact name of the data, studies, summaries, waiving arguments, testing proposals and/or assessments]

The right to refer to the dossier is subject to the following restrictions:

1. The right of referral is only in respect of the dossier of the Substance for the registration as specified above.

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<sup>1</sup> At the date of issue of this Letter of Access the members of the consortium are: ..... [insert names of the members of the consortium]

2. The right of referral is granted solely in favour of *Company XYZ*, is not transferable or assignable to any other entity or person and the related data are confidential.
3. *Company XYZ* is not authorised to receive any copies of the dossier nor is *Company XYZ* authorised to inspect or view the dossier or any related specific document in whole or in part.<sup>2</sup>
4. This Letter of Access shall in no event be construed as granting *Company XYZ* any property or other rights whatsoever in the dossier or any part thereof.
5. Nothing in this letter shall require *The Consortium* to file any additional data.

Signature: [Authorised Representative of the Consortium]

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<sup>2</sup> Depending on the contract between the Consortium and *Company XYZ* the latter may receive the results and/or summaries/Robust summaries of Studies directly from the Consortium.

**APPENDIX 6 MEMBERSHIP CONTACT LIST**