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Under the auspices of the
European Precious Metals Federation (EPMF),
~ A member of Eurométaux ~

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

CONSORTIUM AGREEMENT

Date of current draft:
20th of June, 2007

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This Precious Metals 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 have submitted it 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 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 internal market and stimulating innovation and competitiveness in the chemical industry;

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

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

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

Whereas, considering the human and financial resources required for registration, together with the limited time to ensure compliance, it is necessary to increase and/or improve efficiency of registration 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;

Whereas some information required pursuant to REACH Regulation requirements for registration has already been generated in the context of the Risk Assessment under Regulations 93/793/EC, and other information has already been generated as a result of work undertaken in preparation for the implementation of the REACH Regulation;

Whereas the Members, having here above mentioned operations involving Precious Metals 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, 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 and to submit a harmonised set of data for registration;

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

THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

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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, Manufacturer, Importer and Downstream User). Furthermore, in this Agreement, the following terms shall have the following meanings:

"Assembly"	means all the Members of the Precious Metals 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 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 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: • Classification and Labelling of the Substance(s); • Summaries of Information derived from the application of Annexes VI to XI to the REACH Regulation; • Robust Study Summaries derived from the application of Annexes VI to XI, if so required under Annex I to the REACH Regulation; • Testing Proposals where required by the application of Annexes VI to XI to the REACH Regulation; 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 tonnage band of Substance(s) covered by this Consortium Agreement.
"Deadlines for Registration"	means the latest date by which the Substances 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.

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"Industry Association"	means a natural or a legal person that represents the interests of (a) legal entity(ies) having to register (a) Substance(s) covered by this Consortium Agreement and/or (a) use(s) of such Substance(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.
"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 in the EU and which may submit registration for Substance(s).
"Precious Metal"	means an elemental or compound form of Silver, Gold and the Platinum Group Metals (PGM's) Platinum, Palladium, Iridium, Rhodium, Ruthenium and Osmium. For purposes of this Agreement, Precious Metals are divided in three separate groups: Silver, Gold and PGM's.
"Receiving Party"	means any Party to this Agreement to which Information is made available whether within the framework of the Management Committee or the Working Group(s) or in any manner whatsoever within the scope of this Consortium Agreement.
"Registration Dossier"	means the dossier which contains the Core Data on a particular Substance and which is submitted by the Consortium's Lead Registrant to the Agency.
"Representative"	means a natural or legal person authorised to act on behalf of a Member.
"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 REACH requirements and therefore adopt decisions for a specific group of Precious Metals. For decision-making purposes, the Consortium shall constitute one Sub-Assembly per Precious Metals

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	group, such as but not necessarily limited to: a Silver Sub-Assembly, a Gold Sub-Assembly and a Platinum Group Metals' 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 Substance pre-registration and registration.

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, 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;
(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) 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;
(k) Register the Core Data before the Deadline for registration applicable to the Member with the highest tonnage band;
(l) Answer to possible requests from the Agency during Dossier Evaluation period.

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 Substance(s) covered by this Agreement.

The Substance(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.

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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) covered by this Agreement and established in the EU; and/or
(b) A Non-EU Manufacturer of (a) Substance(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) (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 and the Substance and tonnage band declaration presented in Appendix 1 and Appendix 2, respectively) 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 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

Pursuant to the cost-sharing formula set out in Appendix 9 of this Agreement and in accordance with Article 7, each Member shall pay as contribution to the Consortium:

(a) its annual share of the Generic costs for the year it is entering the Consortium and for each following year of membership;
(a) its annual share of the applicable Metal-specific costs for the year it is entering the Consortium and for each following year of membership;
(b) its annual shares of the Generic and the applicable Metal-specific costs incurred by the Consortium for the past years (limited to 10 (ten)) of activity prior to its entry to the Consortium; 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 (c).

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.

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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 written 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 written approval of the Assembly as per Article 4.1.2 (d).

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"), 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.

For the purposes of this Agreement, one company is deemed to "control" another one:
(a) when it, directly or indirectly, holds a fraction of the capital that gives it a majority of the voting rights at that company's general meetings;
(b) when it effectively determines the decisions taken at that company's general meetings through the voting rights it holds;
(c) when it is a partner in, or shareholder of, that company and has the power to appoint or dismiss the majority of the members of that company's administrative, management or supervisory structures.

3.4.2. In any case, the Secretariat shall be notified, in writing and on or before the effective date, 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.

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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 as well as 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.

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

Except otherwise decided by the Management Committee, the withdrawing or excluded Member shall however have no right in respect of the Registration Dossier including no right to refer to the registration Dossier prepared by the Consortium. In the event the withdrawing or excluded Member wishes to submit a Registration Dossier, it must obtain the necessary authorization to use and to refer to the Registration Dossier pursuant to Article 5.2.2.

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4. ORGANIZATION AND MANAGEMENT OF THE CONSORTIUM

4.1. Assembly

"Assembly" is defined in Article 1 of this Agreement.

4.1.1. Composition of the 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 three separate Sub-Assembly lists (which shall be updated whenever necessary) of those Members being subject to REACH requirements for Gold Substances, for Silver Substances, and for Platinum Group Metals Substances 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 REACH, 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 three lists shall be applied when proceeding to a decision-making, an election or vote concerning a specific Sub-Assembly of the Consortium.

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 Assembly

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

(a) the election and/or revocation of the members on the 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 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 adapt the Consortium Agreement in light of legislative and technical changes to the REACH requirements, including the entry into force of the REACH Regulation, and in particular the establishment of the Substance Information Exchange Forum (SIEF) or the entry into force of the Globally Harmonised System (GHS) regulation;
(g) proposal(s) concerning the modification or amendment to any provision of this Consortium Agreement, if and when needed;

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(h) proposal(s) concerning the modification or amendment to any Appendix of this Consortium Agreement, if and when needed;
(i) proposal to end the Consortium and terminate this Consortium Agreement.

When a decision is to be made by the Assembly for the above proposals, the Management Committee shall prepare and submit to each present or represented Member, a document containing 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 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" is able to show at the beginning of the meeting a duly signed proxy of the Representative. 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.

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Such Representative or Replacement Representative shall have authority to commit the Member(s) it represents in the Assembly decisions.

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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 REACH requirements for a particular group of Substance(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 Assembly present or represented at the meeting, except for:

(a) Decisions related to points (a), (b), (c), (d), (e), (f), (h) and (i) 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 (g) of Article 4.1.2 which shall be taken by unanimity of the Members of the Assembly present or represented at the meeting.

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 Management Committee to the Members for the approval of the 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 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 in 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.

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4.2. Management Committee

In order to take decisions on the overall and daily organization 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 all Members to nominate, on a voluntary basis, one candidate to sit on 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 Chairman of the Management Committee in place together with the Trustee shall work with the Members in order to ensure the Management Committee assembles a workable number of members. The Chairperson of the EPMF shall be entitled to attend Management Committee meetings, but shall have no right in his/her capacity as Chairperson of the EPMF to vote on any decision taken.

Elections to 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 on 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 its 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, withstanding that 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 unavailable.

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) designation of the Consortium's Lead Registrant(s), as proposed by the relevant Work Group(s);

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(d) management of the Consortium's financial resources, including its budget, funding and accountancy and any proposal to license existing Studies or Information from any third party that may assist Members for registration purposes, as approved by the Assembly;
(e) coordination of, and guidance for Information collection and sharing concerning Substance(s) covered by 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;
(h) appointment of external consultants or contractors to perform technical and scientific tasks and as proposed by the relevant Work Group(s) (when requiring a budget);
(i) approval of the Core Data before joint submission to the Agency;
(j) approval of the Chemical Safety Reports before submission to the Agency;
(k) facilitation of proper communication between all Parties involved;
(l) arbitration in cases of disagreement or disparities within or between the Working Groups;
(m) approval of and monitoring 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) by 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 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;

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(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 provided 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:

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(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 on 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 Secretariat 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 it to the activities of the Consortium and it shall be included in the Generic Costs as described 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 and distribute one complete copy of the Consortium Agreement to all its Parties;
(b) hold and update as necessary three separate lists enclosing those Members who are subject to compliance with REACH requirements for Gold Substances, for Silver Substances, and for Platinum Group Metals Substances 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 in 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 Substance(s) covered by this Agreement;
(l) supervise and frequently remind the Members to abide by the Competition Law Compliance Guidelines.

4.4. Accountant

4.4.1. Designation of the Accountant

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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 included in the Generic Costs as described 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.

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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. 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 authorizations;
(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 for a period of 1 (one) year. The Chairperson shall coordinate the Work Group, organize its work with the assistance of the Secretariat and shall act as the official representative of the Work Group. The Co-Chairperson shall replace the Chairperson when unavailable.

4.5.1.3. External independent expert(s)

If approval and a budget have been granted by the Management Committee, 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.

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4.5.2. Role of the Work Group(s)

The key roles of the Work Group(s) are indicated 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. 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 (b).

In the event of a temporary absence of the designated Trustee, the Secretary General of Eurométaux 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 Eurométaux 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 included in the Generic Costs as described 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

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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, three separate lists enclosing those Members who are subject to compliance with REACH requirements for Gold Substances, for Silver Substances, and for Platinum Group Metals Substances respectively.

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 is(are) proposed by the relevant Work Group and is(are) designated and may be replaced by decision of the Management Committee. The Consortium's Lead Registrant(s) shall be (a) Member(s) of the Consortium and shall be subject to the same rights and obligations as the other Members, in particular regarding confidentiality obligations.

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) submit the Registration Dossier to the Agency on behalf of the Members, including their respective Affiliates which have to register for the concerned Substance, in the format specified by the Agency, on the date determined by the Management Committee;

(b) together with the Trustee:
- ensure that the complete and valid identity of the Members and Affiliates taking part to the joint submission of the Registration Dossier is notified to the Agency in the Registration Dossier;
- 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.

(c) submit a copy of the full Registration Dossier as submitted to the Agency to the Trustee;

(d) submit to the other Members who have contributed to the Registration Dossier for any particular substance:
- 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);

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

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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 Members, or the Trustee only 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 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 for the purpose of registration.

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 (presented in Appendix 10 hereto), 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. 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.

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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 exclusive purpose of fulfilling the requirements of the REACH Regulation.

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" in the form attached to this Agreement in Appendix 10.

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.
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. Generic costs

The Generic costs are the administrative expenses incurred by the Consortium including, in particular but not solely, cost incurred for the:

(a) remuneration of the Secretariat;
(b) remuneration of the Trustee;
(c) remuneration of the Accountant;
(d) remuneration of an external Legal Counsel, if required.

7.1.2. Metal-specific costs

The Metal-specific costs are the costs incurred by the Consortium, for each metal group as described in Appendix 4, particularly but not only related to the:

(a) Information and Study(ies) licensed from a Disclosing Party as referred to in Article 5.1.4;
(b) remuneration of the consultants for e.g. the reports on data gap analysis and other activities for which they have been contracted;
(c) remuneration of the external and independent experts;

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(d) performance of the tests to comply for REACH requirements.

The budget of the Consortium shall bear three separate Metal-specific costs, one for each group of metals as defined in Article 1: Silver, Gold and Platinum Group Metals.

7.2. Registration costs

The registration fee(s) per registered Substance 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 January 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 Offerred 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 authorized, and do not and will not (i) violate any law, rules, regulation, order, or decree applicable to it, or (ii) violate its organizational documents;

(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 and the Management Committee 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.

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

The 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 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. 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 non 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.

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 gross negligence or wilful intent 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 REACH Regulation, in as much as these rights and obligations are not expressly transferred 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 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

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Each Party to this Agreement is solely liable vis-à-vis third party within the scope of his 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 at 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, with the exception of gross negligence and wilful intent, in unlawful actions or serious actions incompatible with its mandate.

8.3.3. Liability of the Trustee

The Trustee is fully responsible of 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 a professional liability insurance, which shall be added to the Generic costs of the budget of the Consortium.

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, with the exception of gross negligence and wilful intent, 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 an extent more than liability of the Members, except liability attributable to its (their) gross negligence or wilful misconduct as Consortium's Lead Registrant(s).

9. DURATION AND TERMINATION OF THE CONSORTIUM AGREEMENT

9.1. 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

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a Founding Member is 15 September 2007. This Agreement shall be binding to each Party as per the respective signing date of such Parties.

9.2. This Agreement shall remain in full force and effect until terminated by decision of the Assembly.

9.3. 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 this "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 do whatever may be necessary 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 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. Neither Party nor its agents, employees, consultants or contractors are agents, employees or joint ventures of the other, nor do they have any authority to bind the 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 legal relations, the Consortium shall not act under its own name but as a community of all individual Parties to the Consortium Agreement.

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

In case the Consortium enters into contracts, the liability of the Members will be on several basis. Any debt incurred by the Consortium would be paid by the Consortium and then accounted for by each of the Members. 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. As more referred to in

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Article 4.2.1.2, only the Chairperson of the Management Committee has authority to sign contracts on behalf of the Members of the Consortium, unless this specific mandate has been assigned to any other party, as indicated in Article 4.2.2.

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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, except by further written instrument executed by the Members, 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 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.

4. DISPUTE RESOLUTION – GOVERNING LAW

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

11.2 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

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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 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, 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 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.

5. 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.

6. 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 REACH Regulation.
Appendix 4: Substance(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: Letter of access (template).

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APPENDIX 1
Of the Precious Metals Consortium Agreement

Signature folio of the Precious Metals Consortium Agreement (template)

IMPORTANT NOTICE

- *This Signature folio shall be submitted by each Member to the Secretariat and shall validate the membership status of the signing Party to the Precious Metals 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 it otherwise.*
- *The Secretariat shall be promptly informed on any change in the data provided by the Member in this folio.*

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

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

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

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

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

Date: _____
Signature: _____

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APPENDIX 2
Of the Precious Metals 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 Consortium Agreement by the Member.*
- *The signatory of this Declaration shall be the same as the Representative signing the Signatory folio of the Precious Metals Consortium Agreement.*
- *The content of this Declaration shall be applied to define the appropriate Metal-specific cost-share of the Member, pursuant the cost sharing formula defined in Article 7 and in Appendix 9 of this Agreement.*
- *The content of the Declaration shall remain with the Trustee and shall be kept confidential.*
- *As adaptations of the substance inventories of the Precious Metals Consortium may be necessary from time to time, a flexible approach to adjust them is needed. The Trustee shall be promptly informed on any change in the data provided by the Member in this Declaration. The process of adding substances to this Declaration after signature will be according to the selection criteria and decision tree in Appendix 4.*

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 Consortium Agreement, and providing that the Substances indicated hereto are included in the list of Substances presented in Appendix 4 of such Agreement, declare to join the Precious Metals Consortium to fulfil the requirements under REACH Regulation for the following substances in the following tonnage bands:

	Name of the material	**Subst. (**)**	**Synonyms**	**Formula**	**EC N°**	**CAS N°**	**Tonnage Band (t/a)**			
							≤ 10	**≤ 100**	**≤ 1000**	**> 1000**
Silver group										
Gold group										
PGM's group(*)										

* Platinum Group Metals.
** Please tick this column if your material is likely to be registered as a Substance as defined in the REACH Regulation.

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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 and tonnage bands declared here above.

Date: _____
Signature: _____

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APPENDIX 3
Of the Precious Metals 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;

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(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;

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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.

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APPENDIX 4
Of the Precious Metals Consortium Agreement

Substances covered by the Consortium Agreement

I. Substances 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 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);
- 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;
- Can be a material of variable composition containing (a) Precious Metal(s) and which is used in one of the industrial processes used to mine, refine, recycle, manufacture, trade, bank or import Precious Metals.

In the exceptional situation that a Substance which is not or does not contain (a) Precious Metal(s) needs to be assessed and prepared for registration purposes by the Precious Metals 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.

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

Testing will be performed 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 shall never 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 REACH Regulation requires otherwise. In any case, the Consortium shall prepare the Registration Dossiers for those Substances which have been recommended by the Work Group(s) and agreed upon by the Management Committee.

II. Indicative Substance lists

For reference purposes, indicative substance-level inventories for each of the Precious Metals groups (as defined above) are established under the coordination of the Trustee. Updates of these inventories are available on request to the Secretariat.

(a) Silver Indicative List
Will be presented on the 29 June 2007 at the EPMF Plenary Meeting in Krakow

(b) Gold Indicative List
Will be presented on the 29 June 2007 at the EPMF Plenary Meeting in Krakow

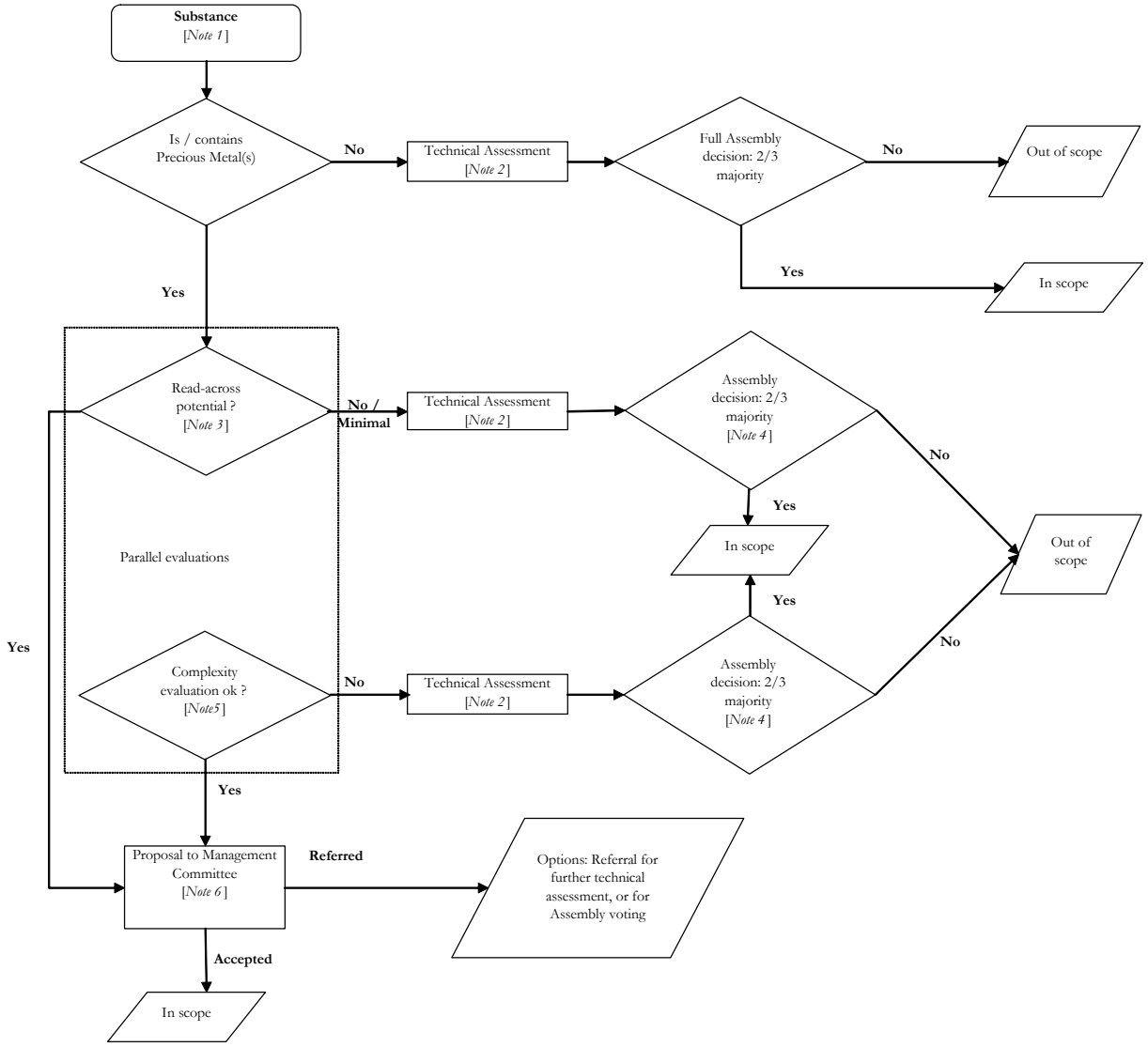
(c) Platinum Group Metals Indicative List
Will be presented on the 29 June 2007 at the EPMF Plenary Meeting in Krakow

III. Selection criteria and decision tree

Not all Substances fulfilling the criteria stated above and/or listed in the indicative lists presented 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:

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Decision Tree applicable to substances covered by the Consortium Agreement



Notes:

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

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

Note 3: Evaluated by the Technical Advisory Panel (or an external consultant) as a substance 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 previously selected as in scope (by applying RIP 3.10 principles of commonality), or another parameter. Alternatively, inclusion of the Substance 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) are eligible to vote, as more referred to in Article 4.1.6 of this Precious Metals Consortium Agreement.

Note 5: Evaluated by the *ad hoc* Precious Metals Work Groups and by the Technical Advisory Panel as a Substance 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

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factors: (a) its tonnage band; (b) whether a comprehensive dataset is already in existence for the substance; (c) the absence of complexity factors, e.g. the substance is not classified as a CMR or significant eco-toxicant.

Note 6: Evaluated by the *ad hoc* Precious Metals Work Groups and by the Technical Advisory Panel as a Substance which should be included in the programme for the relevant Substance group.

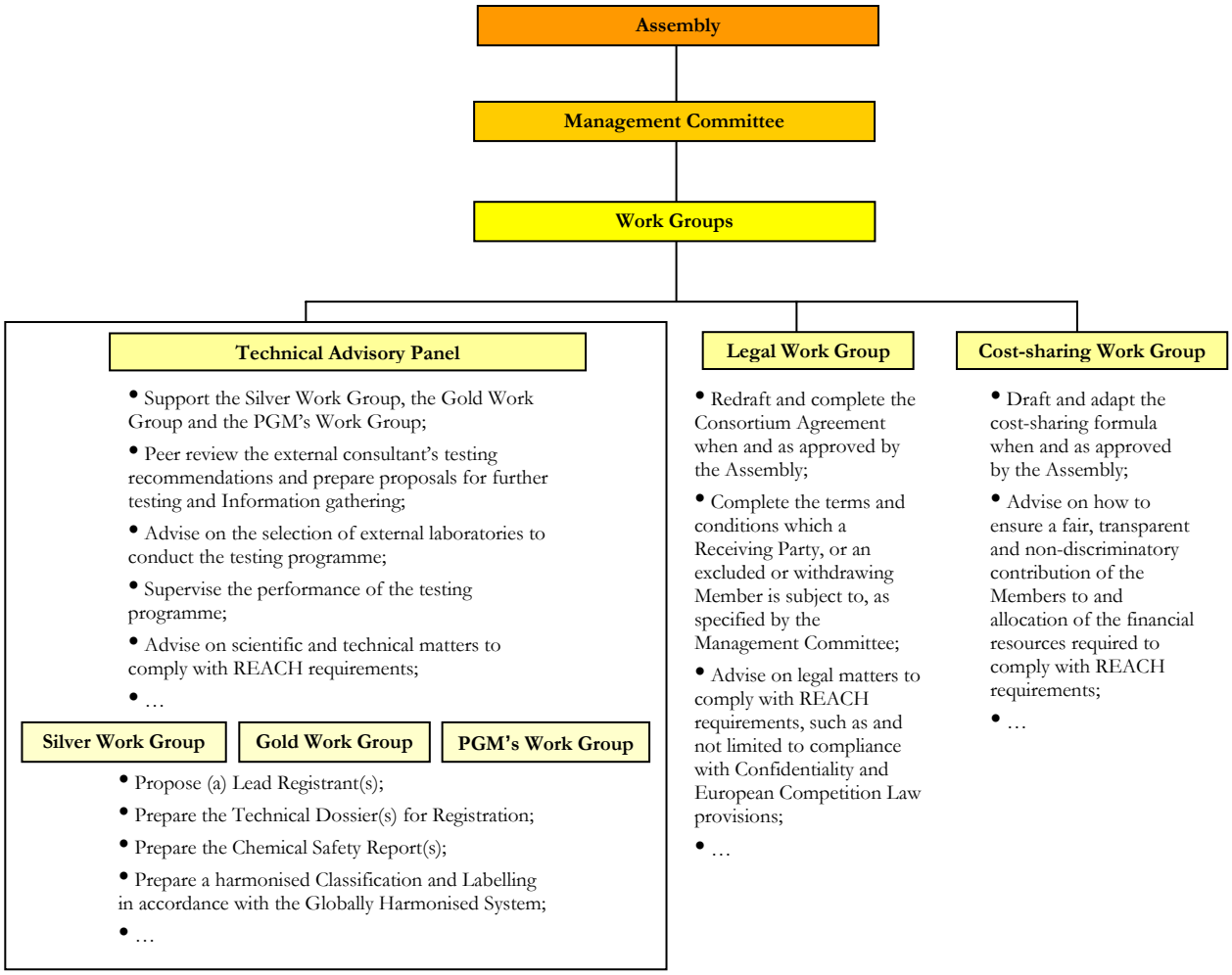
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APPENDIX 5
Of the Precious Metals Consortium Agreement

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 Consortium. A non-exhaustive list of pertinent tasks is given under each level for reference purposes only.

This working structure shall not be considered as being definitive; 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.



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APPENDIX 6
Of the Precious Metals 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 Consortium and with any other Party being in relation with the Precious Metals 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 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 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); 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 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.

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 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

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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.

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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 Perties 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.

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APPENDIX 7
Of the Precious Metals 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 Consortium to whose Consortium Agreement this Agreement is, as an appendix, an integral part thereof

and

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

The Trustee recognizes and acknowledges that the above mentioned Precious Metals 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

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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 which shall be available to Eurométaux, which is entitled to act on behalf of the Trustee in the event of the absence of the designated Trustee pursuant to Article 4.6.1of 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,

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supplies, facilities, and trade secret information and were developed entirely on Trustee's own time, unless (i) the Inventions relate directly to the Consortium activities; or (ii) the Inventions result from any work performed by the Trustee for the Consortium.

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

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

3. Competition Law

3.1. During the course of its mission, the Trustee shall not, in any manner whatsoever, act, or allow or enable Consortium Member(s) or any third party involved into the Consortium activities under the Consortium Agreement, to act in infringement or in non-compliance with applicable rules on Competition Law, in particular –but not limited to– Articles 81 and 82 of the EC Treaty as well as any applicable national law.

The Trustee recognizes as binding the Competition Law Compliance Guidelines attached hereto as 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.**

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

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

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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. 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: _____

Address: _____

Signature: _____

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APPENDIX 8
Of the Precious Metals 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 81 of the EC Treaty; they shall observe the prohibition of abusing a market-dominating position pursuant to Article 82 of the EC Treaty:

I.

Article 81

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:
   (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
   (b) limit or control production, markets, technical development, or investment;
   (c) share markets or sources of supply;
   (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
   (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
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 82

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

II.

The Parties shall act in compliance with the following checklist:

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DO	DON'T
Application of competition law	
Art. 81 and 82 EC Treaty 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. 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. 81 and 82 EC Treaty 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. 81 and 82 EC Treaty, activities which have the object of the effect of preventing, restricting and/or distorting competition are prohibited within the scope of this Agreement, including: - Coming to agreement, including arrangements or collusions, about prices, markets and customers (see Art. 81 paragraph 1 a)-e) EC Treaty); - Joint boycotting of other companies; - The unjustified unequal treatment of trade partners; - The abusive exploitation of a dominating market position.
Exchange of Confidential Information	
Involve a Trustee for the exchange of Confidential Information.	The exchange of 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 : - Production capacities; - Productions or sales volumes; - Import volumes; - Market shares; - Price policy; - Distribution and marketing terms; - Marketing strategies; - Information regarding the relationship with suppliers.
Documentation on Cooperation	
Keep minutes of all meetings which detail the subject of the meeting. 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. Stop all meetings which are not in compliance with these Guidelines until a legal expert has been involved.	

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APPENDIX 9
Of the Precious Metals 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 Consortium. In such case, the Member should address the appropriate request to the Management Committee.

2. The share of the Generic costs and of the applicable Metal-specific costs to be paid by each Member shall be calculated based on (i) the declaration submitted by the Member to the Trustee at the moment of the signature of the Precious Metals 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 Consortium.

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

3.1. Generic costs will be distributed equally among all the Members of the Precious Metals Consortium. Each Member will pay only one share of the Generic Costs, no matter how many (groups of) Substances it has declared to the Trustee at the moment of the signature of the Precious Metals Consortium Agreement or afterwards updated to the Trustee.

3.2. Metal-specific costs will be allocated in two parts, following two weighted approaches:

a) 50% (fifty percent) of the Metal-specific 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 Consortium Agreement or afterwards updated to the Trustee.

b) 50% (fifty percent) of the Metals-specific costs will be allocated according to the number of Substances per tonnage band each Member has declared to the Trustee at the moment of the signature of the Precious Metals Consortium Agreement or afterwards updated to the Trustee. Substances in tonnage band 1 (1 to 10 tonnes) will be weighted with a factor of 5 (five); Substances in tonnage band 2 (10 to 100 tonnes) will be weighted with a factor of 20 (twenty); Substances in tonnage band 3 (100 to 1000 tonnes) will be weighted with a factor of 100 (one hundred); and Substances in tonnage band 4 (more than 1000 tonnes) will be weighted with a factor of 1000 (one thousand).

c) In the event any strictly controlled isolated intermediate(s) as defined in the REACH Regulation is to be assessed and prepared for Registration by the Precious Metals Consortium, the cost-sharing formula shall be reviewed by the Management Committee in order to allocate such Intermediate(s) into the cost-sharing formula in a fair, transparent and non-discriminatory manner.

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

$$(a) \qquad C_i = A_i + B_i$$

$$(b) \qquad A_i = G/n$$

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

$$(d) \qquad y_i = 5x_{i(t1)} + 20x_{i(t2)} + 100x_{i(t3)} + 1000x_{i(t4)}$$

Where the symbols have the following meaning:

C_i is the share of the total Consortium costs borne by member "i"
A_i is the share of the generic costs borne by member "i"
B_i is the share of the metal-specific costs borne by member "i"

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G is the total generic costs of the Consortium
n is the total number of members of the Consortium
M is the total metal-specific costs of the Consortium

x_i is the total number of substances for member "i"
y_i is the tonnage factor for member "i"
$x_{i(t1)}$ is the number of substances in tonnage band 1 for member "i"
$x_{i(t2)}$ is the number of substances in tonnage band 2 for member "i"
$x_{i(t3)}$ is the number of substances in tonnage band 3 for member "i"
$x_{i(t4)}$ is the number of substances in tonnage band 4 for member "i"

4. Each Member will pay its share of the costs based on above cost-sharing formula and considering:

4.1. The number of Substances to be registered under REACH by itself and by all its Affiliates, each Substance being accounted once, no matter whether registered by one or more Affiliates;

4.2. The highest tonnage band in which each Substance is manufactured and/or imported by the Member or by one or more of its concerned Affiliates.

4.3. Only the Metal-specific costs for the group(s) of Precious Metals as defined in Article 1 (Silver, Gold and Platinum Group Metals) in which it declared to be joining the Consortium in its Substance and tonnage band declaration. A Member having declared Substances in the Silver group only shall not be charged for the Metal-specific costs related to Gold or Platinum Group Metals. The same applies where a Member has declared Substances in the Gold group only or in the Platinum Group Metals group only.

5. Any change in the Substances 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.

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

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APPENDIX 10
Of the Precious Metals Consortium Agreement

Letter of access (template)

[Address of Regulatory Authority] [Date]

Letter of Access for the registration of the Substance _____ *[insert the short name of the Substance to be registered]* under REACH Regulation 1907/2006/EC.

Dear Sirs,

The Precious Metals Consortium constituted on _____, 2007 on the registration of the Substance _____ [*insert the short name of the Substance to be registered*] under REACH Regulation (hereafter referred to as "the Consortium") agrees that the data, studies, summaries, waiving argumentations, reasoning of testing proposals and/or assessments specified in detail below owned by Consortium Members and submitted by the Consortium in support of the registration under REACH Regulation:

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

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

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

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

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

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

1. The right of citation or referral only gives access to the Dossier of the Substance for the registration as specified above.
2. The right of citation or referral is solely granted in favour of [*Applicant*] and is not transferable to any other entity or person, without prior written consent of the Consortium Members.
3. [*Applicant*] is not authorised to receive any copies of the Dossier nor is [*Applicant*] authorised to inspect or view the Dossier or any related specific document in whole or in part [*Note : Depending on the agreement between the Consortium and [Applicant] the latter may receive the results and/or summaries/robust summaries of studies directly from the Consortium.*]
4. This Letter of Access shall in no event be construed as granting [*Applicant*] any property rights whatsoever in the Dossier.
5. Nothing in this Letter of Access shall require the Consortium to provide or to file any additional data.

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

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IN WHITNESS THEREOF, THE PARTIES EXECUTE THIS AGREEMENT, by:
(i) setting their signature
(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,
both documents being duly completed and signed by their respective authorized Representatives.

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

Date: _____

Signature: _____

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Signature: _____

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Date: _____

Signature: _____

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Date: _____

Signature: _____

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

Date: _____

Signature: _____

I, _____ authorized Signatory of

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