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**Under the auspices of the**
**European Precious Metals Federation (EPMF)**


# Precious Metals and Rhenium Consortium for the Registration, Evaluation and Authorization of Chemicals (REACH)

**CONSORTIUM AGREEMENT**
Version 4

Approved at unanimity at Precious Metals and Rhenium Consortium Assembly meeting held in Brussels on 2 December 2015

**Dated: 17 November 2015**

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This Precious Metals and Rhenium Consortium Agreement (hereinafter "the Consortium Agreement" or "the Agreement") is executed

BY and BETWEEN

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

Hereinafter referred to individually as "Member" or "Party" and jointly as "Members" or "Parties";

**PREAMBLE**

Whereas the EU Regulation 1907/2006/EC on Registration, Evaluation and Authorization of Chemicals (hereinafter the "REACH Regulation") aims at ensuring a high level of protection for human health and environment, while promoting the efficient functioning of the EU (*extended to* "EEA") internal market and stimulating innovation and competitiveness in the chemicals industry;

Whereas the REACH Regulation requirements will affect the activity of entities mining, refining, recycling, manufacturing, importing, trading, banking Precious Metals and/or Rhenium, or other similar activities involving Precious Metals and/or Rhenium.

Whereas the REACH Regulation sets out requirements for manufacturers and importers of chemical substances, concerning more specifically the registration, classification, evaluation and authorisation of chemical substances on their own, in preparations, in articles or as intermediates;

Whereas the REACH Regulation sets out obligations for manufacturers and importers of chemical substances to share vertebrate animal studies, and to jointly submit and keep up to date part of the registration;

Whereas, considering the human and financial resources required for registration, classification, evaluation and authorisation together with the limited time to ensure compliance, it is necessary to increase and/or improve the efficiency of registration, classification, evaluation and authorisation preparation as well as cost-efficiency;

Whereas the REACH requirements will affect directly or indirectly manufacturers and importers of chemical substances established within or outside the EU (*extended to* "EEA");

Whereas some information required pursuant to REACH Regulation requirements for registration has already been generated;

Whereas the Members, having here above mentioned operations involving Precious Metals and/or Rhenium and having a common interest in fulfilling the requirements under the REACH Regulation, wish to form a Consortium, open to any other interested operator, whether or not established in EU (*extended to* "EEA"), with possibility of participation by any entity wishing to facilitate the achievement of their purpose, in order to share human and financial resources involved in complying with the REACH Regulation;

Whereas the European Precious Metals Federation (hereinafter the "EPMF") is committed to steer the response of the Precious Metals and/or Rhenium manufacturers and importers to the REACH Regulation.

**THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:**

## 1. DEFINITIONS

Any definition specified in Article 3 of the REACH Regulation (listed in Appendix 3) shall have the same meaning in this Consortium Agreement (including the definitions of Substance, Intermediate, Manufacturer, Importer and Downstream User). Furthermore, in this Agreement: (i) "EU" reference (for "European Union") is extended, for meaning and application in the REACH Regulation to "EEA" (for "European Economic Area") in accordance with the Official Journal of the European Union dated 29th of May 2007, page L 136/3, stating the REACH Regulation as being "Text with EEA relevance", and (ii) the following terms shall have the following meanings:

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| "Assembly" | means all the Members of the Precious Metals and Rhenium Consortium. |
| "Affiliate" | means a legal entity controlling, controlled by, or under common control with, a Member; with "control" meaning (i) the direct or indirect ownership of 50 % (fifty percent) or more of the shares or interests which are entitled to vote for the directors of an entity or the equivalent, for as long as such entitlement subsists, or (ii) equivalent power on the management of a legal entity. |
| "Chemical Safety Report" (CSR) | means a report containing a chemical safety assessment and the risk management measures that must be implemented by the Potential Registrants or Downstream Users for their uses. |
| "Confidential Information" | means all oral, written and/or tangible and intangible technical, financial, business and/or other data, information or knowledge of whatever kind that is confidential, proprietary and/or not generally available outside of the Consortium, including, without limitation, information relating to the Consortium present and future Members, activities, strategies, plans and concepts, volume estimates, financial data, market information, research and development plans and results, work product, analyses, compilations, studies, reports or other documents or records generated from such data and information, specifications, configurations, designs, drawings, apparatus, sketches, software, hardware, and other data and information which a Disclosing Party is disclosing, exchanging or sharing under this Agreement for the Purpose at any time during the term hereof, as further described in Appendix 6 and 7 of this Agreement. |
| "Consortium" | means the Precious Metals and Rhenium Consortium of Members formed pursuant to this Agreement for the purpose of discharging certain obligations under the REACH Regulation. |
| "Core Data" | means the data to be submitted jointly by Registrants pursuant to the REACH Regulation, and which include amongst others:<br>• Classification and Labelling of the Substance(s) and Intermediate(s);<br>• Summaries of Information derived from the application of Annexes VI to XI to the REACH Regulation;<br>• Robust Study Summaries derived from the application of Annexes VI to XI, if so required under Annex I to the REACH Regulation;<br>• Testing Proposals where required by the application of Annexes VI to XI to the REACH Regulation;<br>being understood that the scope of the Core Data shall correspond to the requirements of the REACH Regulation applicable to the Member(s) manufacturing or importing the specified highest |

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| | tonnage band of Substance(s) and Isolated Intermediates covered by this Consortium Agreement. |
| "Deadlines for Registration" | means the latest date by which the Substances and Isolated Intermediates covered by this Consortium Agreement must be registered at the latest, according to the yearly tonnage manufactured or imported by each Potential Registrant in accordance with the requirements of REACH Regulation. |
| "Disclosing Party" | means any natural or legal person that discloses Information in the framework of this Agreement. |
| "Industry Association" | means a natural or a legal person that represents the interests of (a) legal entity(ies) having to register (a) Substance(s) or Isolated Intermediate(s) covered by this Consortium Agreement and/or (a) use(s) of such Substance(s) or Isolated Intermediate(s). A Consortium Member may instruct an Industry Association to act as its Representative in the Consortium. |
| "Information" | means Studies and other tests, data and information made available to the Consortium by a Member or any third party, or generated by the Consortium, within the framework of this Consortium Agreement (whether in writing, by email, by other tangible electronic storage medium, orally or visually) together with all statistics, information, data or conclusions that may be derived or deduced from it. |
| "Isolated Intermediate" | For purpose of the present Consortium Agreement and unless otherwise stated therein, Isolated Intermediate shall mean Isolated Intermediate handled under strictly controlled conditions in accordance to the REACH Regulation. |
| "Lead Registrant(s)" | means the Registrant(s) who will submit the Core Data to the European Chemicals Agency ("Agency") on behalf of the Members, pursuant to the REACH Regulation. |
| "Management Committee" | means the committee appointed pursuant to Article 4.2. |
| "Member" | means a contracting Party of this Agreement pursuant to Article 3. |
| "Non-EU Manufacturer" | means a non-Community Manufacturer according to Article 8 of the REACH Regulation. |
| "Only Representative" | means a natural or legal person established in the EU appointed by a Non-EU Manufacturer to fulfil the obligations applicable to Importers under the REACH Regulation, as permitted by Article 8 of the REACH Regulation. |
| "Potential Registrant" | means a Manufacturer or Importer or an Only Representative, established inside the EU, which either is manufacturing or importing, or intends to manufacture or import, Substances and/or Isolated Intermediates in the EU and which may submit registration for Substance(s) and/or Isolated Intermediates. |
| "Precious Metal" | means an elemental or compound form of Silver, Gold and of the Platinum Group Metals (PGM's) Platinum, Palladium, Iridium, Rhodium, Ruthenium and Osmium. For purposes of this Agreement, Precious Metals are divided in eight separate groups: Silver, Gold, Precious Metals Cyanides, Platinum, Palladium, Iridium, Ruthenium and Rhodium. |

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| "Receiving Party" | means any Party to this Agreement to which Information is made available whether within the framework of the Management Committee or the Work Group(s) or in any manner whatsoever within the scope of this Consortium Agreement. |
| "Refinable" | means a non-waste complex (UVCB) Isolated Intermediate resulting from a primary or secondary refining stream containing precious metals. |
| "Registration Dossier" | means the dossier which contains the Core Data and the Chemical Safety Report on a particular Substance whenever required by the Consortium Agreement in accordance with the REACH Regulation and the definition of "Core Data" above and which is submitted by the Lead Registrant to the Agency. |
| "Representative" | means a natural or legal person authorised to act on behalf of a Member. |
| "Rhenium" | means an elemental or compound form of Rhenium. |
| "Study(ies)" | means (a) report(s) (including a Summary or Robust Study Summary) prepared for the purpose of registration pursuant to the REACH Regulation (whether in written or electronic form), and concerning investigations, tests, or other examinations (excluding or including vertebrate animals), relating to intrinsic Substance properties, or to the exposure assessment and risk characterization contained in the Chemical Safety Report. |
| "Sub-Assembly" | means part of the Members of the Consortium having to comply with the REACH Regulation requirements and therefore adopt decisions for a specific group of Precious Metals or for Rhenium. For decision-making purposes, the Consortium shall constitute: (a) one Sub-Assembly per Precious Metals group and (b) one Sub-Assembly for Rhenium: the Rhenium Sub-Assembly. |
| "Trustee" | means the legal or natural person appointed by the Management Committee, who is entrusted under confidentiality undertakings, to receive, record and aggregate Confidential and/or proprietary Information that would be disclosed by a Member or a third party together with any sensitive information which disclosure might be regarded as not in compliance with EU competition law; as further described in Appendices 6, 7 and 8. |
| "Work Group" | means an *ad hoc* group constituted by the Management Committee to discharge certain functions pursuant to the purposes of the Consortium Agreement. The operation of such group is described in Article 4.5. |

## 2. PURPOSE AND SCOPE OF THE CONSORTIUM

In the framework of this Agreement, the Members join forces in order to comply jointly with the requirements of the REACH Regulation for the pre-registration, registration, classification, evaluation and authorisation of Substances and Isolated Intermediates.

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

In particular, the Members undertake to pursue collectively the following purposes and objectives:
(a) Compile and assess existing Studies;

(b) Prepare proposal(s) for new testing not involving vertebrate animals and have such test(s) performed;
(c) Identify, propose and perform jointly vertebrate animals Studies where necessary for registration and classification, in order to limit the number of such Studies conducted, as required according to the REACH regulation;
(d) Prepare the Core Data;
(e) Address technical issues in relation to registration and classification;
(f) Develop read-across approach based on surrogate data;
(g) Assess opportunities for exposure-based waivers;
(h) Develop a uniform Classification and Labelling;
(i) The option to prepare jointly the Chemical Safety Reports and the Guidance On Safe Use of the Substance(s) and Isolated Intermediate(s) covered as per Appendix 4;
(j) Coordinate the submission, by the Consortium's Lead Registrant(s), of the Core Data, the Chemical Safety Report and the Guidance on Safe Use of the Substance or Isolated Intermediate;
(k) Submit the Registration Dossier before the Deadline for registration applicable to the Member with the highest tonnage band;
(l) Answer to possible requests from the Agency during the Dossier Evaluation period, update the Registration Dossier if relevant, and address evaluation and authorisation requirements as applicable.

being understood that the scope of the Core Data shall correspond to requirement of the REACH Regulation applicable to the Member(s) manufacturing or importing the highest tonnage band of the Substance(s) or Isolated Intermediate(s) covered by this Agreement.

The Substance(s) and Isolated Intermediate(s) covered by this Consortium Agreement are those defined in Appendix 4.

## 3. MEMBERSHIP

### 3.1. Members

"Member" is defined in Article 1 of this Agreement and shall fulfil the admission criteria stipulated in Article 3.2.

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

### 3.2. Admission of Members

#### *3.2.1. Admission of Member*

Admission of the Member to the Consortium shall be submitted for acceptance to the Assembly, subject to previous fair, transparent, objective and non-discriminatory review by the Management Committee, to ensure compliance with the criteria and the requirements set out in this Article 3.2.1.

Membership shall be opened to any natural or legal person that meets one or more of the criteria set out in (a) and (b) below, and conforms to the requirements of Articles 3.2.2 and 3.2.3. The person must be either:
(a) A Potential Registrant, whether a Manufacturer or Importer of (a) Substance(s) or Isolated Intermediate(s) covered by this Agreement and established in the EU; and/or
(b) A Non-EU Manufacturer of (a) Substance(s) or Isolated Intermediate(s) covered by this Agreement represented in the Consortium either by an Only Representative or not.

#### *3.2.2. Commitment of the Member*

To become a Member, an applicant shall sign this Agreement and shall therefore commit:

(a) to respect any and all terms and conditions set out in this Consortium Agreement;
(b) to complete and submit the relevant declarations (including but not necessarily limited to the Signature folio, the Substance and tonnage band declaration presented in Appendix 1 and Appendix 2, respectively, and the closing page) associated to this Consortium Agreement;
(c) to share free of charge any and all Information and/or Study as defined in Article 1 which is(are) available in its domain and not generally available or known to be in the public domain, and relevant for the preparation of the Core Data as defined in Article 1; and
(d) to pay (except in the case of Article 3.4) its share of the costs as stated in Article 3.2.3.

#### *3.2.3. Contribution to the Consortium*

Each Member shall pay as contribution to the Consortium:
(a) its annual share of the applicable costs for the year it is entering the Consortium and for each following year of membership pursuant to the cost-sharing formula set out in Appendix 9 of this Agreement and in accordance with Article 7;
(b) its annual shares of the applicable costs incurred by the Consortium for the past years (limited to 10 (ten)) of activity prior to its entry to the Consortium pursuant to the then applicable cost-sharing formula that was in effect during each of these years. ; and
(c) an amount equivalent to the annual average interest rate as per the London Interbank Offerred Rate (LIBOR) for each annual share calculated in (b).

### 3.3. Founding Member

A "Founding Member" is a Member fulfilling the criteria and the conditions pursuant to Article 3.2 and having signed this Agreement and joined the Consortium by the 15th of September 2007. Members belonging to the Rhenium Sub-Assembly will be deemed to be Founding Members provided they have signed this Consortium Agreement by the 15th of June 2008.

### 3.4. Transfer or assignment of membership ("Transfer")

#### *3.4.1. Transfer of membership*

A Member shall be entitled to transfer membership, including all rights and obligations related thereto under the Agreement, to another Party or third party subject to the following terms and conditions:

*3.4.1.1. Transfer with prior approval of the Assembly*

Membership may be assigned to a third party, only if such third party meets and complies with the conditions set out in Articles 1 and 3.2. Transfer will be subject to prior approval of the Assembly as per Article 4.1.2 (d). This obligation shall not apply to situations where a Member updates its Signature folio so that another Affiliate becomes the official representative in the Consortium. This constitutes a change in the internal organisation of the Member which does not affect the operation and activities of the Consortium. Should this situation occur, prior approval of the Assembly is not required.

*3.4.1.2. Transfer without prior approval of the Assembly*

(a) in the event of an acquisition or merger by or with a third party

Membership shall be transferred in these circumstances without the prior approval of the Assembly provided that the new entity continues to meet and to comply with the conditions stated in Articles 1 and 3.2.

(b) in the event of an acquisition, merger or change in control (hereafter "Change in Control" and in accordance with the definition of "control" given in Article 1 "Affiliate"), by or with another Member

All the rights and obligations of a Member under this Agreement shall be transferred in these circumstances without the prior approval of the Assembly, at the effective date of the Change in Control. However, in such circumstances, the voting rights belonging to the controlled Member shall not be assigned to the controlling Member and shall cease to exist at the effective date of such Change in Control. The newly formed entity shall have only one voting right.

#### *3.4.2. Notification to the Secretariat*

In any case, the Secretariat shall be notified in writing of the transfer of Membership by the Member concerned.

### 3.5. Termination of membership

#### *3.5.1. Withdrawal of a Member*

A Member may withdraw from the Consortium at any time by giving not less than 6 (six) months prior written notice of such withdrawal to the Secretariat, which shall promptly communicate it to the Management Committee and to the Assembly. The effective date of withdrawal by the said Member shall be 6 (six) months from the date of receipt of notice by the Secretariat.

#### *3.5.2. Exclusion of a Member*

*3.5.2.1. Membership conditions*

A Member may be excluded from the Consortium by decision of the Assembly if it does not continue to meet durably the membership conditions stated in Article 1 and 3.2.

*3.5.2.2. Material breach*

A Member may be excluded from the Consortium by decision of the Assembly in the event of a durable material breach by it of one or more provisions of this Consortium Agreement. For the avoidance of doubt, a breach of Article 7 shall be considered a material breach.

If the Management Committee reasonably believes a Member (the “Breaching Member”) is in such material breach of the terms of the Agreement, then upon a vote of the Management Committee, the Management Committee shall instruct the Secretariat to give the Breaching Member written notice specifying the breach, and giving the Breaching Member 90 (ninety) calendar days in which to remedy the breach ("the Remedy Period"). If, upon expiration of the Remedy Period, the Breaching Member remains in breach, then upon a vote of the Assembly, the Breaching Member shall be excluded from the Consortium.

*3.5.2.3. Fraud*

A Member (the “Defrauding Member”) will be excluded from the Consortium by decision of the Assembly if it has intentionally made a false representation of a material fact, with intent to mislead the other Members of the Consortium or the Agency, involving a breach of REACH regulatory requirements and/or a breach of the Consortium Agreement.

#### *3.5.3. Consequences of withdrawal and exclusion of a Member*

Upon the effective date of the withdrawal or exclusion of a Member from the Consortium, the rights and obligations of the withdrawing or excluded Member under this Consortium Agreement shall cease to exist with the exception of the Survival Provisions set out at Article 9.4. Further, the withdrawing or excluded Member shall not be relieved of any funding obligation to which it is committed up to the effective date of its withdrawal or exclusion, in accordance with the conditions specified by the

Management Committee pursuant to Article 4.2.2 (q), nor shall it be entitled to any refund of monies at any time paid by it to the Consortium.

The Members shall be entitled to continue to make use of Information made available by the withdrawing or excluded Member, in accordance with the conditions specified in this Agreement.

Unless otherwise decided by the Management Committee, the withdrawing or excluded Member shall not be entitled to make use of the results of commissioned Study(ies) or work(s) under the conditions defined in this Agreement nor shall it have any right in respect of the Registration Dossier including right to refer to the Registration Dossier prepared by the Consortium. In the event the withdrawing or excluded Member wishes to submit a Registration Dossier, it must obtain the necessary authorization to use and to refer to the Registration Dossier pursuant to Article 5.2.2.

## 4. ORGANISATION AND MANAGEMENT OF THE CONSORTIUM

### 4.1. Assembly and Sub-Assembly

"Assembly" and "Sub-Assembly" are defined in Article 1 of this Agreement.

#### *4.1.1. Composition of the (Sub-)Assembly*

*4.1.1.1. Assembly of the Consortium*

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

*4.1.1.2. Sub-Assemblies of the Consortium*

The Secretariat together with the Trustee shall hold ten separate Sub-Assembly lists (which shall be updated whenever necessary) of those Members being subject to the REACH Regulation requirements for Silver, for Gold, for Precious Metals Cyanides, for Platinum, for Palladium, for Iridium, for Rhodium, for Ruthenium, for Rhenium (and compounds thereof), and for Refinables respectively, in accordance with the content of the individual declarations made by each Member at the time of signature of this Agreement, in the format presented in Appendix 2.

Members shall be responsible for providing to the Trustee the Information which establishes their subjection to the REACH Regulation, and their membership to one or more of the Sub-Assemblies of the Consortium, as the case may be. The Trustee is entitled to verify this Information as necessary.

As more referred to in Article 4.1.6, each one of these eleven lists shall be applied when proceeding to a decision-making, an election or vote concerning a specific Sub-Assembly of the Consortium. The decision power of each individual Sub-Assembly shall be restricted exclusively to the decisions having a direct impact on the concerned Sub-Assembly.

All members (except the members of the Rhenium Sub-Assembly) are members of an eleventh Sub-Assembly dedicated to SVHC (Substance of Very High Concern) Roadmap.

*4.1.1.3. Chairperson and Co-Chairperson of the Assembly*

The elected Chairperson and Co-Chairperson of the Management Committee shall act as the Chairperson and Co-Chairperson of the Assembly. The Co-Chairperson shall replace the Chairperson when unavailable.

***4.1.2. Role of the (Sub-)Assembly***

The (Sub-)Assembly shall, within the budget and operational remit, take the necessary decisions related to the Consortium, its objectives and activities and shall in this regard, particularly, but not exclusively, come to a decision on:

(a) the election and/or revocation of the members on the Management Committee;
(b) proposal(s) concerning the Consortium's financial resources, including its budget, funding and accountancy and any proposal to license existing Studies or Information from any third party that may assist Members for registration or classification purposes;
(c) proposal(s) regarding the acceptance of a new Member;
(d) proposal(s) regarding transfer of membership;
(e) proposal(s) regarding the exclusion of a Member;
(f) proposal(s) to include or exclude any Substance or Isolated Intermediate from the scope of this Agreement, as evaluated through the provisions of Appendix 4 of this Agreement;
(g) designation of the Lead Registrant, as proposed by the relevant Work Groups;
(h) proposal of the Core Data before joint submission to the Agency;
(i) proposal of the Chemical Safety Reports before submission to the Agency;
(j) proposal(s) to adapt the Consortium Agreement in light of legislative and technical changes to the REACH Regulation requirements, including the entry into force of the REACH Regulation, and in particular the establishment of the Substance Information Exchange Forum (SIEF) or the entry into force of the Globally Harmonised System (GHS) regulation;
(k) proposal(s) concerning the modification or amendment to any provision of this Consortium Agreement, if and when needed;
(l) proposal(s) concerning the modification or amendment to any Appendix of this Consortium Agreement, if and when needed;
(m) proposal to end the Consortium and terminate this Consortium Agreement, provided that the Consortium has achieved its purposes as per Article 2.

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

***4.1.3. Meetings of the Assembly***

*4.1.3.1. Ordinary meetings*

Ordinary meetings of the Assembly shall be held at least every 6 (six) months, preferably in early December and early July of each year unless otherwise agreed by the Management Committee, in particular to:

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

*4.1.3.2. Extraordinary meetings*

Extraordinary meetings of the Assembly may be convened at request of one Member, with prior approval of the Management Committee, in circumstances when agreed estimated

deadlines, or budget, are overrun or any other major unexpected event occurs in the performance of the Consortium's activities.

*4.1.3.3. Notice and place of meetings*

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

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

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

*4.1.3.4. Minutes of meetings*

The minutes of the Assembly meetings shall be written by the Secretariat which shall address them promptly, for comments and/or approval, to the Assembly. Comments and/or approval shall be returned to the Secretariat within 14 (fourteen) calendar days. Failure by a Member to reply by the due date will be deemed as acceptance of the minutes by the Member.

### *4.1.4. Representation*

As stated in Article 4.1.1 each Member shall appoint and mandate only one authorised Representative to the Assembly. Replacement of the authorised Representative shall be possible provided the "Replacement Representative" (i) is able to show at the beginning of the meeting a duly signed proxy of the Representative and (ii) signs the Confidentiality, Non-Use and Non-Disclosure Agreement presented in Appendix 6 of this Agreement. Each Representative or Replacement Representative may represent more than one Member providing it holds a duly signed proxy of each Member it is representing at the meeting. Such Representative or Replacement Representative shall have authority to commit the Member(s) it represents in the Assembly decisions.

### *4.1.5. Quorum and Voting rights*

The Assembly meeting shall have a valid quorum if 50% (fifty percent) plus 1 (one) of the Members are present or represented. If a valid quorum is not present at an Assembly meeting, another meeting shall be convened within 14 (fourteen) calendar days of the original Assembly meeting. The second meeting shall be deemed to have a valid quorum irrespective of the number of Members present or represented.

Each Member is entitled to one vote in any applicable decision taken at an Assembly meeting. A Representative will be entitled to vote once per each Member it is representing and only when appearing on the appropriate list as described in Article 4.1.6.

An Affiliate shall not be eligible to vote. As defined in Article 1, an Affiliate as such is not a Member in its own right but is represented in the Assembly by the Member that it is affiliated to as indicated in the Signature folio, at the time of signature of this Agreement, or otherwise updated to the Secretariat.

### *4.1.6. Decision modalities*

Decisions taken by a Sub-Assembly may only be appointed to those Members having to comply with the REACH Regulation requirements for a particular group of Substance(s) and Isolated Intermediate(s). In such circumstances, only those Members appearing on the appropriate list as held by the Trustee at the time the vote takes place shall be entitled to vote, and votes by other Members shall not be counted. The Secretariat shall monitor any such decisions to ensure that only eligible Members have voted, and discount any votes made by ineligible Members.

*4.1.6.1. Adoption of decisions during Assembly meetings (Oral decisions)*

Any decision shall be taken by a majority of 50% (fifty percent) plus 1 (one) Member of the (Sub-)Assembly present or represented at the meeting, except for:

(a) Decisions related to points (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (l) and (m) of Article 4.1.2 which shall be taken by a qualified majority of 2/3 (two-thirds) of the Members of the Assembly present or represented at a meeting, and

(b) Decisions related to point (k) of Article 4.1.2 which shall be taken by two thirds (2/3) of the Members of the Assembly present or represented at the meeting. An amended version of the Agreement given effect pursuant to this Article shall replace its predecessor with effect from the date of the applicable decision of the Assembly.

Any oral decision shall be duly recorded by the Secretariat and shall be promptly communicated to all the Members of the Consortium, including to those who did not take part to the vote.

*4.1.6.2. Adoption of decisions outside Assembly meetings (Written decisions)*

Decisions may be taken by written means outside Assembly meetings. Decision proposals for the Consortium relating to the matters set out in Article 4.1.2 shall be submitted by the Secretariat to the Members for the approval of the (Sub-)Assembly. Such proposals shall be set out in (a) separate document(s), clearly identified as "Proposals of the Management Committee".

The Secretariat shall address this(ese) document(s) promptly, for comments and/or approval, to the (Sub-)Assembly. The document shall be duly executed by all of the Members and, as far as they are concerned, by the Secretariat and/or the Trustee and/or the Accountant (as the case may be) before the proposal is implemented. Comments and/or approval shall be returned to the Secretariat within 28 (twenty eight) calendar days. The validation or rejection of the decision proposals shall be determined by the Secretariat following the conditions set out in Article 4.1.6.1. No reply by the due date will be taken as signifying acceptance and tacit consent.

## 4.2. Management Committee

In order to take decisions on the overall and daily organisation and management of the Consortium, a number of Members shall meet in a Management Committee. The Management Committee shall be entrusted by and accountable to the Assembly.

### *4.2.1. Composition of the Management Committee*

*4.2.1.1. Members of the Management Committee*

Upon decision of the Management Committee in place, the Secretariat shall invite Members to nominate, on a voluntary basis, one candidate to sit in the Management Committee. Nominations shall be sent to the Secretariat within the 21 (twenty-one) calendar days following the invitation of the Secretariat. The list of candidates shall be collected by the Secretariat who shall present it to the Assembly. A formal election shall take place within the following 21 (twenty-one) calendar days of the closure of nominations. The Chairperson of the Management Committee in place together with the Secretariat and Trustee shall work with the Members in order to ensure the Management Committee assembles a workable and representative number of members to be approved by the Assembly. The President and/or Vice-President of the EPMF shall be entitled to attend Management Committee meetings, but shall have no right in his/her capacity as President and/or Vice-President of the EPMF to vote on any decision taken.

Elections of the Management Committee shall take place every 3 (three) years. Members shall be entitled to replace their member on the Management Committee if agreed by the Management Committee. If a member resigns or revokes from the Management Committee, or if a Member having a member on the Management Committee withdraws or is excluded from the Consortium, the Secretariat shall set up an open nomination for the Assembly to proceed to a by-election, which shall take place within 28 (twenty-eight) calendar days of the closure of nominations. Whether done by oral or by written decision, this by-election shall follow the conditions specified in Article 4.1.6.

*4.2.1.2. Chairperson and Co-Chairperson of the Management Committee*

The members of the Management Committee shall elect between themselves a Chairperson and a Co-chairperson for a period of 2 (two) years. If the Chairperson or Co-Chairperson resigns from his/her post, the other members on the Management Committee shall elect a replacement for the remainder of the original term.

The Chairperson shall coordinate the Management Committee, organize its work with the assistance of the Secretariat, and act as the official external Representative of the Consortium. The Chairperson shall be authorised to enter into agreements and/or contracts with third parties on behalf of the individual Members of the Consortium for the purpose of the Agreement, provided that (i) the agreement and/or contract has been approved by the Management Committee, (ii) the Chairperson's position and mandate are duly described next to its signature on any agreement or contract he/she enters into, (iii) such agreement and/or contract contains a term pursuant to which the third party (and any other beneficiary of an obligation of the Consortium thereunder) acknowledges and accepts that where any obligation is expressed to be an obligation of the Consortium, it is an obligation to be borne pro rata between the relevant (Sub-)Assembly Members, and further provides that the third party shall not be entitled to pursue any relevant (Sub-)Assembly Member for more than that Member's pro rate share of the relevant liability, and (iv) liability remains with each Member of the Consortium, as more referred to in Article 8.3 and 10.2.2.

The Co-Chairperson shall replace the Chairperson when the Chairperson is unavailable.

The Chairperson may delegate his/her power to enter into contracts to the Secretariat of the Consortium provided that (i) the agreement and/or contract has been approved by the Management Committee, (ii) the Secretariat indicates that he/she is signing on behalf of the Chairperson of the Management Committee next to its signature, and (iii) terms (iii) and (iv) described in the above paragraph are contained in the contract and/or agreement.

In the event a quick decision needs to be taken, and as long as this decision is in compliance with guiding principles and instructions of the Management Committee and with the budget approved by the Assembly for that year, the Chairperson, or in his absence the Co-Chairperson, of the Management Committee shall be entitled to make emergency decisions without requiring the prior approval of the Management Committee or the (Sub-)Assembly. Any such decision shall however be duly documented in the applicable project plan by the Secretariat, including any financial or practical consequence the latter may have, in order to be communicated to the Management Committee and the concerned (Sub-)Assembly within one week.

***4.2.2. Role of the Management Committee***

The Management Committee shall make the necessary proposals and take the necessary decisions related to the Consortium, its objectives and activities and shall in this regard particularly, but not exclusively, deal with the following:
(a) designation of the Secretariat and the Trustee;
(b) designation of the Accountant and the Auditor(s) (as required);

(c) proposals regarding the designation of the Consortium's Lead Registrant(s), before they are submitted to the relevant Sub-Assembly for approval;
(d) management of the Consortium's financial resources, including its budget, funding and accountancy, the approval of reimbursement mechanisms and any proposal to license existing Studies or Information from any third party that may assist Members for registration and classification purposes, as approved by the Assembly;
(e) coordination of, and guidance for Information collection and sharing concerning the Substance(s) and Isolated Intermediate(s) covered by this Agreement according to the criteria presented in Appendix 4 of this Agreement;
(f) coordination and supervision of activities of the Secretariat, the Work Groups and the Consortium's Lead Registrant(s);
(g) approval for additional Information and testing programs within the budget approved by the (Sub-)Assembly;
(h) appointment of external consultants or contractors to perform technical and scientific tasks and as proposed by the relevant Work Group(s) within the budget approved by the (Sub-)Assembly;
(i) approval of the Core Data as prepared by the Lead Registrant and the Trustee, before approval by the concerned registrants of the Sub-Assembly;
(j) approval of the Chemical Safety Reports as prepared by the Lead Registrant and the Trustee, before approval by the concerned registrants of the Sub-Assembly;
(k) facilitation of proper communication between all Parties involved;
(l) mediation in cases of disagreement or disparities within or between the Work Groups;
(m) approval and monitoring of the protection of intellectual property rights ("IPR") arising from the Information produced within the Consortium;
(n) decisions granting a right to use new Information jointly owned by Members (possibly granting of Letters of access) to third parties;
(o) proposal(s) regarding acceptance of a new Member;
(p) proposal(s) regarding transfer of membership;
(q) proposal(s) regarding exclusion of a Member, including specification of the conditions accompanying such exclusion and in particular related to any funding obligation and right to use, cite or refer to Information;
(r) proposal(s) to adapt the Consortium Agreement in light of legislative and technical changes to the REACH Regulation requirements, including the entry into force of the REACH Regulation, and in particular the establishment of the Substance Information Exchange Forum (SIEF) or the entry into force of the Globally Harmonised System (GHS) regulation;
(s) proposal(s) concerning the modification or amendment to any provision of this Consortium Agreement, if and when needed;
(t) proposal(s) concerning the modification or amendment to any Appendix of this Consortium Agreement, if and when needed;
(u) proposal to end the Consortium and terminate this Consortium Agreement;
(v) periodically report to the EPMF Board.

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

Subject to a majority of 50% (fifty percent) plus 1 (one) of the members, as per Article 4.2.5, the Management Committee may delegate, by specific mandates, some tasks to designated party(ies), acting within the limits defined in such mandate(s) such as, but not limited to, Work Group(s).

### *4.2.3. Meetings of the Management Committee*

#### *4.2.3.1. Ordinary meetings*

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

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

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

*4.2.3.2. Extraordinary meetings*

Extraordinary meetings of the Management Committee may be convened at request of anyone of its members. Extraordinary meetings may be called when agreed estimated deadlines, or budget, are overrun or any major unexpected event occurs in the performance of the Consortium activities.

*4.2.3.3. Notice and place of meetings*

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

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

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

*4.2.3.4. Minutes of meetings*

Minutes of the Management Committee meetings shall be written by the Secretariat which shall address them promptly for comments and/or approval, to all members of the Management Committee. Comments and/or approval shall be returned to the Secretariat within 14 (fourteen) calendar days. Failure by a member to reply by the due date will be deemed as acceptance of the minutes by the member.

### *4.2.4. Quorum and representation*

The Management Committee meeting has a valid quorum if 50% (fifty percent) plus 1 (one) of its members are present or represented. If there is no quorum, another meeting shall be convened within 8 (eight) calendar days. The second meeting shall be deemed to have a valid quorum irrespective of the number of present or represented members.

Management Committee members may be represented at each meeting by a Representative upon notice to the Secretariat. Each Representative may represent only 1 (one) member on the Management Committee.

### *4.2.5. Decision modalities and voting rights*

Decisions and decision proposals of the Management Committee shall take into account the expertise, the justification and the recommendations of the relevant Work Groups.

Each member or Representative of the Management Committee is entitled to 1 (one) vote in any decision taken in the Management Committee. Decisions shall be taken by a majority of 50% (fifty percent) plus 1 (one) of the members of the Management Committee present or represented at the meeting, except for the decision proposals:

(a) related to points (d), (o), (p), (q), (r), (t) and (u) of Article 4.2.2 which shall be submitted to the Assembly only after a qualified majority of 2/3 (two-thirds) of the members of the Management Committee have approved it, and
(b) related to point (s) of Article 4.2.2 which shall be submitted to the Assembly only after unanimous approval of the members of the Management Committee.

In the case of equality of votes, the Chairperson has no casting vote and a re-vote will be required.

For informative purposes, decisions related to points (a), (b), (c), (g), (h), (i), (j), (l), (m) and (n) of Article 4.2.2 taken by the Management Committee shall be promptly communicated by the Secretariat to the Assembly.

### 4.3. Secretariat

#### *4.3.1. Designation of the Secretariat*

The Officers of the EPMF, shall be designated to act as the Secretariat for the Consortium, unless otherwise agreed by the Management Committee pursuant to Article 4.2.2 (a). The costs of the Secretariat shall be calculated according to the time dedicated by the EPMF Officers to the activities of the Consortium and it shall be allocated to the concerned projects referred to in Article 7.1.

#### *4.3.2. Role of the Secretariat*

The Secretariat shall be responsible for daily management in strict compliance with any applicable provision of this Agreement and of the Confidentiality, Non-Use and Non-Disclosure Agreement as presented in Appendix 6, and in particular with any mandate(s) given by the Management Committee.

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

(a) hold the executed counterparts of this Agreement;
(b) hold and update as necessary ten separate lists enclosing those Members who are subject to comply with the REACH Regulation requirements for Silver, for Gold, for Precious Metals Cyanides, for Platinum, for Palladium, for Iridium, for Rhodium, for Ruthenium, for Rhenium, and for Refinables, respectively;
(c) coordinate and prepare the decision proposals of the Management Committee to be submitted to the Assembly;
(d) organize (identify and classify) and store the decision proposals and the decisions of the Management Committee and the decisions of the Assembly;
(e) follow up the legislative and technical development of the REACH Regulation and inform the Work Groups and the Management Committee about any relevant new developments;
(f) present regular operating and development plans, annual or periodic budgets, including proposals of future annual budgets, to the Management Committee for discussion and approval;
(g) prepare and send the invoices according to the procedure described in Article 7.4;
(h) follow up the progress of the technical activities of the Consortium and periodically report on the technical and financial issues to the Work Groups and to the Management Committee;
(i) provide technical and administrative support to the Work Groups and to the Management Committee;
(j) supervise external consultants and experts appointed by the Management Committee;
(k) coordinate and provide guidance for Information collection concerning the Substance(s) and Isolated Intermediate(s) covered by this Agreement;
(l) supervise and frequently remind the Members to abide by the Competition Law Compliance Guidelines.

To the extent that this Agreement provides for the collection of data pertaining to the Signatories of the Agreement, the Secretariat shall work in accordance with the European Directive 95/46/EC on the protection of individuals with regard to the processing of personal data within the meaning of Article 2(a) of Directive 95/46/EC.

### 4.4. Accountant

#### *4.4.1. Designation of the Accountant*

The Accountant shall be designated, and may be replaced by the Management Committee as permitted by Article 4.2.2 (b). The costs of the Accountant shall be shall be allocated to the concerned projects referred to in Article 7.1. The Accountant shall operate in strict compliance with any applicable provision of this Agreement and of the Confidentiality, Non-Use and Non-Disclosure Agreement as presented in Appendix 6, and in particular with any mandate(s) given by the Management Committee.

#### *4.4.2. Role of the Accountant and accounting principles*

The Accountant shall conduct all normal accounting activities of the Consortium, to the exclusion of those accounting activities exclusively attributed to the Management Committee or the Secretariat. It shall maintain the Consortium's accounts and accountancy in accordance with generally accepted auditing and accounting principles consistently applied and shall in particular:

(a) follow up the progress in the financial activities of the Consortium;
(b) maintain full and accurate books, records, and accounts that shall, in reasonable detail, transparently, accurately and fairly reflect the cost-sharing accounts of the Members and all transactions of the Consortium;
(c) retain such books, record, and accounts for such period of time as may be required by law and thereafter for such period of time as may be reasonable;
(d) upon decision of the Management Committee, and with the assistance of the Secretariat, permit Members reasonable access to such books, records, and accounts for the purpose of providing such information as any such Member may reasonably request;
(e) devise and maintain a system of internal controls sufficient to provide reasonable assurances that transactions of the Consortium are executed in accordance with required authorisations;
(f) assist the Secretariat in preparing regular operating and development plans, annual or periodic budgets, including proposal of annual budget for next years, to the Management Committee for approval;
(g) prior to April of each calendar year, provide the Management Committee with regular annual audited financial statements by external and independent auditors. Such financial statements shall include such appropriate financial information reasonably requested by the Management Committee.

All periodic or special reports and filings shall be approved by the Management Committee prior to filing.

### 4.5. Work Group(s)

#### *4.5.1. Composition of the Work Group(s)*

##### *4.5.1.1. Members of the Work Group(s)*

In order to pursue the purposes of the Consortium, the Management Committee shall establish *ad hoc* "Work Group(s)", composed of one or more voluntary Member Representatives, having the appropriate expertise for the purpose of discharging the designated function of that Work Group, as presented in Appendix 5, or otherwise appointed from time-to-time by the Management Committee to fulfil a particular function.

*4.5.1.2. Chairperson and Co-Chairperson*

In the event where the Work Group has more than 3 (three) members, the members of any given Work Group(s) shall elect amongst themselves a Chairperson and a Co-chairperson, who shall be replaced upon the vote of 50 (fifty) plus 1 (one) percent members of the Work Group. The Chairperson shall coordinate the Work Group, organize its work with the assistance of the Secretariat and shall act as the official representative of the Work Group. The Co-Chairperson shall replace the Chairperson when unavailable.

*4.5.1.3. External independent expert(s)*

If approval and a budget have been granted by the Management Committee as more referred to in Article 4.2.2 (h), a Work Group may, if it considers it necessary, co-opt an external independent expert to review proposals before they are put to the Assembly for approval.

***4.5.2. Role of the Work Group(s)***

The key roles of the Work Group(s) are described in Appendix 5.

***4.5.3. Meetings of the Work Groups***

*4.5.3.1. Ordinary and extraordinary meetings*

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

*4.5.3.2. Notice and place of meetings*

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

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

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

*4.5.3.3. Minutes of the meetings*

Minutes of the Work Group meetings shall be written by the Secretariat which shall address them promptly, for comments and/or approval, to all the members of the relevant Work Group. The Members of the Work Group(s) shall reach agreement by consensus. Comments and/or approval shall be returned to the Secretariat within 14 (fourteen) calendar days. Failure by a member to reply by the due date will be deemed as acceptance of the minutes.

**4.6. Trustee**

***4.6.1. Designation of the Trustee***

The Trustee is designated and may be replaced by the Management Committee pursuant to Article 4.2.2 (a).

In the event of a temporary absence of the designated Trustee, the Secretary General of the EPMF shall appoint a member of its personnel to act as the Trustee of the Precious Metals Consortium and shall therefore be authorised to fulfil the role and tasks assigned to the Trustee, provided the EPMF agrees to be bound by any and all provisions of this Consortium Agreement, especially those applicable to the Trustee. If the absence of the Trustee is prolonged for more than 120 (one hundred and twenty) calendar days, the Management Committee shall designate a new Trustee.

The remuneration of the Trustee shall be allocated to the concerned projects referred to in Article 7.1.

#### *4.6.2. Role of the Trustee*

The Trustee is responsible for:

(a) receiving, collecting, recording and aggregating any information, including Confidential and proprietary Information, as well as sensitive business secrets and other information which if disclosed to another Member(s) might be regarded as a breach of Competition Law, and thereafter circulating and disclosing sufficient and appropriate information, as required for the purposes of this Consortium Agreement;
(b) holding and updating as necessary, eleven separate lists i) enclosing those Members who are subject to compliance with the REACH Regulation requirements for Silver, for Gold, for Precious Metals Cyanides, for Iridium, for Platinum, for Palladium, for Rhodium, for Ruthenium, for Rhenium and for Refinables respectively; ii) enclosing Members who are part of the SVHC Roadmap Sub-Assembly.

The role and tasks of the Trustee are further described in Appendix 7 “Undertakings of the Trustee”.

For the avoidance of doubt, no provision in this Agreement or in any other agreement shall oblige the Trustee to disclose any Confidential Information as defined in Article 1 and in Appendices 6 and 7, to the Management Committee, the Members or any other member or third party other than the Agency.

### 4.7. Consortium’s Lead Registrant(s)

#### *4.7.1. Designation of the Consortium’s Lead Registrant(s)*

The Consortium’s Lead Registrant(s) for each Substance and Isolated Intermediate is(are) proposed by the relevant Work Group and is(are) designated and may be replaced by decision of the concerned Sub-Assembly. The Consortium’s Lead Registrant(s) shall be (a) Member(s) of the Consortium; shall, without prejudice to Article 8.3.5, be subject to the same rights and obligations as the other Members, in particular regarding confidentiality obligations; and shall complete and sign the Declaration of Commitment provided in Appendix 10. In the event the Consortium’s Lead Registrant wishes to withdraw from this role, a notification shall be sent to the Secretariat at least six months before the Registration deadline as provided in the REACH regulation or established by the Management Committee as per Article 4.7.2. The Secretariat shall invite the concerned (Sub-)Assembly to elect a new Lead Registrant without delay. Any request for change in the Declaration of Commitment shall be duly communicated to the Secretariat, who shall inform the concerned (Sub-)Assembly and launch the required decision-making, if applicable.

#### *4.7.2. Role of the Consortium’s Lead Registrant(s)*

In accordance with the REACH Regulation, the Consortium’s Lead Registrant(s) shall:

(a) Create a joint submission object on REACH-IT, communicate the name and token security number of this joint submission object to the Trustee, and submit the joint Registration Dossier containing, where relevant and applicable, the information listed below in the format specified by the Agency and as approved by the concerned registrants to the Agency on behalf of the Members, including their respective Affiliates which have to register the concerned Substance or Isolated Intermediate, on the date determined by the Management Committee;
    - The identity of the substance as specified in section 2 of Annex VI of the REACH regulation;

- The information on the manufacture and use(s) of the substance as specified in section 3 of Annex VI of the REACH regulation;
- The classification and labelling of the substance as specified in section 4 of Annex VI of the REACH regulation;
- The guidance on safe use of the substance as specified in Section 5 of Annex VI of the REACH regulation;
- The study summaries of the information derived from the application of Annexes VII to XI of the REACH regulation;
- The robust study summaries of the information derived from the application of Annexes VII to XI of the REACH regulation, if required under Annex I of the REACH regulation;
- Proposals for testing where listed in Annexes IX and X of the REACH regulation;
- The Chemical Safety Report when required under Article 14 of the REACH regulation, in the format specified in Annex I of the REACH regulation.
- An indication as to which of the information submitted has been reviewed by an assessor chosen by the manufacturer or importer and having appropriate experience.

(b) not modify the "joint part" of the Registration Dossier without the prior approval of the concerned registrants.

(c) together with the Trustee, ensure that Confidential Information in the Registration Dossier is marked or identified as such and shall submit to the Agency any requested justification for non-disclosure of Information in the Registration Dossier.

(d) submit a copy of the full Registration Dossier as submitted to the Agency to the Trustee within one week of its submission to the Agency;

(e) submit to the other Members who have contributed to the Registration Dossier for any particular Substance or Isolated Intermediate, within one week of its submission to the Agency:
- a copy of all the non-Confidential Information in the Registration Dossier as submitted to the Agency;
- a copy of those parts of the Registration Dossier as submitted to the Agency, that each contributing Member is entitled to, based on the Substance and tonnage bands declaration that it has provided to the Trustee at the time of signature of this Agreement, or otherwise updated to the Trustee (and consequently has paid for according to the cost-sharing formula set out in Appendix 9);

(f) forward to the Members concerned, through the Secretariat, any communication received from the Agency.

## 5. INFORMATION AND DATA SHARING

### 5.1. Right of access and use to existing Information - Ownership of existing Information

#### *5.1.1. Confidentiality*

Subject to compliance with the confidentiality provisions of this Agreement, the Parties to this Agreement undertake to provide the Consortium, through the Trustee when higher degree of confidentiality is required, with any existing Information of interest for achieving the purposes of the Consortium, for no additional cost.

Each Member shall inform the Trustee on the confidential nature of any Information, and in particular those that can not be made public pursuant to Article 119 of the REACH Regulation. The sensitivity of the Information depends on the subjective assessment of its holder; confidentiality must therefore be granted whenever a Disclosing Member considers that the Information to be disclosed is sensitive.

#### *5.1.2. Property rights*

Property rights (including intellectual property rights – "IPR") applicable to an existing Information made available in accordance with this Agreement shall remain with the Party who provided the Information. However, the other Members shall have the right to use the Information for the purpose of complying with the requirement(s) of the REACH Regulation, provided that they have paid their share of the Consortium's costs according to the cost-sharing formula as more referred to in Article 7

and Appendix 9 of this Agreement. This right of use shall extend to Affiliates of Members as specified in the Signature folio presented in Appendix 1, at the time of signature of this Agreement or otherwise updated to the Secretariat.

The Parties undertake to respect the IPR of each Member (whether existing prior to the date of conclusion of this Agreement or acquired subsequently) and not to commit any act or omission which might prejudice a Party in the exercise or preservation of infringements of a Member's IPR.

#### *5.1.3. Rights to use, cite or refer to*

The Party who initially provided existing Information to the Consortium may, at its sole discretion, allow other Parties to use, cite or refer to this Information for purposes other than fulfilling the requirements under the REACH Regulation.

Rights to use (including to cite, or refer to) existing Information granted by the Consortium to third parties within the context of the REACH Regulation, for instance through a Letter of access, shall be subject to prior written approval from, and appropriate compensation to the Member(s) who initially provided the Information to the Consortium.

The submission of existing Information, owned by one (or several) Member(s) and one (or several) third party(ies), can only be made available to the Consortium or its Members following prior written approval of all the owners.

#### *5.1.4. Licensing*

The Management Committee may decide to license from any third party existing Studies or Information that may assist Members for the purpose of registration or classification. Such license shall be concluded by the Management Committee on behalf of the Assembly, under conditions agreed by the Management Committee. The Members shall have the right to use such jointly licensed Information to the extent they share individually the license costs in accordance with the cost-sharing formula agreed upon, which is described in Appendix 9 hereto.

### 5.2. Ownership and Use of new Information developed by the Consortium

#### *5.2.1. Ownership and use in the Consortium*

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

Members and their Affiliates shall have the right to use such Information for the purpose of discharging any regulatory obligations (which for the avoidance of doubt shall not be confined to obligations under the REACH Regulation) provided that the Secretariat is promptly notified of the purpose for which the Information is to be used by the Member(s) or its Affiliate(s). In the event a Member or its Affiliate(s) wishes to use such Information for any other purpose, the Management Committee shall be promptly informed (and be given full details of the proposed use) and invited to vote on the acceptability of such proposal in accordance with Article 4.2.5.

#### *5.2.2. Use by third parties*

The Management Committee may decide to grant to third parties the right to use (including to cite, or refer to) new Information under terms and conditions to be mutually agreed on. Such third parties shall then execute a "Letter of access". .

## 6. CONFIDENTIALITY – NON-DISCLOSURE AND NON-USE OF CONFIDENTIAL INFORMATION

Each Member agrees to be bound by the provisions of the Confidentiality, Non-Use and Non-Disclosure Agreement, a copy of which is attached hereto as Appendix 6 and which forms an integral part of this Agreement.

Confidential Information disclosed to the Trustee is subject to a higher degree of confidentiality as set out in Appendix 7.

## 7. FINANCIAL RIGHTS AND OBLIGATIONS

The Members shall bear the Consortium costs jointly. Affiliates of a Member do not have any financial right or obligation providing that the Member which is representing them in the Consortium has paid its share of the costs according to the applicable conditions for the cost-sharing formula presented in Appendix 9.

### 7.1. Budget of the Consortium

The budget of the Consortium shall be prepared by the Accountant with the assistance of the Secretariat on an annual basis. The Consortium costs will include:

#### *7.1.1. Applicable costs*

The applicable costs are the costs incurred by the Consortium, for each project undertaken pursuant to Appendix 4, particularly but not only related to the:

(a) administrative costs (e.g. human resources including the Secretary General, the Secretariat's personnel, the Regulatory Affairs Manager, office costs, meeting and travel costs, Assembly costs, Eurometaux fees, Trustee fees, Accountant fees, External Legal Counsel fees, etc). As regards the allocation of administrative costs to the different projects, the allocation key will be driven by the relative proportion of human resources expended by project and will be reviewed each year based on the new human resources needs for each project. At the end of each year, the allocation key (initially based on budget) will be checked and adapted to ensure that it corresponds to the actual human resources needs for each project.
(b) Information and Study(ies) licensed from a Disclosing Party as referred to in Article 5.1.4;
(c) remuneration of the scientific managers and consultants, e.g.: the reports on data gap analysis, the compilation of Registration Dossiers, and other activities for which they have been contracted;
(d) remuneration of the external and independent experts;
(e) performance of the tests to comply for the REACH Regulation requirements;
(f) the cost of the samples of Substances or Isolated Intermediates which are provided by the Members in order to be used as reference materials in the test programme. In the event a Member provides the Consortium with a sample in order to be used in any of the tests commissioned by the Consortium to a Third Party in the context of any of the precious metals or rhenium projects, this Member shall be reimbursed by the concerned Sub-Assembly for the cost of the sample (calculated based on the concentration of precious metal or rhenium, respectively) as well as for the manufacturing, shipment and associated insurance costs, etc. as appropriate. The reimbursement shall be done on the basis of an invoice sent by the concerned Member to the Secretariat indicating the cost of the sample based on its precious metal or rhenium content, the cost of the associated insurance, and the cost of the transport. Only the amount of sample lost during the testing programme will be reimbursed. The Consortium reserves the right to proceed to an independent evaluation of the cost charged by each sample provider.

The budget of the Consortium shall bear at least eleven separate applicable costs elements, including (i) one for each project related to each of the following groups of metals and their compounds: Silver, Gold, Precious Metals Cyanides, Iridium, Palladium, Platinum, Rhodium, Ruthenium, Rhenium, Refinables and (ii) one for the project related to SVHC Roadmap. Each applicable costs shall be borne by each concerned individual Sub-Assembly as further referred to in article 4.1.1.2. and in Appendix 9.

### 7.2. Registration costs

The registration fee(s) per registered Substance or Isolated Intermediate due to the Agency shall be borne by each legal entity to which they apply. Such fees are not included in any of the costs of the Consortium and the payment of the registration fees to the Agency shall not be borne by the Consortium but by each registering legal entity.

### 7.3. Cost-sharing formula

The cost-sharing formula is described in Appendix 9.

### 7.4. Invoicing, Payments and Late Payment Penalties

As described in Article 4.3.2 (g), invoicing shall be performed by the Secretariat of the Consortium.

Invoices shall be sent every 6 (six) months, in February and in July, to the Members, by e-mail and by post, to the address specified by the Member in its Signature folio or otherwise updated to the Secretariat. The Secretariat shall immediately electronically notify the nominated Representative of the Member on such invoicing. In the event the Representative has not received the electronic notification on time, unless previously advised of the delay by the Secretariat, the Representative shall promptly inform the Secretariat.

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

If the payment is made after that period, the interest rate as per the London Interbank Offered Rate (LIBOR) shall be monthly added to the due sum and payment shall become immediate. The "Breaching Member" as more referred to in Articles 3.5.2.2 and 3.5.2.3, will have no voting right until payment has been received.

## 8. UNDERTAKINGS

### 8.1. Representations and warranties

Each Party to this Agreement represents and warrants to any other Party that:

(a) it is a duly organized, validly existing entity of the type described in this Agreement and is in good standing under the laws of the jurisdiction of its formation, and that it has all requisite power and authority to enter into and to perform its obligations under this Consortium Agreement;
(b) its execution, delivery, and performance of this Consortium Agreement have been duly authorised, and do not and will not (i) violate any law, rules, regulation, order, or decree applicable to it, or (ii) violate its organizational documents;
(c) there is no litigation pending or, to the best of its knowledge, threatened to which such Party or any of its Affiliates is a party that, if adversely determined, would have a material adverse effect on the financial condition, prospects, or business of the Consortium, or that Party's ability to perform its obligations under this Consortium Agreement.

### 8.2. Compliance with laws

The Assembly, the Management Committee and the Secretariat shall cause the Consortium to conduct its activities at all times in accordance with high standards of business ethics and all applicable laws. Each Member is responsible for ensuring that it adheres at all times to its own national and European laws.

Neither this Consortium Agreement nor anything contained in this Agreement is intended to restrict competition in any manner whatsoever. The Parties expressly undertake to comply with applicable

rules on Competition Law, in particular but not limited to Articles 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU"), as well as any applicable national laws.

The Members shall not engage in any activity or communications, such as discussions of pricing, allocations of markets, unfair competition, or limitations of supply or bidding procedures, which could be violations of applicable laws or regulations.

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

Each Party to this Agreement agrees to be bound by the provisions of the Competition Law Compliance Guidelines attached in Appendix 8 hereto which forms an integral part of this Agreement.

### 8.3. Liability

#### *8.3.1. Liability of Members*

The Members are liable for themselves and for their Affiliates.

Each Member and its Affiliates shall comply, in an appropriate and timely manner, with all provisions of the REACH Regulation that are required of it as well as those under this Agreement.

The Members and their Affiliates are required to exercise due care and diligence vis-à-vis other Members in observing the rights and obligations arising from this Agreement. In case of failure to exercise due care and diligence, Article 11 shall apply. Subject to the other provisions of this Agreement, the Members shall be liable to each other only in respect of wilful misconduct, fraud, and gross negligence.

In any case, the liability of each Member shall be several and not joint.

*8.3.1.1. Liability related to use of Information*

The Members shall not be held liable for the respective misuse by other Members of Information they made available or developed in the Consortium framework. Each Member shall be held fully liable for its own misuse of Information made available or developed in the Consortium.

*8.3.1.2. Liability related to the provided Information*

Members shall assume liability for the accuracy or correctness of the Information they provide in the frame of this Consortium Agreement, only in case of wilful misconduct, fraud, and gross negligence of the providing Member.

*8.3.1.3. Liability related to the fulfilment of REACH Regulation's requirements*

Each Party to this Consortium Agreement is responsible for complying with its rights and obligations according to the REACH Regulation, in as much as these rights and obligations are not expressly transferred to other Members of the Consortium, or to the Consortium, in accordance with this Consortium Agreement. This applies in particular to the Information which is to be submitted to the Agency within the Pre-Registration and in the Registration Dossier in due time by each Member, the payment of the registration fee(s) as well as to communication with Downstream Users in the supply chain.

*8.3.1.4. Sole liability of Members*

Each Party to this Agreement is solely liable vis-à-vis third parties within the scope of its responsibility, with respect to its activities and obligations within (and outside) the scope and purpose of the Consortium, in connection with any loss, damage or injury to third party resulting from its own fault or negligence.

*8.3.1.5.* Save where there has been a breach of the Confidentiality Agreement of Appendix 6, no Member shall in any circumstances (whether in contract, tort (including negligence) or otherwise) be liable to another Member for any loss of profit or loss of margin (in each case whether direct or indirect) or for any indirect, consequential, contingent or special damages (whether for loss of use, loss of business or contracts, depletion of goodwill or otherwise).

***8.3.2. Liability of the Secretariat***

*8.3.2.1. Secretariat's liability vis-à-vis Members*

The Secretariat is accountable and shall report to the Management Committee and to the Assembly for the achievement of its purposes as defined in Article 4.3.2.

*8.3.2.2. Secretariat's liability vis-à-vis third parties*

The Secretariat shall bear no individual responsibility or liability for its actions taken in its capacity of Secretariat, with the exception of wilful misconduct, fraud, and gross negligence, in unlawful actions or serious actions incompatible with its mandate. Save in respect of the Secretariat's wilful misconduct, fraud, or gross negligence, liability for the acts and omissions of the Secretariat is shared equally between the Members.

***8.3.3. Liability of the Trustee***

The Trustee is fully responsible for any breach of its obligations under this Agreement, and especially those stated in Appendix 7 "Undertakings of the Trustee". The Trustee is encouraged to acquire professional liability insurance, whose cost and eventual deductible shall be added to the Trustee's fees.

***8.3.4. Liability of the Accountant***

*8.3.4.1. Accountant's liability vis-à-vis Members*

The Accountant is accountable and shall report to the Management Committee for the achievement of its purposes as defined in Article 4.4.2.

*8.3.4.2. Accountant's liability vis-à-vis third parties*

The Accountant shall bear no individual responsibility or liability for its actions taken in its capacity of Accountant, with the exception of wilful misconduct, fraud, and gross negligence, in unlawful actions or serious actions incompatible with its mandate.

***8.3.5. Liability of the Consortium's Lead Registrant(s)***

The Consortium's Lead Registrant(s) shall not be liable to third parties to an extent more than liability of the Members, except:

(a) in respect of liability attributable to its (their) wilful misconduct, fraud, and gross negligence as Consortium's Lead Registrant(s); and
(b) in respect of liability attributable to its (their) role of Consortium's Lead Registrant according to which the Consortium's Lead Registrant(s) shall be liable to the Members with whom it(they)

is(are) preparing and submitting a Registration Dossier to the Agency for a Substance or Isolated Intermediate.

## 9. DURATION AND TERMINATION OF THE CONSORTIUM AGREEMENT

### 9.1. Entry into force

This Agreement shall enter into force when signed by duly authorized Representatives of at least 2 (two) Parties to the Consortium Agreement. The deadline for signature in order to be considered as a Founding Member is 15 September 2007 and 15 June 2008 as further referred to in Article 3.3. This Agreement shall be binding to each Party as per the respective signing date of such Parties.

### 9.2. Duration

This Agreement (as may be updated from time to time pursuant to a decision of the Assembly in accordance with Article 4.1.6.1 (b)) shall remain in full force and effect until the Consortium has achieved its purposes as per Article 2, or until terminated by decision of the Assembly as per Article 4.1.2 (m).

### 9.3. Termination

Before dissolution or termination of the Consortium, all remaining joint and severable rights and obligations of the Members resulting from this Agreement, if any, shall be resolved by the Management Committee.

### 9.4. Survival Provisions

The provisions of this Agreement which by their nature extend beyond the expiration or termination of the Agreement and, in particular, those relating to the protection of confidentiality, Information ownership, disclosure and use, liability and settlement of disputes, as per these "Survival Provisions", shall survive the expiration or termination of the Agreement.

## 10. CONCLUDING PROVISIONS - MISCELLANEOUS

### 10.1. Good Faith and Fair Implementation

The Parties undertake:

(a) to use their best endeavours to enable the reciprocal rights and obligations of the Parties to be exercised;
(b) to observe the utmost good faith towards each other in all their dealings arising out of or in connection with this Agreement;
(c) not to do or omit anything which might prejudice or detract from the rights and interests of each other;
(d) to use their best endeavours at all times to procure the effective implementation of this Agreement and to co-operate with each other to that end;
(e) upon formal request from the Management Committee, to submit to the Trustee auditable attestations on the Substances, Isolated Intermediates and the tonnage bands declared and registered at the Agency.

### 10.2. Legal status

#### *10.2.1. Independency*

Each Party is and remains an independent contractor. No one Party nor its agents, employees, consultants or contractors, is an agent, employee or joint venturer of or with any other, nor does it have any authority to bind any other Party by contract or otherwise to any obligation.

*10.2.2. Legal personality*

It is not the intention of the Parties to create, nor shall this Consortium Agreement be deemed to or construed to create a partnership, joint venture or association.

The rights and obligations arising from this Consortium Agreement shall not result in the creation of a legal person distinct from the legal personality of the Parties. In external contractual relations, the Consortium shall not act under its own name but as a community of all individual Parties to the Consortium Agreement, represented by the Chairperson of the Management Committee as further referred to in Article 4.2.1.2.

Collectively, the Members are subject to the rights and duties of the Consortium, on a non-profit basis.

In case the Consortium enters into contracts with third parties, pursuant to the purpose of this Agreement, the liability of the Members shall be on a several basis. Any third party wishing to sue will have to bring an action against each individual Member of the Consortium for that Member's share of the debt.

**10.3. Successors and assigns**

Except otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, executors and administrators of the Parties hereto; provided, however that, otherwise, no party may transfer or assign its interests hereunder without the prior written consent of the Management Committee, as described in Article 3.4.

Each Party shall timely inform the Management Committee of any change in its legal status or Change in Control in order to discuss with Members any measure to be taken in order to safeguard each other's interests, especially with respect to confidentiality, termination or continuation of pending work, liability for agreed payments and the like.

**10.4. Entire Agreement - Written Agreement**

This Agreement constitutes the sole and entire agreement between the Parties in respect of the subject matter thereof and supersedes all prior contracts or agreements among such Parties with respect to such matters. This Agreement may not be modified, amended or otherwise varied, save as specified in Article 4.1.6.

**10.5. Severability**

Neither Party shall be hereby required to perform any act which is or becomes invalid, illegal or unenforceable under the laws or regulations of any government. If any provision of this Agreement is or becomes invalid, illegal or unenforceable, the remaining provisions of the Agreement shall remain in full force and effect. Instead of the invalid, illegal or unenforceable provisions, admissible provisions shall be agreed upon by the Parties, which will come as close as possible to the initial intent of the Parties.

**10.6. No Waiver**

No delay or failure by either Party to exercise or enforce at any time any provision of this Agreement will be considered as a waiver thereof or of such Party's right thereafter to exercise or enforce each and every right and provision of this Agreement. No single waiver will constitute a continuing or subsequent waiver. No waiver will be effective unless it is in writing.

**10.7. Language**

During the performance of this Agreement, all correspondence, invoices and other documents shall be written in English language.

### 10.8. Notices

Unless otherwise stated herein, all notices required to be given under this Agreement shall be in writing and shall be sufficient if delivered in person or sent by mail or telefax to the other Party at the addresses available at the Secretariat.
Any Party may change its address by a notice given to the Secretariat in the manner set forth above.

## 11. DISPUTE RESOLUTION – GOVERNING LAW

### 11.1. Governing Law

This Agreement is governed by, and all disputes arising under or in connection with this Agreement shall be resolved in accordance with, the substantive laws of Belgium.

### 11.2. Settlement of disputes, controversies or claims

Without prejudice to provisions of Articles 11.3 and 11.4 hereafter, any and all disputes, controversies or claims which may arise between the Parties in connection with the interpretation of any provision of this Agreement or its validity or enforceability, or the breach or termination of it, or the performance or non performance of any obligations under the terms and conditions of this Agreement, shall be settled by an amicable effort on the part of the Parties.

An attempt to arrive at a settlement shall be deemed to have failed as soon as one of the Parties so notifies the other Party in writing. Should such amicable settlement fail, the dispute shall be settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The decision of this Chamber shall be final and binding for all Parties to this Agreement.

The arbitral tribunal shall consist of three arbitrators: each Party designates one arbitrator; these two arbitrators then designate the third arbitrator who acts as chairperson; the chairperson shall have a university degree in law. The arbitral tribunal shall decide on the regulation of the costs of arbitration including out-of-courts costs incurred by the Parties in accordance to the outcome of arbitration. The language of proceedings shall be English. The venue of arbitration shall be Brussels.

### 11.3. Mediation

Notwithstanding Article 11.2 above, before resorting to arbitration, the Parties shall attempt to settle by negotiations between them in good faith all disputes or differences or differences which arise between them out of or in connection with this Agreement. The Parties further agree that (provided both Parties consider that such negotiations would be assisted thereby), they will appoint a mediator by mutual agreement, [or (failing mutual agreement) will apply to the President of the Brussels Chamber of Commerce to appoint a mediator, to assist them in such negotiations]. The Parties agree to cooperate fully with such mediator, to provide such assistance as is necessary to enable the mediator to discharge its duties, and to bear equally between them the fees and expenses of the mediator.

### 11.4. Judicial Court

Notwithstanding Article 11.2 above, any Party shall be entitled to apply to the judicial Courts of Brussels, Belgium for interim relief including in relation to disputes, claims, or controversies concerning the confidentiality of Information.

## 12. COUNTERPARTS

This Consortium Agreement will be executed in a number of counterparts, which shall together constitute a single document, which is held by the Secretariat as referred to in Article 5.3, as custodian of the Consortium Agreement.

## 13. APPENDICES

Appendix 1: Signature folio of the Precious Metals Consortium Agreement (template).
Appendix 2: Substance and tonnage band declaration (template).
Appendix 3: Definitions of Article 3 of the REACH Regulation.
Appendix 4: Substance(s) and Isolated Intermediate(s) covered by the Precious Metals Consortium Agreement.
Appendix 5: Working structure of the Precious Metals Consortium.
Appendix 6: Confidentiality, Non-Use and Non-Disclosure Agreement.
Appendix 7: Undertakings of the Trustee (template).
Appendix 8: Competition Law Compliance Guidelines.
Appendix 9: Cost-sharing formula.
Appendix 10: Lead Registrant Duties, Responsibilities and Declaration of Commitment.

**APPENDIX 1**
**Of the Precious Metals and Rhenium Consortium Agreement**

**Signature folio (template)**

***IMPORTANT NOTICE***

- *This Signature folio shall be submitted by each Member to the Secretariat and shall validate the membership status of the signing Party to the Precious Metals and Rhenium Consortium as of the date first mentioned above the signature.*
- *The content of this Folio shall remain with the Secretariat and shall be kept confidential according to the provisions set out in the Confidentiality, Non-Use and Non-Disclosure Agreement presented in Appendix 6 of the Consortium Agreement, unless the signatory of this Folio indicates otherwise.*
- *The content of this Folio will be used by the Secretariat to determine which legal entities represented by a Member of the Consortium are entitled to appear as legitimate registrants for the purpose of joint submission.*
- *The Secretariat acknowledges that the information provided at the time of the signature of the Agreement may evolve with time and that some updates to the folio might eventually be required. The Secretariat shall however be promptly informed on any change in the data provided by the Member in this folio and at the latest, 30 (thirty) calendar days before the foreseen Registration date. The Consortium cannot undertake to take changes into account in all cases.*

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

| **Information box 2** | INFORMATION ON THE AFFILIATES REPRESENTED BY THE MEMBER | |
|---|---|---|
| | Name | Address |
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| … | | |

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

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

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

Date: _____

Signature: _____

**APPENDIX 2**
**Of the Precious Metals and Rhenium Consortium Agreement**

**Substance and tonnage band declaration (template)**

***IMPORTANT NOTICE***

- *This declaration shall be submitted by each Member to the Trustee at the time of the signature of the Precious Metals and Rhenium Consortium Agreement by the Member.*
- *Template tables for listing and describing those Precious Metals and/or Rhenium Substances and Isolated Intermediates which are subject to be registered by the Member and/or by one or more of its Affiliates under the REACH Regulation, and for listing those studies or articles on Precious Metals and/or Rhenium which are available to the Member or to one or more of its Affiliates (Table 1, Table 2, and Table 3) are available on request from the Trustee. Table 1, Table 2, and Table 3 together with Appendix 1 and the closing page of the Agreement, must be completed, signed and submitted to the Secretariat of the Consortium in order to be eligible for Membership.*
- *The content of this declaration shall be kept confidential and remain with the Secretariat and Trustee who are entitled to use it to: (a) define the scope of each Consortium project; (b) calculate the appropriate applicable project costs-share of the Member, pursuant the cost-sharing formula defined in Article 7 and in Appendix 9 of this Agreement; and (c) determine the Substance or Isolated Intermediate and the corresponding tonnage band for which a copy of the Registration Dossier must be sent to the Member for the purpose of joint submission as per article 4.7.2 (e).*
- *The process of adding Substances and/or Isolated Intermediates to and changing the tonnage bands of this declaration after signature will be according to the selection criteria and decision tree in Appendix 4, as well as according to the work programme in course/work in progress.*
- *The Secretariat be promptly informed on any change in the data provided by the Member in this declaration and at the latest, 30 (thirty) calendar days before the foreseen Registration date and 15 (fifteen) calendar days before the costs of the Precious Metals and Rhenium Consortium are presented and approved at the Assembly meeting which immediately precedes the invoicing period for which the updated declaration shall be applied.*
- *In the event the update of a Member involves additional work for past phases of a specific project of the Consortium, the costs associated to such work shall be borne by the Member having submitted the given update. The past shares of such Member shall be re-calculated according to the cost-sharing formula and adjusted as appropriate so the Member can reimburse the Consortium accordingly.*
- *In the event a potential registrant wishes to join the Consortium for a Substance or Isolated Intermediate which is already part of the scope of a Consortium project but resident in a lower tonnage band than the tonnage band declared by the potential registrant, the latter shall commit to pay for any additional project work engaged, which is directly linked to the higher tonnage band declared by him. However, should it change its tonnage band or leave the Consortium, the Consortium will require the potential registrant to pay for any project work engaged as a consequence of the higher tonnage band.*

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

I, acting as Representative of [_____] and of its Affiliates as defined in Article 1 of the Precious Metals and Rhenium Consortium Agreement, and providing that the Substances and Isolated Intermediates listed and described in Table 1 and Table 2, respectively, are included in the scope of such Agreement, as presented in Appendix 4, declare to join the Precious Metals and Rhenium Consortium to fulfil the requirements under the REACH Regulation for those Substances and Isolated Intermediates.

I declare that we will not refer to any of the Information of the Registration Dossier which is submitted to the Agency by the Consortium's Lead Registrant(s) which is not required for the Substances, Isolated Intermediates and tonnage bands declared in Table 1 and Table 2.

Date: _____

Signature: _____

**APPENDIX 3**
**Of the Precious Metals and Rhenium Consortium Agreement**

**Definitions of Article 3 of the REACH Regulation**

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

2) **Preparation:** means a mixture or solution composed of two or more substances;

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

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

5) **Polymer:** means a substance consisting of molecules characterised by the sequence of one or more types of monomer units. Such molecules must be distributed over a range of molecular weights wherein differences in the molecular weight are primarily attributable to differences in the number of monomer units. A polymer comprises the following:
   (a) a simple weight majority of molecules containing at least three monomer units which are covalently bound to at least one other monomer unit or other reactant;
   (b) less than a simple weight majority of molecules of the same molecular weight.
   In the context of this definition a "monomer unit" means the reacted form of a monomer substance in a polymer;

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

7) **Registrant:** means the manufacturer or the importer of a substance or the producer or importer of an article submitting a registration for a substance;

8) **Manufacturing:** means production or extraction of substances in the natural state;

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

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

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

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

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

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

15) **Intermediate:** means a substance that is manufactured for and consumed in or used for chemical processing in order to be transformed into another substance (hereinafter referred to as "synthesis"):
   (a) **Non-isolated intermediate:** means an intermediate that during synthesis is not intentionally removed (except for sampling) from the equipment in which the synthesis takes place. Such equipment includes the reaction vessel, its ancillary equipment, and any equipment through which the substance(s) pass(es) during a continuous flow or batch process as well as the pipework for transfer from one vessel to another for the purpose of the next reaction step, but it excludes tanks or other vessels in which the substance(s) are stored after the manufacture;
   (b) **On-site isolated intermediate:** means an intermediate not meeting the criteria of a non-isolated intermediate and where the manufacture of the intermediate and the synthesis of (an)other substance(s) from that intermediate take place on the same site, operated by one or more legal entities;
   (c) **Transported isolated intermediate:** means an intermediate not meeting the criteria of a non-isolated intermediate and transported between or supplied to other sites;

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

17) **Actors in the supply chain:** means all manufacturers and/or importers and/or downstream users in a supply chain;

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

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

20) **Phase-in substance:** means a substance which meets at least one of the following criteria:
   (a) it is listed in the European Inventory of Existing Commercial Chemical Substances (EINECS);
   (b) it was manufactured in the Community, or in the countries acceding to the European Union on 1 January 1995 or on 1 May 2004, but not placed on the market by the manufacturer or importer, at least once in the 15 years before the entry into force of this Regulation, provided the manufacturer or importer has documentary evidence of this;
   (c) it was placed on the market in the Community, or in the countries acceding to the European Union on 1 January 1995 or on 1 May 2004, before entry into force of this Regulation by the manufacturer or importer and was considered as having been notified in accordance with the first indent of Article 8(1) of Directive 67/548/EEC but does not meet the definition of a polymer as set out in this Regulation, provided the manufacturer or importer has documentary evidence of this;

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

22) **Product and process orientated research and development:** means any scientific development related to product development or the further development of a substance, on its own, in preparations or in articles in the course of which pilot plant or production trials are used to develop the production process and/or to test the fields of application of the substance;

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

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

25) **Registrant's own use:** means an industrial or professional use by the registrant;

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

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

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

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

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

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

32) **Supplier of a substance or a preparation:** means any manufacturer, importer, downstream user or distributor placing on the market a substance, on its own or in a preparation, or a preparation;

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

34) **Recipient of a substance or a preparation:** means a downstream user or a distributor being supplied with a substance or a preparation;

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

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

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

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

39) **Substances which occur in nature:** means a naturally occurring substance as such, unprocessed or processed only by manual, mechanical or gravitational means, by dissolution in water, by

flotation, by extraction with water, by steam distillation or by heating solely to remove water, or which is extracted from air by any means;

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

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

**APPENDIX 4**
**Of the Precious Metals and Rhenium Consortium Agreement**

**Substances and Isolated Intermediates handled under SCC covered by the Consortium Agreement**

## I. Substances and Isolated Intermediates covered by this Agreement

The Substances (on their own, in preparations (such as alloys) or in articles) and Isolated Intermediates which will be covered by this Agreement and therefore jointly prepared for registration or classification purposes shall fulfil at least one of the following criteria:

- Shall be or contain (a) Precious Metal(s) (i.e. elemental or compound forms of Gold, Silver, and the Platinum Group Metals Platinum, Palladium, Iridium, Rhodium, Ruthenium and Osmium as defined in Article 1 of this Consortium Agreement) and/or Rhenium and be used in one of the industrial processes used to mine, refine, recycle, manufacture, trade, bank or import Precious Metals and/or Rhenium;
- Shall not be a waste as defined by the REACH Regulation (as wastes are out of the scope for Registration);
- Shall be manufactured and/or imported in a volume of at least 1 (one) tonne per year by at least one of the Members of the Consortium.

In the exceptional situation that a Substance or Isolated Intermediate which is not or does not contain (a) Precious Metal(s) and/or Rhenium needs to be assessed and prepared for registration or classification purposes by the Precious Metals and Rhenium Consortium, the Management Committee and/or two-thirds of the Assembly (as the case may be) must first agree on the preparation of the Registration Dossier for such a Substance or Isolated Intermediate.

Applicable percentage content thresholds will be as stipulated in the REACH Regulation Title relating to Registration.

Testing will be performed on Substances and Isolated Intermediates on a case-by-case basis after evaluation of the relevant Work Group and read-across potential will be exploited in the most appropriate way in order to avoid unnecessary testing, especially on vertebrate animals. Testing on vertebrate animals required as per Annexes IX and X of the REACH Regulation shall not be performed before prior submission of a testing proposal to the Agency and reception of the pertinent response to the Consortium (the Secretariat or the Consortium's Lead Registrant(s)) from it, unless the REACH Regulation requires otherwise.

The Consortium shall prepare the Registration Dossiers for those Substances and Isolated Intermediates which have been recommended by the Work Group(s) and agreed upon by the Management Committee and/or (each Sub-)Assembly.

## II. Indicative Substance lists

For reference purposes, indicative substance-level inventories for each of the Precious Metals groups and Rhenium (as defined above) are established and updated under the coordination of the Trustee. These indicative inventories are available on request.

## III. Selection criteria and decision tree

Not all Substances or Isolated Intermediates fulfilling the criteria stated above and/or listed in the indicative lists described above shall be automatically assessed by the Consortium. Criteria relating to inclusion of one of the above entities as described in the decision tree available below are to be applied:

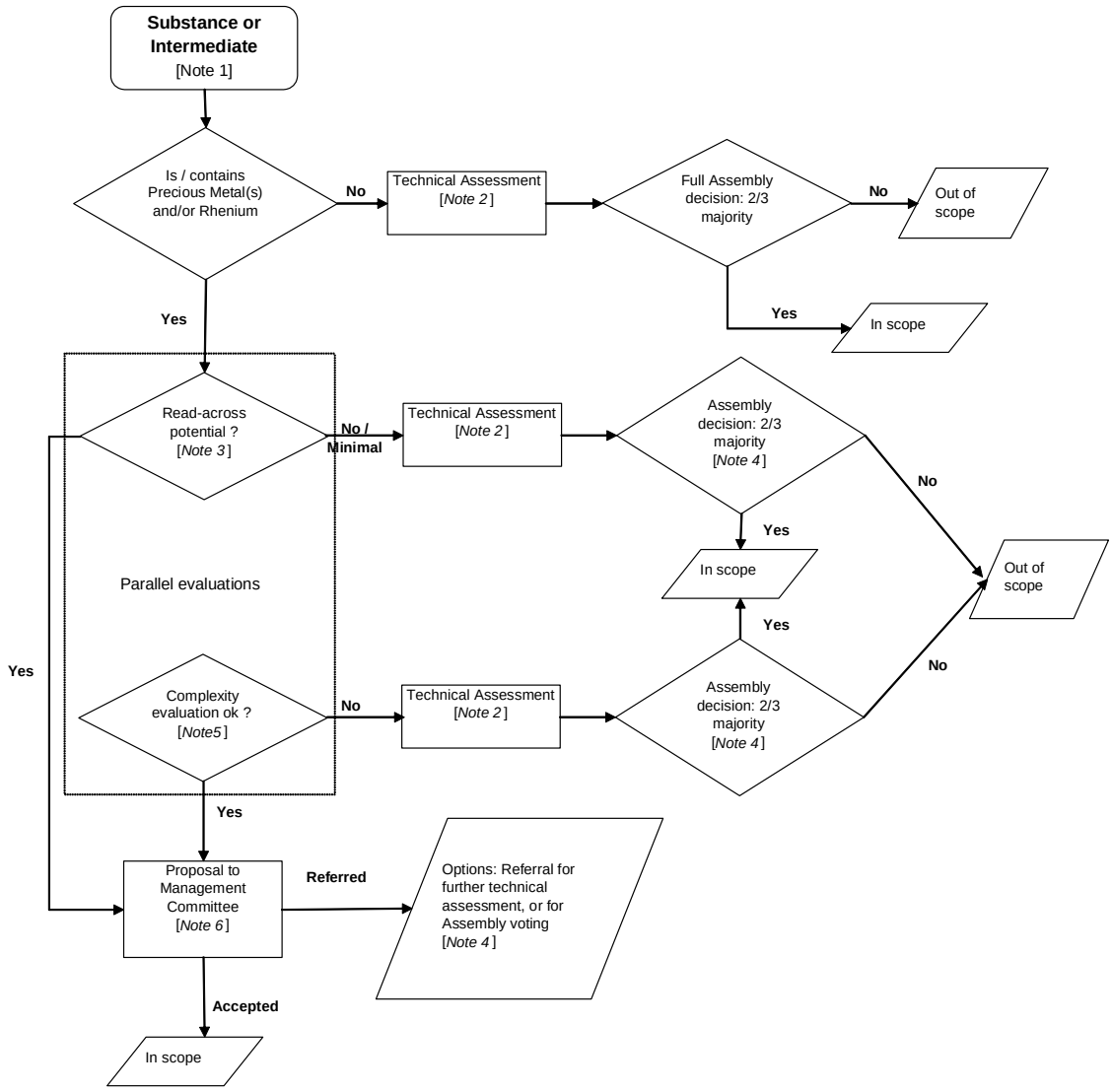



**Figure 1. Decision tree reflecting the procedure to include or exclude a Substance or Isolated Intermediate in or from the scope of the Precious Metals and Rhenium Consortium Agreement.**

**Notes:**

**Note 1:** As defined within Article I of this Appendix.

**Note 2:** Referral by the *ad hoc* Precious Metals or Rhenium Work Groups for decision making; which is routed via the Management Committee to the (Sub-)Assembly. This action may be triggered at any of the indicated points in the decision tree.

**Note 3:** Evaluated by the Work Groups (or an external consultant) as a Substance or Isolated Intermediate where the dataset established for Registration and/or the testing program for Registration for the Substance family in question will allow substantive read-across (and thus limit the complexity of its assessment). This may be due to its homology to a Substance or Isolated Intermediate previously selected as in scope (by applying the Agency's Guidance on Substance identification

principles of commonality), or another parameter. Alternatively, inclusion of the Substance or Isolated Intermediate is evaluated as being likely to contribute with a significant read-across benefit to the substance family as a whole, such that its inclusion in the testing program is warranted.

**Note 4:** Assembly voting is partitioned such that companies with interests in the specific Precious Metal (e.g. either Silver, or Gold, or Platinum Group Metals) or Rhenium project(s) are eligible to vote, as more referred to in Article 4.1.6 of this Precious Metals and Rhenium Consortium Agreement.

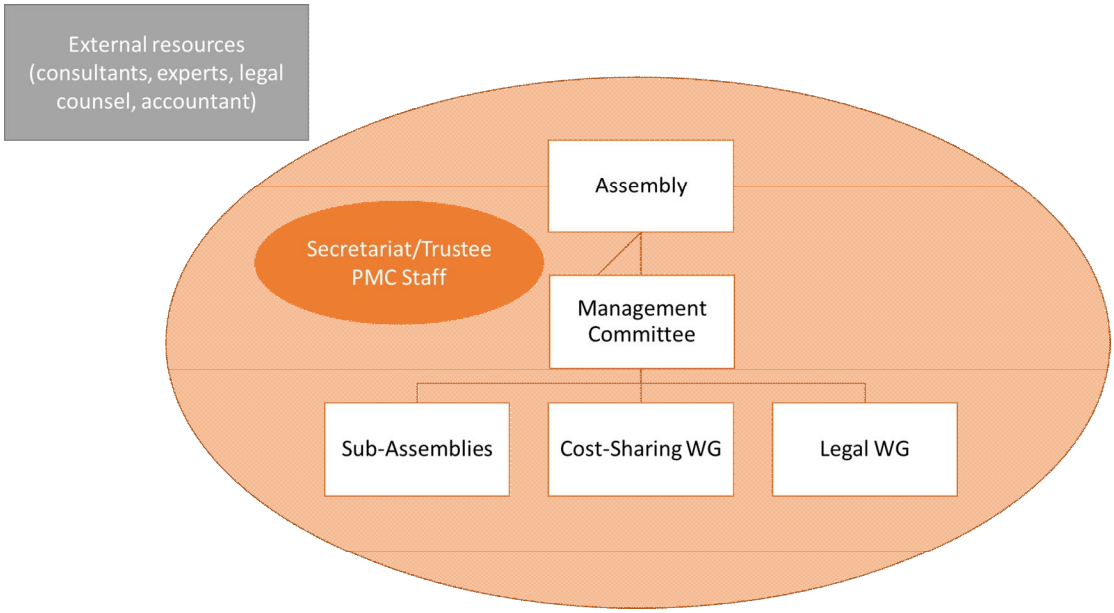
**Note 5:** Evaluated by the *ad hoc* Precious Metals or Rhenium Work Groups as a Substance or Isolated Intermediate where its inclusion will result in only limited additional costs for testing / assessment. This evaluation will be made on the basis of a weighted decision-making process, including but not limited to consideration of each of the following factors: (a) its tonnage band; (b) whether a comprehensive dataset is already in existence for the Substance or Isolated Intermediate; (c) the absence of complexity factors, e.g. the Substance or Isolated Intermediate is known or expected to be significantly toxic or hazardous.

**Note 6:** Evaluated by the *ad hoc* Precious Metals or Rhenium Work Groups as a Substance or Isolated Intermediate which should be included in the programme for the relevant group.

**APPENDIX 5**
**Of the Precious Metals and Rhenium Consortium Agreement**

**Working Structure of the Consortium**

The following chart indicates the main arrangement of the working structure which is necessary to achieve the purposes of the Precious Metals and Rhenium Consortium.




This working structure shall not be considered as being definitive; (an) additional *ad hoc* Work Group(s) might be constituted by the Management Committee from time-to-time and some of the Work Groups indicated in the chart might be dormant at some stages of activity of the Consortium. Work Groups are composed of volunteer Member representatives as further described in Article 4.5.1.

The mandate of the Cost-sharing and Legal Work Groups is to review, verify, and propose solutions and alternatives to resolve the Consortium's cost-sharing and legal obligations such as cost-sharing formula, data-sharing, letters of access, contractual engagements, and the revision of this Agreement, amongst other tasks.

The mandate of the Silver, Gold and Precious Metals Cyanides, PGM (which incorporates the Platinum, Palladium, Iridium, Rhodium, Ruthenium projects) Rhenium and Refinables Work Groups is to address and formulate recommendations on project-specific issues such as but not limited to Scope, Substance characterisation and sameness, Registration strategy, Testing Programme, Classification, Lead Registrants.

An additional Work Group is in charge of SVHC Roadmap issues.

In any case, and as further presented in the flow chart below, any decision on a proposal (i.e. a service offer or quotation, a testing recommendation, etc.) from a Consultant, a Work Group, , or the Management Committee that is not covered by the original budget and project plan already approved by the Consortium's Assembly, shall be taken in an informed and transparent manner, in accordance with this Agreement and with the following order or hierarchy: Work Group(s) < Management Committee < (Sub-)Assembly.

**APPENDIX 6**
**Of the Precious Metals and Rhenium Consortium Agreement**

**Confidentiality, Non-Use and Non-Disclosure Agreement**

This CONFIDENTIALITY, NON-DISCLOSURE AND NON-USE AGREEMENT (this "**Agreement**") is among the Members of the Precious Metals and Rhenium Consortium and with any other Party being in relation with the Precious Metals and Rhenium Consortium such as but not limited to the Secretariat, the Accountant, the Legal Counsel and/or any other third party; hereinafter sometimes referred to individually as a "Party", a "disclosing Party" or a "receiving Party" and collectively as the "Parties".

WHEREAS the Parties are willing to cooperate with each other in the implementation of EU Regulation 1907/2006/EC on Registration, Evaluation and Authorization of Chemicals (the "**REACH Regulation**");

WHEREAS the Parties, having a common interest in fulfilling the requirements of the REACH Regulation, wish to form a Consortium open to any entity able to facilitate, and cooperate in, the achievement of such purpose in accordance with terms and conditions agreed under the Precious Metals and Rhenium Consortium Agreement;

WHEREAS the Parties mutually have agreed, as from the 24 January 2007, date of the EPMF Precious Metals Consortia Seminar, to work together, within the framework of the European Precious Metals Federation, to prepare the Precious Metals and Rhenium Consortium Agreement and to have certain work performed to comply with the REACH Regulation, and therefore to disclose and exchange data and information which could be Confidential Information (as defined below);

WHEREAS the Parties mutually have agreed not make any agreements concerning coordination of conduct that restrict or affect competition within the meaning of Article 101 of the Treaty on the Functioning of the European Union ("TFEU"); and to observe the prohibition of abusing a market-dominating position pursuant to Article 102 of the TFEU; and

WHEREAS the foregoing is hereinafter referred to as the "**Purpose**".

IN CONSIDERATION OF THE EXCHANGE OF CONFIDENTIAL INFORMATION, EACH OF THE PARTIES HAS AGREED TO EXECUTE THIS AGREEMENT AND TO AGREE AS FOLLOWS:

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

2. Confidential Information, subject to the restrictions in paragraph 3 below, shall be in writing or other tangible form (including electronic form), (i) clearly marked as "CONFIDENTIAL" or the like when disclosed to a receiving Party or, (ii) if not in tangible form (i.e. disclosed orally or observed), then identified as confidential when disclosed and confirmed as such in writing within 10 (ten) calendar days after such disclosure. If a Party fails to clearly mark Confidential Information as "CONFIDENTIAL" (see above (i)) or fails to identify it as confidential within 10 (ten) calendar days after disclosure (see above (ii)), neither any Party nor the Trustee will be liable for any disclosure of such unmarked or unidentified Confidential Information to any Party or any third party.

3. The receiving Party shall:
   - hold all such Confidential Information confidential and secret;
   - use such Confidential Information only for the Purpose and in no direct or indirect manner detrimental to the disclosing Party;
   - reproduce such Confidential Information only to the extent necessary for the Purpose;
   - restrict disclosure of such Confidential Information to those of its Affiliates (as defined in Article 1 of the Precious Metals and Rhenium Consortium Agreement), directors, officers, employees, agents or representatives, including financial advisors, consultants and counsel (collectively, **"Representatives"**) with a need-to-know such information for the Purpose. The Parties agree to inform their Representatives of the confidential and/or proprietary nature of the Confidential Information, to make them aware of this Agreement, and to require them to comply with this Agreement; each Party nevertheless being responsible to the disclosing Party for any breach of this Agreement by any of its Representatives;
   - not disclose such Confidential Information to any third party without the prior written approval of the disclosing Party.

4. The foregoing restrictions on the disclosure and use of Confidential Information shall not apply to any information which is:
   (a) at the time of disclosure to the receiving Party, known to such Party free from restrictions on disclosure or use, which shall be evidenced by documentation in such Party's possession; or
   (b) publicly known or later made generally public, through no wrongful act of the receiving Party; or
   (c) developed by the receiving Party independently from Confidential Information received by it under this Agreement; or
   (d) lawfully received, free from restrictions on disclosure or use, from a third party having the right to furnish such Confidential Information and who had not received it directly or indirectly from the receiving Party; or
   (e) approved for release in writing by the disclosing Party.

5. In consideration of any Confidential Information received pursuant to this Agreement, the receiving Party undertakes, in the event that any Confidential Information received by it must be disclosed by law, governmental regulation or court order, to give the disclosing Party prior written notice thereof and co-operate with the disclosing Party in any attempt to test the requirement and/or to obtain a protective order.

6. No license to a Party under any trademark, patent, copyright or any other intellectual property right is either granted or implied by the disclosure of Confidential Information to such Party under this Agreement. None of the Confidential Information which may be disclosed or exchanged by the Parties hereunder shall constitute any representation, warranty, assurance, guarantee or inducement by either Party to the other of any kind and, in particular, with respect to the non-infringement of trademarks, patents, copyrights or any other intellectual property rights or other rights of third parties.

7. All Confidential Information shall remain the property of the disclosing Party and shall be returned by the receiving Party upon written request of the disclosing Party. However, the receiving Party

shall be entitled to retain one set of copies of Confidential Information for archival purposes in its legal department.

9. Without prejudice to the restrictions on confidentiality and use contained herein, nothing in this Agreement shall be construed as restricting or prohibiting any Party from carrying on its usual business.

10. This Agreement constitutes the entire understanding and agreement among the Parties as to Confidential Information related to the Purpose and replaces all prior discussions among the Parties relating thereto.

11. Neither this Agreement nor any rights or obligations hereunder may be assigned by any Party to any third party without the prior written consent of the other Parties. If a Party assigns this Agreement or any of its rights or obligations hereunder to a third party with the consent of the other Parties, the assigning Party and the third party assignee shall be jointly and severally liable to the other Parties for compliance with all of the obligations so assigned by the assigning Party to the third party assignee.

12. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of 2/3 (two-thirds) of the Parties by their respective duly authorized officers or Representatives.

13. This Agreement shall be valid and binding on a Party for a period of 20 (twenty) years after its execution by that Party, or any other period of time mutually agreed by all of the Parties.

14. This Agreement is construed and interpreted in accordance with the laws of Belgium.

15. Dispute resolution and governing law.
    15.1 This Agreement is governed by, and all disputes arising under or in connection with this Agreement shall be resolved in accordance with, the substantive law of Belgium.
    15.2 Without prejudice to provisions of Articles 15.3 and 15.4 hereafter, any and all disputes, controversies or claims which may arise between the Parties in connection with the interpretation of any provision of this Agreement or its validity or enforceability, or the breach or termination of it, or the performance or non performance of any obligations under the terms and conditions of this Agreement, shall be settled by an amicable effort on the part of the Parties.

    An attempt to arrive at a settlement shall be deemed to have failed as soon as one of the Parties so notifies the other Party in writing. Should such amicable settlement fail, the dispute shall be settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The decision of this Chamber shall be final and binding for all Parties to this Agreement.

    The arbitral tribunal shall consist of three arbitrators: each Party designates one arbitrator; these two arbitrators then designate the third arbitrator who acts as chairperson; the chairperson shall have a university degree in law. The arbitral tribunal shall decide on the regulation of the costs of arbitration including out-of-courts costs incurred by the Parties in accordance to the outcome of arbitration. The language of proceedings shall be English. The venue of arbitration shall be Brussels.

    15.3 Notwithstanding Article 15.2 above, before resorting to arbitration, the Parties shall attempt to settle by negotiations between them in good faith all disputes or differences or differences which arise between them out of or in connection with this Agreement. The Parties further agree that (provided both Parties consider that such negotiations would be assisted thereby), they will appoint a mediator by mutual agreement, [or (failing mutual

agreement) will apply to the President of the Brussels Chamber of Commerce to appoint a mediator, to assist them in such negotiations]. The Parties agree to cooperate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge its duties, and to bear equally between them the fees and expenses of the mediator.

15.4 Notwithstanding Article 15.2 above, any Party shall be entitled to apply to the judicial Courts of Brussels, Belgium for interim relief including in relation to disputes, claims, or controversies concerning the confidentiality of Information.

**APPENDIX 7**
**Of the Precious Metals and Rhenium Consortium Agreement**

**Undertakings of the Trustee (template)**

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

the (present and future) **Members** of the Precious Metals and Rhenium Consortium to whose Consortium Agreement this Agreement is, as an appendix, an integral part thereof

and

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

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

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

Accordingly, in consideration of the above mentioned context, the Consortium Members and the Trustee, intending to be legally bound, AGREE AS FOLLOWS:

1. **Confidential Information.**

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

**1.2. Trustee's Obligations as to Confidential Information.**

**1.2.1. Non-Disclosure.** During the course of its mission of Trustee, the Trustee may have access to Confidential Information and/or Confidential Information entrusted to the

Consortium Members by other persons. The Trustee shall not, either during the term of its mission or during the two (2) year period after the termination of its mission for whatever reason, use or disclose such Confidential Information or convey such Confidential Information to persons outside the Consortium Members, nor shall the Trustee cause or permit any individual in relation with the Trustee to do any of the foregoing, except as may be (i) expressly authorized by the Consortium Members in their sole discretion; (ii) required during and in the course of the mission of the Trustee by the Consortium Members; or (iii) required by a judicial order or decree or governmental law or regulation.

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

**1.2.3. Reception and safeguard of Confidential Information.** The Trustee shall receive and store Confidential Information in a safe database following a strict guideline (Guidelines for Safeguarding Confidential and Proprietary Information) which shall be available to another Officer of the EPMF, which is entitled to act on behalf of the Trustee in the event of the absence of the designated Trustee pursuant to Article 4.6.1 of the Consortium Agreement.

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

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

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

**1.2.7. E-Mail.** The Trustee understands that the Consortium maintains an electronic mail system for the purpose of Consortium activities communications. The Trustee acknowledges that the said system, as well as all electronic communications transmitted thereon, is property of the Consortium Members, which retain the right to review any and all electronic mail communications, with or without notice, at any

time, without prejudice however to their respective confidentiality obligations and commitments under the Consortium Agreement.

**1.2.8.** The Trustee recognizes as binding the regulations set out in the Confidentiality, Non-Use and Non-Disclosure Agreement attached hereto as Appendix 6 of the Precious Metals Consortium Agreement.

**2. Ideas and Inventions.**

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

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

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

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

**3. Competition Law**

**3.1.** During the course of its mission, the Trustee shall not, in any manner whatsoever, act, or allow or enable Consortium Member(s) or any third party involved into the Consortium activities under the Consortium Agreement, to act in infringement or in non-compliance with applicable rules on Competition Law, in particular –but not limited to– Articles 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU") as well as any applicable national law.

The Trustee recognizes as binding the Competition Law Compliance Guidelines attached hereto as Appendix 8 of the Precious Metals Consortium Agreement.

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

**4. General Provisions.**

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

**4.2. Enforcement.**

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

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

**4.3. Governing Law – Jurisdiction.**

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

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

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

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

**4.6.** **Severability.** The Trustee agrees that each of its obligations specified in this Agreement is a separate and independent covenant that shall survive any termination of this Agreement and that the unenforceability of any of them shall not preclude the enforcement of any other covenants in this Agreement.

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

Accepted and agreed to by:

**The Trustee**

Name: _____ Date: _____
Signature: _____ Address: _____

**APPENDIX 8**
**Of the Precious Metals and Rhenium Consortium Agreement**

**Competition Law Compliance Guidelines**

The Parties shall not make any agreements concerning coordination of conduct that restrict or affect competition within the meaning of Article 101 of the Treaty on the Functioning of the European Union ("TFEU"); they shall observe the prohibition of abusing a market-dominating position pursuant to Article 102 of the TFEU:

**I.**

**Article 101**

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:
   (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
   (b) limit or control production, markets, technical development, or investment;
   (c) share markets or sources of supply;
   (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
   (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
   1. any agreement or category of agreements between undertakings,
   2. any decision or category of decisions by associations of undertakings,
   3. any concerted practice or category of concerted practices,

   which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
   (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
   (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

**Article 102**

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.
Such abuse may, in particular, consist in:
(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
(b) limiting production, markets or technical development to the prejudice of consumers;
(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

**II.**

The Parties shall act in compliance with the following checklist:

| DO | DON'T |
|---|---|
| **Application of competition law** | |
| Art. 101 and 102 TFEU may be applicable to the conclusion of any preliminary agreement and activities of any preliminary phase. | Don't assume that conflicts with competition law are excluded simply by the fact that the Agreement complies with the provisions of the REACH Regulation. |
| **Consultation in Matters of Competition Law** | |
| Consult an in-house legal expert or the compliance officer of your company or an external lawyer whenever there are uncertainties respecting compliance with competition law.<br>Stop all meetings/discussions which are not in compliance with these Compliance Guidelines until a legal expert has been involved. | Don't assume that these Compliance Guidelines deal with all competition law issues exhaustively. Basically, compliance with Art. 101 and 102 TFEU can be determined only on the basis of market impact in each individual case. These Compliance Guidelines may therefore be regarded only as a means of providing general conduct recommendations. |
| **Activities in any preliminary phase and at any other stage of operation of the Consortium** | |
| Restrict cooperation within the scope of the preliminary phase to the initially defined goals and purposes of the cooperation. | Pursuant to Art. 101 and 102 TFEU, activities which have the object of the effect of preventing, restricting and/or distorting competition are prohibited within the scope of this Agreement, including:<br>- Coming to agreement, including arrangements or collusions, about prices, markets and customers (see Art. 101 paragraph 1 a)-e) TFEU);<br>- Joint boycotting of other companies;<br>- The unjustified unequal treatment of trade partners;<br>- The abusive exploitation of a dominating market position. |
| **Exchange of Confidential Information** | |
| Involve a Trustee for the exchange of Confidential Information. | The exchange of Information concerning market behaviour and having the object or the effect of preventing, restricting and/or distorting competition is inadmissible; in particular, this relates to :<br>- Production capacities;<br>- Productions or sales volumes;<br>- Import volumes;<br>- Market shares;<br>- Price policy;<br>- Distribution and marketing terms;<br>- Marketing strategies;<br>- Information regarding the relationship with suppliers. |
| **Documentation on Cooperation** | |
| Keep minutes of all meetings which detail the subject of the meeting.<br>In case of uncertainty, have the contents of the minutes reviewed by an external legal expert prior to sending them to all parties of the Agreement.<br>Stop all meetings which are not in compliance with these Guidelines until a legal expert has been involved. | |

**APPENDIX 9**
**Of the Precious Metals and Rhenium Consortium Agreement**

**Cost-sharing formula**

**1.** The cost-sharing formula should not result in any Member paying more than what it would have paid to meet its obligations under the REACH Regulation without joining the Precious Metals and Rhenium Consortium. In such case, the Member should inform the Management Committee, who will consider what action, if any, needs to be taken.

**2.** The share of applicable costs to be paid by each Member shall be inter alia calculated based on (i) the declaration submitted by the Member to the Trustee at the moment of the signature of the Precious Metals and Rhenium Consortium Agreement or afterwards updated to the Trustee and (ii) on the annual budget prepared by the Secretariat and the Accountant, as approved by the Management Committee and the Assembly of the Precious Metals and Rhenium Consortium.

**3.** The allocation of the applicable costs for all projects will be done as follows:

**3.1.** As regards the administrative costs referred to in Article 7.1.1. a), the allocation key will be driven by the relative proportion of human resources expended by project and will be reviewed each year based on the new human resources needs for each project. At the end of each year, the allocation key (initially based on budget) will be checked and, to the extend necessary, adapted to ensure that it corresponds to the actual human resources needs for each project. These administrative costs will be borne by the concerned Sub-Assemblies and will be equally shared by the Members within the concerned Sub-Assemblies.

**3.2.** As regards the other applicable costs referred to in Article 7.1.1 b) to f), they will be borne by each concerned Sub-Assembly and will be shared by the concerned Members following two weighted approaches:

a) 50% (fifty percent) of these costs will be allocated according to the total number of Substances each Member has declared to the Trustee at the moment of the signature of the Precious Metals and Rhenium Consortium Agreement or afterwards updated to the Trustee, and

b) 50% (fifty percent) of these costs will be allocated according to:

i. the number of Substances per tonnage band each Member has declared to the Trustee at the moment of the signature of the Precious Metals and Rhenium Consortium Agreement or afterwards updated to the Trustee,

ii. the number of Isolated Intermediates handled under strictly controlled conditions each Member has declared to the Trustee at the moment of the signature of the Precious Metals and Rhenium Consortium Agreement or afterwards updated to the Trustee, where:

1. Isolated Intermediates handled under strictly controlled conditions in any tonnage band (1 (1 (one) to 10 (ten) tonnes per year), 2 (10 (ten) to 100 (one hundred) tonnes per year), 3 (100 (one hundred) to 1000 (one thousand) tonnes per year, or 4 (more than 1000 (one thousand) tonnes per year) will be weighted with a factor of 1 (one);
2. Substances in tonnage band 1 will be weighted with a factor of 5 (five);
3. Substances in tonnage band 2 will be weighted with a factor of 20 (twenty);
4. Substances in tonnage band 3 will be weighted with a factor of 100 (one hundred); and
5. Substances in tonnage band 4 will be weighted with a factor of 1000 (one thousand).

For any avoidance of doubt, 'Intermediate' shall have the meaning of the REACH Regulation, as the latter may be modified or revised from time to time. The intermediates under not-strictly controlled conditions are considered for the registration purpose and in this cost-sharing formula as "substance".

The mathematical description of the cost-sharing formula of the Precious Metals and Rhenium Consortium as regards the other applicable costs referred to in Article 7.1.1 b) to f) is the following:

$$B_i = \frac{M}{2} \bullet \left( \frac{x_i}{\sum_{i=1}^{n} x_i} \right) + \frac{M}{2} \bullet \left( \frac{y_i}{\sum_{i=1}^{n} y_i} \right)$$

$$y_i = 1x_{i(1)} + 5x_{i(5)} + 20x_{i(20)} + 100x_{i(100)} + 1000x_{i(1000)}$$

Where the symbols have the following meaning:

$B_i$ is the share of the costs borne by Member "i"

M is the total applicable costs of the Consortium

$x_i$ is: the total number of Substances in any tonnage band for Member "i" in the Precious Metals or Rhenium group to which the Metal-specific costs "M" refer
$y_i$ is the tonnage factor for Member "i"
$x_{i(1)}$ is the number of Isolated Intermediates handled under strictly controlled conditions in any tonnage band for Member "i"
$x_{i(5)}$ is the number of Substances in tonnage band 1 for Member "i"
$x_{i(20)}$ is the number of Substances in tonnage band 2 for Member "i"
$x_{i(100)}$ is the number of Substances in tonnage band 3 for Member "i"
$x_{i(1000)}$ is the number of Substances in tonnage band 4 for Member "i".

**3.3** As regards the project related to SVHC Roadmap, all applicable costs will be shared by the Sub-Assemblies (except the Rhenium Sub-Assembly) on an equal basis. Within each Sub-Assembly (except the Rhenium Sub-Assembly), the concerned costs will be equally shared by the Members.

**4.** The Management Committee may decide to implement a fair and transparent reimbursement mechanism applicable to all co-registrants to allow the potential adjustment of the share of costs when other registrants subsequently join the Consortium Agreement [or acquire Letters of Access] This reimbursement mechanism shall include a method of proportional redistribution to each Member of their share of costs paid. The reimbursement mechanism shall also take account of the following factors: the possibility of future additional registration requirements for that substance, other than those resulting from a potential substance evaluation decision; and the economic viability of certain reimbursements where the costs of reimbursement are higher than the amount to be reimbursed.

**5.** Each Member will pay its share of the costs based on above cost-sharing conditions and considering the following principles:

**5.1.** Should one same material be registered both as a Substance and as an Isolated Intermediate handled under strictly controlled conditions by the Member, the material will only be counted once in the calculation of the share of applicable costs due by the Member. The tonnage band to be considered for the purpose of calculating this share is the tonnage band applicable to the Substance declared by the Member in its Substance and tonnage band declaration at the time of signature of this Agreement, or otherwise updated to the Trustee.

**5.2.** The number of Substances and Isolated Intermediates to be registered under the REACH Regulation by itself and by all its Affiliates, each Substance and Isolated Intermediate being accounted once, no matter whether registered by one or more Affiliates;

**5.3.** The highest tonnage band in which each Substance or Isolated Intermediate handled under strictly controlled conditions is manufactured and/or imported by the Member or by one or more of its concerned Affiliates.

**5.4.** Only the applicable costs for the Precious Metals group(s) as defined in Article 1 and/or Rhenium group in which it declared to be joining the Consortium in its Substance and tonnage band declaration. For example, a Member having declared Substances or Isolated Intermediates handled under strictly controlled conditions in the Silver project only shall not be charged for the applicable costs related to the other projects.

**6.** Any change in the Substances, Isolated Intermediates handled under SCC and tonnage bands declared by a Member to the Trustee at the moment of the signature of the Precious Metals Consortium Agreement shall be promptly announced to the Trustee, in accordance with the procedure given in the Important Notice of the Substance and tonnage band declaration presented in Appendix 2.

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

**APPENDIX 10**
**Of the Precious Metals and Rhenium Consortium Agreement**

**Lead Registrant Duties, Responsibilities and Declaration of Commitment**

## 1. Background

As per Article 11 of the REACH regulation, **registrants are required to jointly submit information** on the hazardous properties of the substance (studies and proposals for testing) and its classification and labelling, and can, if they agree, also jointly submit the CSR and/or the guidance on safe use (cf. Table 1). This joint submission is done by a designated Lead Registrant (LR), on behalf of the other registrants[1].

**Table 1.** Overview of the data to be submitted jointly and/ or separately

| Joint submission | Separate submission | Joint or separate submission: free decision |
|---|---|---|
| 10(a IV) **Classification and Labelling** of the substance as specified in section 4 of Annex VI | 10 (a I) **Identify of manufacturer or importer of the substance** as specified in section 1 of Annex VI | 10 (a V) Guidance of safe use of the substance as specified in section 5 of Annex VI |
| 10 (a VI) **Study summaries** of the information derived from the application of Annexes VII to XI | 10 (a II) **Identity of substance** as specified in section 2 of Annex VI | 10 (b) **Chemical Safety Report** when required under Article 14, in the format specified in Annex I. the relevant sections of this report may included, if the registration considers appropriates, the relevant use and exposure categories |
| 10 (a VII) **Robust study summaries** of the information derived from the application of Annexes VII to XI, if required under Annex I | 10 (a III) **Info on the manufacture and use(s) of the substance** as specified in section 3 of Annex VI; this information shall represent all the registrant's identified | |
| | use(s). This information may include, if the registrant deems appropriate, the relevant use and exposure categories | |
| 10 (a IX) **Proposals for testing** where listed in Annexes IX and X | 10 (a X) **for substances in quantities of 1 to 10 tonnes, exposure information** as specified in section 6 of Annex VI | |
| Optional: 10 (a VIII) Indication as to which of the information submitted under Article 10(a), (iv), (vi), (vii) has been **reviewed by an assessor** chosen by the manufacturer or importer and having appropriate experience | Optional: 10 (a VIII) Indication as to which of the information submitted under Article 10(a) (iii) has been **reviewed by an assessor** chosen by the manufacturer or importer and having appropriate experience | Optional: 10 (a VIII) Indication as to which of the information submitted under Article 10(b) has been **reviewed by an assessor** chosen by the manufacturer or importer and having appropriate experience |

[1] It is important to note that the "joint submission of data" does not eliminate the obligation for each registrant to submit as well an individual dossier. Although the information that needs to be submitted jointly is submitted by one LR on behalf of the others, additional information needs to be submitted by all registrants individually. The content of the individual file will be determined by the optional parts that are jointly submitted (cf. Table 1).

This document presents the duties and liabilities of the LR in order to assist those legal entities wishing to act as LR to identify the potential workload and responsibilities that may be associated with this role under REACH.

## 2. SIEF Formation Facilitator versus Lead Registrant

It should be clarified that the SIEF Formation Facilitator (SFF) role is not formally recognised under REACH; therefore pre-registrants have no obligation to use a SFF to form a SIEF. This is not the case of LR, which is a legal requirement under REACH.

Although the legal entity having volunteered to act as SFF may or not, volunteer or act as LR, the SFF will not automatically become the LR. The SFF and the LR have two different roles, although parts of these roles may, in some cases, overlap.

## 3. Who is the Lead Registrant?

Although there are **no specific rules** in REACH, the LR is described as the one registrant acting with the agreement of the other assenting registrant(s) and who submits parts of the registration on behalf of one or more of these assenting registrants (cf. Articles 11 and 19 of the REACH regulation).

The ECHA guidance on data-sharing[2] and ECHA SIEF key principles[3] outline that:

- **Only one LR** can be appointed per substance even if several tonnage bands co-exist and whether the substance is used as an intermediate or not. It means that all the potential registrants should be part of the discussions irrespective of their tonnage band.

- The LR will be logically **one of the Registrants who plan to submit their registration at the earliest registration deadline**. The latter is not an obligation as the joint submission registrants have the possibility to appoint a leader with a lower tonnage band. However, the LR would have to submit a registration file in accordance with the **highest applicable tonnage band**, although he will still **pay the fee corresponding to his own tonnage.**

It is important to note that the joint submission does not remove the obligation for each one of the other registrants to notify their membership to the joint submission and subsequently submit as well an individual Registration dossier to the Agency through REACH-IT, which will contain legal entity-specific information.

In order to ensure a cross-link with the registration submitted by the LR, when submitting its individual registration, any other registrant shall identify the LR submitting on his behalf, by specifying his contact details, and indicate the joint parts of the registration which are submitted by the LR.

## 4. How to appoint a Lead Registrant?

Only one LR can be appointed per substance even if several tonnage bands co-exist and whether the substance is used as an intermediate handled under SCC or not. All other registrants of the same substance, whether members of the Consortium or not, must agree on the proposed LR.

[2] http://guidance.echa.europa.eu/docs/guidance_document/data_sharing_en.pdf
[3] http://echa.europa.eu/doc/reachit/sief_key_principles.pdf

Article 4.7.1 of the PM & Re Consortium Agreement foresees that each relevant Work Group proposes a Consortium LR who is then officially designated (and replaced[4]) by decision of the concerned Sub-Assembly. Once this Consortium LR is appointed, the Consortium Secretariat submits the proposal to the SIEF, in order to check if there is any objection to the proposal. If there is none, the Consortium LR becomes the LR.

The proposed LR should:

- Ideally be one of the main manufacturers or importers of the substance on the EU and have, as such, a good technical knowledge on the substance, and a confirmed interest in marketing the substance on the EU,
- Have a clear understanding of REACH requirements and enough resources to be actively involved in REACH preparatory work, registration submission through REACH IT (could be time-consuming), and communication obligations (with ECHA and the other registrants),
- Be subject to the earliest registration deadline applicable to the SIEF, or must otherwise be prepared to adopt such a deadline.

However, a legal entity not fulfilling the above criteria can also volunteer and be appointed as LR, as long as the registration is submitted on time for the first applicable registration deadline in the SIEF. After the joint and the individual submissions, each registrant, including the LR, pays a registration fee that will correspond to its individual tonnage band.

When requesting legal entities to volunteer to act as LR, several situations can occur:

- **No legal entity volunteers** - A default mechanism is proposed: the LR will be the EU manufacturer or importer with the highest capacity of manufacture or import of the concerned substance.
- **Only one legal entity volunteers** - This volunteer needs to obtain the other registrants' support.
- **Two or more legal entities volunteer** - 1) the volunteers should come to an agreement on who is better placed to endorse the LR role and **propose it to be supported by the other potential registrants**; and if this fails; 2) the other registrants need to proceed to a vote in order to elect the most appropriate LR.

In any case, the procedure through which the LR was proposed and designated in the Consortium and then in the SIEF shall be documented for transparency.

## 5. What are the tasks of the Lead Registrant?

Article 4.7.2 of the PM & Re Consortium Agreement details those tasks that are incumbent on the LR and that should be performed with the support of the secretariat of the Consortium:

**(a)** Create a joint submission object on REACH-IT, communicate the name and token security number of this joint submission object to the Trustee, submit the joint Registration Dossier containing, where relevant and applicable, the information listed below in the format specified by the Agency and as approved by the concerned registrants to the Agency on behalf of the Members, including their respective Affiliates which have to register the concerned Substance or Isolated Intermediate, on the date determined by the Management Committee;

- The identity of the substance as specified in section 2 of Annex VI of the REACH regulation;
- The information on the manufacture and use(s) of the substance as specified in section 3 of Annex VI of the REACH regulation;
- The classification and labelling of the substance as specified in section 4 of Annex VI of the REACH regulation;

[4] If for any reason, the LR withdraws or behaves improperly, the concerned Sub-Assembly has the right to replace him.

- The guidance on safe use of the substance as specified in Section 5 of Annex VI of the REACH regulation;
- The study summaries of the information derived from the application of Annexes VII to XI of the REACH regulation;
- The robust study summaries of the information derived from the application of Annexes VII to XI of the REACH regulation, if required under Annex I of the REACH regulation;
- Proposals for testing where listed in Annexes IX and X of the REACH regulation;
- The Chemical Safety Report when required under Article 14 of the REACH regulation, in the format specified in Annex I of the REACH regulation.

**(b)** Not modify the "joint part" of the registration without the prior approval of the other registrants.

**(c)** Together with the Trustee, ensure that confidential information in the registration is marked or identified as such and shall submit to the Agency any requested justification for non-disclosure of information in the registration as per Article 10(a)(xi) of the REACH regulation.

**(d)** Submit a copy of the full registration as submitted to the Agency to the Trustee;

**(e)** Submit to the other Members who have contributed to the registration:

- A copy of all the non-confidential information in the registration as submitted to the Agency;
- A copy of those parts of the registration as submitted to the Agency, that each contributing Member is entitled to, based on the Substance and tonnage bands declaration that the Member has provided to the Trustee at the time of signature of this Agreement, or otherwise updated to the Trustee (and consequently has paid for according to the cost-sharing formula set out in Appendix 9);

**(f)** Forward to the Members concerned, through the Secretariat, any communication received from the Agency (e.g. data requests, registration update requirements, etc.).

For a joint registration to be successful substance sameness must have been confirmed and the applicable information requirements must have been fulfilled by having conducted tests or by submitting test derogation/waiving proposals, or testing proposals for Annexes IX and X, as applicable.

**Substance identification and sameness, and appointment of the Lead Registrant**
Once the substance is properly defined and the LR is elected by the Consortium Members, the secretariat of the Consortium is responsible for informing the concerned SIEF and allowing pre-registrants to raise any objection to the proposed substance description and the LR. The LR is informed on any relevant feed-back as any other Member of the Consortium.

**Dossier preparation**
The compilation of the IUCLID 5 files is performed by the consultants having been commissioned with each metal-specific project of the Consortium and the secretariat of the Consortium. The the LR only needs to include, in order to finalise the joint dossier, those information which are specific and/or confidential to the LR. This means that as regards dossier preparation, the workload of the LR is reduced to a level equivalent of the workload of any joint registrant under REACH.

**Dossier submission**
Following dossier preparation, and as foreseen by Article 11(1) of the REACH regulation the LR is responsible for submitting the dossier to the Agency on behalf of the concerned Members of the Consortium. In the event the LR requires assistance to perform this task the secretariat of the Consortium will put in place the necessary resources to provide this assistance.

**Post-registration communication**
After dossier submission, the LR constitutes the official contact to be used by the Agency, Member States Competent Authorities and co-registrants in regard to any question arising on the dossier

submitted by the LR on behalf of the concerned Members of the Consortium. The LR is therefore responsible for regularly inspecting his REACH-IT mail inbox and of informing the secretariat of the Consortium of any message, question, query or request which may require the involvement of the concerned Members of the Consortium. Following the first contact, any required action (exchange or decision-making) will be launched, followed-up, coordinated and supervised by the secretariat of the Consortium. With the exception of returning communications from the Consortium to the Third Party having made the question, query or request, the LR's participation is not expected to be more significant than the participation of any other joint registrant.

## 6. What are the liabilities of the Lead Registrant?

As per Article 4.7.1 of the PM & Re Consortium Agreement, the Consortium LR shall be subject to the same rights and obligations as the other Members, in particular regarding confidentiality obligations. Article 8.3.5 of the PM & Re Consortium Agreement foresees that the Consortium LR shall not be liable to third parties to an extent more than liability of the Members, except:

**(a)** in respect of liability attributable to its wilful misconduct, fraud, and gross negligence as Consortium LR; and

**(b)** in respect of liability attributable to its role of Consortium LR (as described in section 5 above) according to which the Consortium LR shall be liable to the Members with whom it is preparing and submitting a registration to the Agency.

The above liability shall be made clear to the SIEF when a proposed LR is put forward for election.

## 7. Declaration of commitment of the LR

After a LR has been elected by the Consortium and no objection has been received from the SIEF, each LR will be invited to complete and sign the following template, for each PM & Re Consortium substance or intermediate it will endorse the LR role for.

**Declaration of Commitment (template)**
Text in orange: keep the applicable option only
Text in blue: complete with relevant information
Text in green: to be completed by PM & Re Consortium Secretariat

**Notice:** This document is confidential to the PM & Re Consortium and shall not be distributed or used outside the membership of the PM & Re Consortium unless so requested by European Competent Authorities in REACH.

I/We, the undersigned FULL NAME OF THE SIGNATORY am/are duly representing, and acting on behalf of FULL NAME OF THE COMPANY MEMBER OF THE PM & Re CONSORTIUM as well as on behalf of FULL NAME OF THE LEGAL ENTITY ACTING AS LEAD REGISTRANT IN REACH-IT (may be different from Consortium Member one, e.g.: an Affiliate company), hereby commit to the role of Lead Registrant for EC NAME AND NUMBER OF SUBSTANCE OR INTERMEDIATE under SCC which Registration Dossier will be submitted to the ECHA through the REACH-IT before the APPLICABLE DEADLINE. The Dossier submitted will include all information requirements that apply to the registration of a Substance/Intermediate in the 1-10/10-100/100-1000/> 1000 t/a tonnage band.

I/We undertake to respect all applicable terms and conditions related to the role and responsibility of a Lead Registrant as set out in the PM & Re Consortium Agreement, as well as to comply with the REACH Regulation (including Confidentiality and EU Competition Law).

With the support of the PM & Re Consortium Secretariat and with the collaboration of the legal entities jointly registering this Substance/Intermediate with FULL NAME OF THE COMPANY MEMBER OF THE PM & Re CONSORTIUM, I/we engage to implement all necessary means and human, material and/or financial resources, that are required to achieve a successful registration of the above Substance/Intermediate.

| | INFORMATION ON THE SIGNATORY OF THIS DECLARATION OF COMMITMENT (please add one table per signatory) |
|---|---|
| Name: | |
| Position: | |
| Professional address: | |
| Professional phone number(s): | |
| Professional fax number(s): | |
| Professional e-mail address: | |

I/We, acting as Signatory on behalf of FULL NAME OF THE COMPANY MEMBER OF THE PM & Re CONSORTIUM and of FULL NAME OF THE LEGAL ENTITY ACTING AS LEAD REGISTRANT IN REACH-IT (may be different from Consortium Member one, e.g.: an Affiliate company), execute this Declaration of Commitment as of the date first mentioned above my/our signature(s):

Place: _____

Date: _____

Signature: _____

**Closing Page**
**Of the Precious Metals and Rhenium Consortium Agreement**

IN WITNESS THEREOF, THE PARTIES EXECUTE THIS AGREEMENT, by:
(i) setting their signature(s) on this closing page;
(ii) submitting to the Secretariat, the Signature folio following the template presented in Appendix 1; and
(iii) submitting to the Trustee, the Substance and tonnage band declaration following the template presented in Appendix 2, including tables 1, 2 and 3
all documents being duly completed and signed by their respective authorized Representative(s).

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

Date: _____

Signature: _____

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

Date: _____

Signature: _____

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

Date: _____

Signature: _____