

Consortium Agreement for the REACH Registration of Inorganic phosphates

pursuant to requirements of the European REACH Regulation

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Inorganic phosphates Consortium Agreement

This Agreement is signed between the following Members:

Note: conform to §I below (“Definitions”), one “Member” may cover a number of legal entities which are separate REACH Registrants (each paying its own Registration Fee), if and only if each of these legal entities is an “Affiliate” (see Definitions) of this Member, and in this case this Member is treated as a single unit in all aspects of this Agreement: one vote, one share in cost sharing, etc ... Affiliates of Members as at the date of Entry into Force are listed indicatively in [Annex 4](#).

Members

At the date of Entry into Force of this Agreement, six Initial Members

- 1) **BK Giulini GmbH**, a company with limited liability under German law (Gesellschaft mit beschränkter Haftung), whose registered office is at Giulinistrasse 2, 67065 Ludwigshafen am Rhein, Germany,

- and 2) **Chemische Fabrik Budenheim KG** a limited partnership under German law (Kommanditgesellschaft) whose registered office is at Rheinstrasse 27, D-55257 Budenheim, Germany,

- and 3) **FMC Foret S.A.**, a company with limited liability under Spanish law (sociedad anonima) whose registered office is at Plaza Xavier Cugat, 2, Edificio C, planta 3ª, Parque de Oficinas Sant Cugat Nord 08174 Sant Cugat del Vallés (Barcelona), Spain,

- and 4) **Prayon SA**, a company with limited liability under Belgian law (société anonyme) whose registered office is at Rue J. Wauters 144, B-4480 Engis, Belgium BCE 0405 747 040,

- and 5) **Thermphos International BV**, a private company with limited liability under Netherlands law (Besloten Vennootschap) whose registered office is at Europaweg Zuid, Haven 9890, 4389 PD Ritthem, The Netherlands,

- and 6) **CECA S.A.**, a company with limited liability under French Law (société anonyme) whose registered office is at 89, boulevard National, 92257 La Garenne-Colombes cedex, France

Preamble

Whereas the Members are (as defined in REACH) manufacturers and/or importers and/or only representatives with registered offices in the European Economic Area, or non-EU manufacturers represented by an only representative established in the European Economic Area, of one or more of the Substances listed in Annex 1 with registered head offices or affiliates in the European Union.

Whereas the Substances have phase-in status according to Article 3 (20) of REACH.

Whereas REACH imposes on EU manufacturers and importers an obligation to register the Substances as such, in preparations or in articles within the prescribed deadlines.

Whereas REACH requires, subject to certain exceptions, multiple registrants of the same Substance to share certain data and jointly submit part of the registration relating to the substance.

Whereas considering the effort required by the regulatory obligations the Members wish to increase the efficiency of generation of Information, to avoid to duplicate work and to reduce associated costs as well as to file a harmonised set of data for each of the Substances to the European Chemicals Agency.

Therefore, with a view to fulfilling their regulatory obligations for the Consortium Substances, the Members form by the present a Consortium (see Definitions) in respect of anti-trust and competition legislation, open to any other interested operators subject to the criteria defined hereunder, in order to achieve the Purpose (defined in § II), and in particular to:

- share Information, review the available data, identify data gaps, propose additional testing, and, subject to an agreement on a case-by-case basis, perform testing where necessary,
- compile and submit harmonised sets of data for Registration and Registration Dossiers,
- manage Registration and access to these REACH Registration Dossiers and to relevant data before and after the Date of Registration, in particular with relation to: other potential REACH Registrants of the Substances, potential REACH Registrants of other substances with potential read-across to/from the Substances, any other party wishing to access or use this dossier for REACH or for any other regulatory purposes,
- carry out other joint activities necessary for the REACH Registration of the Substances or relevant to or related to the Purpose.

NOTE: Pre-Registration remains the responsibility of each Member and is NOT carried out by or otherwise coordinated or managed by the Consortium

Copyright

This Agreement text is based on the model text developed by Cefic for its member companies and Sector Groups, and on the text developed by the Initial Members of the STPP Consortium, modified by the Members and by experts commissioned by these Members. This text is thus copyright and property of Cefic and of the Members, and no part of it may be copied or used for other purposes without written authorisation from both Cefic and from the Secretariat.

The signature of this Agreement by those Initial Members which are also the Initial Members of the STPP Consortium (see Definitions), constitutes explicit acceptance by each of them of the use of this text for this Agreement, and also of the use of accounting and consortium management tools developed for the STPP Consortium, in both cases without payment of compensation in any form, corresponding to the difficulty in evaluating the value of this knowledge and to the fact that the five of the beneficiary companies are the same.

The Members have agreed the following:

I) Definitions

The following terms and expressions shall have the meaning assigned to them below:

Administration Fee: see Annex 9;

Advantage Compensation Payment: see Annex 9;

Affiliates: any legal entity controlling, controlled by, or under common control with a Member, and which is (as defined in REACH) : a manufacturer and/or importer and/or only representative with registered offices in the European Economic Area, or a non-EU manufacturer provided that he is represented by an only representative established in the European Economic Area. For these purposes, "control" shall refer to: (i) the possession, directly or indirectly, of the power to direct the management or policies of a person, whether through the ownership of voting rights, by contract or otherwise; or (ii) the ownership, directly or indirectly, of 50 % or more of the voting rights or other ownership interest of a person. The indicative list of Affiliates as at the date of Entry into Force of this Agreement and conditions for updating this list are included in Annex 4;

Agency: the European Chemical Agency;

Agreement: this contract between the Members;

Annex: refers to an Annex of this Agreement;

Confidential Information: see §.IV;

Concerned Substance / Concerned Member : see § III.6

Consortium: the Members acting together within this Agreement as specified in § VI.1;

Consortium Entry Fee: see Annex 9;

Core Data: the data that Members gather, develop in common and agree to submit to the Agency pursuant to Article 11 paragraph 1 of the REACH Regulation, including the following data:

- Classification and labelling of the Consortium Substances pursuant to section 4 of Annex VI of REACH;
- Study summaries of the information derived from the application of Annexes VII to XI of REACH;
- Robust Study summaries of the information derived from the application of Annexes VII to XI, if required in Annex I of REACH;
- Proposals for testing where listed in Annexes IX and X of REACH;
- Chemical Safety Report (including chemical safety assessment) as required under Article 14 of REACH, in the format specified in Annex I of REACH;
- Guidance on safe use of the Consortium Substances as specified in section 5 of Annex VI of REACH.

it is noted that information on manufacturing processes, Substance impurities (see Annex 1.2) and confidential uses (see Annex 2.2) will be submitted separately in each company's specific Registration information;

Date of Leaving: see § III.3 and §III.4;

Date of Registration: date on which a Registration Number is received from the Agency by the Lead Company, following submission of the Registration Dossier;

Deadline for registration: the date by which (one of or a group of) Consortium Substances must be registered at the latest, as specified in Article 23 of the REACH Regulation, as applicable for the

Tonnage Band indicated in Annex 1 (or the highest of these Tonnage Bands for a Group of Substance, as defined below). Note, this Deadline is modified if the relevant Tonnage Band(s) are modified as specified in Annex 1;

Directly Concerned Substance / Directly Concerned Member : see § III.6

Dossier Contribution Cost: see Annex 9;

Entry into Force: date on which this Agreement has been signed by all of the signatories listed in § XV. If the signatories sign on different dates, this means the date of signature of the last of the signatories;

General Costs of the Consortium: all costs concerning the management and administration of the Consortium: secretariat, accounting, establishment, meeting costs ...

Identified Uses: of the Consortium Substances are those listed in Annex 2.1 of this Agreement, as referred to in Article 3, sub 26 of the REACH Regulation;

Indirectly Concerned Substance / Indirectly Concerned Member : see § III.6

Information: Studies, other scientific, statistical, commercial or technical data, including but not limited to Core Data and other data concerning composition, characteristics, properties and processes and uses, and any Information in any form made available to the Members by a Member (including its employees, Affiliates or agents) or by any third party, or generated by the Members individually or jointly. The term Information comprises relevant information that has been exchanged or generated pursuant to or in the course of this Agreement, or prior to the Entry into Force of this Agreement;

Existing Information: Information which was NOT generated by the activities covered by this Agreement, that is

- Information which existed prior to the Entry into Force and was not generated in the joint activities of the Initial Members during the phase of establishing this Agreement (late 2007, early 2008);
- Information which was generated by third parties, independently of this Agreement, before or after the Entry into Force;
- in particular, the Studies listed in Annex 5;

Governing Committee: see § VI.3;

Group of Substances: several (more than one) Consortium Substances which for which Registered is prepared together, either in a single Registration Dossier or in separate Registration Dossiers which are prepared through the same work plan and are based on mainly the same content.

Joint Submission: as defined in Article 11 of the REACH Regulation.

Key study: a study considered as the “key study” as defined in the Agency “Guidance for the Implementation of Reach, Guidance on Data Sharing, September 2007”.

Lead Company: for a Substance or Group of Substances, the Member who is responsible for submitting the Core Data to the Agency on behalf of the Members and their Affiliates pursuant to Article 11 (1) of REACH;

Letter of Access: as per models in Annex 10A and Annex 10B.

Member(s): the Initial Members (see below) as well as any (as defined in REACH) manufacturers and/or importers and/or only representatives with registered offices in the European Economic Area or non-EU manufacturer represented by an only representative established in the European Economic Area, of one or more of the Consortium Substances, which become signatories to this Agreement in future as specified in § III of this Agreement;

Membership: being a Member as defined above;

Initial Members: the Manufacturers / Importers / Only Representatives, as defined in REACH, of the Consortium Substances which are signatories of this Agreement (that is, all the signatories in § XV except the Secretariat) at the date of Entry into Force;

Voting Member: (representative of a) Member who is part of a given Committee or Task Force and is entitled to vote and not excluded from voting on a given issue;

Pre-Registration: see NOTE under Preamble;

Pro Rata Share: see Annex 9;

Purpose: as defined above under Preamble and in § II;

REACH: the REACH Regulation N° 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (OJ L 396 of 30.12.2006), and also all subsequent regulations, decisions, guidelines and rules defining the implementation of this Regulation;

Registration: REACH Registration of a substance, as defined in Article 10 of the REACH Regulation;

Registration Dossier: all Information, Studies, summaries of Studies, data, documents collected and collated for the REACH Registration of (one of or a group of) Consortium Substances and submitted to or held available to the Agency, and in particular including the Core Data (see above);

Secretariat: see § VI.7;

Study: reports, tests or evaluations in written or electronic form, including full study reports, summaries and robust study summaries as defined by REACH, relating to properties, exposure assessment, environmental or biological behaviour and/or impacts, and/or risk characterisation of the Consortium Substances and which are of relevance for Registration;

STPP Consortium: the Consortium for the REACH Registration of Sodium Tripolyphosphate (STPP), established by signature in May of an agreement between the five companies who are also the Initial Members of this Inorganic Phosphates Consortium

Substance: the Consortium Substances, for the purpose of this Agreement, are listed in Annex 1;

Task Force: a working group made up of the Members, as defined in § VI.2;

Technical Committee: see § VI. 5;

Tonnage Band: as defined in REACH, article 12 – see Annex 1;

and otherwise **any definitions specified in REACH**, in particular in Article 3 of the REACH Regulation, shall apply to this Agreement.

II) The purpose

II. 1) REACH Registration preparation

The Members of the Consortium undertake to cooperate and share human and financial resources in order to comply with the requirements of REACH for the Consortium Substances and in particular to pursue jointly the following objectives:

- (1a) define and agree the identity and the sameness of the Consortium Substances and their regulatory status
- (1b) define Groups of Substances (see Definitions)
- (1c) develop Core Data for the Consortium Substances fulfilling the REACH requirements applicable for the highest Tonnage Band(s) for a Substance (or Group of Substances) as defined in Annex 1, including where appropriate the following actions:
 - Gather and assess available data on the Consortium Substances held by the Consortium Members or by third parties as well as data in the public domain (literature etc.);

- Identify data gaps between the available data and the requirements in Annexes VI to XI of REACH;
 - Where this is necessary (in view of data gaps for the Consortium Substances), appropriate and feasible, define and agree for which other substances the available Information might be relevant for Registration of the Consortium Substances, gather and assess available data and develop read-across;
 - Assess opportunities for exposure-based waivers;
 - Subject to obligations under Art. 30 of REACH Regulation carry out testing to close the data gaps identified in relation to Annexes VI to VIII of REACH taking into account Annex XI;
 - Develop testing proposals as required according to Annexes IX and X of REACH taking into account Annex XI;
 - Acquire where necessary Information, and appropriate access rights to this Information, from third parties;
 - Prepare Study summaries and robust Study summaries, where appropriate;
 - Develop for the Consortium Substances uniform classification, and where necessary uniform labelling, conform to applicable legislation;
 - Coordinate the compilation and the submission of the Registration Dossiers for the Consortium Substances by the Lead Companies;
 - Gather information on use and exposure categories of the Consortium Substances, conditions of use and exposure to humans and environment for the Identified Uses of the Consortium Substances;
 - Perform a risk assessment according to scientific principles and regulatory guidelines with the intention to show a safe production and use of the Consortium Substances for the Identified Uses;
 - Initiate testing where a higher tier risk assessment is needed to demonstrate safe manufacturing, transport, handling and use of the Consortium Substances in for the Identified Uses.
- (2) prepare Registration Dossiers for the Consortium Substances, and prepare all data and information necessary for these purposes
- (3) Mandate the Lead Companies to carry out Joint Submissions on behalf of all the Consortium Members and of their Affiliates.
- (4) Coordinate the submission to the Agency of the Core Data by the Lead Companies at least three months before the Deadline for Registration as defined in Definitions.
- (5a) Continue the cooperation between Members relating to Registration of the Consortium Substances and consequences of this Registration, after Registration, and in particular during the dossier evaluation according to Title VI of the REACH Regulation, including supervising the performance of the testing proposals as authorised by the Agency.
- (5b) Address legal and technical issues in relation to this Agreement and to the Purpose.
- (6) Prepare and manage Information relevant to the Registration of the Consortium Substances, relevant to participation in Substance Information Exchange Forums (SIEF) for the Consortium Substances, and relevant to answering enquiries from participants in SIEFs for the Consortium Substances and for other substances ; including concerning possibilities to apply read-across approaches and (Q)SAR models both to and from other substances, and in particular:
- Coordinate relations between the Members and other companies in the Consortium Substances SIEFs concerning all issues relating to Registration of the Consortium Substances, or concerning the use of Information developed or collected through this Agreement and/or contained in the Consortium Substances Registration Dossiers developed through this Agreement;
 - Coordinate relations between the Members and companies, in SIEFs for other substances, who wish to use Information developed or collected through this Agreement and/or contained

in the Consortium Substances Registration Dossiers developed through this Agreement, for read-across for REACH Registration of other substances or for any other purposes;

- Coordinate relations between the Members and other companies holding information useful for the Purpose;
 - Look for and develop opportunities to obtain compensation for the Information collected and developed through this Agreement in exchange for use of this Information by third parties for Registration of the Consortium Substances, of other substances (read-across) or for other purposes.
- (7) Exercise the rights to Information and Studies in accordance with sections IV and V of this Agreement.
- (8) Manage and defend the rights of access, for use in REACH, other regulations or for any other purpose, to the Consortium Substances Registration Dossiers and to other Information developed through this Agreement, including defining, collecting and distributing payments for the purchase of these access rights.
- (9) Where this appears as preferable, for reasons of cost, reliability, efficiency or otherwise, to negotiate access for the Consortium Members to Studies, Information and/or complete Registration Dossiers developed by other organisations (company, consortium, other ...) for Consortium Substances, rather than the Consortium developing these itself, or to work jointly with other organisations to develop Information and Registration Dossiers

II. 2) Management of access to the REACH Registration Dossiers

See § V.2

III) Membership

III. 1) Admission of new Members to the Consortium

1. All conditions to access the Consortium, and in particular all financial conditions, shall in all cases be fair and transparent. Membership shall be open to any applicant who fulfils the Membership criteria defined in this Agreement (in particular the Definition of Members in § I) and is committed, in writing, to pay the financial contribution as defined by this Agreement.

The financial conditions of Membership of the Consortium are defined in Annex 9

2. Application for Membership shall be sent in writing and to the Secretariat which shall then submit such application to the next meeting of the Governing Committee, which shall be called within a reasonable delay and generally if practical within approximately two months. The Parties agree that the acceptance of a new Member is subject to the decision of the Governing Committee (as specified in § VI.10), it being understood that such consent cannot be unreasonably denied.

The Membership application shall specify and justify for which Consortium Substances for which the applicant is Directly and Indirectly Concerned.

In any case, the acceptance of a new Member cannot be denied should the applicant fulfil the following objective requirements:

- a) at the time of requesting Membership, **be Directly Concerned by** (see § III.6) at least one of the Consortium Substances, or be an "Only Representative" of such a company
- b) and have committed in writing to fulfil all the conditions of this Agreement, and in particular the financial conditions indicated in Annex 9

It is here noted that, by Article 7 of the REACH Regulation and according to Tonnage Bands, and except where exempted, under "importer of the Consortium Substances", are included importers

of products or formulations containing one or more of the Consortium Substances, where the substance "is intended to be released under normal or reasonably foreseeable conditions of use".

Note: access to the Registration Dossiers, data and information developed under this Agreement is possible, without becoming a Member of the Consortium, according to the conditions specified in § V.3

3. Any decision refusing Membership shall clearly state the reasons why the Membership is not granted. The applicant whose application was turned down has the right to submit its observations in writing to the Governing Committee, which shall have to review the observations and reply in writing within a reasonable delay and generally if practical within approximately two months of receiving the observations. If there is disagreement and an amicable solution cannot be found, then the applicant shall be invited to submit the issue to arbitration as provided in § XIV.
4. A new Member shall commit in writing to the terms and conditions as set out in this Agreement and shall then receive an Access Letter for Directly Concerned Substances (and for Indirectly Concerned Substances for which appropriate financial payment or commitment is made) according to the model in Annex 10 A to this Agreement. As from receipt by the Secretariat of all payments due as defined in this Agreement (and in particular in Annex 9), the new Member shall have the same rights and obligations as any existing Member.
5. Membership explicitly implies and necessitates acceptance, by the Member, to make available for the Purpose all relevant Information concerning all Consortium Substances in its ownership and of which it has information, as specified in § V.1 of this Agreement, unless such information is subject to confidentiality which cannot be waived by such Member.

III. 2) Transfer of membership

1. A Member shall be entitled to transfer Membership including all its rights and obligations under the Agreement to a third party subject to:
 - requesting the transfer in writing to the Secretariat, specifying clearly the identity of the new Member,
 - the new Member must meet the Membership criteria defined in this Agreement,
 - decision of the Governing Committee (as specified in § VI.10)
 - written acceptance by the new Member of the conditions for Membership defined in this Agreement.

The decision procedures and deadlines are as specified in III.1

2. The consent of the Governing Committee shall not be required in the case of a transfer of Membership in the context of restructuring of legal persons affiliated to or within a Member composed of a group of companies, or in the case of the transfer of ownership of a Member to a new legal entity (take-over, merger, or similar).
3. The transfer by a Member of a part of its rights or obligations, including financial claims, to a third party shall not be permitted, unless decided by the Governing Committee.

III. 3) Termination of Membership

1. At any time, a Member can terminate its Membership in the Consortium if circumstances making the continued Membership in the consortium disproportionate or unjustified have durably occurred provided that the Member fulfils all of its financial obligations to the Consortium and to the other Members. In this case, the Member must provide three months prior written notice to the Secretariat.

2. At any time, a Member can terminate its Membership in the Consortium without justification, provided that it has fulfilled all of its financial obligations as specified in Annex 9. In this case, the Member must provide one year prior written notice to the Secretariat
3. The Date of Leaving is the date of expiry of the written notice period specified above, which runs from the reception of the notification by the Member to the Secretariat of the termination of Membership.

III. 4) Exclusion

1. Any Member, that
 - does not meet durably the Membership conditions of this Agreement,
 - fails to make payments due within the delay specified in Annex 9 and fails to correct this situation within 15 days of receiving a written reminder from the Secretariat,
 - or commits a serious material breach of this Agreement that has not been repaired within 30 calendar days after formal notice has been sent by the Secretariat by registered mail to the Member concerned,
 - or does not durably comply with the provisions of this Agreement such that this non-compliance has affected the effectiveness of the Consortium in achieving the Purpose, or has affected the functionality and reliability of the Information collection process, and/or has caused damages to the other Members,

may be excluded from the Consortium, as follows, without prejudice to any other rights the Members may have against the defaulting Member.

2. The defaulting Member may be excluded by decision of the Governing Committee (as specified in § VI.10) and on the basis of an objective and documented justification in compliance with Articles 81 and 82 of the EC Treaty. The defaulting Member shall have the right to present its defence beforehand. The decision of the Governing Committee shall be immediately notified to the defaulting Member by registered mail.
3. The non-defaulting Members will share any damages suffered by the Consortium as a result of the defaulting Member, according to the cost sharing rules indicated in Annex 9, and the Consortium (as specified in § VI.8) shall coordinate any legal recourse against the defaulting Member on behalf of the non defaulting Members.
4. The Date of Leaving will be the date of receipt by the Member of the registered mail specified above.

III. 5) Common provisions on termination and exclusion

1. Subject to the conditions specified hereafter, termination or exclusion of a Member (both as above) are without prejudice to the rights and obligations of the Member that is terminating its Membership or is excluded (hereafter **Member leaving**) which have accrued up to the date of effective termination or exclusion provided that the Member leaving meets all payment obligations for the period of Membership and payment obligations due after ceasing to be a Member as specified in this Agreement. The Member leaving shall have no further rights to any results arising out of this Agreement in respect of which it has not fulfilled its financial contribution or to any compensation from new Members that have subsequently joined the Consortium for information and Studies developed before cessation of its Membership.
2. The other Members shall continue to be entitled to make use of the Information made available by the Member leaving on the conditions specified in this Agreement and provided that the Member leaving has been duly compensated under the conditions defined in this Agreement. Any recoverable damages suffered by the remaining Members as a result of the defaulting Member's actions shall be off set against any compensation payable to the Member leaving.

3. The Member leaving shall have no claims for reimbursement of any financial contribution to the Consortium.
4. The Member leaving shall remain liable for the activities undertaken under this Agreement for the period of its Membership, and for ongoing activities at the time of leaving as specified in Annex 9.
5. In the event of termination or exclusion, the rights and obligations resulting from this Agreement cease to exist, to the exception of, as defined in this Agreement, confidentiality commitment and data ownership, liability as defined in § XIII.2, settlement of disputes, and any outstanding financial obligations. In particular, the confidentiality conditions specified in § VI remain applicable to the Member leaving.
6. In particular, leaving the Consortium does not negate or remove the entitlement of the Member leaving to continue to use for itself and for its Affiliates only, under the conditions defined in this Agreement, those parts of the Registration Dossiers and other Information which were developed by the Consortium during the period in which the leaving Member complied with its financial obligations as defined in this Agreement and/or for which the leaving Member contributed financially under this Agreement.
7. A Member having left the Consortium cannot sell or transfer in any way to third parties, other than its Affiliates, without approval from the Consortium, any Information developed by the Consortium, the Registration Dossiers developed by the Consortium, nor any rights of access to these.

III. 6) Members Directly and Indirectly Concerned for Substances

The following definitions apply:

- **Directly Concerned Member** (for a Consortium Substance) : a Member which is at the time a manufacturer or importer into the EU of the Substance or is susceptible to become so in the future, and which has committed to contribute to the cost of Information and the Registration Dossier developed for the Substance by the Consortium;
- **Directly Concerned Substance** (for a Consortium Member) : a Substance for which the Member is a Directly Concerned Member as above;
- **Indirectly Concerned Member:** (for a Consortium Substance) : a Member which is NOT a Directly Concerned Member for the Substance but has committed to contribute to the cost of Information developed for the Substance by the Consortium because of interest in this Information for the purposes of read-across for Reach Registration or for other regulatory purposes for other Consortium Substances or for other substances not covered by the Consortium;
- **Indirectly Concerned Substance** (for a Consortium Member) : conversely as above;

A list of Directly and Indirectly Concerned Members for each Consortium Substance is maintained by the Secretariat, and can be consulted at any time by any Member. This list is updated by the Secretariat whenever a Member transmits information demonstrating that their status has changed for any Substance. The list is also updated automatically by the Secretariat whenever the Consortium's activities or decisions implicitly result in a Member becoming or ceasing to be Indirectly Concerned by a Substance (conclusions concerning read-across, decisions to carry out joint studies ...) and whenever a Member wishes to use Information for a Substance (Indirectly Concerned). When a Member ceases to be Directly Concerned by a Consortium Substance (or Substances), or ceases to be Indirectly Concerned by a Substance (or Substances), the implications for the financial and legal obligations of the Member are as for a Member Leaving, in particular as described in § III.5 (rights to Information, financial obligations, etc, applied to the studies, costs and information relevant to the Substance(s) concerned and applied to the calculation of the Pro Rata Share) and § IV Confidentiality.

Any questions or disagreements regarding the status of Members as Directly or Indirectly Concerned or not for any Substance shall be decided by the Governing Committee as specified in § VI.

As an illustrative example: a Member may inform the Secretariat that they cease to be Directly Concerned by a Substance (subject to the financial and legal obligations as indicated above), if the Member decides to join another consortium to develop the Registration Dossier for the Substance, or decides to purchase the Registration Dossier developed or being developed by another consortium, or if the Substance is deemed to be not subject to REACH Registration requirements, or if the Member no longer wishes to Register the Substance. If the Consortium itself decides to not pursue completion of a Registration Dossier for a Substance or Substances, preferring instead to refer Members to another consortium working on this Substance(s), then these Substance(s) will be removed from the list of Consortium Substances (Annex I) and cost shares etc. will be recalculated as described in § III.5.

It is noted that even if companies are not directly involved with a particular substance, they will nonetheless be kept up to date on the activities, studies, information collected and Registration Dossier preparation for the Substance, except where this concerns confidential information, in particular in order to facilitate possible sharing of information, read-across, joint organisation of activities, etc within the Consortium.

IV) Confidentiality

1. Subject to the conditions below the Members, unless compelled by law or a legally empowered authority, or unless legal disclosure requirements apply, undertake to keep confidential, as specified below, any information other than as specified hereafter, which is:
 - directly or indirectly belonging or relating to other Members,
 - disclosed by another Member pursuant to or in the course of this Agreement,
 - or jointly developed, obtained from a third party or otherwise resulting from this Agreement.

Such information, except as specified in § IV.7 and § IV.8, is termed “**Confidential information**”.

2. Each Member shall advise immediately the other Members in writing of any disclosure or misuse by any Member or a third party of Confidential Information, as well as of any request by competent authorities relating to the disclosure of such information.
3. Disclosure of results in Studies as required for legal and/or regulatory purposes including the REACH Regulation, shall only take place by the Members in a form (for example short summaries where possible) reflecting the minimum information required to be disclosed.
4. The above restrictions do not apply to the Member who has provided or who owns the Confidential Information.
5. Members may use Confidential Information only for the Purpose, and only for Substances for which they are Directly or Indirectly Concerned, or otherwise as permitted under or in accordance with this Agreement, or as authorised by the owner of the information.
6. Members will disseminate Confidential Information to their employees, Affiliates or external experts and/or consultants only on a need to know basis and only to the extent absolutely necessary for the Purpose or otherwise as permitted under or in accordance with this Agreement. Each Member shall have in place policies and procedures to ensure the confidentiality of information, computer files and documents, and require that its external experts and/or consultants also have such policies and procedures in place to ensure their compliance with these confidentiality obligations.
7. The obligations specified above shall not apply to Information for which the receiving Member can reasonably demonstrate that such information:
 - a) was known to the receiving Member on a non-confidential basis prior to its disclosure pursuant to this Agreement;
 - b) is publicly known at the time of disclosure or thereafter becomes publicly known without breach of the terms of this Agreement;

- c) becomes non-confidential through disclosure by sources other than the disclosing Member, having a right to disclose such Information,
 - d) was independently developed by the receiving Member without access to the disclosing Member's Information, as evidenced by documentary records,
 - e) becomes subject to disclosure to governmental agencies or other authorities which then render the Information non confidential.
8. Specific items of information shall not fall within any exception merely because they are combined with other information falling within any exception. Likewise, any combination of specific items of information shall not fall within any exception merely because the specific items fall within any exception, but only if the combination itself, and its principles of operation, fall within any exception.
 9. Affiliates and external experts and/or consultants (if bound by a confidentiality agreement) of any Regular Member are not regarded as third parties for the purpose of this § IV. Each Member assumes full responsibility for compliance by its employees, Affiliates or external experts and/or consultants with the requirements of this Agreement in the respect of any Information received by this party, unless the party in question is also a signatory of this Agreement.
 10. In the event of non-compliance with the obligations set out in this § IV the Members whose Information is disclosed shall have the remedies available under the applicable law notwithstanding the stipulations contained in this Agreement.
 11. The duration of the above confidentiality obligations is defined in § XIII.

V) Ownership of data

V. 1) Obligation to make available data

1. Within 6 weeks of a new Member joining the Consortium, it shall make available to the Secretariat a list of all Information it owns, has access to and/or has knowledge of, which is relevant to the Purpose for any of the Consortium Substances (even if the Member is not Directly or Indirectly Concerned by the Substance), including Information concerning the uses and conditions of use of the Consortium Substances for which the Member is Directly Concerned within the categories of Identified Uses (Annex 2). The obligation to list the Information applies even if the Information itself is confidential, unless the simple listing of the knowledge would be contradictory to confidentiality conditions which the Member cannot waive. This list can take the form of indicating only Information which is additional or new to that already listed by the Secretariat, or for which the new Member has ownership or access rights additional to the rights already available to the Consortium. The Secretariat shall make the necessary arrangements for the review of this Information by the Technical Committee.

It is noted that the Initial Members of the Consortium have already fulfilled this obligation prior to the Entry into Force of this Agreement, see Annex 5 ("Existing Studies").

2. All Members agree to make available to the Secretariat, to the other Members and to third parties purchasing access to all or to part of the REACH Registration Dossiers developed within this Agreement, according to the conditions defined in this Agreement, and in particular in Annex 8 (Study valuation), Annex 9 (Financial Rules) and Annexes 10A and 10B (Model letters of access):
 - all Existing Information and any new Information for which they are Directly or Indirectly Concerned relevant for the Registration of the Consortium Substances, for which they have or come to have ownership or right of access entitling them to do so, and which are relevant for the Purpose,
3. All Members agree to inform the Secretariat and the Lead Company of any contact or communication from third parties wishing to access any of the Registration Dossiers developed under this Agreement, or Information therein or developed by the Consortium, or otherwise

wishing to share Information, join or cooperate with the Consortium, or develop other relations with the Consortium

V. 2) Ownership rights and uses of Information

The following clauses are subservient to any requirements specified by REACH, by its official Guidance documents, by the Agency, and to any other applicable European or international regulations or laws:

1. Members will be entitled to use and refer to the Registration Dossiers developed within this Agreement **for the Substances for which they are Directly or Indirectly Concerned**, except as specified hereafter, **for purposes of REACH Registration of the Consortium Substances only**.

Members will however be entitled to use, for their own use and the use of their Affiliates, Information newly developed by activities carried out within this Agreement, to which they contributed financially as Directly or Indirectly Concerned Members, **for all regulatory or other purposes**.

Unless specifically agreed otherwise with the owner, Members will be entitled to use Existing Information collected within this Agreement (owned by a Member or a third party) concerning substances for which they are Directly or Indirectly Concerned for purposes of REACH Registration of the Consortium Substances only.

2. The above does NOT affect the copyright and ownership of Studies and data developed outside this Agreement by Members, owned by Members or by third parties.

Members wishing to use such Information, must ensure that they have the necessary authorisation from the data owners, unless this authorisation for the relevant use is obtained and covered by an agreement between the data owners and the Consortium.

Any intellectual property or ownership rights to any Existing Information independently developed by a Member or any third party and made available to the Members in accordance with this Agreement shall remain unaffected by this Agreement. The (other) Members shall have for an indefinite period of time the non-transferable right to use the Information for the Purpose, including the right to refer to the full Study report, provided that they share in its cost in accordance with the cost allocation method defined in this Agreement.

The Study made available by a Member or a third party to other Members may not be sub-licensed or otherwise made available to third parties without prior written approval of the Member who provided the Study.

The Member who provided a Study to other Members may extend, by agreement in writing, at a cost or free of charge, their right to use or refer to the Study for other purposes.

Existing Studies which are owned by several Members or by one or several Members and one or several third parties can only be made available to the other Members with the prior written approval of all owners unless otherwise agreed in writing among the owners of the Study.

3. Conditions concerning third parties wishing to use the REACH Registration Dossiers developed within this Agreement, or a part of this dossier, and/or any other Information developed within this Agreement are defined in § V.3.
4. The Members mandate the Governing Committee (as per definition of powers in § VI.8) to manage on their behalf all such authorisations, and the Secretariat to collect and to redistribute appropriately all payments relating to these authorisations.
5. Any Information generated or developed within this Agreement shall be owned jointly by the Directly and Indirectly Concerned Members provided that the individual Members have contributed to the costs thereof in accordance with the cost allocation method defined in this Agreement. Each of the joint owners shall obtain a copy of the full Study reports. The Information referred to in the first sentence may be used by the Members who have contributed to the costs

thereof for the Purpose and also for fulfilling their own other regulatory and legal requirements (under REACH and other regulations, European, national or other regulations, for the Consortium Substances and for other substances), but such Information shall not, for the period defined for duration of confidentiality under § XIII, be sold, licensed or otherwise made available to third parties by any Member unless as decided by the Governing Committee (as specified in § VI.10)

6. Affiliates of a Member shall have the same rights on Information under the same conditions as the Member to which they are affiliated.
7. Neither this Agreement nor any disclosure of Information shall be deemed by implication or otherwise to vest in one Member any present or future rights in any patents, trade secrets or property rights in data belonging to another Member and no licence is granted except as explicitly stated in this Agreement.

The conditions of access to Information are further specified in Annex 8.

V. 3) Third party access to Information

Third parties may be granted rights to use or refer to the parts or totality of the Registration Dossiers, or to any other Information generated by or owned by the Consortium Members jointly, including any Information for which the use granted by its owner to the Consortium Members jointly enabled such transfer of rights, subject to the financial conditions defined in Annex 9.

In particular, any potential REACH Registrant of one or more of the Consortium Substances, including the applicants for Membership whose application was refused, may request a right to use or to refer to the parts or all of the Registration Dossiers to the extent the Members of the Consortium are entitled to do so.

Where granted, such right will be non-exclusive and non-transferable.

Access will not be granted to data not owned by the Members, unless this has been agreed with the original owner.

Subject to the terms of this Agreement, the Governing Committee shall take a decision (as specified in § VI.10) whether or not to grant such rights to a third party, for which Consortium Substances the rights are granted, and determine the amount of compensation payable in accordance with Annex 9. This decision will be taken without undue delay.

The terms and conditions of access will be set out in each case specifying the Substances concerned and the exact scope in accordance with the model Letter of Access attached in Annex 10B.

VI) VI. Organisation

VI. 1) Legal personality

This Agreement and the cooperation contemplated herein shall not constitute or be deemed to constitute a legal entity between the Members nor make a Member the agent or representative of another Member unless expressly stated otherwise.

In its external relations, the Consortium will not act under its own name but as a community of all its Members. The Members hold the rights and obligations of the Consortium jointly.

VI. 2) Organisation

The bodies of the Consortium will be the Governing Committee and the Technical Committee.

The Consortium shall be governed by the Governing Committee.

In order to fulfil the Purpose, the Governing Committee shall be empowered to set up and define the composition, mandate, duration and rules of any necessary Task Forces. In particular, Task Forces may be established to address issues concerning only one or some Consortium Substances or Group or Groups of Substances, in which case such Task Forces will only include Directly and Indirectly Concerned Members.

A Secretariat may be appointed, for as long as is decided, as defined below.

Voting and quorum rules for the different committees are specified in § VI.10

VI. 3) Governing Committee

The Members of the Consortium shall meet in the Governing Committee in order to take decisions on the overall organisation of the Consortium. The Governing Committee shall have all powers necessary to ensure that the Purpose is achieved and to take decisions on all issues resulting from this Agreement.

The Governing Committee shall consist of one representative per Member.

The Governing Committee shall jointly elect a Governing Committee Chairperson, for a period of two years renewable, preferably from one of the Lead Companies.

Meetings of the Governing Committee shall be convened at least once every six months up until completion of REACH Registration of the Consortium Substances, and then at least once every three years or whenever is necessary, to review, on the basis of the technical and financial progress reports of the Secretariat, the progress and developments of the Consortium's work and budget, and more generally all Consortium activities and management issues, or other questions relating to the Purpose.

Meetings of the Governing Committee will also be convened if requested by the majority of the Members, whenever the agreed deadlines or estimated budget are overrun and/or when extraordinary circumstances occur.

The tasks of the Governing Committee include amongst others the following:

- Appointment or ending the appointment of a Secretariat as specified below in § VI.7;
- Directing the Technical Committee;
- Establishing defining and directing Task Forces as required and appropriate;
- Decisions on funding, scope and matters of policy;
- Deciding if for some Substance(s) these should be removed from the Consortium list of Substance (Annex 1) or if access to a Registration Dossier developed by another organisation should be purchased or Information and/or Registration Dossier(s) developed jointly with another organisation
- All decisions concerning the financial contributions of Members, including new Members and Members leaving the Consortium or excluded;
- Decisions on the working and finance plan, including outline test plans and strategies for purchasing access to third party Information to fill data gaps;
- Management of financial resources of the Consortium, including deciding budgets, examining and approving accounts, collecting funds and overseeing accountancy and budgets;
- Deciding, conform to Annex 9, which costs engaged by Members, the Secretariat and other parties are included in the budget subject to the cost sharing;
- Coordination and supervision of activities of the Lead Company;
- Mediation in cases of disagreement or disparities within the Technical Committee;
- Modification of any provision as well as the Annexes of this Agreement;
- Adaptation of this Agreement in light of legislative and technical adaptation of the REACH requirements (in particular the establishment of the SIEF) or Entry into Force of the Globally Harmonised System;

- Decision regarding admission, withdrawal and exclusion of Members;
- Decisions regarding access rights to Information and to the Registration Dossiers, including deciding contract and other conditions and fixing payments in accordance with Annex 9 ;
- Competition law compliance ;
- Defining rules and modalities concerning communication between all parties involved.

VI. 4) Not applicable

VI. 5) Technical Committee

The Technical Committee shall consist of one representative per Member, unless one or more Members do not wish to be represented on this Committee.

The Technical Committee shall jointly elect a Technical Committee Chairperson who shall be responsible for the organisation of meetings and who shall report to the Governing Committee. If not, this role will be ensured by the Governing Committee Chairperson. Meetings of the Technical Committee shall be convened by its Chairperson when necessary to review the progress according to the work schedule and the engagement of costs.

The tasks of the Technical Committee include as necessary and appropriate, amongst others, the following, in all cases subject to respecting the general objectives fixed by the Governing Committee and subject to respecting the budgets decided by the Governing Committee:

- Defining and overseeing the work of the Secretariat;
- Defining and overseeing the technical work;
- Defining Groups of Substances
- Appointment of external consultants to perform technical and scientific tasks;
- Delegating and directing sub-tasks;
- Determining the value of Information;
- Estimate financial resources required to comply with REACH requirements;
- Proposing work plans and outline test plans to the Governing Committee, ensuring execution and quality of results of approved work and test plans;
- Decisions to implement or reject testing proposals;
- Within the outlines and strategies decided by the Governing Committee, decisions on data collection concerning the Consortium Substances, evaluating the Consortium Substances related Information to be shared, as well as completion of data gaps in compliance with the legal requirements laid down by REACH regarding data sharing, including decisions on purchase of access to third party Information where necessary;
- Overlooking the progress and the budget management, reporting deviations to the Governing Committee;
- Supervising preparation of the Registration Dossiers, including the determination of data gaps, waivers and surrogate data;
- Approval of the Registration Dossiers and Core Data to be submitted jointly to the Agency (cf. in particular Article 11 of the REACH Regulation) and determination of the Information which shall be subject to a request for confidentiality according to Article 119 of the REACH Regulation;
- Supervising preparation of the Chemical Safety Report (CSR), if required;
- Collecting classification and labelling data from all Members and preparing harmonised classification and labelling in accordance with the Global Harmonised System of classification and labelling of chemicals (GHS);

VI. 6) Not applicable

VI. 7) The Secretariat

A Secretariat may be appointed by the Governing Committee, which can also terminate the appointment of the Secretariat. A Secretariat may be appointed as from the Entry into Force by designation in § XV of this Agreement and its signature by the Secretariat.

The conditions of the appointment of the Secretariat are specified in a Consortium Management Service Agreement with the Secretariat which is either signed by the Secretariat and all Member companies or signed by the Secretariat and the Governing Committee Chairperson after approval by the Governing Committee (as specified in § VI.10).

The Secretariat is accountable to the Governing Committee.

The Secretariat must be fully independent from all Members (that is: not under legal or financial control of any Member, no significant part of its capital or control held by any company holding significant capital or legal control in a Member ...).

If, at any time, no Secretariat is appointed, or if the Secretariat is not operational, then its tasks and its role as indicated throughout this Agreement will be assumed by the Governing Committee Chairperson, who may subcontract part or all of these tasks under the conditions specified below.

The Secretariat may subcontract part of its tasks to other persons or organisations, subject to prior approval of the Governing Committee (as specified in § VI.10) specifying the identification of the subcontractor and the nature and conditions of the tasks subcontracted, including the legal liabilities of the subcontractor, and subject to the subcontractor being also independent from all Consortium Members.

The legal liabilities of the Secretariat are as specified in § XII.

The Secretariat conducts all normal business of the Consortium, subject to the decisions of the Governing Committee and Technical Committee, and is responsible for daily management and external representation of the Consortium and shall in this regard deal particularly with the following:

- Proposing the working and finance plan;
- Organising and convening meetings, distribution of agenda and making minutes, archiving, and distribution of minutes and other information;
- Keeping archives for a minimum period of twelve years and notifying the Members before any archive will be disposed of;
- Ensuring compliance with competition laws;
- Handling where necessary for the Purpose of confidential data (production volumes, markets, confidential uses, etc.)
- Supervision of external consultants and experts;
- Follow up the legislative and technical development of REACH and inform the Technical Committee and Governing Committee about relevant new developments;
- Follow up of progress in the technical activities of the Consortium and reporting on the technical and financial aspects to the Technical Committee and to the Governing Committee;
- Provision of technical and administrative support for the Technical Committee and for other Consortium activities;
- Providing guidance for, coordination of and carrying out of guidance for data collection concerning the Consortium Substances, and proposing purchase of rights of access to Information where necessary for the Purpose;
- Performing sub-tasks as agreed by the Technical Committee;
- Processing of purchase orders and contracts for Studies in line with the approved test plans and for other work for Consortium activities;

- Preparing Governing Committee decisions on rights of access of third parties to the Registration Dossiers and other Information, including proposing conditions and appropriate levels of payments in accordance with Annex 9;
- Maintaining a list of decided Groups of Substances, Lead Companies for each Consortium Substance, status of Registration, Directly and Indirectly Concerned Members for each Consortium Substance, highest Tonnage Bands
- Keeping track on ownership, access rights, costs and values of Information (developed within this Agreement, owned by Members or third parties and used for the Purpose), keeping records of compensation due for access rights and other payments due, keeping records of the costs, value and ownership rights of Information generated;
- Keeping an up-dated list of third parties having access rights to Information and to the Dossiers developed by the Consortium;
- Handling financial matters including preparing budgets, collecting payments due and making payments, invoicing, managing collected funds, preparing accounts;
- Calculating cost shares and other payments due by and to Members, compensation and payments due by and to third parties;
- Keeping an up-dated list of Members, Affiliates and their representatives;
- Communicating to organisations, associations and potential new Members.

VI. 8) Delegations of powers and representation to third parties

The Governing Committee Chairperson is empowered to represent the Members and to sign all documents, contracts and agreements which are in compliance with valid decisions of the Governing Committee, except the following acts for which the Lead Company is empowered to represent the Members Directly Concerned by the relevant Consortium Substance(s) and to sign:

- all acts directly concerning the REACH Registration of the Consortium Substances, including joint submission of the relevant Information, and including dealing with any regulatory consequences of Registration of the Consortium Substances (SIEF, ECHA questions ...);
- Letters of Access or other documents concerning transfer of access rights to the REACH Registration Dossiers for the Consortium Substances, Information contained within this or developed or obtained within this Agreement.

The Governing Committee may empower the Technical Committee Chairperson to sign all documents, contracts and agreements on behalf of the Consortium Members which have been approved by the Technical Committee and which are covered by the powers and tasks of the Technical Committee.

The Governing Committee may empower the Secretariat to sign all documents on behalf of the Consortium Members, in place of the Governing Committee Chairperson and of the Lead Company, subject to the following conditions:

- In this case, the Secretariat shall represent the Members for all acts necessary to achieve the Purpose and shall fully and timely comply, on behalf of Members, with the relevant provisions of REACH in this respect;
- the Secretariat may represent the Members in the SIEF if this is possible under the SIEF operating rules and information tools to be established by the Agency. If this representation is not entrusted to the Secretariat, then the Lead Company may be designated to represent the other Members in the SIEF.

Only the Members who are required to submit a Study or data, according to their Tonnage Band for given Consortium Substance(s), shall be listed as parties to the relevant agreements and actions, and be liable for the expenses incurred.

Any legal suits shall be brought or defended by the Governing Committee Chairperson or a Member or the Secretariat, after authorisation by the Governing Committee as specified in § VI.10. A status report on such litigation shall be presented to the Governing Committee annually.

VI. 9) Working language

The working language of all Committees, Task Forces and other activities under this Agreement shall be English.

VI. 10) Rules on voting, quorum and meeting organisation

Unless specified otherwise in this Agreement, the following rules apply to meetings and to the decision making of the Governing Committee, Technical Committee and any Task Forces.

1. General rules concerning meetings

Meetings may take place in person, by telephone, video or webcam conferences or similar.

Each Member shall name to the Secretariat the person who is its representative in the Committees and Task Forces. The Member may name a substitute or a different representative before the start of a meeting. These persons must be salaried staff or legal representatives of the Member or of its Affiliates.

The Member's representative may be accompanied by other salaried staff or legal representatives of the Member or its Affiliates, unless another Member present objects to this. Only the Member's representative is entitled to vote.

The external experts indicated in Annex 6 are allowed to participate in meetings without having voting rights. Other third parties may participate at Technical Committee meetings without having voting rights, unless one or more Members object.

Notice of each Governing Committee meeting and the agenda shall be transmitted to each Member at least 21 days in advance; 10 days for the Technical Committee and Task Forces.

No decision can be taken on an item which does not appear on the circulated agenda unless all Voting Members are present and agree at the meeting and/or have agreed prior to the meeting (by email or in writing) to discuss this item.

A written consultation of all Voting Members of a Committee or Task Force can take place by email when a decision cannot be deferred until the following meeting and is not sufficiently important to justify convening a meeting, or when the organisation of a meeting is not feasible because of availability of Voting Members. Except in urgent cases, which must be explicitly indicated, replies must be given, within 21 days for the Governing Committee or 10 days for the Technical Committee and Task Forces. The absence of the reply after a written reminder and within this period shall signify acceptance. Any decision taken by written consultation shall be submitted for confirmation at the subsequent Committee meeting.

2. Voting rules: majorities

A Voting Member which is unable to have a representative (as defined above in § VI.1) present at a meeting may give their proxy vote only to the representative of another Voting Member. One Voting Member, however, may not vote by proxy for more than one other Voting Member (in addition to their own vote). The written proxy shall be presented to the Secretariat before the meeting or at the start of the meeting.

Decisions of the **Governing Committee** shall be taken as follows:

- Unanimous decision of Voting Members (present or represented) is required for:
 - modification of this Agreement or its Annexes (except as specified below);
 - admission of a new Member, transfer of Membership or Membership rights;
 - exclusion of a Member (the Member under discussion does not vote);
 - changes to the list of Consortium Substances in Annex 1
 - replacement of a Lead Company (the actual Lead Company does not vote, but all other Members vote even if not Directly or Indirectly Concerned);
 - decisions concerning legal actions brought by/against the Consortium;
 - dissolution of the Consortium and termination of this Agreement at any time before 12 years after the Date of Registration.
- Any modification of the Advantage Compensation Payment (amount, mechanism) can be made only by the unanimous decision of those Initial Members which are still Members at the time of the decision.
- 2/3 majority of Voting Members (present or represented) is required for:
 - fixing the annual budget;
 - appointment, termination or modification of the Secretariat, delegation of the Secretariat's tasks;
 - authorisation and conditions of subcontracting by the Secretariat;
 - establishment of, appointment or modification of Task Forces;
 - modification of annexes 10 A and 10 B (terms of Letters of Access);
 - decisions regarding purchase of access to Registration Dossier(s) developed by other organisations or joint work with other organisations for the development of Registration Dossier(s)
 - authorisation of sale, rights of access, etc., to the Registration Dossiers and Information developed within this Agreement, and payment conditions.
- Simple majority of Voting Members (present or represented) for:
 - financial and budget decisions, except as specified above;
 - modification, according to the procedures indicated in these Annexes, of Annex 2 (Identified Uses), Annex 4 (affiliates), Annex 6 (experts);
 - validation of changes to the highest Tonnage Band indication for a Substance (as specified in Annex 1)
 - validation of changes to the list of Directly and Indirectly Concerned Members maintained by the Secretariat, as specified in § III.6
 - dissolution of the Consortium and termination of this Agreement after the date indicated above;
 - decision to appeal against any decision by the Agency, or by Member States, relating to the Purpose;
 - all other questions and decisions not specified above.

Decisions of the **Technical Committee and Task Forces** shall be by unanimous vote of Members present or represented at each meeting.

A Member shall be excluded from voting (and not be counted in the "Voting Members" above) in the event of a vote on:

- the exclusion of that Member ;
- on matters in which it has no vested interest, including a vote on testing proposals which it is not required to provide for Registration and of which it does not intend to participate in funding.

In particular, for questions concerning only certain Consortium Substances, only Directly or Indirectly Concerned Members are entitled to vote. Except where specifically defined otherwise elsewhere in this Agreement (eg. change of Lead Company, see § VII), for questions concerning the content of the Registration Dossier (selection of Key Studies, definition of Identified Uses, exposure scenarios ...) and concerning the calendar of Registration (dossier preparation timing, Registration, ...) only Members who are Directly Concerned are entitled to vote.

3. Voting rules: quorum

All decisions will only be valid if the following a quorum of Voting Members is present or represented:

- for Governing Committee decisions requiring a unanimous vote: 100% of Voting Members,
- for other Governing Committee decisions: 80% of Voting Members
- for Technical Committee and Task Force decisions: 2/3 of Voting Members of the relevant committee

If a Governing Committee meeting is unable to take decisions because the quorum is not achieved, then the Governing Committee Chairperson will call a second Governing Committee meeting and this time for the same decisions a quorum of only a majority of the Voting Members will be necessary, or a written consultation will be carried out to take the decision, in both cases according to the modalities (notice, agenda) defined above.

If a Technical Committee meeting is unable to take decisions because the quorum is not achieved, then decisions may be referred by its Chairperson to the Governing Committee, to a second Technical Committee meeting (with unchanged quorum rules) or to a written consultation.

For any modification of the Advantage Compensation Payment (amount, mechanism), a decision can only be taken by a vote of all of Initial Members which are still Members at the time.

VII) Lead Company

At the date of Entry into Force and unless replaced as specified in § VI, the Lead Company for each of the Consortium Substances is specified in Annex 1.

This Article and all other conditions concerning the Lead Company specified in this Agreement apply to the Lead Company for each of the Consortium Substances, as regards the REACH Registration of those Substances only.

The Lead Company may resign from its responsibility upon written notice to the Governing Committee with a notice period of six months. Such resignation, however, is only admissible if not endangering the Purpose of the Consortium. The Lead Company shall as far as is reasonably feasible fully and timely comply, on behalf of Members of the Consortium, with the relevant provisions of REACH.

The Lead Company, with the assistance of the Secretariat and other Members, shall where appropriate prepare and submit to the Agency, on behalf of the Directly Concerned Members and in the format specified by the Agency, the Registration Dossiers, Core Data, Chemical safety Report and Guidance on safe use as necessary for Registration of the Consortium Substances, at least two months before the Deadline for Registration defined in Definitions.

The Lead Company shall pay its fee as invoiced by the Agency after submission of the Core Data without undue delay. The Lead Company shall further communicate the Registration number as obtained by the Agency after payment of the fee to the other Members without undue delay.

The Lead Company undertakes to inform the Directly Concerned Members regularly on the developments of the Registration process. In addition, the Lead Company shall forward in writing to the Secretariat, within 10 calendar days, any communication received either from the Agency or a Member State or any other authority regarding the joint submission or Registration Dossiers.

The Lead Company shall if required and approved by the Governing Committee, appeal any adverse decisions of the Agency or the Member States relating to the joint submission or Registration Dossiers.

It is noted that each Member must nonetheless themselves carry out the Registration submission and other tasks which, by REACH or otherwise, are their own obligation, in particular submit any relevant confidential or specific company information (including as specified in Annexes 1 and 2), submit necessary information concerning Registration Fee payment and ensure payment of their own REACH Agency Fees and other dues.

Voting rules for changing a Lead Company are as defined in VI.10.2.

VIII) Individual obligations

1. The Members undertake to make all reasonable efforts to ensure the appropriate and timely completion of the Purpose. In particular, each Member shall:

- Observe and comply with the provisions in this Agreement;
- As specified and subject to the conditions in § V.1.1, make available to the Secretariat all available Information relevant for the Purpose;
- Inform the Secretariat and the Lead Company of any relevant contacts with third parties as specified in § V.1.3;
- Critically assess the Information submitted to or generated under this Agreement;
- Allocate human and financial resources as appropriate, and participate in the work of, the Governing and Technical Committees and any Task Forces;
- Fund the agreed work plans and other agreed actions for all Substances for which they are Directly or Indirectly Concerned;
- Inform the Secretariat of any significant change with respect to legal status or organisation of the Member or of its Affiliates;
- Inform the Secretariat of any change in their Tonnage Band for any Consortium Substance, or in any modification of the list of Substances for which they are Directly or Indirectly Concerned
- Keep the Secretariat continuously informed of a responsible contact person for the duration of this Agreement.

2. Each Member is responsible for observing its rights and obligations pursuant to REACH, in as much as these rights and obligations are not observed by the application of this Agreement. This applies, in particular, to information which is to be submitted to the Agency within the Registration Dossier in due time by each Member as well as any Information communicated by the Members to customers, suppliers and other third parties, such as Safety Data Sheets.

IX) Competition law compliance

The Members acknowledge that any activities carried out under this Agreement have to be carried out in full compliance with EU competition law, in particular but not limited to Articles 81 and 82 EC Treaty as well as any applicable national laws.

The Members explicitly agree to observe Cefic rules and policies regarding competition law and anti-trust, as available from Cefic (the European Chemical Industry Council, avenue E. van Nieuwenhuysse 4, B1160 Bruxelles, Belgium).

In order to ensure compliance with anti-trust and competition law, data which is not publicly available regarding quantities, manufacturing processes, impurities and uses other than the Identified Uses (Annex 2) will be transmitted, if required, in confidentiality to the Secretariat and will be kept by the Secretariat confidential from other Members and other companies potentially concerned, and will be transmitted in confidentiality only to the Agency as required for REACH purposes, or if necessary for technical studies to relevant contracted experts under confidentiality agreements. If no Secretariat is appointed and such confidential and commercial data needs to be collected, then this must be done through an independent organisation designated by the Governing Committee.

Should it become apparent at any time that this Agreement, any provision of this Agreement, or any activity or decision of the Members of the Consortium, can have a potentially restrictive effect on open and fair competition, in breach of any statutory provision, each Member shall take immediate steps to remedy that situation.

X) Definition of costs and cost allocation

X. 1) Valuation of Studies

The value of Existing Information shall be determined on the basis of an evaluation of the scientific quality and relevance to the Purpose, in accordance with **Annex 8**.

X. 2) Cost sharing principles

All costs of Consortium establishment and management, and all costs engaged for the Purpose, in particular in establishing and submitting the Registration Dossiers, including developing studies and purchasing access to third party owned information where necessary shall be shared in accordance with **Annex 9**.

XI) Administration & Reporting of costs

1. The Secretariat shall administrate and keep records of all expenses, compensations due, values of Information, budgets and payments and all other financial matters, access rights and related issues, as specified in § VI.7
2. The Secretariat will present regularly, or whenever significant developments occur, a costs overview to the Governing Committee.
3. The Consortium's funds will be managed either in a specific separate and guaranteed bank account or in some other way, to be decided by the Governing Committee, which ensures security and transparency. Where this is reasonably feasible, available funds will be managed to provide interest to the Consortium.
4. The Governing Committee shall base decisions on contributions and payments on the principle that provided data shall be assessed and incurred costs shall be split in a fair, transparent and non discriminatory way.
5. The financial year shall run from 1 January to 31 December of each calendar year. However, the first financial year shall run from the date of Entry into Force until 31st December of the same year, but shall take into account all relevant spending and costs incurred prior to the Entry into Force of this Agreement, as indicated in Annex 11.
6. Each year, the Secretariat shall submit to the Governing Committee, for approval, the accounts of the past financial year and the budget for the following year, presented according to recognised accounting procedures.
7. When, for appropriate reasons, the budget agreed by the Governing Committee has to be increased in the course of the financial year, the decision must be taken by the Governing Committee either prior to the changed spending, or as rapidly as possible in the case of urgent and necessary costs.

XII) Limitation of liability

1. The Members shall undertake their Purpose related activities specified hereunder in good faith and according to all applicable laws and regulations, and they shall use all reasonable endeavours to ensure the best possible results based on the evidence, methods and techniques known at the time.

2. Subject to § XII.3 below each Member shall assume liability for the correctness of the Information which he makes available to other Members and that he is authorised to do so. No warranty for acceptance of the Information by the Agency at the dossier evaluation (according to Title VI REACH) is given.
3. The Member who submits Information to other Members will indemnify them in respect of any claims for unauthorised use or breach of the intellectual property rights of any third party relating to that Information which results from its use by the persons and under the conditions under which it was submitted.
4. Except as specifically indicated elsewhere in this Agreement, none of the Members, including the Lead Companies, shall be held liable for any direct, indirect or consequential loss or damage incurred by another Member in connection with the activities contemplated in this Agreement, unless caused by gross negligence or wilful misconduct.
5. Each Member shall be liable with respect to third parties within the scope of its responsibility. The other Members of the Consortium shall support to the extent possible and reasonable, any Member against whom a liability claim has been made within the scope of this Agreement by a third party in its defence against such claim. If a third party makes a claim against a Member such that the other Members are jointly responsible or share part responsibility through this Agreement or the activities developed under this Agreement, then this Member may ask the other Members to share according to their shared responsibilities any resulting legal actions, arbitration, compensation or costs.
6. The Secretariat acts entirely in its capacity as representative of the Members and bears no individual responsibility or liability for its actions taken in this capacity, with the exception of gross negligence or wilful misconduct. In any case the liability of the Secretariat as agreed in the Consortium Management Service Agreement with the Secretariat will not be overruled by this agreement.
7. Except for gross negligence and wilful misconduct, the Lead Company shall not be liable, to the greatest extent possible under the laws of the relevant jurisdiction, for any direct, indirect, incidental, special, consequential or punitive damages, or any other damages whatsoever arising in connection with the performance of its obligations defined above.

XIII) Duration, termination, modification

1. This Agreement shall be applicable and valid as from the date of Entry into Force. The Consortium shall be formed for the duration necessary to achieve the Registration of all of the Consortium Substances and for as long as any of these Registrations remains valid, unless it is dissolved by a decision of the Governing Committee as defined in § VI.10.
2. This Article and the provisions relating to the protection of confidentiality (§ IV), ownership and use of Information (§ V), dispute resolution and applicable law (§ XIV) and limitation of the liability (§ XII) shall survive the termination of this Agreement. In particular all Confidential Information, and in particular Study reports, Study summaries and robust Study summaries, should be kept confidential indefinitely, that is without limits of time other than limits fixed by applicable copyright law, by REACH or by other applicable contracts or legislations
3. Upon termination of the Consortium and after payment of all obligations of any kind to or by the Members and other parties, the Governing Committee shall decide on the method of liquidation and the distribution of the Consortium's remaining funds. Before dissolution or termination of the Consortium all remaining joint and severable rights and obligations of the Members resulting from this Agreement shall be settled.
4. Amendments to this Agreement must be decided as specified in § VI and must be in written form to be effective.

XIV) Dispute resolution and applicable law

1. The Members shall first attempt to settle amicably any dispute arising out of this Agreement.

If differences remain, each Member shall have the right to submit its observations in writing to the Governing Committee, which shall have to reply in writing stating the reasons for the decision within 2 months.

Should such amicable settlement fail, the dispute shall be resolved by arbitration, ousting jurisdiction by ordinary courts, by a panel of three arbitrators. Each party to the dispute will nominate one arbitrator. These two arbitrators will then designate a third arbitrator who will also act as Chairperson. The arbitration decision shall be binding on the parties. The arbitration rules of the ICC shall be applicable. The place of any hearing shall be Brussels and the language of the arbitration shall be English.

2. This Agreement shall be governed by the laws of Belgium.
3. If at any time any provision of this Agreement is or becomes invalid or illegal in any respect, this shall have no effect on the validity of the remaining contractual provisions. The invalid provisions are to be replaced, backdated to the time of their becoming ineffective, by provisions which come closest to achieving their objective.
4. This Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the Members with respect to the subject matter hereof.

XV) Signatures

This Agreement has been made in as many originals as signatories below, each signatory below receiving one copy.

This Agreement is endorsed by ReachCentrum as far as its involvement is concerned and ReachCentrum hereby confirms that it will fulfil the role as the Secretariat. The Members by the signature of the present designate ReachCentrum as the Secretariat from the data of Entry into Force of this Agreement and as until decided otherwise by the Governing Committee.

For and on behalf of **REACH Centrum**, Avenue E. van Nieuwenhuysse 6, 1160 Brussels, Belgium, Mr Alain Perroy

Signature:
on (date of signature):

For and on behalf of **BK Giulini GmbH**, Roberto Wurst (Director BU Bekaphos) and Dr. Alexander Maurer (Vice President Global Phosphates)

Signature:
on (date of signature)

Signature:
on (date of signature)

For and on behalf of **Chemische Fabrik Budenheim KG**, Mr Christian Kohlpaintner, CEO and Chairperson of the Board, and Mr Hans-Jürgen Reinheimer, Director Business Line Phosphoric Acid

Signature:
on (date of signature):

Signature:
on (date of signature):

For and on behalf of **FMC Foret S.A.**, Javier Carratalá, Managing Director,

Signature:
on (date of signature):

For and on behalf of **Prayon SA**, Mr Yves Caprara, Chief Executive Officer and Mr Jean Braham, Phosphates Direction President

Signature:
on (date of signature):

For and on behalf of **Thermphos International BV**, Mr. Joachim Koppers, Business Unit Director and Dr. Rob de Ruiter, Director,

Signature:
on (date of signature)

For and on behalf of **CECA S.A.**, Mr. Christophe Villain, General Director,

Signature:
on (date of signature)

Annex 1 – List of Consortium Substances, Lead Companies, Highest Tonnage bands

1. Modification of information given in Annex 1:

The table indicates for each Substance the highest Tonnage Band of the Tonnage Bands indicated confidentially to the Secretariat by each Member for the Substances for which the Member is Directly Concerned. This highest Tonnage Band is automatically updated if a Member communicates to the Secretariat information demonstrating that their Tonnage Band for a Substance has changed and if this results in a change to the highest Tonnage Band indicated. The change is notified immediately by the Secretariat to all Members and is validated by the following Governing Committee meeting as specified in § VI.10.2.

The Substances are principally identified by their EINECS number(s).

The names of Substances, formulas, and CAS numbers given in this list are as best identified to date, may be incomplete (other names or CAS numbers may be used for some Substances, chemicals with similar formulae may be considered to be the same Substance, etc) and are indicative only. These elements of information can be modified by decision of the Technical Committee.

The other elements given in this table (list of Consortium Substances, Lead Company for each Substance) can be modified as defined in § VI.10.2.

2. Impurities:

This agreement covers Registration of the Consortium Substances. Impurities depend on production processes, and will be declared, where required, separately and independently by each Registrant, directly or confidentially via the Secretariat, for their own products.

3. Hydrates

Conform to Annex 1 of REACH, the Registration will, in each case and where appropriate, also cover the hydrate forms of the Consortium Substances below.

4. Table of Consortium Substances

N°	Chemical name		Acronym	EINECS N°	CAS N°(s)	Leading company	Highest tonnage band	
0	Sodium tripolyphosphate	Na ₅ P ₃ O ₁₀	STPP	231-838-7 237-004-9	7758-29-4	FMC	Not covered by this Agreement.	
	Pentasodium triphosphate				13573-18-7			
	Sodium triphosphate		STP		15091-98-2			
	Sodium tripolyphosphate-hexahydrate							
1	Triphosphoric acid, sodium salt	NaX H ₅ O ₁₀ P ₃		237-004-9	13573-18-7			
	Sodium triphosphoric acid							
2	Sodium dihydrogenorthophosphate	H ₃ O ₄ P.Na	MSP	231-449-2	7558-80-7	TP		1,000++
	Monosodium phosphate-anhydrous				13472-35-0			
	Monosodium phosphate-dihydrate							
	Monosodium phosphate-				10049-21-5			

	monohydrate						
3	Disodium hydrogenorthophosphate	H3O4P.2Na	DSP	231-448-7	7558-79-4	TP	1,000++
	Disodium phosphate-anhydrous						
	Disodium phosphate-dihydrate				10028-24-7		
	Disodium phosphate-dodecahydrate				10039-32-4		
	Disodium phosphate-heptahydrate				7782-85-6		
4	Trisodium orthophosphate	Na3PO4	TSP	231-509-8	7601-54-9	TP	1,000++
	Trisodium phosphate-anhydrous						
	Trisodium phosphate-dodecahydrate				10101-89-0		
	Trisodium phosphate-hexahydrate				15819-50-8		
	Trisodium phosphate-decahydrate				10361-89-4		
	Trisodium phosphate-0,5-hydrate				60593-58-0		
	Trisodium phosphate-octahydrate				60593-59-1		
5	Disodium dihydrogenpyrophosphate	H4O7P2.2Na	SAPP	231-835-0	7758-16-9	TP	1,000++
	Sodium pyrophosphate						
	Sodium acidpyrophosphate						
6	Trisodium hydrogen diphosphate	H4O7P2.3Na	T3SPP	238-735-6	14691-80-6	TP	1,000++
	Trisodium pyrophosphate						
	Trisodium pyrophosphate-monohydrate				26573-04-6		
7	Trisodium pyrophosphate-nonahydrate				16457-94-6		
	Tetrasodium pyrophosphate	H4O7P2.4Na	TSPP	231-767-1	7722-88-5	TP	1,000++
Tetrasodium pyrophosphate-decahydrate	13472-36-1						
8	Trisodium trimetaphosphate	H3O9P3.3Na	STMP	232-088-3	7785-84-4	BKG	100-1,000
	Sodium trimetaphosphate						
9	Polyphosphoric acids, sodium salts		SHMP	272-808-3	68915-31-1	BKG	1,000++
	Sodium hexametaphosphate						
10	Sodium metaphosphate	H6O18P6.6Na	SMP	233-343-1	10124-56-8	BKG	1,000++
11	Sodium metaphosphate insoluble	HO3P.Na	IMP	233-782-9	10361-03-2	BKG	1,000++
12	Potassium dihydrogenorthophosphate	H2O4P.K	MKP	231-913-4	7778-77-0	Pr	1,000++
	Monopotassium phosphate						
13	Dipotassium hydrogenorthophosphate	H3O4P.2K	DKP	231-834-5	7758-11-4	Pr	1,000++
	Dipotassium phosphate						
	Dipotassium phosphate-trihydrate				16788-57-1		
	Dipotassium phosphate-hexahydrate				78436-04-1		
14	Tripotassium orthophosphate	H3O4P.3K	TKP	231-907-1	7778-53-2	Pr	100-1,000
	Tripotassium phosphate						

	Tripotassium phosphate-monohydrate				27176-10-9		
	Tripotassium phosphate-trihydrate				22763-03-7		
	Tripotassium phosphate-heptahydrate				22763-02-6		
	Tripotassium phosphate-nonahydrate				78436-05-2		
15	Tetrapotassium pyrophosphate	H4O7P2.4K	TKPP	230-785-7	7320-34-5	BKG	1,000++
	Tetrapotassium pyrophosphate-monohydrate				79102-70-8		
	Tetrapotassium pyrophosphate-trihydrate				7790-67-2		
16	Pentapotassium triphosphate	H5O10P3.5K	KTPP	237-574-9	13845-36-8	BKG	1,000++
	Potassium tripolyphosphate				66904-52-7		
	Potassium tripolyphosphate-dihydrate						
17	Potassium metaphosphate	HO3P.K	KMP	232-212-6	7790-53-6	CFB	100-1,000
	Polyphosphoric acids, potassium salts	na		273-317-7	68956-75-2		
18	Ammonium dihydrogenorthophosphate	H3N.H3PO4	MAP	231-764-5	7722-76-1	Pr	1,000++
	Phosphoric acid, ammonium salt	H3N.xH3PO4		233-330-0	10124-31-9		
	Monoammonium phosphate						
19	Diammonium hydrogenorthophosphate	H3N.1/2H3O4P	DAP	231-987-8	7783-28-0	Pr	1,000++
	Diammonium phosphate						
20	Polyphosphoric acids, ammonium salts	na	APP	269-789-9	68333-79-9	CFB	1,000++
	Ammonium polyphosphate				14728-39-3		
21	Calcium bis(dihydrogenorthophosphate)	Ca.2H3O4P	MCP	231-837-1	7758-23-8	CFB	1,000++
	Monocalcium phosphate anhydrous				10031-30-8		
	Monocalcium phosphate 1-hydrate						
22	Calcium hydrogenorthophosphate	Ca.H3O4P	DCP	231-826-1	7757-93-9	CFB	1,000++
	Dicalcium phosphate anhydrous				7789-77-7		
	Dicalcium phosphate 2-Hydrate						
23	Tricalcium bis(orthophosphate)	Ca.2/3H3O4P	Beta-TCP	231-840-8	7758-87-4	CFB	1,000++
	Beta-tricalcium phosphate						
24	Hydroxylapatite	Ca5(OH)(PO4)3	HAP	215-145-7	1306-06-5	CFB	100-1,000
	Hydroxyapatite	Ca5HO13P3	TCP	235-330-6	12167-74-7		
	Tricalcium phosphate						
	Pentacalcium hydroxide tris(orthophosphate)						
25	Calcium dihydrogenpyrophosphate	Ca.H4O7P2	CAPP	238-933-2	14866-19-4	CFB	100-1,000
	Calcium acid pyrophosphate						
26	Dicalcium pyrophosphate	Ca.1/2H4O7P2	CPP	232-221-5	7790-76-3	CFB	10 - 100
	calcium pyrophosphate						

27	Iron orthophosphate	Fe.H3O4P	FeP	233-149-7	10045-86-0	CFB	100-1,000
	Ferric-III orthophosphate						
28	Tetrairon tris(pyrophosphate)	Fe.3/4H4O7P2	FePP	233-190-0	10058-44-3	CFB	100-1,000
	Ferric-III pyrophosphate						
29	Magnesium hydrogenorthophosphate	H3O4P.Mg	DMP (MGHP)	231-823-5	7757-86-0	CFB	100-1,000
	Dimagnesium phosphate anhydrous						
	Dimagnesium phosphate 3-hydrate				7782-75-4		
30	Magnesium hydrogen phosphate trihydrate	H3O4P.3/2Mg	TMP	231-824-0	7757-87-1	CFB	10-100
	Trimagnesium bis(orthophosphate)						
	Trimagnesium phosphate 4-hydrate						
	Trimagnesium phosphate 5-hydrate						
31	Trimagnesium phosphate 8-hydrate	H3O4P.1/2Mg	MMP	236-004-6	13092-66-5	CFB	100-1,000
	Magnesium bis(dihydrogenorthophosphate)						
32	Monomagnesium phosphate 4-hydrate	HO3P.1/2Mg	MDMetaP	237-000-7	13573-12-1	CFB	10-100
	Magnesium dimetaphosphate						
33	Trimanganese bis(orthophosphate)	H3O4P.3/2Mn	TMangP	237-997-9	14154-09-7	CFB	1-10
	Trimanganese phosphate 3-hydrate						
34	Manganese bis(dihydrogen phosphate)	H3O4P.1/2Mn	MMangP	242-520-2	18718-07-5	CFB	1-10
	Monomanganese phosphate						
35	Manganese hydrogen phosphate	H3O4P.Mn	DMangP	257-147-0	51349-94-1	CFB	1-10
	Dimanganese phosphate 2-Hydrate						
36	Tricopper bis(orthophosphate)	Cu.2/3H3O4P	TCuP	232-254-5	7798-23-4	CFB	1-10
	Tricopper (II)-phosphate						
37	Diphosphoric acid, copper salt	Cu.xH4O7P2	CuPyro	233-279-4	10102-90-6	CFB	10-100
	Copper (II)-pyrophosphate						
38	Dicopper hydroxide phosphate	Cu2HO5P	CuHP	235-285-2	12158-74-6	CFB	10-100
	Copper (II)-hydroxyphosphate						
39	Aluminium tris dihydrogenphosphate	Al.3H3O4P	MALP	236-875-2	13530-50-2	CFB	1,000++
	Monobasic aluminium phosphate						
40	Aluminium orthophosphate	Al.H3O4P	TALP	232-056-9	7784-30-7	CFB	100-1,000
	Aluminium phosphate trihydrate				22784-12-9		
	Tribasic aluminium phosphate						
41	Aluminium dihydrogen triphosphate	Al.H5O10P3	ALTPP	237-714-9	13939-25-8	CFB	100-1,000
	Aluminium tripolyphosphate						
42	Aluminium metaphosphate	Al.3HO3P	ALMP	237-415-3	13776-88-0	CFB	100-1,000
43	Phosphoric acid, aluminium	Al.xH3O4P.xNa	SALP	232-090-4	7785-88-8	CFB	1,000++

	sodium salt						
	Sodium aluminium phosphate 1:3:8						
	Sodium aluminium phosphate 3:2:8						
	Sodium aluminium phosphate $Al^*_xH_3PO_4^*_xNa$						
44	Boron orthophosphate	BO4P	BOP	236-337-7	13308-51-5	CFB	100-1,000
	Boron phosphate						
45	Sodium calcium polyphosphate	Ca.xHO3P.xNa	NaCaPP	245-490-9	23209-59-8	BKG	100-1,000
	Metaphosphoric acid, calcium sodium salt						
	Polyphosphoric acid calcium sodium salt		CSPP		85049-55-4		
46	Pentapotassium pentasodium bis(triphosphate)	H5O10P3.5/2K.5/2Na	SKTP	246-156-5	24315-83-1	CFB	1,000++
	Sodium potassium tripolyphosphate						
47	Disodium fluorophosphate	FH2O3P.2Na	SFP	233-433-0	10163-15-2	BKG	1,000++
48	Phosphoric acid	H3O4P	PA	231-633-2	7664-38-2	TP	1,000++
	Orthophosphoric acid						
49	Polyphosphoric acid(s)		PPA	232-417-0	8017-16-1	to be defined	1,000++
50	Pyrophosphoric acid(s)		PyroPA	219-574-0	2466-09-3	CECA	100-1000
51	Urea phosphate	CH4N2O.H3O4P	CARBP	225-464-3	4861-19-2	CFB	100-1,000
	Carbamide phosphate						
52	Zinc bis(dihydrogen phosphate)	H3O4P.1/2Zn	MZNP	237-067-2	13598-37-3	CFB	10-100
	Monozinc phosphate 2-Hydrate						
53	Trizinc bis(orthophosphate)	H3O4P.3/2Zn	TZNP	231-944-3	7779-90-0	CFB	1-10
	Trizinc phosphate 2-hydrate						
54	Dizinc pyrophosphate	H4O7P2.2Zn	ZNPyro	231-203-4	7446-26-6	CFB	1-10
	Zinc pyrophosphate						

Note: in table above: leading companies abbreviations are as follows:

- BKG = BK Giulini GmbH
- CFB = Chemische Fabrik Budenheim KG
- FMC = FMC Foret S.A.
- Pr = Prayon SA
- TP = Thermphos International BV
- CECA = CECA S.A

Annex 2 – Identified Uses

1. Non confidential use categories

This Agreement covers the following non-confidential use categories of the Consortium Substances, which are to be included in the Registration activities, and in particular in the Chemical Safety Assessments, developed within this Agreement.

NOTE: where relevant, this Agreement covers only the REACH requirements for which the Consortium Substances is NOT exempted under other regulations applicable, for example: human food additives drinking water treatment, medical, animal feed, pharmaceutical, cosmetics, ...

The specific Identified Uses for each one or group of the Consortium Substance(s) will be indicated more precisely, within the general use categories specified below, in the Registration Dossiers.

- a) detergent and cleaning products intended for domestic, institutional and industrial usage ;
- b1) industrial and manufacturing processes, ceramics and porcelain, construction products and refractory materials, metal treatment, paper manufacture, plastics, polystyrene and polymers, rubbers, molecular sieves ;
- b2) coatings, paints and enamels, pigments
- b3) flame retardants
- b4) textiles
- b5) tyres
- c) water treatment (treatment of waste water, closed process water circuits ...) ;
- d) drinking water treatment, see NOTE above: may in some cases be excluded from REACH Registration by REACH (Art. 2);
- e) cosmetics and baby care: see NOTE above, these uses are excluded from Title IV of REACH only (supply chain information) because covered by the Cosmetics Directive 76/768/EC ;
- f) human foods, animal feeds, medical and pharmaceutical products: see NOTE above, excluded from REACH Registration by REACH (Art. 2)
- g) fertilisers, agricultural and horticultural
- h) biofuels, industrial oil treatment and additives

2. Confidential uses

Where a use is considered “confidential”, then this use will NOT be covered by the Chemical Safety Assessment, and the Member will be responsible for itself carrying out Registration, Information and documentation requirements for this “confidential” use.

3. Identification of “confidential” uses

The process of identifying uses considered “non-confidential” (Identified Uses) will be as follows:

- a Member wishing to include an use in the Identified Uses covered by this Agreement, beyond those already listed, will indicate this use in confidentiality to the Secretariat;
- the Secretariat will ask all Directly Concerned Members whether they object to the addition of this use, without indicating which company requested the addition;
- all such Members will reply in confidentiality to the Secretariat;
- if none of the Members objects within 21 days, then the Secretariat will inform the Members that this use is added to the list of Identified Uses; if one or more Members objects then the use will not be added to the list and the Secretariat will inform all Members of this decision, without indicating how many or which Members objected.

Such changes to the list of Identified Uses will be immediately effective as the information by the Secretariat to the Members and will be ratified by decision of the Governing Committee at its next meeting.

Annex 3 – not used

Annex 4 – Affiliates of Members

This is an indicative list of the Members' Affiliates as at the date of Entry into Force of this Agreement. The status of "Affiliate" depends on the actual real legal ownership links with the Member, according to the criteria set under Definitions. Inclusion in this list is only indicative and does not confer this status if these ownership criteria are not in reality true, and vice versa.

This list may evolve as ownership of legal entities is modified in the future.

Members will notify the Secretariat whenever changes in ownership result in a modification of this list of Affiliates, indicating which legal entities should be added to or removed from this list of Affiliates (and providing legal name, address and registration numbers, and any relevant indications regarding Registration Band tonnage changes).

Proof of the legal ownership links specified in Definitions must be supplied to the Secretariat, but without providing any information about % share ownership or other confidential data.

New Members must provide to the Secretariat the list of their Affiliates, including the above indicated information and proof.

Changes to this list of Affiliates will be immediately effective as of receipt of notification by the Secretariat and will be ratified by decision of the Governing Committee at its next meeting.

In order to have the Registration Dossiers submitted by the Lead Company on behalf of their Affiliates, the Member concerned notifies the names and addresses of its Affiliates to the Secretariat in writing at least thirty (30) days before submission, so the Lead Company is able to include their names and addresses as required in Annex VI Section 1.2 of the REACH Regulation.

List of affiliates removed

List of affiliates removed

List of affiliates removed

Annex 5 – Existing Studies

A list of Existing Studies and Information provided by the Members as at the date of Entry into Force of this Agreement has been established, approved by these Members, and is held and maintained by the Secretariat.

This list indicates which Member(s) own the Information and the expected value of each study, as established according to the principles of Annex 8. This list is not necessarily complete and exclusive, that is Existing Members and New Members may provide further Existing Information during the development and submission of the Consortium Substances Registration, and this will be evaluated as specified in Annex 8. The list will also be modified by the Secretariat in the case of any new information becoming available, for example further studies or new information concerning the value of a given study (expert assessment leading to revision of the Klimisch category).

All modifications of this list will be communicated by the Secretariat to all Members (revised list, indicating the changes made) and will be considered approved if no Member objects within one month. In case of objection, the question will be submitted to the Technical Committee, and in the case of no agreement within the technical Committee to the Governing Committee.

This list may also include Information which is known to the Members to exist and is free for use without necessitating a Letter of Access because it is included in published literature or in reports commissioned by public organisations.

Annex 6 – Specified external experts

The following third parties will have access to the Confidential Information under the same conditions as the Members as defined in section IV:

- 1) CEFIC, avenue E van Nieuwenhuysse 4 bte 2, B 1160 Bruxelles – Belgium ;
- 2) Mr Christopher Thornton, consultant, TECC Sarl, 27 impasse de Charges, 38300 Bourgoin Jallieu, France ;
- 3) The Secretariat, as appointed ;
- 4) Myra L. Weiner, TOXpertise LLC, 100 Jackson Avenue, Princeton, NJ 08540 USA.

Annex 7 – Typical current costs of Studies and tests

The costs for Studies and tests as given for “average price – all labs” in Fleischer (2007, as below) are used as the basis for the “basic cost” (ex-VAT) valuation for Studies as defined and used in **Annex 8**.

It is noted that these costs will be updated where appropriate to take into account inflation or evidence of general evolution of relevant study prices over time.

Reference is to: M. Fleischer (2007), J. Business Chem., Vol. 4, Issue 3, p. 96-114

For information only: this article was at the date of Entry into Force available for download at http://www.wirtschaftschemie.de/journal/2007_iss3_96-114.pdf

Annex 8 – Valuation and access to information

The following rules will generally apply for the valuation of the Information i) contributed by Members or third parties, or ii) generated or established by activities under this Agreement by the Consortium, which together with the aforementioned Information are made available to Members or to third parties.

The aforementioned reports are initially evaluated with respect to their scientific value. In a second step, their financial value is calculated as described below.

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

For reports, which are contributed by individual Members, the supplier provides the Consortium with the report itself and available summaries in the form of an IUCLID data set and a robust summary. The robust summary may also be integrated into the IUCLID data set.

The quality of the reports is determined by the Technical Committee, or experts commissioned by the latter, in accordance with the Klimisch et al.¹ 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 allocation to the four categories must be accompanied by appropriate substantiation in accordance with the requirements described in the chapter "Documentation of reliability categories in data sheets (IUCLID)" of the Klimisch et al. publication.

The quality of the robust summaries and IUCLID datasets is determined by the Technical Committee, or experts commissioned by the latter.

If the documents (IUCLID data set and/or robust summary) submitted by a party supplying a report are not in conformity with the state of the art or missing, the Technical Committee or experts commissioned by the latter, should develop a robust summary and an IUCLID update.

Also studies, for which no standard protocol exists, e.g., exposure studies, must be documented by an IUCLID data set and a robust summary, and are also to be evaluated under the Klimisch et al. method.

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

For data, Studies and reports, which are not supported by any standard test protocols or for which a market price is not applicable, the party supplying should provide a document justifying the costs, including the expenses and/or the time required (overview of the process steps, working days, costs per working day), including: development of study concept, exploratory studies, carrying out of the study, analyses, expenses for further contractors, administrative costs (see below).

2. Calculation of value

1) The **basic cost “BC”** of the Study or report is assessed as follows:

- in general, for standard tests and Studies, by referring to the present-day cost of such a study, by reference to the list of typical study costs in Annex 7, updated to take into account inflation and developments in study prices.
- for non-standard tests and Studies and reports, or where it can be demonstrated that a specific non-standard cost is applicable, either the real price of the work (updated by inflation) or a justified estimate of current day costs, will be used, as indicated above.

2) The above value of the Study will then be adjusted according to its **Klimisch category evaluation**, by multiplying $K \times BC$, where:

- $K = 100\%$ for Klimisch category 1
- $K = 80\%$ for Klimisch category 2
- $K = 25\%$ for Klimisch category 3
- $K = 25\%$ for Klimisch category 4

3) **Administrative and risk costs:**

- In general, the following fixed surcharges will be added to the cost
 - +30% to cover **risk** inherent in carrying out new Studies: the decision to conduct a Study involves the risk that the Study results could adversely affect or prevent future substance marketing; hence, the 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, new parties or parties wishing to acquire a specific Study are not exposed to this risk since they already know the Study result; and
 - +15% to cover **management and administrative costs (choosing and briefing laboratory, managing contracts and payments)**
 - these two % are applied independently, and not additively, to the study cost (in general, total of +45%)
- In particular cases, where it can be justified (specific risks, proof of real costs), different figures may be applied

4) % of value depending on **authorised uses**. The value calculated above will be multiplied by the following factor:

- **70%**, corresponding to authorisation to access (use directly or by read-across) for REACH Registration for **more than one** of the Consortium Substances, and for no other uses, for all Members and all companies purchasing access rights to the Registration Dossiers, as specified in this Agreement, for Studies made available to the Consortium as specified under § V.1 (that is, this does not cover authorisation for access for use under regulations other than REACH and does not cover use for REACH Registration of substances other than the Consortium Substances);
- **50%**, corresponding to authorisation to access for REACH Registration for **only one** of the Consortium Substances, under the same conditions as above;
- for Information for which the owner has already been credited 50% of the value under the STPP Consortium agreement (corresponding to use for Reach Registration of STPP only), the owner will receive a **further 20% only** to “extend” the access to **one or more** of the Consortium Substances.

5) **Calculation if several studies are available** covering the same endpoint:

- In general, calculation of cost shares due by the different Members will be carried out by referring to the indications and examples in the Agency document “Guidance for the Implementation of Reach, Guidance on Data Sharing, September 2007”
- **In all cases, payment will only be considered due by the Consortium for Information which is necessary for the REACH Registration Dossiers for one or more of the Consortium Substances.**
That is, if Studies or Information (including expert reports, internal industry documentation or reports, read-across Information ..) are already available, adequate for Registration of the Consortium Substances, and to which the Consortium has access for use in the Registration Dossiers (existing studies already provided by existing Members, studies developed by the Consortium, publicly available Information, Information for which the Consortium has already paid for access rights from a third party ...), then the Consortium will **not pay to access further Studies or Information**, unless specifically required to ensure the validity of the Registration Dossiers.
- In the above case, a New Member owning additional Information which would have been adequate for Reach Registration in place of Information used by the Consortium, may nonetheless subtract from the total consortium costs on which their Pro Rata Share is calculated (Z in Annex 9.5B) the value of this Information or the value of the relevant existing information already available (whichever is the lower figure) as indicated in the Agency Guidance referred above
- Where several Existing Studies are available for the same endpoint for a given Consortium Substance then the Key Study for each endpoint will be identified and the Pro Rata Share due by each Member calculated, according to the examples in the Agency Guidance document referred above, as follows:
 - only the value of the Key Study will be taken into account in calculating the Pro Rata Share
 - Members owning other Information concerning the relevant endpoint may subtract from their Pro Rata Share the calculated value of this information or the value of the Key Study (whichever figure is the lowest)

3. Summary table: Rules of access

	Member Directly or Indirectly Concerned by a given product and having contributed financially to the Information development	Member NOT Directly or Indirectly Concerned by a given product And NOT having contributed financially to the Information development	Company purchasing access to the Registration Dossiers or to Information contained therein for REACH Registration of one or more of the Consortium Substances	Company purchasing access to the Registration Dossier(s) or parts thereof for other purposes
Information developed within this Agreement	Joint owner. Receives full copy of Registration Dossiers and also copies of full study reports, etc. Use for any regulatory purpose for the Member or its Affiliates Rights may not be sold or transferred.	Has NO ownership or access rights. But may at any time decide to contribute to Information development cost (becomes Indirectly Concerned)	Receives full copy of Registration Dossier(s). Does not receive copy of study reports, summaries or other data. Use for REACH Registration of the specified Consortium Substances only	To be negotiated with the Secretariat and decided by the Governing Committee on a case by case basis
Information owned by Members	Use for REACH Registration of the specified Consortium Substances only. Does not receive copy of study reports, summaries or other data, except as included in the Registration Dossiers.			
Information owned by third parties referred in the Registration Dossiers	Use for REACH Registration of the Consortium Substances only. No other rights unless explicitly transferred by the Information owner			To be negotiated directly with the Information owner (unless a mandate for negotiation has been given to the Secretariat)

Annex 9 – Financial rules

1a. General financial rules

The fees and amounts below are contributions fixed as defined, intended to cover the approximate relevant costs in a simple, fair and reasonable manner, and not to correspond to the exact amounts.

All figures indicated are exclusive of VAT and of any other taxes which may be due.

In all cases, no rights of access to the Registration Dossiers or to any other Information can be claimed by a new Member or by a party purchasing access rights, until :

- all payments due have been effectively received by the Secretariat;
- the recipient has accepted, by written signature, agreement to the conditions of access. These conditions will either be as specified by the full text of this Agreement and its Annexes, or will be decided as defined in § VI based on this Agreement and its Annexes.

In all cases, the payments indicated cover access, as specified, to the Registration Dossiers and/or Information as these stand only, and with no guarantee of their validity or acceptance by the Agency. In particular, if after the Date of Registration, the Agency requests further testing of the Consortium Substances or for other reasons it becomes necessary to develop or supply further Information to support the Registration of the Consortium Substances, then the Members are not obliged to bear these costs and are not obliged to carry out the required work, unless they decide to do so through the Consortium or otherwise. Such further work and costs may be shared between all parties who choose to continue to support the Registration or the work organised in other ways to be defined.

In all cases, the payments indicated below are due per company manufacturing, importing or representing the Consortium Substances:

- one company's payment will cover its Affiliates as defined in this Agreement;
- payment by an Only Representative of more than one company will be calculated per company, according to the number of companies represented (unless these are Affiliates as covered above);
- Only Representatives will therefore be required to specify and justify the number of companies manufacturing the Consortium Substances (other than Affiliates) effectively being represented, either by listing these companies or in case of confidentiality or anti-trust issues, by depositing the list with a lawyer or other recognised party who will transmit only the number.

A) **Access for REACH Registration of one or more of the Consortium Substances:**

Three different possibilities are open to any non-Member wishing to refer to the Registration Dossiers or part thereof, for Registration of one or more of the Consortium Substances:

- i) to become a Member of the Consortium, subject to respecting the Membership criteria and being accepted as a Member according to the procedures in this Agreement. This results in the rights, as specified in this Agreement for all Members, to refer to the Registration Dossiers for REACH Registration of the Consortium Substances for which the New Member is Directly or Indirectly Concerned.. In this case the new Member must pay **three amounts: the Advantage Compensation Payment, the Pro Rata Share calculated for each of the Dossiers to which the Member wishes to have access, and also the Consortium Entry Fee** as defined below, and will obtain Letter(s) of Access as per the model in Annex 10A;
- ii) to purchase access to one or more **full** Registration Dossier(s) developed by the Consortium without becoming a Member of the Consortium. In this case, the third party must pay **two amounts: the Advantage Compensation Payment and the Dossier Costs Contribution calculated for each of the Dossiers to which the Member wishes to have access** as defined below (but NOT the Consortium Entry Fee), and will obtain Letter(s) of Access as per the model in Annex 10B;
- iii) to purchase access to **part of** one or more of the Registration Dossiers developed by the Consortium without becoming a Member of the Consortium. In this case, the third party must pay a **part** (proportional to the Information access requested) of the two amounts specified in A.ii above, calculated for each Dossier required, and will obtain (s)Letter of Access as per the model in Annex 10B, appropriately modified to limit access to relevant parts of the Information.

B) **Access for REACH Registration of other substances or for other purposes:**

Third parties (that is non-Members) wishing to purchase access to the whole or part of one or more of the Registration Dossiers developed by the Consortium, for purposes other than REACH Registration of the Consortium Substances (other regulatory purposes, read-across for REACH Registration of other substances, etc), will generally be required:

- i) for access to Information, Studies or reports owned by third parties to which the Consortium does NOT have ownership and does not have the right to sell or transfer access: access must be directly negotiated with, Letters of Access and other documents signed with and payments made to the relevant owner;
- ii) for Information, Studies or reports referred in the Consortium Substances Registration Dossier and (a) owned by Members, or (b) developed by the Consortium under this Agreement, or (c) owned by third parties and for which the Consortium has the right to negotiate third party access under the terms of this Agreement: access conditions and cost will be negotiated with the Secretariat as a function of the elements for which access is required and of the intended uses, and will be decided by the Governing Committee as specified in § VI.

1b. Indicative summary table : Payments due for Membership and/or Dossier access

This summary table is indicative only, the text above and below fixes the precise financial rules.

<i>Substance* below = Consortium Substance for which the Member is Directly or Indirectly Concerned</i>					
	Advantage Compensation Payment	Consortium Entry Fee	Pro Rata Share	Dossier Contribution Costs	
<u>New Members</u>	<i>Shared equally between Initial Members only</i>	<i>Shared equally between existing Members</i>	<i>Effectively reduces the share of cost for existing Members</i>	<i>Shared between existing Members according to number of Substances</i>	
- first new Member	5 000 € for each Substance* . Up to maximum 20 000 € for 4 or more Substances* .	5 000 € for each Substance* . Up to maximum 20 000 € for 4 or more Substances* .	Decreasing share as new Members enter (depending on number of Members and number of Substances* per Member)		
- second new Member					
- etc					
<u>Companies wishing to refer to full Registration Dossier(s) for REACH Registration of the Consortium Substances (not becoming Members)</u>					
- first company	5 000 € for each Substance. Up to maximum 20 000 € for 4 or more Substances* .	NOT applicable			Non-decreasing share
- second company					
- etc					
<u>Company wishing to refer to part of the Registration Dossier for REACH Registration of one or more Consortium Substances</u>					
	Part of 5 - 20 000 € proportional to part of Dossier required	NOT applicable		Part of Costs Share proportional to part of Dossier required	
<u>Company wishing to refer to all or part of the Registration Dossier for purposes other than REACH Registration of the Consortium Substances</u>					
Access conditions and cost to be negotiated directly with the owners of the Information required, or with the Secretariat if the Information owner has given a mandate to the Secretariat (in this case, subject to Administration Fee for Non Members)					

2. Administration Fee

In the case of 1.B(ii) above, an Administration Fee of 15% of the final calculated payable value of the Information, as calculated under steps 1-4 of Annex 8, will be collected by the Consortium to cover the costs of secretariat and administration.

This Fee will NOT be charged to companies purchasing access to part of or to the full Registration Dossier under the conditions specified in 1.A above, as it is in this case covered by the other payments indicated in this Annex.

The Administration Fee is retained by the Consortium (the payable value of the Study or data being transferred to its owner).

3. Advantage Compensation Payment:

This is a one-off payment of a fixed amount required for any non-Member wishing to become a Member and/or to use one or more of the REACH Registration Dossiers developed by the Consortium for their own REACH Registration of the Consortium Substances, and is additional to and independent of the Pro Rata Share, Dossier Contribution Costs and Consortium Entry Fee.

The Advantage Compensation Payment covers the goodwill, experience and know-how resulting from the work together of the Initial Members, and the with competent third parties (consultants, Cefic ...), in joint research and collaboration concerning inorganic phosphates through the Cefic Sector Group PAPA (previously EFPA) over the last 30 years, including work studying, achieving and updating authorisation as food additives, and cooperating in communications and information exchange and joint research concerning the Consortium Substances.

The Advantage Compensation Payment and Consortium Entry Fee are not payable by companies who have been members of PAPA in the past, who have as such contributed financially to PAPA's activities over the last five years (2003-2007), and who have participated in the preparation of the Consortium over the period end 2007- 2008.

The Advantage Compensation Payment is fixed at 5 000 Euros per Consortium Substance up to a maximum of 20 000 € for 4 or more Substances, that is Substances for which the New Member is Directly or Indirectly Concerned as defined in § III.6

The Advantage Compensation Payment is credited and reimbursed only to those Initial Members which are still Members at the time at which the payment is due (an equal share of sum indicated above to each of these Initial Members) and is not due in any part to new Members having joined the Consortium after the date of Entry into Force.

In the case of a non-Member wishing to use only part of the Registration Dossier for their own REACH Registration of the Consortium Substances, then only a fraction of the sum above, defined by the Governing Committee proportional to the Information requested, will be payable.

4. Consortium Entry Fee:

This payment is due by any company which becomes a new Member of the Consortium after the date of Entry into Force (not by Affiliates of Members).

This Fee covers:

- time and staff costs necessary for the existing Members to formally decide upon the request for new Membership according to the decision process specified in this Agreement;
- Secretariat and other Consortium administration costs resulting from the inclusion of the New Member in the Consortium, including modification of the Consortium Agreement, adjusting the accounting system, recalculating the Pro-Rata Share, issuing corresponding invoices and reimbursements;
- the new Member's potential financial benefit resulting from their becoming a Member, because of reimbursements of Pro-Rata Share, Dossier Contribution Costs and Consortium Entry Fee

which will benefit them if in the future another company becomes a new Member of the Consortium or purchases access to the Registration Dossier or to other Information developed by the Consortium.

The Consortium Entry Fee is fixed at 5 000 Euros per Consortium Substance up to a maximum of 20 000 € for 4 or more Substances, that is Substances for which the New Member is Directly or Indirectly Concerned as defined in § III.6

The amount of this Fee is credited to and reimbursed to (shared equally between) all existing Members (existing Members at the time of the Governing Committee decision concerning the admission of the New Member).

5A). Pro Rata Share:

That is, participation by Members in expenses incurred in establishing and managing the Consortium and in producing, managing and submitting the Registration Dossiers, including costs of existing and new Information obtained or developed by the Consortium for the Purpose. These costs are detailed in 5C.

Participation is as per the cost sharing mechanism specified below in 5B which ensures an equal share of these costs between Initial and new Members.

The Pro Rata Share has the following two elements, as specified below:

- for any newly joining Member, a one-off payment, on joining, to cover the Pro Rata Share of costs engaged by the Consortium up until the date of joining (**past costs**). These costs are the total of the following:
 - > costs engaged during the establishment of the Consortium, that is before the date of Entry into Force of this Agreement, as detailed in Annex 11
 - > costs of Existing Studies provided by the Initial Members are calculated as per Annex 8 for each Consortium Substance
 - > costs engaged by the Consortium from the date of its establishment through until the date of joining of the new Member

The amount above of the Pro Rata Share paid by a new Member is credited to existing Members following the same rules as defined in 5B below, so that after this re-accounting, all Members (existing and new) have in effect paid the same share of the total costs depending on the number of Substances for which they are each Directly or Indirectly Concerned.

- for existing Members and for any newly joining Member after joining, the Pro Rata Share of all **future costs** engaged by the Consortium, according to the cost sharing basis defined below.

Payment by a New Member of the Pro Rata Share of past costs is due as for other payments as defined in point 8 of this Annex. For the future costs, payment is subject to the same rules as other Members.

Rules defining how are calculated the Members' costs for their work in the consortium are defined below.

5B). Cost sharing mechanism: one Member = one share per Substance

All Consortium costs are shared as follows:

(i) for General Costs of the Consortium (operation, establishment, ...) and for other costs necessary for Registration of all of the Substances

- cost share based on number of products: if company A is Directly Concerned by a Substances, company B is Directly Concerned by b, C is Directly Concerned by c, etc, ... then company A will

have to pay
 $\frac{a}{(a+b+c+d+e)}$ th share

(ii) for costs necessary for the Registration of one or several (not all) of the Consortium Substances :

ii.a) one Consortium Substance only (eg. a study of this Substance, which is not necessary for read-across for other Consortium Substances):

- each Member Directly or Indirectly Concerned by the Substance (that is, wishing to refer to the Registration Dossier for Registration of the Substance) pays an equal share (N_s Members concerned by a Substance, each Member pays $1/N_s$ th of costs)

ii.b) for costs concerning several of the Consortium Substances (eg. a study of more than one Consortium Substance, or a study enabling read-across to other Consortium Substances)

- cost share based on number of products: if company A is Directly or Indirectly Concerned by a' Substances, company B by b' , and company E by e' , then company A will have to pay $\frac{a'}{(a'+b'+e')}$ th share

For example, for the General Costs of the Consortium, if at the date of entry of a new Member into the Consortium:

- the number of Members passes from N to $(N+1)$
- f = number of Directly Concerned Substances of the $(N+1)$ new Member
- the General Costs of the Consortium costs engaged up until the date of entry are Z Euros

then

- the new Member must pay $\frac{f}{(a+b+c+d+e+f)} * Z$ Euros for past General Costs (in addition to the Advantage Compensation Payment)
- each existing Member will be reimbursed according to the same cost share rules, for example : company A will receive $\frac{a}{(a+b+c+d+e)} * \frac{f}{(a+b+c+d+e+f)} * Z$

and after the date of entry of the new Member, each of the Members will pay the revised share of future General Costs as follows, for company A share = $\frac{a}{(a+b+c+d+e+f)} * Z$, etc.

The calculation for the costs necessary for the Registration of one or several (not all) of the Consortium Substances are similar, however, a Member will only be liable to pay costs relating to Studies required for the Consortium Substance(s) for which the Member is Directly or Indirectly Concerned according to the relevant Tonnage Band, so that if some Members are not concerned (lower Tonnage Band) by certain Studies, the Pro Rata Share for these Studies for the remaining Members will be higher (division by a smaller number of parts).

If at any time, the list of Consortium Substances for which they a Member is Directly or Indirectly Concerned is modified (as specified in § III.6), then:

- the Member's Advantage Compensation Payment, Consortium Entry Fee and Pro Rata Shares for both Consortium General Costs and specific costs for the Substances concerned are all recalculated, and any resulting amounts due will be collected by the Secretariat and re-accounted to the other Members whose cost share may thus be reduced
- however, for past costs already paid or budgeted by the Consortium no reimbursement will be due as a result of changes reducing the number of a Member's Directly or Indirectly Concerned Substances, and for costs and work underway or already committed by the Consortium the Member will remain obliged to pay according to the cost sharing ratio at the time of the commitment and with the same payment due delays as fixed in §7 of this Annex.

5C). Costs included in Pro Rata Share costs

The following will be accounted in the calculation of the Pro Rata Shared costs, by the Secretariat, applying where appropriate the rules on Member costs fixed below:

- Administrative expenses incurred for the management of the Consortium, including the Secretariat, legal and accounting costs, coordination and other administrative costs, management of confidential data or external experts, etc. ;
- Value of or rights of access to (evaluated according to Annex 8) Existing Information owned by Members (as detailed in Annex 5) and purchased from other parties and required for the Purpose;
- Costs for new Information developed where required for the Purpose;
- Costs for a Member accomplishing tasks assigned to it by the Consortium;
- All other costs engaged conform to this Agreement in order to achieve the Purpose

5D). Rules for company costs

The following rules will be used for evaluating and reimbursing costs engaged by Members in preparing, establishing and managing the Consortium and in contributing to achieving the Purpose. These amounts will be counted as Consortium costs (Pro Rata Share costs as above).

In order to avoid excessively detailed accounting, the following “fixed” costs are taken as the basis for calculating Member input and work.

For participation in a physical meeting:

- two days staff time, per Member, as at rate below, including preparation and travel time,
- travel costs on the basis of an average cost of 500 Euros per Member, including travel costs and booking costs.

For participation in a telephone meeting:

- one day staff time as at rate below, including preparation,
- organisation costs as spent by Secretariat or organisation organising.

Staff time rate:

- 800 Euros per day / 400 Euros per half day, including secretarial and overheads.

The amounts and numbers of staff days indicated above are per Member per meeting at which the Member effectively participates, irrespective of how many persons are in fact present per Member.

6. Dossier Contribution Costs:

This is payable by parties wishing to purchase access to one or more of the Registration Dossiers developed by the Consortium **without becoming a Member of the Consortium**. The Dossier Contribution Costs correspond to a fair participation in the total expenses, relevant to the Registration Dossiers required, incurred in establishing and managing the Consortium and in preparing, justifying, writing and submitting the relevant Registration Dossiers and fulfilling other relevant Registration requirements.

The Dossier Contribution Costs are calculated in the same way as specified under points 5A – 5D of this Annex for the Pro Rata Cost, and include the same elements, but they are calculated **through to the Date of Registration**.

The Dossier Contribution Cost is calculated as in (5B) above at the time of the decision of the Governing Committee decision according access.

The Dossier Contribution Costs payment is credited to and reimbursed to existing Members, using the same cost allocation rules as specified in (5B) above, so that after this re-accounting, the Members at

the date of access purchase and the party X paying the Dossier Contribution Costs have in effect agreed to pay the same equal share of the total General Costs and the same relative share of the Substance-specific costs (depending on numbers of Substances per company). However, should a further party Y agree later to purchase access to the Registration Dossiers developed by the Consortium without becoming a Member of the Consortium, and so pay the Dossier Contribution Costs, then the share of the total General Costs paid by the Members will become lower than that of the parties X and Y, and similarly for the share of the Substance specific costs. This difference is compensated by the Consortium Entrance Fee payable by New Members defined above.

In the case of a non-Member wishing to use only part of the Registration Dossier(s) for their own REACH Registration of the Consortium Substances, then only a fraction of the sum above, defined by the Governing Committee proportional to the Information requested, will be payable.

7. Financial contributions in case of leaving the Consortium

All financial contributions are non reimbursable.

In case a Member should leave the Consortium, either on its own decision or by exclusion and for whatever reason, this Member remains liable to pay:

- the Pro Rata Share of all Consortium administration and management costs for the calendar years (1 January to 31 December) prior to the Date of Leaving (see §III.3 and §III.4), for the calendar year of the Date of Leaving, and for the calendar year following this calendar year (through to 31 December of the year after the date of leaving);
- the Pro Rata Share, until the activity is completed, of all Studies, contracts, administrative procedures and other specifically budgeted items of activity engaged prior to the Date of Leaving for the Member's Directly or Indirectly Concerned Substances. The Member leaving thereby acquires a joint ownership of the Information developed under these activities.

8. Consortium accounting system and payments

The Secretariat will establish invoices for payment of all amounts due indicated above. The invoice shall be established rapidly following the relevant decision of the Governing Committee (decision on rights of access, decision on budget and cost sharing ...); the invoice will be accompanied where appropriate with justifications of costs and budgets; payment must be made within 30 days of receiving the invoice. The relevant Letters of Access will be established within 30 days of the Secretariat receiving the payments invoiced.

The Secretariat will maintain a Consortium internal accounting system, where for each Member, for each Substance and for Consortium General Costs are credited and debited:

- money spent for the Purpose on Consortium preparation, establishment and management (travel and staff time, as above, and other relevant costs),
- value of Information owned by the Member and made available to the Consortium for the Purpose,
- money due for relevant shares of Advantage Compensation Payment, Consortium Entrance Fee, Pro Rata Share payment made by a new Member entering, Dossier Contribution Costs payment,
- payments due for Studies or Information owned by the Member and made available, via negotiation through the Secretariat, to third parties or for purposes other than Registration of the Substance,
- other payments due to or from the Member for Consortium activities,
- payments made into or received from Consortium funds.

The Secretariat will also maintain an internal accounting system of all amounts due to and from third parties, both to/from the Consortium and to/from each Member, for access to Information purchased

by the Consortium and/or access of third parties to the Registration Dossiers (all or part thereof) and/or to Information referred in this Dossier or developed within this Agreement.

The Secretariat will collect funds from Members sufficient to cover expected spending, for a period of 3 months – one year, to be decided by the Governing Committee, in order to minimise administrative costs (reduce number of invoices) whilst avoiding excessive advance collection. Invoices received from the Secretariat must be paid within 30 days of receiving them. Where reimbursements of costs or credits are due to Members, the Secretariat will group these and make payments on the same period basis as for fund collection.

Fund collection will be based on estimative cost sharing between Members based on the number of Directly and Indirectly Concerned Substances for each Member and on expected separation between Consortium General Costs and specific Information and Dossier costs for certain Substances or Groups of Substances. For each fund collection, the Secretariat will propose a total amount to be collected, calendar for collection, and cost sharing between Members to the Governing Committee.

Annex 10A – Model Letter of Access (for Members)

Model Letter of Access for Members for the Registration of one or more Inorganic Phosphates (Consortium Substances)

By this letter, the Members of the Consortium for the REACH Registration of Inorganic Phosphates (hereafter referred to as "the Consortium" and "the Substance(s)") agree that the REACH Registration Dossiers, and also all data, studies, summaries, waiving argumentations, reasoning of testing proposals and/or assessments, and other relevant information submitted by the Consortium in support of the Registration under REACH of the following Substance(s) may be referred to:

- by **Company XYZ**, which being a Member of the Consortium, and its Affiliates
- in order to support REACH Registration of the Substance(s)
- List of Substances: **XXXXXXXXXXXX**

This Letter of Access is subject to and subservient to the terms of the Consortium Agreement signed between the Consortium Members. The rights and obligations resulting from this Letter of Access are as specified in the Consortium Agreement and its Annexes.

"The Consortium" above refers to the Consortium established by signature on **XXXXXXXXXX** of the Consortium Agreement between the following initial Members :

- BK Giulini GmbH
- Chemische Fabrik Budenheim KG
- FMC Foret SA
- Prayon SA
- Thermphos International BV
- CECA SA

Signature: Authorised Representative of the Consortium

Annex 10B – Model Letter of Access (Non Members)

Model Letter of Access for Non Member for the registration of Inorganic Phosphates under REACH Regulation

By this letter, the Members of the Consortium for the REACH Registration of Inorganic Phosphates, as indicated below, (hereafter referred to as “the Members”, “the Consortium” and “the Substance(s)”), agree that:

- the REACH Registration Dossiers, including data, Studies, summaries, waiving argumentations, reasoning of testing proposals and/or assessments owned by Members of the Consortium and submitted by the Consortium in support of the Registration under REACH of the following Substance(s) (hereafter referred to as “the Dossier(s)”)

may be referred to:

- by **Company XYZ** (hereafter “The Applicant”)

in order to support

- the Applicant’s Registration of the Substance(s) under REACH
- list of Substances: **XXXXXXXXXX**

subject to the following conditions:

1. the right to refer is restricted only for the Registration purpose as specified above, that is only for REACH Registration, and only for the Substance(s) listed above;
2. the right to refer is solely granted in favour of the Applicant is not transferable to any other entity or person;
3. the Applicant is not authorised to receive any copies of the Dossier(s) nor is the Applicant authorised to inspect or view the Dossier(s) or any related specific document in whole or in part, only the right to refer to the Dossier(s) and their contents for the purpose specified above is granted;
4. this Letter of Access shall in no event be construed as granting the Applicant any property rights whatsoever in the Dossier(s) or to any information contained within them or elsewhere;
5. the right to refer granted by this Letter of Access is subject to the conditions specified in the Consortium Agreement (including its Annexes), of which the Applicant has received copy / AND/OR / is subject to the specific conditions listed below and annexed to this Letter of Access.

The right to refer is granted subject to the Members receiving the signature in writing by the Applicant of acceptance of these conditions (OR SPECIFY date of this signature).

The right to refer remains subject to the permanent respect of these conditions, and to effective payment of the relevant costs and fees.

“The Consortium” above refers to the Consortium for REACH Registration of Inorganic Phosphates, established in 2008 between the following Initial Members : BK Giulini GmbH, Chemische Fabrik Budenheim KG, FMC Foret SA, Prayon SA, Thermphos International BV

Signature: Authorised Representative of the Consortium

Annex 11 – Consortium preparatory work costs

Estimated costs of preparatory work, engaged for the preparation and establishment of the Consortium, that is **before Entry into Force** of this Agreement, are outlined below. Exact costs will be justified in the Consortium accounts by invoices and receipts.

The costs below are in addition to the Existing Studies specified in Annex 5. They will be included in the Pro Rata Share calculations as specified in Annex 9.

All prices below are ex-VAT

Literature search, data gap analysis and complementary assessment – Safepharma, TOXpertise – as already prepared and partly engaged at the date of Entry into Force

Member company costs:

- Meeting 11th March 2008
- Meeting 18th June 2008
- Meeting 18th September 2008
- Time spent by company personnel preparing Consortium agreement
- Calculation as per rules specified in Annex 9

Consultants: ReachCentrum and Christopher Thornton – time spent and costs

- - meetings as above, including coordination, minutes
- - coordinating decision making between the future Consortium members to prepare agreements and launch work
- - preparation Consortium agreement, secretariat contract, other contracts, budgets, cost sharing tools, other administrative issues
- - defining and overseeing data gap analysis study, call for proposals for Consortium management, preparation of Safepharma studies above
- - purchase of electronic copies of relevant studies (Infotrieve costs)
- - time spent looking for relevant Studies

Cefic – time spent and costs

- - participation of Marc Vermeulen in meetings and coordination of Consortium preparation, June 2007 – October 2008
- - meeting room costs and organisation costs for the meetings indicated above