June 2008

CONSORTIUM AGREEMENT

SILICON/SILICA FUME/FESI ALLOYS

I. General Information

This Consortium Agreement (hereinafter "the Consortium Agreement" or "the Agreement") is executed

BY and BETWEEN

Those Parties who have duly signed this Agreement in accordance with Appendices 1 and 2, and have submitted it to the Secretariat. The signatories are available on request to the Secretariat.

Hereinafter referred to individually as " Member";

II. Preamble

Having regard to Regulation (EC) N° 1907/2006 on Registration, Evaluation, Authorization and Restriction of Chemicals (hereafter REACH Regulation), aimed at ensuring a high level of protection for human health and the environment, while ensuring the efficient functioning of the internal market and stimulating innovation and competitiveness in the chemical industry;

Having more specifically regard to the registration requirements imposed by the REACH Regulation on manufacturers and importers of chemical substances as such, in preparation or in articles, and the financial and human effort implied by this obligation and the limited time to ensure compliance;

Having regard to the express encouragement of the REACH Regulation to form Consortia for Registration purposes;

Having regard to the fact that the REACH requirements, in practice, will affect indistinctly companies established within or outside the Community;

Having regard to the principle that one substance must be subject to one registration.

Having regard to information that has already been generated by Euroalliages and the preparatory work for REACH undertaken in preparation of the implementation of the REACH Regulation.

The Members, having a common interest in fulfilling the requirements laid down by the REACH Regulation, wish to form a consortium open to any other interested company, whether or not established in the Community, or any entity able to facilitate the achievement of their purpose, including downstream users and Industry Associations, 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;

III. Definitions

Any definitions specified in Article 3 of the REACH Regulation shall apply to this Agreement.

"Affiliate" means a legal entity controlling directly or indirectly a Member, controlled directly or indirectly by a Member, or under common control by two or more Members;

"Control" means that a legal entity controls directly or indirectly another entity by:

- owning or controlling more than forty nine percent (49%) of the shareholders' or members' voting rights; or
- having the right to appoint or remove a majority of the members of its administrative, management or supervisory body; or
- having the right to exercise a dominant influence over its decisions and activities pursuant to a contract entered into with that legal entity or to a provision in its memorandum or articles of association.

"Agency" means the European Chemicals Agency as established by the REACH Regulation.

"Assembly" means the forum of representatives of Members of the Consortium, as described in Chapter VI.1.

"Candidate Lead Registrant" means the Member that is mandated by the other Members to submit the core data to the Agency on behalf of the Consortium.

"Chemical Safety Report" (CSR) means the report described in Article 14 of the REACH Regulation.

"Confidential Information" means, all oral, written and/or tangible and intangible technical, financial, business and/or other data, information or knowledge of whatever kind that is confidential, proprietary and which has been subject to reasonable steps by the person(s) lawfully in control of the information, to keep it secret. Such information include, without limitation, information relating to the Consortium present and future Members, activities, strategies, plans and concepts, volume estimates, financial data, market information, research and development plans and results, work product, analyses, compilations, studies, reports or other documents or records generated from such data and information, specifications, configurations, designs, drawings, apparatus, sketches, software, hardware, and other data and information which a disclosing member is disclosing, exchanging or sharing under this Agreement for the Purpose at any time during the term hereof.

"Consortium" means the group of Members.

"Core Data" means data to be submitted jointly by registrants pursuant to the REACH Regulation and which includes in accordance with article 11.1 of the REACH Regulation:

- classification and labelling of the substances
- study summaries of information derived from the application of Annexes VI to XI to the REACH Regulation
- robust study summaries derived from the application of Annexes VI to XI, if so required under Annex I to the REACH Regulation
- testing proposals where required by the application of Annexes VI to XI to the REACH Regulation
- guidance on safe use of the Relevant Substances listed in Appendix 1 of this Agreement;
- where appropriate, Chemical Safety Reports concerning the Relevant Substances.

"EEA" means the European Economic Area comprising the EU and Norway, Iceland and Liechtenstein.

"EU" means the territory of the European Union, which is comprised of the current twenty-seven (27) Member States, as well as any future Member State of the European Union.

"Deadlines for Registration" are thee deadlines set out in Article 23 of the REACH Regulation.

"Exposure Scenario" means the set of conditions that describes how the substance is manufactured or used during its life-cycle and how the manufacturer or importer controls, or recommends downstream users to control exposures of humans and the environment. Exposure scenarios may cover one specific process or use or several processes or uses as appropriate.

"Member" means a party to the Agreement, whether a manufacturer or importer of the substance(s) covered by this Agreement and established in the EEA[1] , or a manufacturer of this(these) substance(s) established outside the EEA whether represented in the Consortium by its Only Representative or not, or a legal entity controlling directly or indirectly such Manufacturer, Importer or non-EEA Manufacturer.

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

"Industry Association" is a legal person that represents the interests of downstream users of the substance(s) covered by this Agreement or the interests of manufacturers and/or importers of that substance or other substances.

"Information" means studies, other test data and information made available to the Consortium by a Consortium Member or any third party, or generated by the Consortium within the framework of the Agreement.

[1] To the date of commencement of this Agreement, the REACH Regulation is not yet incorporated in the EEA agreement. Accordingly, the Regulation does not apply to Norway, Iceland and Liechtenstein pending the decision of the EEA Joint Committee.

“Letter of access” means a letter granting a permission to refer to a Full Study Report already submitted to the Agency in accordance with article 10.a of the REACH Regulation.
“Licence to use” means a letter demonstrating legitimate possession of a Full Study Report, or its copy, in accordance with article 10.a of the REACH Regulation.

“Manufacturer established outside the Community”, is a natural or legal person which does not have a registered office in the EEA.

“New Member” means a Member, having signed the Consortium Agreement after 1st April 2008 according to the provisions of Art. XI, 2 and 3”.

“Only Representative” is a natural or legal person established in the EEA appointed by a Potential Registrant established outside the EEA to fulfil the obligations applicable on importers under the REACH Regulation.

“Potential Registrant” means a manufacturer or importer of the substance(s) covered by this Agreement or the Only Representative of a manufacturer established outside the EEA, which are subject to the Registration requirements imposed by the REACH Regulation.

“Registration” means submission of the relevant parts of a Registration dossier to the Agency as described in Title II of the REACH Regulation.

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

“Secretariat” means the entity responsible for assisting in the daily management of the Consortium, as described in article VI.4.

“SIEF” means the Substance Information Exchange Forum as defined in the REACH Regulation.

“Steering Committee” means the executive body in charge of the management of the Consortium as described in article VI.2.

“Study(ies)” means tests or evaluations relating to intrinsic properties, exposure assessment and risk characterisation of substances. A Study also includes all statistics, information, data or conclusions that could be deduced from such a Study, and the report of that Study in written or electronic form, including summaries and robust study summaries. A Study can also represents peer review of other studies.

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

“Substances” means the substances intended for Registration under this Agreement as listed in Annex 3”.

"Third Party" means any legal or natural person that is not a signatory to this Agreement.

"Trustee" means a Third Party independent from the Members, which [A1]receives, records and aggregates any Confidential Information provided by a member of the Consortium or a third party.

"Work Group" or "Working Group"shall have the meaning as described in article VI.3

IV. Purpose and scope of the Consortium

1. Purpose

The purpose of the Consortium is to join forces of its Members in order to jointly comply with the requirements pursuant to the REACH Regulation for substance registration. In particular, the Members undertake to identify, propose and perform jointly studies including vertebrate animal studies for the purpose of Registration.

More specifically, the Members aim to achieve uniform pre-Registration of the Relevant Substances and preparation and submission of Core Data for the Registration of the Substances and, to that effect, they undertake to review and share existing data, fill data gaps, and share the costs incurred in developing missing data in accordance with the provision of this Agreement.

Accordingly, the Members of the Consortium have decided to join forces in order to pursue the following additional purposes:

- Compile and assess existing studies not involving vertebrate animal;
- Prepare proposal for new testing not involving vertebrate animal and perform them
- Identify, propose and perform jointly vertebrate animals Studies where necessary for Registration, in order to limit the number of such Studies conducted, as required according to the REACH Regulation;
- Prepare robust data summaries;
- Address technical issues in relation to Registration;
- Develop read-across approach based on surrogate data;
- Assess opportunities for exposure-based waivers;
- Develop uniform classification;
- The option to prepare jointly the Chemical Safety Report and the Guidance On Safe Use of the Substance for purpose of Registration;
- Coordinating the submission of the Core Data, the Chemical Safety Report and the Guidance on Safe Use of the substance by the lead registrant. The scope of the Core Data shall be oriented towards the highest tonnage band applying to one of the Members of the Consortium.
- Prepare guidance for pre-registration
- Answer to possible requests from the Agency during dossier evaluation period

In order to achieve the purpose stated in above, the Members shall prepare the Core Data to be submitted to the Agency for each Substance covered by this Consortium at the latest by the earliest Deadline for Registration applicable to any of the Potential Registrants for each Substance pursuant to the REACH Regulation.

In view of the strict deadlines set by the REACH Regulation for the submission of the Core Data required for each Substance, strict adherence to any working deadline or procedures set by the Assembly (defined below) under this Agreement is an indispensable condition of the Membership.

2. Scope

The Substance(s) covered by this Consortium are those listed in Annex 3.

V. Protection of Confidential Information

1. Identification of Confidential Information

Any Confidential Information, as defined in Chapter III, shall be in writing or other tangible form (including electronic form), clearly marked as "CONFIDENTIAL" when disclosed to a receiving party. If not in a tangible form (i.e. disclosed orally or observed), the Confidential Information shall be identified as confidential when disclosed and confirmed as such in writing within 10 days after disclosure. If a party fails to clearly mark Confidential Information as "CONFIDENTIAL" or to identify it as confidential when disclosed and/or to confirm its confidential nature within the deadline, the receiving party(ies) shall not be liable for the disclosure of such information.

2. Status of Existing or new studies

Existing or new Studies made available in the Consortium and meeting the conditions of Chapter VII (Existing Studies) and VIII (New Studies) are deemed to be Confidential Information which cannot be disclosed to third parties or Members that did not share the cost of development of the studies in accordance with the cost sharing formula agreed upon in this Agreement.

3. Non–disclosure of Confidential Information

Each Member undertakes, on its own behalf and on behalf of its Affiliates, officers, directors, employees, agents, and contractors, not to disclose Confidential Information to any person not expressly authorized under this Agreement. The Secretariat and the Trustee, as well as, if relevant, any other external technical, scientific, financial or legal consultant that receives Confidential Information for REACH or other regulatory purposes must commit not to disclose that Confidential Information by ratifying the Non-Disclosure Statement in Annex 11.

The non-disclosure obligation covers, where relevant:

i) Confidential Information, as defined in Chapter III, that is disclosed by a Member to one or more of the other Members;

ii) Confidential Information, as defined in Chapter III, that is disclosed by a Member to the Secretariat, the Trustee, or any other external technical, scientific, financial or legal consultant;
iii) Existing or new Studies acquired, licensed, developed, contracted or obligated for or by the Consortium pursuant to this Agreement, which are made available to one or more of its Members.

The Members of the Consortium agree to use the disclosed Information exclusively within the context of the present Agreement.

If a Member breaches its duties with regard to confidential data pursuant to this Agreement, that Member shall be obliged to pay an appropriate contractual penalty of minimum 50 000 € to the Members affected by the disclosure. The contractual penalty pursuant shall not apply if evidence is provided by the Member that such violation was not caused by fault (including minor negligence) on his part. Any further penalty relating to or compensating the damage must be based on transparent, objective and documented justification in compliance with articles 81 and 82 of the EC Treaty and must be addressed to the Member.

Circulation within the Consortium, copying, reproduction or duplication by a Member of confidential information provided by another Member, shall be agreed in writing by the originating party and the confidential nature of the information shall be made explicit.

Each Member undertakes to apply the same degree of care with regard to confidential information disclosed within the activities of the Consortium as with its own confidential and/or proprietary information.

Each Member undertakes to advise immediately the other parties in writing of any disclosure or misuse by any Member or Third Party of Confidential Information, as well as any request by competent authorities relating to the disclosure of that Information.

The expiration or termination of this Agreement shall not relieve the Members of any rights or any confidentiality obligations that have arisen under this Agreement before its term.

When necessary, each Member or any Third Party may submit Confidential Information to the Trustee, which shall make only non confidential parts of the information known to the other Members.

4. Persons not authorised to access Confidential Information

The persons not expressly authorised to access Confidential Information under this Agreement include, where appropriate, but are not limited to, any Third Party to this Agreement; any Member which has not shared the cost of a study in accordance with the cost sharing formula agreed upon in this Agreement and its Affiliates.

5. Ratification of a Non-Use and Non-Disclosure Statement

The obligation to fully respect the provisions under this Chapter also applies to the Secretariat and to the Trustee, as well as any other external technical, scientific, financial or legal consultant, which would have access to Confidential Information. The Secretariat shall keep record of the Non-Use and

Non-Disclosure Statement provided in Annex 11 signed by external consultants and the Secretariat. The Secretariat and the Trustee shall provide a signed copy of the signed Non-Use and Non-Disclosure Statement to each Member.

VI. Organization of the Consortium

1. Assembly

The activities of the Consortium shall be determined and controlled by an Assembly consisting of the authorized representatives of each of the Members.

The Members' representatives acting in the Assembly shall be referred to collectively as "Assembly" for the purposes of convenience only and without creating any partnership between or on behalf of the Parties.

1.1. Composition of the Assembly

1.1.1 Assembly of the Consortium

Each Member shall appoint and mandate only one authorised representative to the Assembly. The representative of each Member, as specified to the Secretariat in the Signature folio (presented in Annex 1) submitted at the time of signature of this Agreement or otherwise updated to the Secretariat, shall have authority to commit the Member he represents in the Assembly decisions.

A substitute or replacement for an authorised representative ("Proxy"), either temporary or permanent, may be appointed by a Member at any time. The Member shall notify the Secretariat, which shall promptly advise other authorised representatives of the change.

Each authorised representative or its designated Proxy shall participate in Assembly meetings in person. The same authorised representative's Proxy cannot be appointed by more than one Member.

Affiliates may have access to the Consortium Information in the condition described in this Agreement without being Members. They may become Members if they meet the membership conditions described in Chapter XI and if they contribute to the expenses of the Consortium in accordance with Chapter X.

1.1.2. Chairperson of the Assembly

Authorised Representatives shall elect, from amongst themselves, a Chairman to remain in office for a period of one year.

The Chairman shall coordinate the activities of the Assembly and organise its work with the assistance of the Secretariat.

1.2. Role of the Assembly

The Assembly shall take the necessary decisions related to the Consortium, its objectives and activities and shall in this regard, particularly, but not exclusively, come to a decision on:

(a) the election and/or revocation of the members on the Steering Committee;
(b) the Consortium's financial resources, including its budget, funding and accountancy and any proposal to license existing Studies or Information from any third party that may assist Members for registration purposes;
(c) transfer of membership;
(d) the exclusion of a Member;
(e) the Core Data before joint submission to the Agency;
(f) the Chemical Safety Reports before submission to the Agency;
(g) adaptation of the Agreement in light of legislative and technical changes to the REACH requirements, including the entry into force of the REACH Regulation, and in particular the establishment of the Substance Information Exchange Forum (SIEF) or the entry into force of the Globally Harmonised System (GHS) regulation;
(h) the modification or amendment to any provision of this Agreement, if and when needed;
(i) the modification or amendment to any Appendix of this Agreement, if and when needed;
(j) the termination this Agreement.

When a decision is to be made by the Assembly, the Steering Committee shall prepare and submit to each present or represented Member, a proposal for the decision with its recommendations (based on the input of the appropriate Work Group if applicable). For the avoidance of doubt, the Assembly shall be under no obligation to follow the Steering Committee's proposal and/or recommendation.

1.3. Meetings of the Assembly

1.3.1. Ordinary meetings

Ordinary meetings of the Assembly shall be held at least once a year, preferably in early October unless otherwise agreed by the Steering Committee, in particular to:

(a) approve the annual budget proposed by the Secretariat;
(b) review the technical and financial progress reports submitted by the Secretariat;
(c) review the performance and progress of Consortium activities according to the work plans.

One or more representatives of the Secretariat, the Trustee and the Working Group shall attend meetings of the Assembly, as appropriate, to report on their activities and to receive guidance.

1.3.2. Extraordinary meetings

Extraordinary meetings of the Assembly may be convened at request of one Member, with prior approval of the Steering Committee, in circumstances when agreed estimated deadlines, or budget, are overrun or any other major unexpected event occurs in the performance of the Consortium's activities.

1.3.3. Notice and place of meetings

Ordinary and extraordinary meetings of the Assembly shall be held upon written notice given by the Secretariat.

The notice period shall be at least 28 (twenty eight) calendar days, unless otherwise agreed by the Steering Committee, depending on the nature and/or on the urgency of the issue to be discussed.

The place and time of Assembly meetings shall be indicated on the notice of the meeting.

1.3.4 Minutes of meetings

The minutes of the Assembly meetings shall be written by the Secretariat which shall address them within fourteen calendar days for comments and/or approval to the authorised representatives. Comments and/or approval shall be returned to the Secretariat within five (5) working days. Failure by a Member to reply by the due date will be deemed as acceptance of the minutes by the Member. The Secretariat can only disclose the minutes to the Members, the Trustee, and experts duly commissioned by the Consortium. These persons shall consider the minutes as confidential information in relation to Third Parties.

1.4. Voting procedure

When it is possible, the members of The Assembly shall adopt decisions by consensus. Otherwise, the Assembly may only vote validly if the at least half of the Members allowed to vote on the subject are present or represented.

Each Member in the Assembly is holding a number of votes corresponding to the volume of their Substance or product increased by 2 votes per fixed fee paid by the Member as set out in Annex 7. The Assembly shall make its decisions by two-third (2/3 majority) of the votes.

Voting rights being calculated on the basis of imported and/or manufactured volumes and such individual data being *per se* Confidential Information, voting procedures must be secrete and managed by the Trustee. In that respect, the Trustee shall collect the position of each Member, assign the number of votes corresponding to each Member and compile the various votes in order determine the result of the voting procedure. The actions of the Trustee shall be performed under confidentiality.

Notwithstanding the foregoing, decisions concerning modification of any provision of this Agreement, including any Annex shall be adopted unanimously by all the authorised representatives present at the meeting.

Decisions may be taken by written means outside Assembly meetings. Decision proposals for the Consortium relating to the matters set out under 1.2 shall be submitted by the Steering Committee to the Members for the approval of the Assembly.

A Member shall be precluded from voting in the event of conflicts of interest, including but not limited to a vote on the expulsion of that Member in accordance with Chapter XI.

When a vote concerns issues relating to a specific Substance or group of Substances, only those Members concerned by such Substance or group of Substances may vote. Similarly, concerning such Substance or group of Substances, Members are only entitled to vote on decisions concerning the data that they are required to submit according to their tonnage band. More specifically, these restrictions apply to votes relating but not limited to the following decisions:

i) Adoption of the strategy of the Consortium for registration of a Substance, in terms of timetable, identification of survey and testing priorities, allocation of resources;
ii) Adoption of the strategy of the Consortium in the SIEF in relation to a Substance;
iii) Approval of the budget relating to the collation of data specifically relating to a Substance;
iv) Appeal from a Member of a decision adopted by the Steering Committee or a Working Group relating to a Relevant Substance and settlement of conflicting positions within the Committee in relation to that substance;
v) Approval of Information to be submitted to the Agency in the registration dossier of the Substances

2. Steering Committee

In order to take decisions on the overall and daily organization and management of the Consortium, a Steering Committee shall be established. The Steering Committee shall be entrusted by and be accountable to the Assembly.

2.1. Composition of the Steering Committee

The Assembly shall elect six (6) members of the Steering Committee on a basis of a list of candidate authorized representatives prepared by the Secretariat as proposed by Members. The members of the Steering Committee will represent the respective groups of products covered by the Agreement (two representatives per group of products) and each representative will belong to a different company. In addition to these six members, the Chairperson of the Assembly shall be the chairperson of the Steering Committee.
Dismissal of the Steering Committee may be decided by a two third (2/3) vote of the authorised Representatives. In that case, election of new members of the Steering Committee shall be voted immediately or convened within two weeks upon written notice given by the Secretariat.

2.2. Role of the Steering Committee

The Steering Committee shall make the necessary proposals and take the necessary decisions related to the Consortium, its objectives and activities and shall in this regard particularly, but not exclusively, adopt decisions on :

(a) the designation of the Secretariat and the Trustee;
(b) the designation of the Accountant and the Auditor(s) (as required);
(c) management of the Consortium's administrative expenses common to all members.
(d) coordination and supervision of activities of the Secretariat, the Work Groups and the Consortium's Candidate Lead Registrant(s);
(e) facilitation of proper communication between all Parties involved;

(f) conciliation in cases of disagreement or disparities within or between the Working Groups;
(g) acceptance of a new Member;
(h) Setting up of Work Group, when appropriate.

The Steering Committee shall also adopt proposal for decisions to be submitted to the Assembly regarding particularly, but not exclusively:

(a) the acceptance of a new Member;
(b) transfer of membership;
(c) exclusion of a Member, including specification of the conditions accompanying such exclusion and in particular related to any funding obligation and right to use, cite or refer to Information;
(d) adaptation of the Consortium Agreement in light of legislative and technical changes to the REACH requirements, including the entry into force of the REACH Regulation, and in particular the establishment of the Substance Information Exchange Forum (SIEF) or the entry into force of the Globally Harmonised System (GHS) regulation;
(e) the modification or amendment to any provision of this Agreement, if and when needed;
(f) the modification or amendment to any Annex of this Agreement, if and when needed;
(g) termination of this Agreement;

The Steering Committee, with the assistance of the Secretariat, the Trustee and/or the Accountant, shall prepare working and finance plans concerning the planned activities until submission of each Registration Dossier, in particular concerning the development of Information.

2.3. Meetings of the Steering Committee

2.3.1. Meetings

Ordinary meetings of the Steering Committee shall be held at least every 3 (three) months to review on the basis of the technical and financial progress reports submitted by the Secretariat, the performance and progress of Consortium activities according to the work schedule and the development of the costs.

Ordinary meetings of the Steering Committee shall also be held to approve each of the following stages of Consortium work, after completion by the applicable Work Group(s):

(a) Process for defining Information gaps, including the development of waivers and use of surrogate Information;
(b) Defining test programs;
(c) Analysis of tests results;
(d) Compilation of Core Data;
(e) Designation of the Consortium's Candidate Lead Registrant(s);
(f) Submission of Core Data to the Agency;
(g) Response to request(s) for further information to the Agency.

2.3.2. Notice and place of meetings

Ordinary and Extraordinary meetings of the Steering Committee shall be held upon written notice given by the Secretariat.

The notice period shall be at least 21 (twenty one) calendar days, unless otherwise proposed by the Chairperson of the Steering Committee, depending on the nature and/or on the emergency of the issue to be discussed.

The place and time of Steering Committee meetings shall be indicated on the notice of the meeting. In any event, Steering Committee members may attend meetings by means of telephone conference. If the meeting is to be a telephone conference, this shall also be specified on the notice of the meeting.

2.3.3. Minutes of meetings

Minutes of the Steering Committee meetings shall be written by the Secretariat which shall address them promptly for review and preliminary approval by the Chair within 7 (seven) calendar days. Comments and/or approval shall be returned by the Chair to the Secretariat within 7 (seven) calendar days. The minutes will be then distributed for comments and/or approval, to all members of the Steering Committee within 14 (fourteen) calendar days. During the following Steering Committee meeting, these comments will be reviewed , if necessary corrected and approved. The Secretariat can only disclose the minutes to the Members, the Trustee, and experts duly commissioned by the consortium. These persons shall consider the minutes as confidential information in relation to Third Parties.

2.4 Voting procedure

The Steering Committee can validly deliberate and adopt decisions if a majority of its members is present in the meeting in person or by teleconference. Each member of the Steering Committee has one vote. The chair has a casting vote.

The Steering Committee shall make its decision by simple majority.

2.5. Accountability of the Steering Committeeand Appeal of Decisions

The activities and the decisions of the Steering Committee shall be overviewed by the Assembly.
A group of at least three members might appeal to the Assembly against any decision adopted by the Steering Committee, by lodging an appropriate justification in writing to the Chairperson. The Chairperson shall immediately submit the request and the justification to all the members of the Consortium having an interest in the decision and if necessary convene a special meeting of the Assembly. The submission to the members may be supplemented by the written position of the Steering Committee if the Chairman deems it necessary or appropriate.

The execution of any decision by the Steering Committee shall be suspended until the Assembly votes on the decision.

3. Work Groups

3.1. Composition of the Work Group(s)

3.1.1. Members of the Work Group(s)

In order to pursue the purposes of the Consortium, the Steering Committee shall establish *ad hoc* "Work Group(s)", composed of one or more voluntary Member representatives, having the appropriate expertise for the purpose of discharging the designated function of that Work Group, as described in Annex 5, or otherwise appointed on an *ad hoc* basis by the Steering Committee to fulfil a particular function.

3.1.2. Chairperson and Co-Chairperson

In the event where the Work Group has more than 3 (three) members, the members of any given Work Group(s) shall elect amongst themselves a Chairperson and a Co-chairperson for a period of 1 (one) year. The Chairperson shall coordinate the Work Group, organize its work with the assistance of the Secretariat and shall act as the official representative of the Work Group. The Co-Chairperson shall replace the Chairperson when unavailable.

3.1.3. External independent expert(s)

If the budget is approved by its members, a Work Group may, if necessary, appoint an external independent expert to review proposals before they are put to the Assembly for approval.

3.2. Role of the Work Group(s)

The key roles of the Work Group(s) are the following:

(a) coordination of, and guidance for Information collection and sharing concerning substance(s) covered by this Agreement
(b) approval for additional Information and testing programs within the budget approved by the Assembly;
(c) appointment of external consultants or contractors to perform technical, scientific, financial and legal tasks and as proposed by the relevant Work Group(s) (when requiring a budget);
(d) peer review the external consultant's testing recommendations and prepare proposals for further testing and Information gathering;
(e) approval on the selection of external laboratories to conduct the testing programme;
(f) supervise the performance of the testing programme;
(g) approval of the Core Data, before approval by the concerned registrants of the Assembly;
(h) drafting of the Chemical Safety Reports, before approval by the concerned registrants of the Assembly;
(i) drafting of the Technical Dossier for Registration
(j) monitoring and enforcement of intellectual property rights ("IPR") arising from the Information produced by the relevant Work Group(s);

(k) granting Licences to Use and Letters of Access new Information jointly owned by the members of the relevant Work Group(s);
(l) prepare a harmonised Classification and Labelling in accordance with the Globally Harmonised System;
(m) appoint the Candidate Lead Registrant;
(n) supervise the financial resources of the working group, including its budget, funding and accountancy and any proposal to license existing Studies or Information from any third party that may assist Members for registration purposes, as approved by the Assembly;
(o) Approve the financial value of existing Studies provided to the relevant Work Groups by Members or by third parties that are eligible for financial compensation, based on the opinion of a Work Group.

3.3. Meetings of the Work Groups

3.3.1. Ordinary and extraordinary meetings

Ordinary and extraordinary meetings of the Work Groups may be convened at request of one member of the Work Group and shall be held where and as it is necessary to work on and approve the different stages of Consortium work as regards the specific roles described in Annex 5.

No specific quorum is required for the Work Groups to deliberate and adopt decisions. Each Work Group member is holding a number of votes corresponding to the tonnage band of their Substance or product increased by 2 votes per fixed fee paid by the Member as set out in Annex 7. Decisions shall, as far as possible, be adopted by consensus, otherwise they are adopted by a simple majority.

When a vote concerns issues relating to a specific Substance or group of Substances, members are only entitled to vote on decisions concerning the data that they are required to submit according to their tonnage band.

Voting rights being calculated on the basis of imported and/or manufactured volumes and such individual data being *per se* Confidential Information, voting procedures must be secrete and managed by the Trustee. In that respect, the Trustee shall collect the position of each member, assign the number of votes corresponding to each Member and compile the various votes in order determine the result of the voting procedure. The actions of the Trustee shall be performed under confidentiality.

3.3.2. Notice and place of meetings

Ordinary and Extraordinary meetings of the Work Groups shall be held upon written notice given by the Secretariat.

The notice period shall be at least 14 (fourteen) calendar days, unless otherwise proposed by the Chairperson of the Work Group, depending on the nature and/or on the emergency of the issue to be discussed.

When meetings of the Work Groups shall be held physically, the notice shall indicate the time and place of meeting. In any event, members may attend meetings by means of telephone conference. If the meeting is to be a telephone conference, this shall also be specified on the notice of the meeting.

3.3.3. Minutes of the meetings

Minutes of the Work Group meetings shall be written by the Secretariat which shall address them promptly, for comments and/or approval, to all the members of the relevant Work Group. within 14 (fourteen) calendar days. Comments and/or approval shall be returned to the Secretariat within 5 (five) working days. Failure by a member to reply by the due date will be deemed as acceptance of the minutes. The Secretariat can only disclose the minutes to the Members, the Trustee, and experts duly commissioned by the consortium. These persons shall consider the minutes as confidential information in relation to Third Parties.

3.4. Voting procedure

When it is possible, the members of Work Groups shall adopt decisions by consensus. Otherwise, each member in a Work Group is holding a number of votes corresponding to the tonnage band of their Substance or product increased by 2 votes per fixed fee paid by the Member as set out in Annex 7. The Assembly shall make its decisions by a simple majority of the votes.

4. Secretariat

The Secretariat shall be responsible for assisting in the daily management of and the executing decisions adopted by the Assembly, the Steering Committee and the Work Groups. These activities might also imply duties in terms of accountancy and other financial aspects, as well as external representation of the Consortium.

4.1. Designation of the Secretariat

The Secretariat will be empowered by the Assembly to assist in and conduct the daily business of the Consortium not specifically reserved for the the Steering Committee and the Work Groups.

The Secretariat of EUROALLIAGES may be designated to act as the Secretariat of this Consortium. The Secretariat shall be appointed by mean of a service agreement concluded by the Chairperson on behalf of the Members.

4.2. Role of the Secretariat

The Secretariat shall conduct the day to day business of the Consortium, to the exclusion of activities exclusively attributed to the Steering Committee, and shall in particular, with the assistance of the relevant Work Group(s) if required:

(a) hold the executed counterparts of this Agreement and distribute one complete copy of the Consortium Agreement to all its Parties;
(b) hold and update as necessary three separate lists enclosing those Members who are subject to compliance with REACH requirements for Silicon, Silica Fume and FeSi Working Group respectively;
(c) coordinate and prepare the decision proposals of the Steering Committee to be submitted to the Assembly;
(d) organize (identify and classify) and store the decision proposals and the decisions of the Assembly, the Steering Committee and the the Working Groups;
(e) follow up the legislative and technical development of the REACH Regulation and inform the Work Groups and the Steering Committee about any relevant new developments;
(f) present regular operating and development plans, annual or periodic budgets, including proposals of future annual budgets, respectively to the Working Groups and the Steering Committee for discussion and approval;
(g) follow up the progress in the technical activities of the Consortium and periodically report on the technical and financial issues to the Work Groups and to the Steering Committee;
(h) provide technical and administrative support to the Work Groups and to the Steering Committee;
(i) manage the expenses related to the functioning of the Working Groups or the Consortium
(j) supervise external consultants and experts appointed by the Steering Committee;
(k) coordinate and provide guidance for Information collection concerning Substance(s) covered by this Agreement;
(l) supervise application by the Members of the Competition Law Compliance Guidelines.
(m) And, any other activities upon decisions of the Assembly, the Steering Committee or the Work Groups.

The Secretariat will also be the official external representative of the consortium. The Secretariat acts on behalf of the Consortium Members.

With regard to Third Parties, the Secretariat acts entirely in its capacity as representative of the Consortium Members and bear no individual responsibility or liability for its actions taken in this capacity, with the exception of purposefully unlawful actions.

5. Trustee

5.1. Designation of the Trustee

An independent Third Party shall be designated to act as the Trustee to this Consortium in relation to calling, receiving, recording and aggregating all Confidential Information on the basis of stringent

procedures that protect effectively the confidentiality required by the Members of the Consortium or by third parties (e.g. consultants, laboratories).

The Secretariat of EUROALLIAGES may be designated to act as the Trustee to this Consortium in relation to Confidential Information which do not conflict with the activities of EUROALLIAGES resulting from the defense and promotion of its members' interests. Concerning such information, a Trustee different from EUROALLIAGES shall be appointed to call, receive, record and aggregate the specific Confidential Information which will be used in relation to the determination of fees and charges to be paid by each Member.

The Trustee shall be appointed by mean of a service agreement concluded by the Chairperson on behalf of the Members.

5.2. Role of the trustee

The Trustee is responsible for:

a) receiving, collecting, recording and aggregating any information, including Confidential and proprietary Information, as well as sensitive business secrets and other information which if disclosed to another Member(s) might be regarded as a breach of Competition Law, and thereafter circulating and disclosing sufficient and appropriate information, as required for the purposes of this Consortium Agreement;
b) managing the income related to the variable fee collected individually from each Member and the related bank account;
c) preparing and sending the invoices according to the procedure described in X.4;
d) managing the voting procedure based on the individual contributions of the members, as well as any other aspect of the Consortium that may permit identification of individual contributions of the members.

The Trustee shall only disclose the data in an aggregated form. The Trustee must agree to and observe confidentiality and secrecy with respect to information provided by Members of the Consortium and shall be subject to the Confidentiality Agreement as set out in Annex 5.

The Trustee must guarantee independence and absence of conflicts of interest, and demonstrate appropriate equipment for, and competence in, receiving, recording and aggregating Confidential Information on the basis of stringent procedures that protect effectively confidentiality via a system description.

VII. Right of access to existing data and ownership of existing data

1. Submission and evaluation of Existing Studies to the Consortium

Within one (1) month of the commencement date of this Agreement, or within one (1) week after joining the Consortium subsequently to the commencement date of this Agreement, all Members shall make available to the Secretariat a list of their existing Studies and hard or electronic copies of such Studies, provided that the Secretariat shall have first executed the Non-Use and Non-Disclosure Statement. The Secretariat shall make the necessary arrangement for the review of these Studies by the relevant Work Groups.

Alternatively, existing Studies, Licenses to Use or Letters of Access can also be purchased from third parties subject to a review from the relevant Work Groups.

If relevant and sufficiently reliable for the purpose of compiling a Registration dossier, Members shall be compensated for their existing Studies based on a fair and transparent evaluation, in accordance with Chapter X.2.

2. Ownership of existing Studies

All intellectual property rights applicable to existing studies made available in accordance with this Agreement shall remain vested in the Member (or its Affiliates) who provided the studies. However, the other Members (and their Affiliates) shall have the right to use these studies jointly in accordance with Section 3, below, provided that the Members have shared individually the cost of the studies in accordance with the Cost Key Allocation agreed upon in this Agreement.

The Work Group shall determine the financial value of existing studies made available by a Party pursuant to this Agreement in accordance with the principles laid down in Annex 10. This financial evaluation can take into account the replacement value at the time of the submission to the relevant Working Group, including the administrative costs implied in preparing and following up the testing program.

In the case where an existing Study is relevant for several Work Groups, the decisions relating to the Study, including its financial value and relevance, shall be taken collectively by the members of these Work Groups under the supervision of the Steering Committee.
The right under this Agreement of Members, or their Affiliates, the Secretariat or Trustee, to review, use or, where appropriate, to refer to an existing Study that they do not own, in the conditions described in below, does not give such persons any ownership or data compensation right to such data. The right to use or refer to an existing Study can only be transferred or assigned to an Affiliate or a third party, upon the approval of the original owner(s) of the study.

3. Use of existing Studies

Each Member consents to its existing Study(ies) being submitted and used as part of the Registration dossier(s) relating to Substance(s) listed in Annex 1.

The Members, including their Affiliates, shall have the right to jointly refer to or use Studies for the exclusive purpose of complying with the requirements of the REACH Regulation applicable to the Substances listed in Annex 1, and provided that they have shared individually the cost of the Studies in accordance with the cost sharing formula described in this Agreement.

The Member or third party who initially provided existing studies to the Consortium may extend, for further contribution or free of charge, the right of other Members to use or refer to these studies for other purposes than fulfilling the requirements under the REACH Regulation relating to the Substances covered by this Agreement.

In such case, the Members or their Affiliates shall have the right to use such existing studies solely within the conditions agreed with the initial owner.

Rights to use or refer to existing studies granted by the Consortium to third parties within the context of the REACH Regulation, including through a letter of access, shall be subject to prior approval from and appropriate compensation of the Member who initially provided the studies to the Consortium.

Submission of existing studies, which are owned by various Members to this Agreement, or by one or several Members and one or several third parties, can only be made available to the Consortium or its Members following prior approval of all the owners.

VIII. Ownership and Use of new data developed by the Consortium

1. Development of New Studies by the Consortium

The Members agree that, when there is no existing Study available from the Members or third parties, new Studies must be conducted to fill data gaps to the purpose of compiling the Registration dossier(s). The development of new Studies shall be approved and coordinated by the relevant Working Groups.

In the case where a new Study is relevant for several Work Groups, the decisions relating to the Study shall be taken collectively by the members of these Work Groups under the supervision of the Steering Committee.

The relevant Working Groups will identify data gaps and how to fill these gaps taking account of opportunities such as read-across, exposure waivers or alternative test models. The relevant Working Groups will develop a testing strategy for preparing the missing data in an appropriate time frame. The selection of the appropriate laboratory shall be approved by the Working Groups.

The relevant Working Groups shall report on a regular basis to the Steering Committee, which shall inform the Assembly on the progress made with the new Studies during its ordinary meetings.

2. Ownership of New Studies Developed by the Consortium

Members shall have joint ownership of the studies generated by the Consortium pursuant to this Agreement, to the extent that they share individually the cost of the studies in accordance with the cost sharing formula agreed upon in this Agreement.

A Member which has not paid its individual share of a new Study shall have the right to join the ownership against payment of an individual share determined in accordance with the cost sharing provisions of this Agreement.

Accordingly, each new Study shall refer to the joint ownership of the relevant Members of the Consortium by displaying "© [year] the Members of the Silicon, FeSi and Silica Fume REACH Consortium".

3. Use of New Studies by Members

Members which have paid their individual share of a new Study shall have the right to use the study at no additional cost exclusively for the purpose of fulfilling the requirements of the REACH Regulation in relation to Substances covered by this Agreement.

A Member which has not paid its individual share of a new Study shall have the right to use the study exclusively for the purpose of fulfilling the requirements of the REACH Regulation for the Substances covered by this Agreement, against a fair, proportionate and transparent compensation to be decided by the relevant Work Groups.

Members which have paid their individual share of a new Study shall have the right to use the study for the purpose of fulfilling the requirements of the REACH Regulation relating to Substances not covered by the Consortium, only under the conditions determined by the relevant joint owners based on a two-third (2/3) majority vote, including the payment of a fair, proportionate and transparent compensation for these other uses.

Any use of a Study in relation to other regulatory obligations in the EU or in any other part of the world shall be strictly limited to the fulfillment of regulatory obligations imposed by competent authorities. The Member making any such use must notify it, including the reference to the relevant regulatory obligation, to the Secretariat, which must immediately inform each relevant joint owner. The relevant joint owners may decide, based on a two-third (2/3) majority vote, to request a fair, proportionate and transparent compensation for that use.

After the termination of the Consortium, the Members commit to make any reasonable effort to obtain the approval of the other relevant Members before using a Study developed in the Consortium in relation to other regulatory obligations in the EU or in any other jurisdiction.

The conditions of use of new Studies by Members as described above shall also apply to their Affiliates.

4. Use of New Studies by Third Parties

The right of Members, or their Affiliates, to, respectively, use or refer to the new Study cannot be transferred or assigned to any other Member or third party.

Subject to the prior written approval of all the Members which have paid their individual share of a new Study and which jointly own the Study, the relevant Work Group(s) is/are competent to grant Third Parties with either the right to refer to a Study or, where appropriate, the right to use a Study developed by the Consortium. For that purpose, the relevant Work Group(s) may issue a Letter of Access or a License to Use under the conditions described in this Agreement on request of a Third Party. A Letter of Access or License to use shall be granted to the third party within one (1) week from the payment by that third party of an objective, proportionate and transparent compensation determined in accordance with Chapter XI of this Agreement.

Any refusal of a relevant Working Group to grant either a Letter of Access to a Study or, where appropriate, a License to Use a Study developed by the Consortium must be based on transparent, objective and non-discriminatory justification, duly documented and addressed to the applicant. Such refusal must not have the object or effect of distorting competition in breach of Chapter XII of this Agreement.

5. Use of New Studies following Termination of the Consortium

After dissolution or termination of the Consortium, any remaining rights of the Members resulting from the joint ownership of new studies developed by the Consortium shall be managed by the Secretariat. Accordingly, after termination, any use of such data covered by Section 3 and 4, above, shall be notified to the Secretariat, which shall inquire the joint owners regarding the need to require a fair, proportionate and transparent compensation.

The rights and obligations resulting from the above paragraph in relation to Section 4 (use by Third Parties), shall only apply for a period of twelve years after the submission of the new data to the competent authorities for registration purpose. The rights and obligations resulting from the above paragraph in relation to Section 3 (use by Members), above to shall be maintained after that period.

IX. Provisions dealing with CSR

The Members also reserve the right to prepare and submit jointly a Chemical Safety Report for all Substances in quantities of 10 tonnes or more per year per Potential Registrant. The decision to prepare jointly a Chemical Safety Report for a specific Substance shall be taken by the concerned Members within the Assembly.

The Members may provide the Trustee with the Information relating to Substance uses and exposure in order to identify the uses of a Substance to be covered by the Chemical Safety Report. Process,

monitoring and risk management Information provided by a Member for preparing a Chemical Safety Report shall be free of charge.

The Members may inquire which uses are specific to them with the assistance of the Trustee. Each Member is entitled to consider information on uses Confidential Information. The Consortium shall be allowed to prepare common Chemical Safety Reports only if the particular uses are not considered Confidential Information by the relevant Members.

Any Member shall be able to prepare and submit individually a Chemical Safety Report for uses that it considers Confidential Information.

For the uses for which it will be agreed to develop jointly a Chemical Safety Report, the respective Working Groups shall be responsible for preparing the Chemical Safety Report and the Guidance on Safe Use of the substance for each identified use, based on information submitted by the Members to and compiled in confidence by a Trustee.

To the extent available, Members shall provide the relevant Working Group(s) with the required studies subject to remuneration under clause VII, in particular with respect to human health and environment exposures, for the purposes of the Chemical Safety Report on uses to be assessed jointly.

The relevant Work groups shall make the necessary arrangement for the provision of further studies, when necessary.

X. Financial rights and obligations

The Members shall bear the Consortium costs jointly but apportioned to each Member in accordance with this Agreement. Affiliates of a Member do not have any financial right or obligation providing that the Member which is representing them in the Consortium has paid its share of the costs according to the applicable conditions for the cost-sharing formula presented in Annex X (Cost-sharing formula). Affiliates of Members might be considered themselves as Members if they contribute to the expenses of the Consortium in accordance with the provisions of Chapter X. In such instance, the tonnages of the Affiliates manufactured or imported on the EEA market shall be allocated to the Affiliate and shall be deducted from the quantities of the Member for the purpose of determining their respective voting rights and financial contributions.

1. Costs of the Consortium

There shall be separate budget established for costs incurred in managing the Consortium (hereafter "Generic Costs") and costs related to the collation and development of data (hereafter "Work Group product related-specific costs").

1.1. Generic costs

The Generic Costs shall consist of all contract charges, legal, accounting and other professional fees, as well as any other expense reasonably incurred in the management of the Consortium under sound

accounting practices, including organization of meetings, and more generally any management or secretarial activity of the Consortium, which have been approved by the Assembly.

The Generic Costs shall cover, but are not limited to, the remuneration of the time, out-of-pocket expenses, including travel expenses, spent by the Secretariat, the Trustee, the Accountant and external Legal Counsel, for assisting the Consortium.

1.2. Work Group product related-specific costs

The specific costs are the costs incurred by the Consortium, for each working group as described in Annex 4, particularly but not only related to the:

(a) remuneration of the consultants for e.g. the reports on data gap analysis and other activities for which they have been contracted;
(b) remuneration of the external and independent experts;
(c) the acquisition of existing Studies;
(d) performance of the tests to comply for REACH requirements.

The Working group product related-specific costs shall not include any charge for the time out, out-of-pocket expenses spent by the Members, including their officers, employees or representatives, in connection with the activities of the Consortium, unless expressly approved in advance by the Steering Committee when recourse to specific scientific expertise is required.

The Steering Committee, shall approve, based on the opinion of the relevant Working Group, the financial value of any existing Study made available by a Party pursuant to this Agreement, or any other third party, on the basis of an evaluation of the scientific quality, adequacy and relevance of the Study in relation to the achievement of the purpose of the Consortium.

2. Annual budget, accounts and relevant books

The Secretariat shall be responsible of the accountancy of the Consortium and shall submit to the Assembly, for approval, the accounts of the past financial year and the budget for the following financial year. The Secretary shall prepare the draft budget and the annual accounts, which shall be circulated to the Assembly 30 days before the date arranged for the approval.

When the annual budget has to be increased in the course of the financial year the Assembly may adopt the necessary increase by a vote of 2/3 of the authorized Representatives at a special meeting.

Special pluri-annual budgets may be established by the Secretariat and approved by the Assembly for long research projects and new Studies that are necessary to complete the Core Data.

The Secretariat shall maintain separate books of account covering the costs disbursed and funds received. Any Member shall be entitled to access books of account, as well as any related records, at any reasonable time. On a quarterly basis, the Secretariat shall provide an accounting of all the costs disbursed and funds received to date.

The budget of the Consortium shall bear three separate Work Group-specific costs: Silicon, Silica Fume and FeSi alloys. Each specific cost shall be borne by each individual Working group as further referred to in Annex VII (Cost-sharing formula).

The accounts of the Consortium shall be subject to external and independent audit on a yearly basis, based on recognized accounting standard procedures. This review must result in a financial statement to be made available to all the Members.

3. Cost sharing formula

As soon as a preliminary assessment of the available data has been conducted a detailed estimate of the total cost shall be established.

- The cost sharing between the participants will be carried out on the basis of a fixed fee covering generic costs: allocation of the administrative expenses of the Consortium on "per capita" basis
- a variable fee covering product related-specific costs: allocation of data/scientific expenses of each working group on "proportionate shares" based on the Trustee assessment of bands of production volumes in the EEA as set out in Annex 7.

4. Invoicing, Payments and Late Payment Penalties

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

Invoicing for the fixed fee and the variable fee shall be performed by the Trustee specifically commissioned for the gathering of data related to tonnages .

Invoices shall be sent in January for the fixed fee and every 6 (six) months, in January and in July for the variable fee, to the Members, by e-mail and by registered post, to the address specified by the Member in its Signature folio or otherwise updated to the Secretariat. A transitory regime shall be applied in 2008 for the first invoices. The Secretariat and/or the Trustee shall immediately electronically notify the nominated Representative of the Member on such invoicing. In the event the Representative has not received the electronic notification on time, unless previously advised of the delay by the Secretariat and/or the Trustee, the Representative shall promptly inform the Secretariat or the Trustee.

Invoices for pluri-annual budgets and the invoices for increase of budget shall be sent by the Secretariat and/or the Trustee to the relevant Members within fifteen (15) days of their approval by the Assembly.

Members shall pay their due sum to the bank account number specified in the invoice not later than 2 (two) months after reception of the invoice.

A reminder will be sent by the Secretariat and/or the Trustee before the expiry of the two month period.

If the payment is made after that period, the interest rate as per the London Interbank Offered Rate (LIBOR) shall be monthly added to the due sum and payment shall become immediate. The "Breaching Member", will have no voting right until payment has been received.

If an invoice is not received by a Member within forty-five (45) days from the beginning of the financial year or, where relevant, one (1) month after the adoption of a pluri-annual budget applicable to that Member, or the adoption of an increase of budget, the Member shall notify the Secretariat and/or the Trustee in writing, so that the Secretariat and/or the Trustee re-issues the invoice, which shall be paid within sixty (60) days of its release.

Until disbursed pursuant to this Agreement, all the funds of the Consortium shall be maintained by the Secretariat in guaranteed accounts approved by the Steering Committee.

The Secretariat shall be responsible for making any disbursement relevant for the activities of the Consortium and subject to prior approval of the expense by the Steering Committee or the Work group as appropriate. All earnings from the Members shall be credited by the Trustee to separate an account set up for the Consortium. On a regular basis, the Trustee shall aggregate these earnings and credit the account of the Consortium managed by the Secretariat.

XI. Membership

1. Membership criteria

Membership shall be conferred by execution of this Agreement and payment of the fees and compensation required by this Agreement, including, where relevant, late Membership compensation in accordance with this Chapter.

Membership shall be opened to any natural or legal person that meets one of the criteria set out below. The person must be either:

- A Potential Registrant, whether a Manufacturer or Importer of (a) Substance(s) covered by this Agreement and established in the EU; and/or
- A Non-EEA Manufacturer of (a) Substance(s) covered by this Agreement which can then be represented in the Consortium by an Only Representative or not.
- Any legal entity, whether or not established within the EEA, controlling directly or indirectly a Manufacturer, Importer or non-EEA Manufacturer of (a) Substance(s) covered by this Agreement.

An "Affiliate" as defined under III Definitions of this Agreement does not sign the Agreement and is not a Member as such of the Consortium. Any Affiliate has obligations of confidentiality and rights pursuant to this Consortium Agreement, through the Member representing it in the Consortium and, in particular, those expressly mentioned in Annex 1 of this Agreement as rights and obligations of Affiliates.

However, when an Affiliate has different interests from the parent or daughter Member of the Consortium, this Affiliate may join the Consortium independently as Member.

Each Member shall identify all of its Affiliate to the Secretariat, and update that information as necessary and appropriate. On the basis of that list, the Secretariat shall ensure that Affiliates that join the Consortium are subject to the specific rights and obligations set forth for Affiliates in this Agreement.

At the latest two (2) weeks after the entry into effect of the Consortium, each Member shall inform the Secretariat in writing of the list of Substance(s) that they or their Affiliates intend to register under REACH, as well as the respective volumes per Substance for the Member and the Affiliate. New Members shall provide this information at least or one (1) week after admission in the Consortium.

Any Member established outside the EU may appoint another natural or legal person as its representative in the Consortium. This representative may be its Only Representative under REACH. This representative shall have a sufficient background in the practical handling of the Relevant Substances and the Information related to them.

The Consortium can only refuse access to Membership to applicants that meet the above criteria by unanimous decision of its Members and on the basis of an objective and documented justification in compliance with articles 81 and 82 of the EC Treaty.

2. Admission of new members

The membership criteria, a description of the admission procedure, as well as the admission fees and the data compensation conditions, shall be sent on request to any applicant for admission to the Consortium.

By decision of the Steering Committee by a majority vote, the Consortium may admit new Members to the extent that these Members meet all the conditions for the Membership, including being subject to Registration requirements concerning the substances/products covered by the scope of the Consortium.

A newly admitted Member shall sign a declaration thereby undertaking the terms and conditions as set out in this Agreement and to be annexed to this Agreement.

Any new Member shall have the same rights and obligations as any existing Member, on payment, where applicable, of admission fees and data compensation.

All admission fees and data compensation received will be offset against the relevant sections of the Consortium budget for the calendar year in which it is received.

Any refusal for admittance of an application must be based on transparent, objective and non-discriminatory justification, duly documented and addressed to the applicant. Such refusal must not have the object or effect of distorting competition in breach of Chapter XII of this Agreement. The applicant may lodge an appeal of the decision of the Steering Committee before the Assembly.

3. Fees and compensation due to existing Members

If a Member joins the Consortium after the 1st May 2008, such Member shall pay, in addition to the fixed fee related to the administrative expenses of the Consortium and the variable fee covering product-related-specific costs for which it is liable, an "Advantage Compensation" calculated as a percentage of its total costs as follows:

Members who join after 1st May 2008 but before 1st May 2009	10 %
Members who join after 1st May 2009 but before 1st May 2010	25 %
Members who join after 1st May 2010 but before 1st December 2010	35 %
Members who join after 1st December 2010	50 %

The Advantage Compensation paid shall be credited to the accounts by the Trustee and the Secretariat . The compensation shall be distributed between the existing Members on a pro rata basis corresponding to their respective financial contribution to the data needed by the new Member for the registration of substances covered by the Consortium.

An applicant for membership which has not manufactured or imported the substance or product in question on the EEA market before the calendar year during which it applies for membership shall not be liable to pay the Advantage Compensation.

Upon payment of the amounts indicated above, the new Member has immediately the rights and obligations of an existing Member.

A Member having signed the Consortium Agreement after 1st April 2008 is considered as new Member.

4. Transfer of membership

A Member shall be entitled to transfer its Membership in its entirety including all rights and obligations to a third party subject to compliance by the new Member of the conditions for membership, including the Registration requirements of the Substance.

The assigning Member shall notify the Steering Committee at least sixty (60) days prior to the foreseen assignment date. The transfer might be refused by unanimous decision of the Members and on the basis of an objective and documented justification in compliance with articles 81 and 82 of the EC Treaty.

The consent requirement pursuant to paragraph (1) sentence 2 does not apply to the transfer of Membership in the event of restructuring within a group of companies.

In case of merger or acquisition, the participation in the consortium with all its legal rights and obligations is transferred to the new legal entity.

The transfer by a Member of only a part of its rights or obligations, including financial claims, to a third party is excluded, unless unanimously authorised by the Members.

5. Withdrawal and exclusion of Members

A Member may withdraw from the Consortium by unilateral termination of its collaboration at the end of a calendar year with a notice period of 6 months if circumstances have arisen respecting the Consortium Member which led to discontinuation of the Registration requirement or in the event of other serious reasons which make continued Membership in the Consortium unreasonable.

A Member may be excluded from the Consortium by the Assembly by a decision of 2/3 majority votes of its Members and on the basis of an objective and documented justification in compliance with articles 81 and 82 of the EC Treaty. In this instance, the Member concerned shall be excluded from voting.

In the event of withdrawal or exclusion, the rights and obligations pertaining to this Agreement cease to exist, to the exception of the confidentiality commitment as defined in this Agreement.

The Consortium and the other parties to this Agreement shall be entitled to make use of the data made available by the Member who has withdrawn in the conditions specified in this Agreement.

Further, the withdrawing or excluded Member shall not be relieved of any funding obligation to which it is committed up to the effective date of its withdrawal or exclusion, in accordance with the conditions specified by the Steering Committee, nor shall it be entitled to any refund of monies at any time paid by it to the Consortium.

The withdrawing or excluded Member shall be entitled to make use of the results of commissioned Study(ies) or work(s) under the conditions defined in this Agreement, once they are available even if this is after the effective withdrawal or exclusion date, provided that this Member has paid its full contribution to such Study(ies) or work(s).

Except otherwise decided by the Steering Committee, the withdrawing or excluded Member shall however have no right in respect of the Registration Dossier including no right to refer to the registration Dossier prepared by the Consortium. In the event the withdrawing or excluded Member wishes to submit a Registration Dossier, it must obtain the necessary authorization to use and to refer to the Registration Dossier pursuant to chapter VII of this Agreement.

All stake of a Member in the funds, capital and assets of the Consortium shall immediately cease as soon as that Member withdraws or is excluded from a Consortium, except in the event of dissolution of the Consortium.

XII. Liability

1. Liability between the Members

The Members shall be held liable for themselves and for their officers, directors, employees, agents, Affiliates (unless an Affiliate is itself a Member), and contractors.

Each Member and its Affiliates shall comply, in an appropriate and timely manner, with all provisions of the REACH Regulation applicable to said Member and its Affiliates as well as those under this Agreement.

Members to this Agreement are required to exercise due care and diligence vis-à-vis other Members in observing the rights and obligations arising from this Agreement, in particular, the full respect of the deadlines linked to the purpose of the Agreement as described under IV.1. The Members shall be liable in this respect in accordance with the general rules; liability for minor negligence shall be excluded to the extent not otherwise stipulated below.

Non-compliance with the Agreement's obligations will be subject to contractual liability which may result in:

- payment of fixed indemnities (delay in providing data, non-compliance with exclusivity clauses, etc.);
- financial compensation to offset any damage;
- payment of interest (delay in payments of contribution to the Consortium work);
- exclusion from the Consortium in the most serious cases (failure to provide information, failure to pay, disclosure of any confidential material, etc.)

The sanctions will be decided upon by the Assembly in a proportionate, non-discriminatory, consistent, and duly justified way.

A Member shall not be held liable to another Member hereto for indirect, consequential or financial loss (including loss of profit, loss of business contracts, damage of reputation) arising from or in connection with obligations under this Agreement, except in case of willful misconduct or its gross negligence.

2. Liability related to the use of Studies

Members of the Consortium assume liability for the correctness of their studies provided in accordance with this Agreement unless the same has been assessed and approved for validity by any external expert appointed by the consortium. A Member shall not be liable to another Member hereto for indirect, consequential or financial loss (including loss of profit, loss of business contracts, damage of reputation) arising from the incorrect use of a Study.
Other Members of the Consortium shall not be held liable for misuse of Information developed under the Agreement by one or more Members. Each Member is liable with respect to its activities and obligations outside the scope and the activities of the Consortium.

A Member shall not be held liable for misuse by other Members of Information it made available to the Consortium or developed by the Consortium, unless the willful misconduct and gross negligence of that Member is at the origin of the misuse.

3. Liability of the Members in relation to Third Parties

Each Member shall be liable vis-à-vis Third Parties' claims arising solely and directly from or in connection with that Member's responsibility under this Agreement. The Members of the consortium shall support a Member against whom a claim for liability arising from or in connection with this Agreement is made by a Third Party in the defence against this claim to the extent possible and reasonable.

However, each Member shall indemnify any other Member against and hold such party harmless from all liabilities and claims in connection with any loss, damage or injury to third party resulting from its willful misconduct or its gross negligence.

4. Liability relating to compliance with the REACH regulation

Each Member is responsible for complying with its rights and obligations according to the REACH Regulation. This applies, in particular, to information which is to be submitted to the Agency within the (Pre-Registration and) Registration Dossier in due time by each Member, as well as to communication with "downstream users" in the supply chain.

5. Liability of the Secretariat in relation to the Members and Third Parties

The rights and obligations of the Secretariat in relation to the Members and Third Parties shall result from a service Agreement between the Secretariat and the Consortium, as represented by the Chairperson of the Assembly.

The Secretariat is accountable and shall report to the Steering Committee and to the Assembly for the achievement of its purposes. The Secretariat shall bear no individual responsibility or liability for its actions taken in its capacity, with the exception of gross negligence and willful intent, in unlawful actions or serious actions incompatible with its mandate.

6. Liability of the Trustee

The rights and obligations of a Trustee, whether or not also acting as Secretariat, shall result from a service agreement between the Trustee and the Members of the Consortium, as represented by the Chairman of the Assembly. The Trustee shall maintain appropriate liability insurance for loss or disclosure in the absence of fault.

The Trustee is fully responsible of any breach of its obligations under this Agreement. The Trustee is encouraged to acquire a professional liability insurance, which shall be added to the Generic costs of the budget of the Consortium.

7. Liability relating to compliance with Competition rules

Neither this Consortium Agreement nor anything contained in this Agreement is intended to restrict competition in any manner whatsoever. The Parties expressly undertake to comply with applicable rules on Competition Law, in particular but not limited to articles 81 and 82 of the EC Treaty, as well as any applicable national laws.

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

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

The Secretariat shall particularly ensure compliance with applicable rules on Competition Law, notably by making available at any meeting or at any time on request from a Party the Recommendations for Compliance with Competition Law in Annex 6 to this Agreement.

Non compliance with competition rules may lead to the exclusion of the Member from the Consortium which will be decided upon by the Assembly in a proportionate, non-discriminatory, consistent, and duly justified way.

XII. Legal status

The rights and obligations arising from this Agreement shall not constitute a legal entity between the Members. In external legal relations, the Consortium shall not act under its own name but as a community of all individual Members to the Agreement. Collectively, the Consortium Members are subject of the rights and duties of the Consortium.

XIII. Dispute resolution

Any dispute, controversy or claim which may arise between the Members in connection with the interpretation of any provision of this Agreement, its validity or enforceability, or the breach or termination of it, or the implementation or omission of any of its obligations, or the evaluation of the compensation of data, shall be settled primarily by the amicable efforts of the Parties involved. The nature of the dispute shall be notified by at least one of the Members to the Chairman of the Assembly, who shall coordinate and encourage an amicable settlement. An attempt to reach an amicable settlement shall be deemed to have failed as soon as one of the Members so notifies the other Members concerned and the Chairperson of the Assembly in writing.

1. Arbitration

In case of absence of amicable settlement, the dispute shall be resolved by Arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris. The arbitral tribunal shall consist of one or more arbitrators appointed in accordance with the said Rules. The cost of arbitration shall be paid by the parties involved on equal terms; any out-of-court costs shall be borne by the party responsible for incurring said costs. The arbitral tribunal shall decide on the regulation of the cost of arbitration including out-of-court costs incurred by the parties in accordance to the outcome of arbitration. The language of the proceedings shall be English. The venue of arbitration shall be Brussels, Belgium. The arbitration shall be based on the law of Belgium. The arbitral award shall be final and binding on all Members.

However, any dispute regarding the disclosure of Confidential Information requiring urgent action through a summary judgment or interim relief delivered or granted by a Court, shall not be subject arbitration. The dispute shall be governed exclusively by Belgian law and the jurisdictional venue for the dispute shall therefore be the competent Belgian Court.

2. Judicial settlement

In case of absence of amicable settlement, the dispute shall be governed exclusively by Belgian law and the jurisdictional venue for the dispute shall therefore be the competent Belgian Court.

XIV. Duration, termination of the Agreement and Miscellaneous Items

1. Entry into effects and term

This Agreement shall be signed in multiple counterparts, which together shall constitute a single Agreement, which shall be held by the Secretariat.

This Agreement shall enter into force on the date of signature of at least three companies. The deadline for signature before being considered as a New Member is 1st April 2008.

The expiry date of the Agreement shall be effective with the completion of all the purposes of the Agreement, or alternatively upon a unanimous decision of the Members to terminate the Consortium.

Members may amend the expiry date or the conditions for termination of the Agreement based on a unanimous decision.

2. Effects of Dissolution

Before dissolution or termination of the Consortium, any remaining joint and several rights and obligations of the Members resulting from this Agreement and in relation to third parties shall be settled by the Steering Committee. However, upon dissolution, all rights and obligations of the Members arising from this Agreement that do not involve assets shall lapse. After payment of all expenses and liabilities as authorized by the Steering Committee, any balance remaining of amounts paid by the Members or amounts derived from the granting of licenses to third parties, shall be returned to the Members in a pro rata manner based upon their respective share in the Consortium expenses as at the time of termination.

The provisions relating to the protection of confidentiality and data ownership will survive the termination of the Agreement.

3. Representations and warranties

Each Member represents and warrants for itself only to the other Member that:

i) It is a duly organized, validly existing entity of the type described in the introduction to this 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 Agreement.
ii) Its execution, delivery, and performance of this 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 organizational documents.
iii) This Agreement is a legal and binding obligation of that Member, enforceable against that Member in accordance with its terms, except to the extent enforceability is modified by bankruptcy, reorganization and other similar laws affecting the rights of creditors generally and by general principles of equity.
iv) There is no litigation pending or, to the best of its knowledge, threatened to which such Member or any of its Affiliates is a party that, if adversely determined, would have a material adverse effect on the financial condition, prospects, or business of the Consortium, or that Member's ability to perform its obligations under this Agreement.

4. Severability

If, for any reason a court of competent jurisdiction finds any term, clause or provision of this Agreement to be invalid or unenforceable, the validity or enforceability of any other term, clause, provision or section shall not be affected, and such invalid or unenforceable term, clause, provision or section shall be deemed deleted from this Agreement.

ANNEXES

Annex 1: Signature folio of the Consortium Agreement (template)

Annex 2: Substance and Tonnage Bands declaration of Full Members (template)

Annex 3: Substance(s)/product(s) covered by the Consortium (Specification)

Annex 4: Working structure of the Consortium

Annex 5: Confidentiality Agreement

Annex 6: Competition law Code of Conduct

Annex 7: Cost-sharing formula

Annex 8: Letter of Access

Annex 9: Identified Uses of Members to the Extent Treated in the Chemical Safety Report

Annex 10 : Valuation Rules

Annex 11 : Non-Use and Non-Disclosure Statement

ANNEX 1: Signature folio of the Consortium Agreement (template)

IMPORTANT NOTICE

- *This signature folio shall be submitted by each Member to the Secretariat and shall validate the membership status of the signing Member to the Consortium as of the date first mentioned above the signature.*
- *The content of this folio shall remain with the Secretariat and shall be kept confidential according to the provisions set out in the Confidentiality Agreement presented in Annex 5 of the Consortium Agreement, unless the signatory of this Folio indicates it otherwise.*
- *The Secretariat shall be promptly informed on any change in the data provided by the Member in this folio.*

Information box 1	INFORMATION ON THE MEMBER
Name:	
Registered address:	
Phone number(s):	
Fax number(s):	
Website:	
Invoicing address:	

Information box 2	INFORMATION ON THE AFFILIATES REPRESENTED BY THE MEMBER	
	Name	Address
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
…		

Information box 3	INFORMATION ON THE CONSORTIUM REPRESENTATIVE OF THE MEMBER
Name:	
Position:	
Professional address:	
Professional phone number(s):	
Professional fax number(s):	
Professional e-mail address:	

Information box 4	INFORMATION ON THE SIGNATORY OF THE CONSORTIUM AGREEMENT
Name:	
Position:	
Professional address:	
Professional phone number(s):	
Professional fax number(s):	
Professional e-mail address:	

Information box 5	SUBSTANCES/PRODUCTS OF THE MEMBER WHICH NEEDS TO BE COVERED
SILICON	
FESI	
SILICA FUME	

Information box 6	NOTIFICATION ON CONFIDENTIALITY
I request Information contained in (<u>please tick the appropriate answer</u>):	
Information box **1** of this Folio to be considered	Confidential to third parties to the Consortium ☐
Information box **2** of this Folio to be considered	Confidential third parties to the Consortium ☐
Information box **3** of this Folio to be considered	Confidential third parties to the Consortium ☐
Information box **4** of this Folio to be considered	Confidential third parties to the Consortium ☐
Information box 5 of this Folio to be considered	Confidential third parties to the Consortium ☐

I, acting as Signatory on behalf of [_____] and of its Affiliates as presented above, execute the Consortium Agreement as of the date first mentioned above my signature:

Date: _____
Signature: _____

ANNEX 2: Substance/product and tonnage declaration (template) CONFIDENTIAL

IMPORTANT NOTICE

- *This Declaration shall be submitted by each Member to the Trustee at the time of the signature of the Consortium Agreement by the Member.*
- *The signatory of this Declaration shall be the same as the Representative signing the Signatory folio of the Consortium Agreement.*
- *The content of this Declaration shall be applied to define the appropriate specific cost-share of the Member, pursuant the cost sharing formula defined under chapter X.2. and in Annex 7 of this Agreement.*
- *The content of the Declaration shall remain with the Trustee and shall be kept confidential.*

INFORMATION ON THE SIGNATORY OF THE SUBSTANCE AND TONNAGE DECLARATION	
Name:	
Position:	
Professional address:	
Professional phone number(s):	
Professional fax number(s):	
Professional e-mail address:	

I, acting as Representative of [_____] and of its Affiliates as defined under Definitions of the Consortium Agreement, and providing that the Substances indicated hereto are included in Annex 3 of such Agreement, declare to join the Consortium to fulfil the requirements under REACH Regulation for the following substances in the following tonnage bands:

Please indicate the real tonnages in the relevant column hereafter.

	Name of the substance	Synonyms	Formula	EC N°	CAS N°	Tonnage Band (t/a)			
						< 10	< 100	< 1000	> 1000
Silicon group									
Silica Fume group									
FeSi alloys group									

	Name of the substance	Synonyms	Formula	EC N°	CAS N°	Tonnage Band (t/a)				
						> 10 000	> 20 000	> 30 000	> 40 000	> 50 000
Silicon group										
Silica Fume group										
FeSi alloys group										

I declare that we will not refer to any of the Information of the Registration Dossier which is submitted to the Agency by the Consortium's Candidate Lead Registrant(s) which is not required for the Substances and tonnage bands declared here above.

Date: _____
Signature: _____

Guidance to declare the tonnages

- The reporting of tonnages by the Members shall follow the same principle as for the reporting to the Authorities.

  For the substance/product that has been imported or manufactured in the EEA for at least three consecutive years, quantities per year have to be calculated on the basis of the average production or import volumes for the three preceding calendar years (Article 3.30 of the REACH Regulation). If the substance has not been manufactured or imported for 3 consecutive years then the calendar year tonnage (or an estimate) of the first year participation to the Consortium should be used.

  For 2008, the tonnage to be reported is the average of the years 2005, 2006 and 2007.

- The volume of a non-phase-in substance[2] to be reported in a registration dossier is the estimated quantity that is expected to be manufactured and/or imported in the calendar year (1 January – 31 December) of registration

- All volumes of the substance that are intended to be manufactured and imported by the Member and that are not exempted from registration have to be sum up. Alloys are considered separately within this Consortium Agreement.

- In the case that the Member manufactures and/or imports the same substance at different sites, then the volume of substance to be registered is the total of the volumes of the substance manufactured and/or imported at the different production/imports sites

- The tonnages of substances manufactured and / or imported into the EEA by Affiliates of the Member, as mentioned in Annex 1 and as disclosed to the Trustee, shall be attributed to the Member.

- Each member is responsible for the tonnages declared and the way to estimate them according to its activities (manufacturer, importer, only representative).

- Upon formal request from the Steering Committee, the Member will have to accept to submit auditable attestations on the Substances and the tonnage (bands) declared and registered at the Agency, to the Trustee.

[2] *phase-in substance means substance listed in EINECS; or manufactured in the EU since April 1992 but not placed on the market; or placed on the EU market before 1 June 2007 and considered as notified under Article 8 (1) of Directive 67/548.*

ANNEX 3: Substances/products covered by the Consortium Agreement

The Substances (on their own and in preparations (such as alloys) which will be covered by this Agreement and therefore jointly prepared for registration purposes, are:

Silicon

EINECS n° 231-130-8 CAS n°7440-21-3

Silica Fume

EINECS n° 273-761 CAS n°1 69012-64-2

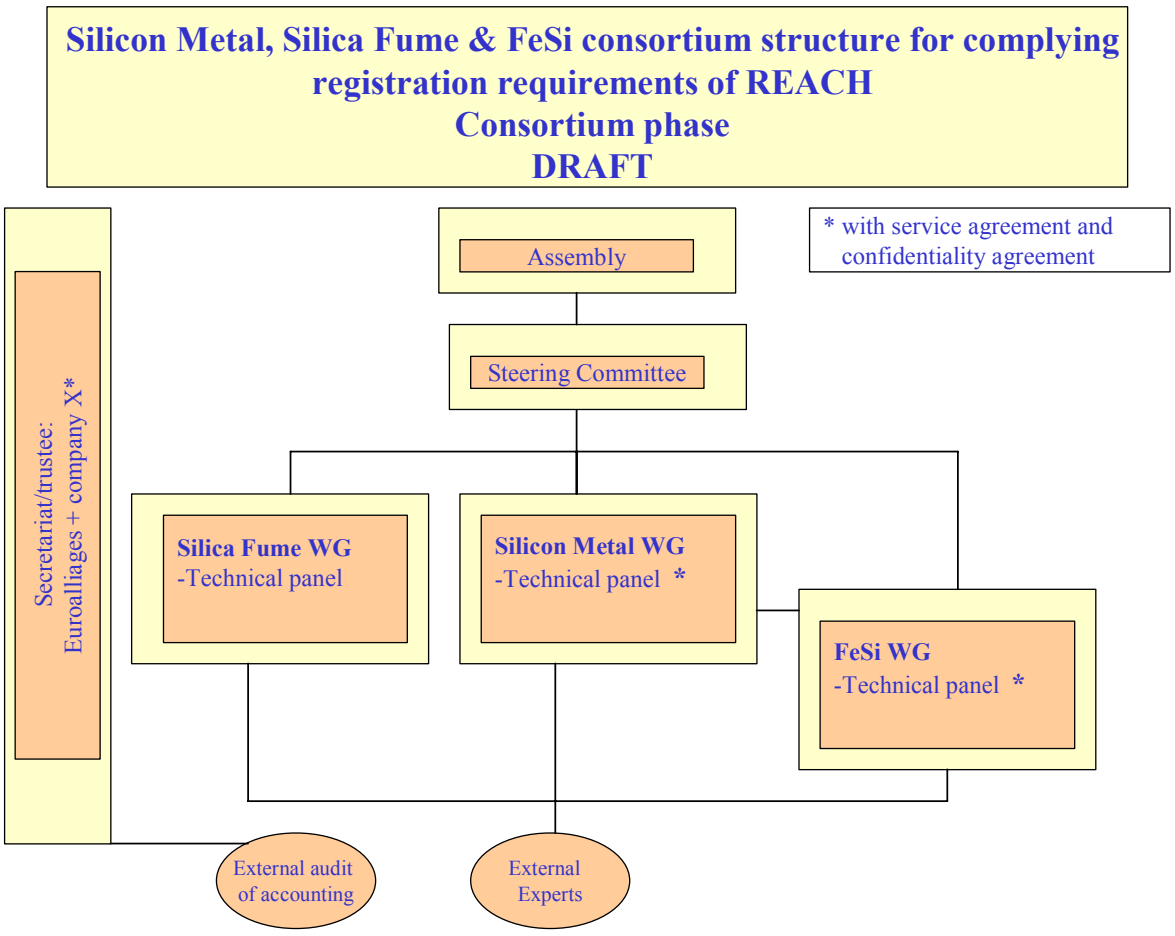
Silicon in FeSi alloys

EINECS n° 234-671-8 CAS n°12022-99-0
234-670-2 12022-95-6
8049-17-0

Other substances/products subject to registration requirements might be identified by the Working Groups.

ANNEX 4: Working Structure of the Consortium

The following chart indicates the main arrangement of the working structure which is necessary to achieve the purposes of the Consortium. This working structure shall not be considered as being definitive; additional *ad hoc* Work Group(s) might be constituted by the Steering Committee from time-to-time.



ANNEX 5: Confidentiality agreement
Undertakings of the Trustee

This **AGREEMENT REGARDING THE UNDERTAKINGS OF THE TRUSTEE** (the "**Agreement**") is entered into as of the Effective Date set forth on the signature page hereof, between

the (present and future) **Members** of the Silicon, Silica Fume and FeSi alloys Consortium to whose Consortium Agreement this Agreement is, as an annex, an integral part thereof

and

the undersigned _____ (Address of the Signatory) (hereafter referred to as the "**Trustee**").

The Trustee recognizes and acknowledges that the above mentioned Silicon, Silica Fume and FeSi Consortium, when retaining its services of Trustee, considered, amongst others, its participation and commitment in the framework of REACH implementation at the largest sense and meaning, including, a.e., the status, function and role ('the mission') of "Trustee" in the context of this consortium, in strict compliance with the terms and conditions related to such mission in provisions of such Consortium Agreement.

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

Accordingly, in consideration of the above mentioned context, the Consortium Members and the Trustee, intending to be legally bound, agree as follows:

1. Confidential Information.

Confidential Information. For purposes of this Agreement, "Confidential Information" means means, in accordance with Article 39.2 of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), all Information which:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

This can be all oral, written and/or tangible and intangible technical, financial, business and/or other data, information or knowledge of whatever kind that is confidential, proprietary and/or not generally available to other persons than the Member that holds it, including, without limitation, information relating to the Consortium present and future Members, activities, strategies, plans and concepts, volume estimates, financial data, market information, research and development plans and results, work product, analyses, compilations, studies, reports or other documents or records generated from such data and information, specifications, configurations, designs, drawings, apparatus, sketches, software, hardware, and other data and information which a disclosing Member is disclosing, exchanging or sharing under this Agreement for the Purpose at any time during the term hereof. "Confidential Information" shall not include any information or knowledge which: (i) is in the public domain other than by a breach in this Agreement; or (ii) is disclosed to the Trustee lawfully by a third party who is not under any obligation of confidentiality; or (iii) is now or hereafter becomes generally known in the industry activities in which the Consortium Members are involved for the present REACH purpose and context, other than by breach of this Agreement.

1.1. <u>Trustee's Obligations as to Confidential Information.</u>

1.1.1. Non-Disclosure. During the course of its mission of Trustee, the Trustee may have access to Confidential Information and/or Confidential Information entrusted to the Consortium Members by other persons. The Trustee shall not, either during the term of its mission or during the confidentiality period foreseen by the Consortium agreement for whatever reason, use or disclose such Confidential Information or convey such Confidential Information to persons outside the Consortium Members, nor shall the Trustee cause or permit any individual in relation with the Trustee to do any of the foregoing, except as may be (i) expressly authorized by the Consortium Members in their sole discretion; (ii) required during and in the course of the mission of the Trustee by the Consortium Members; or (iii) required by a judicial order or decree or governmental law or regulation.

1.1.2. Disclosure Prevention. The Trustee will take all reasonable precautions to prevent the inadvertent or accidental disclosure of Confidential Information. If the Trustee acquires access to information with uncertain confidentiality, the Trustee agrees to treat such information as Confidential Information until it is informed otherwise by an authorized Representative of the Consortium Members. Confidential Information shall be in writing or other tangible form clearly marked as CONFIDENTIAL.

1.1.3. Reception and safeguard of Confidential Information. The Trustee shall receive and store Confidential Information in a safe database following a strict guideline which shall be available to him.

1.1.4. Use of Confidential Information. The Trustee shall prepare a non-confidential summary or aggregation of any Confidential Information if it considers it is necessary for other Members to see some of it for the purpose of the Consortium Agreement, without enabling any Member to infer the sales, market shares, market or sales performance or trends therein of any other Member. The Trustee may seek the advice of an external legal counsel before releasing such a summary to the Members.

1.1.5. Ownership/Return of Materials. All Confidential Information, however and wherever produced, including, without limitation, Confidential Information stored in computer databases or by other electronic means, shall be and remain the sole property of the Consortium Members. At any time upon the request of the Consortium Members, or without such request upon termination of the Trustee's mission with the Consortium Members for whatever reason, the Trustee shall deliver to the Consortium Members (without retaining any electronic or physical copies, extracts or other reproductions) or destroy immediately upon the Consortium Members' request all documents and electronic storage devices that contain Confidential Information and that are in the Trustee's possession, subject to its control, or held by the Trustee for others, including, without limitation, any and all records, drawings, notebooks, memoranda, and computer diskettes, CDs, equipment, tools, or other devices owned by the Consortium Members and in the Trustee's possession.

1.1.6. Computer Security. During its mission with the Consortium, the Trustee agrees to use only computer resources made available to the Trustee, which the Trustee has been granted access and then only to the extent authorized. The Trustee agrees to comply with the Consortium policies and procedures concerning computer security.

1.1.7. E-Mail. The Trustee understands that the Consortium maintains an electronic mail system for the purpose of Consortium activities communications. The Trustee acknowledges that the said system, as well as all electronic communications transmitted thereon, is property of the Consortium Members, which retain the right to review any and all electronic mail communications, with or without notice, at any time, without prejudice however to their respective confidentiality obligations and commitments under the Consortium Agreement.

1.1.8. The Trustee recognizes as binding the regulations set out in the Confidentiality provisions of the Consortium agreement.

2. Ideas and Inventions.

2.1. Ownership. The Trustee acknowledges and agrees that the results of all work performed by it for or on behalf of the Consortium Members, or in connection therewith (the "Works"), are Works made for the Consortium (Members) in that either (i) such Works are and will be prepared within the scope of the Trustee's mission; or (ii) such Works have been and will be specifically ordered or commissioned for the Trustee as a contribution to a collective work or as a supplementary work. The Consortium Members shall therefore be deemed to be the sole author(s) and owner(s) of any and all right, title, and interest therein, including, without limitation, intellectual property rights. To the extent that any such Works do not qualify for any reason as works made for Trustee's mission, and to the extent that the Trustee may have or acquire any right, title, or interest in such Works, the Trustee hereby assigns to the Consortium (Members) any and all such right, title, and interest.

2.2. Disclosure of Inventions. The Trustee agrees to make full and prompt disclosure of any inventions or processes made or conceived by it alone or with other(s) during the term of its

mission (any such inventions or processes hereinafter referred to as the "Inventions"), whether or not such Inventions are patentable or protected as trade secrets and whether or not such Inventions are made or conceived during its mission. Notwithstanding such full and prompt disclosure, the Trustee's agreement to assign, as set forth in Section 2.1 above, shall not apply to any Inventions that were conceived and developed without the use of equipment, supplies, facilities, and trade secret information and were developed entirely on Trustee's own time, unless (i) the Inventions relate directly to the Consortium activities; or (ii) the Inventions result from any work performed by the Trustee for the Consortium.

2.3. The Consortium Members' Discretion to Pursue Intellectual Property Rights. The Trustee understands and agrees that the Consortium Members shall determine, in their sole and absolute discretion, whether an application for patent, copyright registration, or any other intellectual property right, shall be filed on any works or inventions assigned to the Consortium Members under this Agreement and whether such an application shall be prosecuted or abandoned prior to issuance or registration.

2.4. No Conflicting Prior Obligations. The Trustee hereby represents that it has not, since the commencement of its mission with the Consortium (Members), been and is not now under any obligation to any employer or contractor that is inconsistent with the terms of this Agreement and that, to the best of its knowledge, the Trustee has no present obligations to assign to any former employer or contractor, or to any person other than the Consortium Members, any work or invention covered by this Agreement.

3. Competition Law

3.1. During the course of its mission, the Trustee shall not, in any manner whatsoever, act, or allow or enable Consortium Member(s) or any third party involved into the Consortium activities under the Consortium Agreement, to act in infringement or in non-compliance 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 law.

The Trustee recognizes as binding the Competition Law Compliance Guidelines attached hereto as Annex 6 of the Silicon, FeSi, Silica Fume Consortium Agreement.

3.2. Therefore, the Trustee shall identify, check and manage, by any appropriate means – including by seeking any legal advice authorized by Consortium Member(s), when needed, any existing or potential competition law issue which could be, or lead to, an infringement or breach of Competition Law.

4. General Provisions.

4.1. Prohibition of Public Statements. The Trustee agrees that neither the Trustee nor any person working on behalf of the Trustee (if any) in the performance of its mission for the Consortium Members shall make any public statements or otherwise engage in any publicity concerning whether or not confidential, without prior written consent of an authorized representative of the Consortium Members. Notwithstanding the foregoing, nothing in this Agreement shall

preclude the Consortium Members from making public statements or otherwise engaging in publicity concerning the Trustee's work on the Consortium Members' behalf.

4.2. Enforcement.

4.2.1 Survival of Covenants. The Trustee acknowledges and agrees that the covenants made by the Trustee in this Agreement shall survive termination of its mission towards the Consortium Members for whatever reason, whether voluntary or involuntary, and that the existence of any claim or cause of action by the Trustee against the Consortium Members, whether predicated on this Agreement or otherwise, shall not constitute a defence to enforcement by the Consortium Members of such covenants.

4.2.2 Remedies. The Trustee acknowledges that, in the event of a breach of the Trustee's obligations under this Agreement, Consortium Members' interests will be irreparably injured, the full extent of the Consortium Members' damages will be impossible to ascertain, monetary damages will not be an adequate remedy for the Consortium Members, and the Consortium Members will be entitled to enforce this Agreement by an injunction or other equitable relief.

4.3 Governing Law – Jurisdiction.

4.3.1 Governing Law. This Agreement shall be governed by the laws of Belgium.

4.3.2 Consent to Jurisdiction. Any judicial proceedings brought by either Party against the other and arising out of this Agreement shall be brought in a court of competent jurisdiction in Belgium. The Trustee understands and agrees that by execution and delivery of this Agreement the Members accept for themselves, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts.

4.4 No Assignments. Neither Member to this Agreement may assign or delegate any rights or obligations hereunder without first obtaining the written consent of the other Members hereto; provided, however, that the Consortium Members may assign their rights or obligations hereunder to any successor in law of the Consortium Members.

4.5 Amendment, Modification and Waiver. No amendments or additions to this Agreement shall be binding unless in writing and signed by 2/3 (two-thirds) of the Members hereto. No delay or failure at any time on the part of either Party in exercising any right, power, or privilege under this Agreement, or in enforcing any provision of this Agreement, shall impair any such right, power, or privilege, or be construed as a waiver of any default or as any acquiescence therein, or shall affect the right of such Members thereafter to enforce each and every provision of this Agreement in accordance with its terms.

By its signature below, the Trustee acknowledges that it has reviewed this Agreement carefully and understands that the covenants and obligations it contains are binding on the Trustee.

Accepted and agreed to by:

The Trustee

Name: _____

Date: _____

Address: _____

Signature: _____

ANNEX 6: Competition law – Code of Conduct

I.

The parties shall not make any agreements concerning coordination of conduct that restrict or affect competition within the meaning of Art. 81 EC Treaty; they shall observe the prohibition of abusing a market-dominating position pursuant to Art. 82 EC Treaty:

Article 81

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.
The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

II.

The parties shall act in compliance with the following checklist:

DO	DON'T
Application of competition law	
Art. 81 and 82 EC Treaty may be applicable to the conclusion of the Preliminary Agreement and activities of the preliminary phase.	Don't assume that conflicts with competition law are excluded simply by the fact that the Agreement complies with the provisions of REACH.
Consultation in Matters of Competition Law	
Consult an in-house legal expert or the compliance officer of your company or an external lawyer whenever there are uncertainties respecting compliance with competition law. Stop all meetings/discussions which are not in compliance with the Code of Conduct until a legal expert has been involved.	*Don't assume that the Code of Conduct deals with all competition law issues exhaustively. Basically, compliance with Art. 81 and 82 EC Treaty can be determined only on the basis of market impact in each individual case. The Code may therefore be regarded only as a means of providing general conduct recommendations.*
Activities in the preliminary phase	
Restrict cooperation within the scope of the Agreement to the initially defined goals and purposes of the cooperation.	Pursuant to Art. 81 and 82 EC Treaty the following activities are prohibited within the scope of the Preliminary Agreement: - Coming to arrangements about prices, markets and customers (see Art. 81 paragraph 1 a)-e) EC Treaty); - Joint boycotting of other companies - The unjustified unequal treatment of trade partners - the abusive exploitation of a dominating market position.
Exchange of Confidential Information	
Involve a trustee for the exchange of confidential information.	The exchange of confidential information concerning market behaviour is inadmissible; in particular this relates to - production capacities - productions or sales volumes

	- import volumes - market shares - price policy - distribution and marketing terms - marketing strategies - information regarding the relationship with suppliers
Documentation on Cooperation Keep minutes of all meetings which detail the subject of the meeting. Have the contents of the minutes reviewed by an in-house legal expert or the compliance officer of your company prior to sending them to all parties of the Agreement. Stop all meetings which are not in compliance with the Code of Conduct until a legal expert has been involved.	

ANNEX 7: Voting procedure and cost-sharing formula

1. Voting procedure

The number of votes is linked to the financial contribution of each member (the fixed fee and the variable fee). Two (2) votes are attributed per fixed fee. The number of votes related to the variable fee depends upon the tonnage band as follows:

1 – 10 T: 1 vote
10 – 100 T: 2 votes
100 – 1000 T : 3 votes
1000 - 10 000 T : 4 votes
10 000 – 20 000 T : 8 votes
20 000- 30 000 T : 12 votes
30 00 – 40 000 T : 16 votes
40 000 – 50 000 T : 20 votes
> 50 000 T : 24 votes

The substance/product-specific decisions are taken by the « sub » Assembly which only consists of the members concerned by the substance/product.

Generic decisions which concern all the members are taken by the Assembly. The votes of each Working Group are weighted according to the respective budget of each Working Group as presented in the following theoretical example:

	Budget	Weighting factor
Working group 1 - Silicon	20	20/20 = 1
Working group 2 - FeSi	30	30/20 = 1.5
Working group 3 – Silica Fume	40	40/20 = 2

Ex. : A company producing 22 000 T silicon and 5000 T Silica Fume shall have the following number of votes:

for the silicon group: 12 + 2 = 14 votes; for the Silica Fume group: 4 + 2 = 6 votes

For generic question, this company in the Assembly shall have the following votes:

(12*1 + 2) + (4*2 + 2) = 24 votes

2. Cost-sharing formula

1. The share of the generic costs (fixed fee) and of the product-specific costs (variable fee) to be paid by each Member shall be calculated based on (i) the declaration submitted by the Member to the Trustee at the moment of the signature of the Consortium Agreement or afterwards updated to the Trustee and (ii) on the annual budget prepared by the Secretariat as approved by the product-related Working Groups and the Assembly of the Consortium.

2. The allocation of the different costs will be done as follows:

2.1. Generic costs will be distributed equally among all the Members of the Consortium according to one share of the generic costs per member and per substance or product.

2.2. Product-specific costs applicable to each Work Group will be allocated according the tonnage band indicated by the member in its declaration and its corresponding share and the corresponding budget.

3.3. The mathematical description of the cost-sharing formula of the Consortium is the following:

(a) $C_i = A_i + B_i$

(b) $A_i = G. S_i/N$

(c)

$$B_i = P_1 \left[\frac{X_i}{\sum_{i=1}^{n1} X_i} \right] + \delta P_2 \left[\frac{X_i}{\sum_{i=1}^{n2} X_i} \right] + \delta P_3 \left[\frac{X_i}{\sum_{i=1}^{n3} X_i} \right] + \delta P_4 \left[\frac{X_i}{\sum_{i=1}^{n4} X_i} \right]$$

Where the symbols have the following meaning:

C_i is the share of the total Consortium costs borne by member "i"
A_i is the share of the generic costs borne by member "i"
B_i is the share of the product-specific costs borne by member "i"
S_i is the number of substance/product borne by member "i"

G is the total generic costs of the Consortium

X_i is the number of votes borne by member "i"
N is the sum of the members per substance/product covered by the Consortium

n_1 is the total number of members of the Working Group concerned by the first tonnage band (1 – 10 T)
n_2 the second tonnage band (10 – 100 T)
n_3 the third tonnage band (100 – 1000T)
n_4 the highest tonnage band (> 1000 T)

P_1 is the product-specific costs of the Working Group (WG) related to the first tonnage band (1 – 10 T)
δP_2 is the product-specific additional costs of the WG related to the second tonnage band (10 – 100 T)
$\delta\Delta P_3$ the third tonnage band (100 – 1000 T)
$\delta\Delta P_4$ the fourth tonnage band (10 – 100 T)

P is the total cost of the working group corresponding to the highest tonnage band

$P = P_1 + \delta\Delta P_2 + \delta\Delta P_3 + \delta\Delta P_4$

The cost of each tonnage band is based on the total cost (budget) corresponding to the highest tonnage band weighted by the following provisional factors:

	Tonnage band	factor
1	1 – 10 T	5 %
2	10 – 100 T	20 %
3	100 – 1000 T	50 %
4	> 1000 T	100 %

Upon formal request from the Steering Committee, the Member will have to accept to submit auditable attestations on the Substances and the tonnage bands declared and registered at the Agency, to the Trustee.

ANNEX 8: Letter of Access (template)

[Address of Regulatory Authority] [Date]

Letter of Access for the registration of the Substance _____ *[insert name and the applicable Identification Code(s) of the Substance to be registered]* under REACH Regulation 1907/2006/EC.

Dear Sirs,

The Consortium constituted on _____, 2008 on the registration of the Substance _____ [*insert name and the applicable Identification Code(s) of the Substance to be registered*] under REACH Regulation (hereafter 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 Consortium Members and submitted by the Consortium in support of the registration under REACH Regulation:

Substance: _____ [*insert the exact name of the Substance to be registered*]

(hereinafter collectively referred to as the "Dossier"), may be cited or referred to by

Applicant: _____ [*insert the name of the Legal Entity*]

in order to support [Applicant]'s registration of the above mentioned Substance under REACH Regulation.

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 cite or to refer to the Dossier is subject to the following restrictions:

1. The right of citation or referral only gives access to the Dossier of the Substance for the registration as specified above.
2. The right of citation or referral is solely granted in favour of [*Applicant*] and is not transferable to any other entity or person, without prior written consent of the Consortium Members.
3. [*Applicant*] is not authorised to receive any copies of the Dossier nor is [*Applicant*] authorised to inspect or view the Dossier or any related specific document in whole or in part [*Note : Depending on the agreement between the Consortium and [Applicant] the latter may receive the results and/or summaries/robust summaries of studies directly from the Consortium.*]

4. This Letter of Access shall in no event be construed as granting [*Applicant*] any property rights whatsoever in the Dossier.
5. Nothing in this Letter of Access shall require the Consortium to provide or to file any additional data.

The terms and conditions to which the above right to cite or to refer to the Dossier is subject to, as approved by the Steering Committee of the Consortium are:

In whiteness thereof, the parties execute this agreement, by:
(i) setting their signature
(ii) submitting to the Secretariat, the Signature folio following the template presented in Annex 1 and
(iii) submitting to the Trustee, the Substance and tonnage declaration following the template presented in Annex 2,
all documents being duly completed and signed by their respective authorized Representative(s).

I, _____ authorized Signatory of _____ and of its Affiliates, execute the Consortium Agreement as of the date first mentioned above my signature:

Date: _____

Signature: _____

I, _____ authorized Signatory of _____ and of its Affiliates, execute the Consortium Agreement as of the date first mentioned above my signature:

Date: _____

Signature: _____

I, _____ authorized Signatory of _____ and of its Affiliates, execute the Consortium Agreement as of the date first mentioned above my signature:

Date: _____

Signature: _____

ANNEX 9: Identified Uses of Full Members to the Extent Treated in the Chemical Safety Report

ANNEX 10: Valuation Rules

a) The following rules apply for the valuation of the studies, test data and other information i) contributed by consortium members to the consortium, or ii) generated or established by the consortium, which together with the aforementioned information are made available to late members.

b) The rules also apply if, within the framework of SIEF, the Steering Committee awards third parties with usage rights to studies, test data and other information contributed to the consortium by individual members, or generated or established by the consortium within the scope of the present Agreement.

c) The aforementioned reports are initially evaluated with respect to their scientific value for registration pursuant to REACH. In a second step, their financial value is calculated through the use of various mark-ups and deductions.

d) The object of the valuation is to ensure that adequate compensation is paid to the report owner for the provision of preliminary services and that the recipients' requirement for a high quality report is satisfied.

1) Scientific Evaluation

e) The quality of the reports is determined by the Steering Committee, or experts commissioned by the latter, in accordance with the Klimisch et al.[3] method by classifying the report into one of the following categories:

(1) reliable without restriction
(2) reliable with restrictions
(3) not reliable
(4) not assignable.

The chapter on "Categories of reliability" of the aforementioned publication elaborates in detail on the individual categories.

f) The chapter "Criteria for reliability categories" of the Klimisch et al. publication contains detailed descriptions concerning the minimum requirements for studies, which were not fully performed or documented in accordance with currently accepted standards, and were thus classified under category (2) "reliable with restrictions".

[3] H.-J. Klimisch, M. Andeae, and U. Tillmann, A systematic approach for evaluating the quality of experimental toxicological and ecotoxicological data, Regulatory Toxicology and Pharmacology 25, 1-5 (1997)

g) The allocation to the four categories must be accompanied by appropriate substantiation in accordance with the requirements described in the Klimisch et al. publication[4]. An exception is provided for the reports in category (2) “reliable with restrictions", which must be further differentiated for the purpose of the subsequent financial valuation. In this case, in addition to the requirement stated above, supplementary detailed documentation, supported by the greatest level of detail possible, must be prepared. As a rule, it should be noted that the absence of certain information must not be such that it can significantly affect the recipient’s confidence in the correctness of the results and conclusions.

h) Also studies, for which no standard protocol exists, e.g., exposure studies, must be documented and are also to be evaluated under the Klimisch et al. method.

i) In case the generic approach described above is not sufficient in evaluating the reliability of existing data, other sectorial approaches should be considered, in particular for metals, metal compounds and minerals, the MERAG (Metals Risk Assessment Guidance) when scrutinising ecotoxicity data for hazard classification (MERAG Fact Sheet 08, pp 6-12).

3) Financial Valuation

i) From a scientific viewpoint, reports in category (1) “reliable without restriction" and (2) “reliable with restrictions" qualify for financial compensation, whereas reports in categories (3) “not reliable" and (4) “not assignable" are deselected from the subsequent procedure. This does not mean that the information contained in reports from the latter two categories is classified as useless. Rather, the owners are asked to make such information available free of charge.

j) The percentage factor to apply to each rating under i) is the following: 100% of the original or replacement value to category 1), 80% to category 2), 0% to category 3) and a variable factor to category 4) to be decided on a case to case basis.

k) The assessment basis for determination of the financial value of a given report is the replacement value of the report as of the valuation date. Included in this value are expenses for the following measures:

i) Preliminary testing for determining test concentrations
ii) Substance testing according to the standard protocol
iii) Development of suitable analytical methods
iv) Supplementary analyses:

[4] All reports for consideration should ideally be documented as IUCLID 5 datasets with a Robust Study Summary (if available). If the IUCLID 5 file needs to be generated, however, this may be deferred until study selection(s) for a given endpoint has been made. Generally, robust study summaries would be prepared only for the highest quality or “key” studies in a data evaluation exercise.

(1) Substance characterization
(2) Stability in test medium
(3) Concentration in test medium

v) Administrative expenses
(1) Processing and professional support by the commissioning party
(2) Travel expenses
(3) Archival of the test substance and raw data
(4) Preparation of IUCLID data set and robust summary if relevant

The calculation only includes expenses, which are documented by verifiable documentation or, if such documentation is not available, expenses that can be justified with sufficient plausibility.

l) The expenses for preliminary testing and substance testing according to the standard protocol are calculated as the arithmetic average of the prices charged by the following three testing institutes according to their price lists:

i) Testing Institute A *(determined by the consortium members)*
ii) Testing Institute B *(determined by the consortium members)*
iii) Testing Institute C *(determined by the consortium members)*

The relevant end point is subjected to the customary standard procedures valid as at the valuation date. Special conditions, such as those granted when commissioning larger contingents, are not taken into account.

m) In cases of testing for inherent substance properties, the limitation (2) "reliable with restriction" arises mostly from the fact that the study was conducted at a date prior to the introduction of the GLP standards. The deduction is determined from the difference presented in the price lists of institutes or to be inquired there.

n) Deductions due to other deficiencies can be evaluated only on a case-by-case basis. The total deduction should not exceed 20% of the price of the standard test (excluding GLP). Otherwise, the classification to the respective category is placed in doubt.

o) For surveys, which are not supported by any standard test protocols, the party supplying the report should provide a document with an overview of the process steps, including the expenses and the time required (working days, costs per working day), such as:

i) Development of study concept
ii) Exploratory studies
iii) Performance of the study
iv) Analyses
v) Expenses for further contractors
vi) Administrative costs (fixed sum).
(i) The individual positions are to be presented and justified with sufficient plausibility.

p) The calculation of expenses for substance analysis, for which no market prices are available, requires the following information from the party supplying the report for each analytical procedure:

i) Brief description of the procedure or method, including the limit of detection
ii) Estimated costs for the development or provision[5] of the procedure or Method
iii) Costs per analysis
iv) Number of analyses performed

The development and provision costs can also be included in the costs for each analysis.

q) A fixed surcharge of 15% of the sum total of experimental costs (substance testing and analysis) is charged for administrative expenses (processing and professional support by the commissioning party, travel expenses, archival of the test substance and raw data, preparation of IUCLID data set and robust summary). In the case of significant amounts in excess of the above surcharge, the expenses are to be substantiated and documented individually.

r) Robust summaries contributed by the supplier or developed by experts commissioned by the Work Groups should be compensated by 30% of the value of the administrative costs

s) The decision to conduct a study involves the risk that the study results could adversely affect or prevent future substance marketing; hence, the individual member contributing a report to the consortium was exposed to the risk that the investments made in the study are of minor or no benefit. The other members of the consortium are not exposed to this risk since they already know the study result. Therefore, the contributing member is granted a fixed surcharge of 30% of experimental costs.

t) The current value of a given report is comprised of the experimental and administrative expenses, as well as the risk premium specified above.

[5] Provision of analytical procedure or method includes the measures required for testing a method known from the literature for compatibility with the intended use.

ANNEX 11: Non-Use and Non-Disclosure Statement

I. OBLIGATIONS OF THE RECEIVING PARTY

The undersigned (hereafter, the Receiving Party) commit:

a) not to disclose and to protect the confidentiality of the Information, including any notes, summaries, reports, analyses or other material incorporating the Information that are 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 performing 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 (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) Non-use and non-disclosure obligations relating to data submitted to the competent Authorities in the context of REACH Registration shall continue for twelve (12) years from the latest deadline of Registration of each of the Relevant Substances listed in Appendix 1 or, if the Information is submitted to the competent authorities after that date, from date of submission of the Information.

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 immediately notified by the Receiving Party who shall take all reasonable action and cooperate fully in remedying same.

II. EXCEPTION TO CONFIDENTIALITY PROTECTION

Notwithstanding section I of this Appendix, 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 the Substance covered by this Consortium Agreement, that is necessary to enable appropriate risk management measures to be identified and applied, but only so long as the Receiving Party's customer does not manufacture, import into the EU or sell such Substances.

Notwithstanding section I of this Appendix,

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 and provides them with an opportunity to defend such disclosure.

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 Committee.

c) The Receiving Party can disclose the Information to the professional advisers that he appointed under terms of the Confidentiality agreement.

Section I of this Appendix 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;

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 Assembly or the Steering Committee 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) provided that the information is a Study developed by the Consortium, it is approved for public disclosure by written authorisation of the Assembly or the Steering Committee subject to any directions of the Steering Committee with respect to the extent, timing, and manner in which the Information shall be publicly disclosed,

g) is data on exposure to a Relevant Substance.

III. 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 would cause immediate and extremely serious injury to 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 maybe 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.

The undersigned has executed this Non-Use and Non-Disclosure Statement as of the date indicated below:

[INSERT NAME]