Agreement
on
Magnesium REACH Consortium
CONSORTIUM AGREEMENT

between

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2. **ECKA Granulate GmbH & Co. KG**, represented by Dr. Georg Reif, Kaiserstraße 30, 90763 Fürth, Germany - ECKA -
3. **Meridian Technologies Inc.**, represented by Daniel Bisi, Via Glair, 11029 Verrés (Aosta), Italy - Meridian -
4. **MAGONTEC GmbH**, represented by Günter Rienaß, Industriestraße 61, 46240 Bottrop, Germany - MAGONTEC -
5. **Zitzmann Druckguss GmbH**, represented by Johan Westman, Industriestraße 2, 96342 Stockheim, Germany - Zitzmann-
6. **Dead Sea Magnesium Ltd.**, represented by Nir Moscovitch, POB 1195, 8411 Beer-sheva, Israel - DSM -
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8. **Timminco Corporation**, represented by Oliver Haun, 3595 Moline Street, Aurora, Colorado 80010, USA - Timminco -
9. **Elkem AS**, represented by Robin Ephithite, Hoffsvieen 65 B, 0303-Oslo, P.O.Box 5211, Majorstuen, Norway - Elkem -
10. **RIMA INDUSTRIAL S/A**, represented by Jose Carlos Spinola, Anel Rodoviário km 4,5, 30622-910 Belo Horizonte, Brazil - RIMA -
11. Quay Magnesium Ltd.
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18. TAKATA-PETRI AG
represented by André Sander,
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– all hereinafter referred to as “Members of the Consortium” or "Members" –
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I.

Preamble

The Members are manufacturers, importers or downstream users as well as distributors of the substance Magnesium described in Annex 1 – hereinafter: "Magnesium" or “the Substance” – with registered head offices in and outside the European Community.

According to Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (hereinafter “REACH”), manufacturers and importers established within the European Community are obliged to register the Substance within the prescribed deadlines pursuant to Art. 23 REACH Reg. This applies to ALMAMET, ECKA, Meridian, MAGONTEC, Zitzmann, Elektron, Husqvarna, SKW, DEUMU, WIMEX, Aleris and TAKATA-PETRI. It also will apply for Elkem, as Norway is part of the EFTA and is determined to adopt REACH. Each of them will pre-register the Substance according to Article 28 REACH.

Magnesium has phase-in status according to Article 3 No. 20 REACH.

Articles 11 and 19 REACH require Core Data on the same substance to be submitted jointly during registration.

The other members although they are not obliged to register Magnesium by themselves are highly interested in sharing the preparation according to the obligations under REACH. Manufacturers not established in the European Community have the opportunity to appoint a Community-based only representative pursuant to Art. 8 REACH. DSM, Timminco, RIMA, Quay and CMC intend to appoint an Only Representative and to provide the Core Data or the joint dossier to this Only Representative.

The Members have agreed to cooperate in order to comply with the requirements of REACH for Magnesium and have set up a Consortium for this purpose at a meeting held in Aalen, Germany on 20 June 2007 without signing a written contract.

Now, therefore, in consideration of the above, the Members agree as follows:
II.

General Provisions

1. Definitions

(1) Regular Members: manufacturers, importers and/or Only Representatives who are subject to a registration requirement according to REACH and who belong to the Consortium as founding Members or as Members who joined the Consortium at a later date.

(2) Associate Members: Members with specific rights and obligations as stipulated under section VI. par. 2, in particular data holders or downstream users within the meaning of Article 3 No. 13 REACH Reg.

(3) Members Assembly: decision making body of the Consortium with general tasks consisting of a representative of each Regular Member. Annex 2 contains a list of the Representatives.

(4) Steering Committee: decision making body of the Consortium with responsibility to prepare the Joint Dossier as stipulated in section and which consists of one Regular Member of each Industry Sector. Annex 2 contains a list of the Representatives.

(5) Industry Sectors:

a) primary producers
b) secondary producers
c) particulate producers
d) semifinished producers
e) foundries.

(6) Lead Company: the Regular Member who is responsible to submit the Joint Dossier to the European Chemicals Agency (ECHA) on behalf of the Members of the Consortium pursuant to Article 11.1 REACH.

(7) Project Manager: natural or legal person responsible for daily management of the Consortium within the scope of his/her competences provided by the Steering Committee, hereby acting within the decisions of the Steering Committee.
(8) **Working Group**: Group of representatives of Members and - as the case may be - of external persons installed by the Steering Committee with specified supporting tasks, without decision-making power.

(9) **Task Force**: Group of representatives of Members and - as the case may be - of external persons installed by the Steering Committee or a Working Group with specified supporting tasks, without decision-making power.

(10) **Affiliate**: a corporation, which controls, is controlled by or is under common control with a Regular Member, with control meaning at least 50% of the voting rights directly or indirectly owned. Only the corporations listed in **Annex 3** are to be considered as Affiliates of Regular Members.

(11) **Only Representative**: Natural or legal person established in the European Community who is appointed by a Regular Member established outside the European Community according to Art. 8 REACH Reg. to fulfil as his only representative the obligations on importers pursuant to REACH Reg. Only the persons listed in **Annex 3** are to be considered as Only Representatives.

(12) **Core Data**: the following data to be submitted jointly by the Consortium pursuant to Article 11.1 subparagraph 2 REACH:

- classification and labelling of the substance pursuant to Annex VI Section 4 REACH;
- Study summaries derived from the application of Annexes VII to XI REACH;
- robust Study summaries derived from the application of Annexes VII to XI, if so required under Annex I REACH;
- testing proposals where required by the application of Annexes IX and X REACH.

(13) **Studies**: reports in written or electronic form on investigations, tests or other examinations (including those on vertebrate animals), which relate to intrinsic substance properties or to the exposure assessment and risk characterisation in the chemical safety report and as such are of relevance for registration pursuant to Article 10 REACH; these also include summaries and robust Study summaries of the reports.
(14) **Information**: Studies according to Section II.1 (12) of this Agreement and other test data and information made available to the Consortium by a Member under this Agreement as well as under a Preliminary Agreement or generated/determined by the Consortium for the purpose of this Agreement.

(15) **Joint Dossier**: dossier containing Core Data the chemical safety report and the guidance on safe use of the Substance to be submitted to the European Chemical Agency (ECHA).

(16) **Substance**: Magnesium with the specifications as defined in Annex 1.

(17) **SIEF**: Substance Information Exchange Forum as defined in Art. 29 REACH.

To the extent not otherwise defined herein, the definitions in Article 3 REACH shall apply to this Agreement.

2. **Purpose of the Consortium**

(1) The Members undertake to cooperate in order to comply with the requirements of REACH for Magnesium. In particular, they undertake to pursue jointly the following objectives:

   a) Development of Core Data for the Substance as specified in Section III of this Agreement fulfilling the requirements for a production/import-quantity of above 1.000 tonnes per year (Annexes VII - X of REACH Reg.).

   b) Preparation of the chemical safety report and the guidance on safe use of the Substance as specified in Section 4 of this Agreement.

   c) Filing the Joint Dossier by the Lead Company on behalf of those Regular Members which are under an obligation to register Magnesium, also on behalf of the Affiliates as well as for Only Representatives of those Regular Members, who will have been notified by them to the Steering Committee according to Section II.4 (3) of this Agreement.

   d) Exercising the rights to Studies in accordance with Section II.4 of this Agreement.
(2) The Joint Dossier shall be submitted to the European Chemicals Agency (ECHA) at the latest one month before the end of the registration deadline -which is 1 December 2010.

(3) The cooperation also applies to the evaluation phase for dossier evaluation pursuant to Title VI, Chapter 1 REACH Reg.

(4) Each Member remains responsible on its own to comply with REACH, inter alia to submit individually the own registration the Information specified in Art. 11 (1), subparagraph 3 REACH as well as to fulfil communication requirements to importers according to Art. 8 par. 3 REACH Reg. and in the “downstream” supply chain (Titles IV and V REACH).

(5) The Members recognize that any activities carried out under this Agreement have to be carried out in full compliance with applicable competition laws, in particular Articles 81 and 82 EC Treaty. The Members explicitly agree to observe the Code of Conduct attached as Annex 4 to the Agreement.

3. Confidentiality

(1) The Members undertake

   a) to treat all Information as confidential and not disclose it to third parties, unless legal disclosure requirements apply;

   b) only to use the Information for the purpose of this Agreement and, in particular, not to exploit it commercially;

   c) not to make the Information, directly or indirectly, the subject of any patent application or other intellectual property right; and

   d) make the Information available only to Members of the Steering Committee and those employees (including personnel of their Affiliates, as well as experts, other externs and trustees) who need to have access to such Information for the purpose of this Agreement and who are contractually or otherwise obliged to keep it confidential.

(2) The obligations according to Section II.3 (1) of this Agreement shall not apply to Information of which the receiving Member can prove, that such Information
a) was known to it on a non-confidential basis prior to receipt thereof;

b) was publicly known prior to receipt thereof;

c) became publicly known after receipt thereof without breach of this Agreement;

d) was disclosed to it by a third party which to the best of its knowledge was authorised to make such disclosure; or

e) was developed independently by it.

Specific Information shall not become exempt from the obligations according to Section II.3 (1) of this Agreement merely because it is embraced by general information within any of the exceptions according to Section II.3 (2) a) – e) above.

(3) Affiliates, Only Representatives as well as experts, other externs and trustees of one or all Member(s) are not regarded as third parties for the purpose of Section II.3 of this Agreement. The Members are responsible for the compliance with Section II.3. (1) – (2) of their Affiliates, Only Representatives and experts, other externs and trustees.

4. **Rights to Information**

(1) Studies made available in accordance with Section III.1 and in accordance with Section IV.2 (1) of this Agreement are owned by the Member who presented such Studies. However, the other Regular Members shall have for an indefinite period of time the limited, non-terminable and non transferable right to use the summaries or robust Study summaries of such Studies for registration and for authorisation of the Substance pursuant to REACH, and to refer to the full Study reports, provided that such Members share the cost of the Studies in accordance with the cost-key in Section V.2 (3) of this Agreement. Upon this payment the other Regular Members shall obtain a copy of the Study summary as well as the robust Study summary.

(2) The Regular Members shall have joint ownership to Studies generated by the Consortium pursuant to Section III.2 and pursuant to Section IV.2 (2) of this
Agreement, provided that the individual Members share the costs of the Studies in accordance with the cost-key in Section V.2 (3) of this Agreement and thus shall have for an indefinite period of time a limited, non-terminable and non-transferable right to use the Studies. They shall obtain a copy of the full Study report. The right of third parties to use such Studies within or even outside the scope of REACH may only be granted by the Steering Committee for a period of twelve (12) years after the first registration of the Substance.

(3) Affiliates and Only Representatives of a Regular Member - to the extent listed in Annex 3 - shall have for an indefinite period of time a non-transferable, royalty-free and non-terminable right to use those Studies covered by subparas. (1) and (2) for registration and authorisation pursuant to REACH, provided that their respective Regular Member shares the costs in accordance with the cost-key in Section V.2 (3) of this Agreement. In order to benefit from joint submission the Regular Member has to notify the names and addresses of its Affiliates and its Only Representatives to the Steering Committee in writing and at least thirty (30) days before submission of the Joint Dossier, in order to enable the Lead Company to include the names and addresses in the Joint Dossier as required in Annex VI Section 1.2 REACH. If no such notification is made, the Affiliates and the Only Representatives have a royalty free right to refer to the submitted Joint Dossier, especially the Studies indicated in para. (1) and (2), for REACH purposes. A “letter of access” (model in Annex 10 to this Agreement) for REACH purposes shall be issued by the Project Manager upon request. Upon request, the Project Manager shall also issue a “letter of access” or other necessary documents for the use of the Studies indicated in para. 2 by Affiliates for other purposes.

5. Organisation

(1) Neither this Agreement nor the cooperation contemplated herein shall constitute or be deemed to constitute a legal entity between the Members nor make a Member the agent or representative of another Member unless expressly stated otherwise. In external legal relations, the Consortium shall not be entitled to act; external legal relations shall be incurred jointly by all Regular Members

(2) The Consortium shall have its office at the Europäische Forschungsgemeinschaft Magnesium (EFM), Gartenstraße 131, 73430 Aalen, Germany.
(3) The Members Assembly is the general decision making body of the Consortium. It shall consist of one representative of each Regular Member. The current representatives are listed in Annex 2. A Regular Member is allowed to replace its representative at any time by notification in writing to the Members Assembly.

The Members Assembly is responsible for and decides on all general matters regarding the consortium, in particular:

- Decisions on funding, scope and matters of policy;
- Approval of the Core Data to be submitted jointly to ECHA by the Lead Company;
- Approval of the chemical safety report and the guidance on safe use of the Substance;
- Replacement of members of the Steering Committee in accordance with the provisions stipulated under subpara. (5) below;
- Supervision of the Steering Committee;
- Decision regarding access of new Regular or Associate Members or regarding provision of other rights to third parties;
- Decision on the exclusion of a Member.

The Members Assembly may delegate tasks to the Steering Committee. The Members Assembly may adopt rules of procedure.

The Members Assembly has the power of Amending this Agreement by mutual consent of all Regular Members and of Associate Members if they are concerned by the respective matter.

(4) Each Regular Member shall be entitled to one vote in the Members Assembly. Unless otherwise provided for in this Agreement or in Rules of Procedure adopted by the Members Assembly by a two-third majority, the Members Assembly shall decide by simple majority of the Regular Members. If the relevant majority of the Regular Members were absent during the vote, such decision(s) shall be taken by the relevant majority of the Regular Members present at the following meeting, (but only) if notice of this procedure was announced in the agenda for the
following meeting. Associate Members may participate in the meetings of the Members Assembly but shall have no voting rights.

(5) The Steering Committee shall consist of the representatives of one Regular Member per Industry Sector. The Steering Committee shall be headed by a chairman and a deputy chairman. The affiliation of current Regular Members to Industry Sectors as well as current Members of the Steering Committee, their representatives, the chairman and the deputy chairman are listed in Annex 2. Members of the Steering Committee may be replaced by the Members Assembly, by a decision adopted by a simple majority of the Regular Members as well as of a simple majority if the Regular Members belonging to the Industry Sector concerned. The Chairman and the deputy chairman may be replaced by the Steering Committee by a simple majority. A Regular Member may replace its representative at any time on notification in writing to the Chairman.

Each representative shall be entitled to one vote in the Steering Committee. Unless otherwise provided for in this Agreement or in rules of procedure adopted by the Steering Committee by a two-third majority, the Steering Committee shall decide by simple majority of its members. If the relevant majority of the representatives were absent during the vote, such decision(s) shall be taken by the relevant majority of the representatives present at the following meeting, (but only) if notice of this procedure was announced in the agenda for the following meeting.

The Steering Committee shall have the powers necessary to ensure that the purpose of the Agreement as laid down in section II.2. is achieved. Within this framework and in accordance with the decisions of the Members Assembly the tasks of the Steering Committee may include, inter alia:

- Decisions on a working and finance plan and on management of financial resources of the Consortium, including budgeting, funding collection and accountancy;
- Coordination of and guidance for data collection concerning the Substance;
- Determination of financial value of studies provided by the members according to II. 1. (2);
- Decisions to carry out testing and to appoint test-institutes;
- Appointment of external consultants or other service providers to perform technical, scientific and administrative tasks;
- Development of the Core Data to be submitted jointly to ECHA;
- Development of the chemical safety report and the guidance on safe use of the Substance;
- Coordination and supervision of activities of the Project Manager and the Lead Company;
- Nomination and dismissal of the Project Manager; and
- Ensuring competition law compliance including appointment of third parties as trustee.

To achieve its tasks the Steering Committee makes use of the assistance of the Project Manager. As far as external legal relations are necessary to carry out the tasks pursuant to the decisions of the Steering Committee the chairman of the Steering Committee and the deputy chairman together are entitled to act on behalf of all Regular Members. The Members may issue a written proxy.

The Steering Committee is entitled to establish *Working Groups* as well as *Task Forces* without decision-making powers for support in specified tasks, and such bodies may consist of representatives of Members and of external persons, as decided by the Steering Committee from time to time.

The Steering Committee may set up its rules of procedure.

(6) A Member shall be excluded from voting in the Members Assembly or in the Steering Committee in the event of a conflict of interest as well as in matters which do not affect such Member (e.g. voting on tests not required for registration of the Member in question).

(7) The Lead Company shall be responsible to submit the Joint Dossier to ECHA. Furthermore, the Lead Company shall represent the other Members in the SIEF. The Members may issue a written proxy. They may make use of the options laid down in Article 4 REACH in order to prevent disclosure of their identity in the SIEF. The Lead Company is responsible for observance and assertion of the
rights and obligations of the Members pursuant to this Agreement and to the
Steering Committee’s decisions in the SIEF.

The Lead Company is listed in Annex 2.

(8) The Project Manager shall be responsible for daily management of the
Consortium in accordance with the Decisions of the Steering Committee and for
implementation of the decisions of the Steering Committee. The Project Manager
shall observe the rules of confidentiality as stipulated for Members under section
II.3.

The tasks of the Project Manager shall be in particular:

- Carrying out the management of the Consortium according to work plan and
time table,
- Carrying out the management of financial resources of the Consortium,
including budgeting, funding collection and accountancy;
- Computation of the allocation of expenses;
- Coordination of service providers, in particular administration/secretariat,
legal advisors and REACH consultants;
- Coordination of Working Groups and Task Forces;
- Preparing meetings and decisions of the Members Assembly as well as for
the Steering Committee; and
- Keeping minutes of meetings and decisions of Members Assembly and
Steering Committee.

The Project Manager shall be entitled to an adequate remuneration subject to
decision of the Steering committee.

The Project Manager and its current remuneration are determined in Annex 2.

(9) The Steering Committee respectively the Project Manager may use the services of
experts or other competent third parties for advice and consultation. The Steering
Committee shall procure that any such third party maintains confidentiality
concerning all information made available to them through Members for that purpose.

(10) When required for compliance with relevant competition laws, the Steering Committee shall decide on appointing an independent third party as trustee for the development and processing of Information for registration purposes. In such event, the trustee shall inform the Steering Committee in aggregated form concerning the information obtained, thereby observing confidentiality. The Members shall conclude a confidentiality agreement with the trustee prior to its assignment.

(11) The working language of the Consortium shall be English.

2. Working and Finance Plan

The Steering Committee shall prepare a working and finance plan (budget) concerning the planned activities until the submission of the Joint Dossier will have taken place, in particular concerning development of Information stated in Section III and in Section IV of this Agreement.

III.
Development of Core Data

1. Provision of Existing Information on Core Data

(1) As of the effective date of the Agreement, the Members are obliged to provide the Steering Committee with Studies available for them as well as with other relevant Information on Core Data concerning the Substance.

(2) The Steering Committee shall determine the financial value of the Studies made available for registration in accordance with subpara. (1) on the basis of the valuation rules in Annex 5. The Steering Committee may determine other adequate valuation rules for cases where the application of Annex 5 is not suitable.
2. Determination of New Test Data

When required under Annexes VII to XI REACH, the Steering Committee shall define the endpoints on which Studies are not yet available, taking into account the rules on “Waiving” in Annex XI REACH. The Steering Committee shall initiate completion of data according to Annexes VII to VIII REACH in compliance with the legal requirements of REACH on data sharing. The Steering Committee shall decide on testing proposals pursuant to Annexes IX and X REACH. In accordance with Article 10(a)(ix), such testing proposals shall be submitted together with the Joint Dossier. To the extent the testing proposals entail that the Agency or the EC Commission assign additional testing requirements to the Members, the Steering Committee shall act as follows: it shall coordinate any comments on, draft decisions of the Agency or the Commission or legal remedies against decisions of the Agency or the Commission and shall initiate the necessary tests.

3. Rights and obligations of the Members in a SIEF

Inter partes, the rights and obligations of the Members (according to III.1 and III.2 above) replace the rights and obligations on the sharing of data involving tests in Article 30 REACH.

4. Request for non-disclosure of information

By preparing the Joint Dossier, the Steering Committee shall determine (based on Members' proposals) the information which shall be subject to a request for nondisclosure on the Agency’s website according to Article 119 para. 2 REACH. The Lead Company shall file a respective request by submitting the Joint Dossier.

IV. Preparation of a Chemical Safety Report

1. Uses

Uses of the Substance to be assessed in the chemical safety report shall be listed in Annex 6.
2. Development and Provision of Information Concerning Chemical Safety Assessment

(1) In order to cover the uses specified in Annex 6 in the chemical safety report, the Members shall provide the Steering Committee all relevant Studies on uses, in particular with respect to exposure. The Steering Committee shall determine if and to what extent these Studies shall be refunded.

(2) The Steering Committee shall initiate completion of data necessary for the preparation of the chemical safety report.

3. Preparation of the Chemical Safety Report and Guidance on Safe Use

The Steering Committee, with the assistance of the Project Manager, is responsible for drafting and approving the chemical safety report as well as the guidance on safe use of the Substance.

V. Financial Rights and Obligations

1. Fees

Members shall pay an entrance fee as well as a membership fee subject to the date of entry in the Consortium as stipulated in Annex 7. The membership shall not be effective prior to receipt of payment.

2. Consortium Expenses

(1) The Consortium expenses include:

   a) Expenses to be refunded to the Members in accordance with the valuation rules pursuant to Section III.1 (2) and, if applicable, the expenses determined according to Section IV.2 (1) of this Agreement as reimbursement for existing Studies made available by them.

   b) Expenses for new Studies decided upon by the Steering Committee.
c) Current expenses incurred by the Consortium; in particular: remuneration for project management, expenses for a trustee or expenses for a professional expert and other service providers.

(2) Expenses incurred by Members when complying with their obligations under Section III and under Section IV of this Agreement shall not be considered as Consortium expenses.

(3) The Consortium expenses stated under (1) shall be balanced by the accrued entrance and membership fees. Expenses which are not covered by accrued fees shall be allocated to Members in accordance with the cost-key specified under Annex 8 and with the calculation factor determined in Annex 7.

3. Expense Allocation, Settlement Date, Advance Payments

(1) The Steering Committee with assistance of the Project Manager shall allocate the expenses incurred by the Consortium up to the end of a calendar year by 31 March of the following year.

(2) Advance payments may be determined by decision of the Steering Committee.

4. Payments performed

As far as payments on fees and on advance payments determined already have been performed by the Members the obligations stipulated in para. 1.- 3. above are fulfilled.

VI. Membership

1. Admission of New Regular Members

(1) By unanimous decision of the Members Assembly, the Consortium may admit new Regular Members to the extent that these Members are subject to registration requirements concerning the Substance. The Members Assembly shall determine the affiliation of a new Regular Member to the respective Industry Sector. Thereafter the Chairman of the Steering Committee on behalf of the Regular Members shall offer the admittance in writing to the applicant.
2. Admission of Associate Members

The Members Assembly may admit downstream users as Associate Members, if they are able to contribute information for the purpose of this Agreement.

3. Withdrawal

(1) A Member withdraws from the Consortium by termination or through exclusion from the Consortium.
(2) Termination is permissible in writing at the end of a calendar year with a notice period of 3 months if due to circumstances involving the Member, the Member is no longer subject to the registration requirements or in the event that other substantial reasons arise which make continued membership in the Consortium unreasonable. A Member may terminate his membership without cause upon written notice with a notice period of 6 months.

(3) The Members Assembly is entitled to exclude a Member by unanimous decision with immediate effect in the event of material breach of the Agreement.

(4) In the event of termination according to para. (2) or exclusion according to para. (3), payment obligations which have arisen up until that point in time must be met. The rights (related to information according to Section II.4 of this Agreement) which have been acquired up until the point in time of withdrawal shall persist, provided that the Member meets all related payment obligations. Obligations specified in Section II.3 of this Agreement shall persist for a period of twelve (12) years following the Member's initial registration of the Substance. Other Members’ rights of use as specified in Section II.4 of this Agreement respecting the Studies made available by the Member who has withdrawn continue to exist.

(5) Payments already made by the withdrawing Member will not be refunded.

4. Transfer of Membership

(1) A Regular Member shall be entitled to transfer its membership, including all rights and obligations, to a new Member subject to registration requirements respecting the Substance. Such a transfer requires the unanimous consent of the Members Assembly.

(2) The consent requirement pursuant to para. (1) does not apply to the transfer of membership to an Affiliate in the event of restructuring within a group of companies.

(3) The transfer of individual rights and obligations arising from membership is excluded; this also applies to financial claims.
5. **Liability of Members**

   (1) Members, including the Lead Company and the Project Manager, shall only be liable in case of gross negligence and wilful misconduct. Without prejudice to the preceding sentence, they shall not be liable for non-typical or unforeseeable damage nor for consequential damage and lost of profit. The limitation of liability as set out in sentence 2 of this para. does not apply in case of claims for death, personal injury or wilful misconduct. No warranty for acceptance of the Study by ECHA at the dossier evaluation (according to Title VI REACH) is given.

   (2) In accordance with the general rules, each Member shall be liable vis-à-vis third parties within the scope of his/her responsibility. The Members shall support any Member against whom a claim for liability has been made by a third party in defending against such claims to the extent possible and reasonable.

6. **Contractual Penalties**

   (1) If a Member violates the obligation to observe the rights of other Members pursuant to section II par. 4. (1) to (3) of the Agreement, such Member shall pay for each violation a contractual penalty in the amount of 50 % of the expenses for the development of such Information that is related to the violation to the other Member(s) whose Information is affected. If a Member violates the obligation to maintain confidentiality pursuant to section II par. 3.1 to 3 of the Agreement, this Member shall pay an appropriate contractual penalty to the other Member(s) whose Information is affected; the amount shall be defined by the Members Assembly after due assessment of the circumstances. The contractual penalty pursuant to sentence 1 and 2 shall not apply if evidence is provided by the Member that such violation was not caused by fault (including minor negligence) on his/her part. In the event of liability pursuant to section VI par. 5.(1) of the Agreement, the affected Member is entitled to claim damages from the member who is in violation of his contractual obligations, in addition to the contractual penalty according to sentence 1 and 2.

   (2) If a member otherwise negligently violates obligations related to material cooperation arising in this Agreement, this member shall pay an appropriate contractual penalty to the other members of the consortium – notwithstanding liability pursuant to section VI par. 5.1 of the Agreement. The amount shall be defined by the Members Assembly after due assessment of the circumstances.
VII.  
Duration and Dissolution of the Consortium

1. Effectiveness and Duration

(1) This Agreement shall become effective when it has been signed by at least 10 (ten) Regular Members.

(2) The Signature of a Member shall be effective and binding when the agreed closing procedure as described in Annex 11 is fulfilled.

(3) The Members agree that, by way of this closing procedure, the agreement is validly entered into by all parties that have sent back the signature page and that the Closing Procedure meets the criteria of any statutory or other provision according to which this Agreement has to be entered into in written form. They waive any rights resulting from a possible violation of these provisions.

(4) The Consortium shall exist for an indefinite period of time.

2. Dissolution of the Consortium

The Consortium may be dissolved by unanimous decision of the Members. A respective resolution shall be taken if the purpose as defined under Section II.2 of this Agreement has been fulfilled to its full extent.

3. Winding up of the Consortium

(1) In the event of dissolution of the Consortium, there shall be a winding up of said Consortium. Subject to para. (2) and (3) all rights and obligations of Members among each other and in relation to third parties resulting from this Agreement shall be finally settled.

(2) Section II.4 of this Agreement shall survive the dissolution of the Consortium with the following modification: Section II.4 (2), third sentence, shall be performed by a trustee who shall act instead of the Steering Committee. The trustee shall distribute any compensation equally among the Members owning the respective Study.
(3) With regard to Studies, the obligations specified in Section II.3 of this Agreement shall survive for a period of twelve (12) years following the initial submission to ECHA of that Study by a Member. With regard to all other Information, the obligation specified in Section 2.3 of this Agreement shall survive for a period of three (3) years after dissolution.

VIII.
Final Provisions

1. Exclusivity of and Amendments to the Agreement

   (1) The legal relationships of Members with respect to this Consortium shall be governed exclusively by this Agreement. Any other arrangements do not exist or are ineffective.

   (2) Amendments to this Agreement must be in written form to be effective.

2. Annexes

   (1) Regarding Annex 2 Regular Members shall notify in writing the necessary information to be filled in to the Steering Committee within one month after effectiveness of a signature according to Section VII. para. 1. (2) or after arrival of the written declaration according to Section VI. para. 1. (2). The Steering Committee shall complete respectively amend Annex 2 within one month after notification. The Chairman of the Steering Committee shall provide a copy of the actual Annex 2 to all Regular Members.

   (2) Regarding Annex 3 Regular Members may notify their Affiliates or their Only Representatives according to the requirements as stipulated in para. 1. (3) or (4) in writing to the Steering Committee. The Steering Committee shall fill in resp. amend Annex 3 within one month after the notification. The Chairman of the Steering Committee shall provide a copy of the actual Annex 3 to all Regular Members.
3. **Applicable Law and Place of Jurisdiction Arbitration**

   (1) This Agreement is subject to the laws of Germany without giving effect to any rules on conflict of laws.

   (2) In case of a dispute arising out of this Agreement, the parties to the dispute shall first attempt (in good faith) to reach an amicable settlement. Should such amicable settlement fail, the dispute shall be definitely decided in accordance with the rules of conciliation and arbitration of the International Chamber of Commerce in Paris. The award shall be binding on the parties. The arbitral tribunal shall consist of three arbitrators: each party shall designate one arbitrator; and these two arbitrators shall then designate the third arbitrator, who shall act as chairperson; the chairperson shall have a university degree in law and shall have been a practicing lawyer for at least five years. If a party fails to appoint an arbitrator within 21 days of the date the first party notified that it has appointed its arbitrator, such arbitrator shall be appointed, following application by either party, by the International Chamber of Commerce Executive Board. The cost of arbitration and any out-of-pocket expenses shall be distributed as decided by the arbitrators in accordance with the outcome of arbitration. The Arbitration shall take place in Paris. The language of the arbitration proceedings shall be English.

4. **Severability**

   (1) If a provision of this Agreement is found to be unclear or incomplete, an interpretation that best approximates the intent of the Members as expressed in this Agreement shall apply.

   (2) If a provision is invalid, this does not affect the validity of the other provisions. It is deemed to be agreed upon that an admissible provision which best approximates the intent of the Members replaces the invalid provision; accordingly, the Members agree to make a respective written amendment to the Agreement without any delay.

5. **Copies of the Agreement**

This Agreement has been made out in one copy for each Member.
**ALMAMET GmbH,**
represented by Barbara Buchner,
Gewerbestraße 5a, 83404 Ainring, Germany

________________________________________________________________________

Authorized signature       Place       Date


company stamp
ECKA Granulate GmbH & Co. KG,
represented by Dr. Georg Reif,
Kaiserstraße 30, 90763 Fürth, Germany
Meridian Technologies Inc.
represented by Daniel Bisi,
Via Glair, 11029 Verrés (Aosta), Italy

________________________________________________________
Authorized signature

________________________________________________________
Place

________________________________________________________
Date
MAGONTEC GmbH
Represented by Günter Rienaß,
Industriestraße 61, 46240 Bottrop, Germany

Authorized signature  Place  Date
Zitzmann Druckguss GmbH
represented by Johan Westman,
Industriestraße 2, 96342 Stockheim, Germany

Authorized signature

Place

Date
Dead Sea Magnesium Ltd.
represented by Nir Moscovitch,
POB 1195, 8411 Beer-sheva, Israel

Authorized signature ____________________ Place ______________ Date ______________

(Company stamp)
Magnesium Elektron Ltd.
represented by Dr. Timothy Wilks,
PO Box 23, Rake Lane, Swinton,
M27 8DD Manchester, United Kingdom

Authorized signature  Place  Date
Timminco Corporation
represented by Oliver Haun,
3595 Moline Street
Aurora, Colorado 80010, USA

Authorized signature       Place       Date
Elkem AS
represented by Robin Ephithite,
Hoffsveien 65 B, 0303-Oslo, P.O.Box 5211,
Majorstuen, Norway

Authorized signature

Place

Date
RIMA INDUSTRIAL S/A
represented by Jose Carlos Spinola,
Anel Rodoviário km 4,5, 30622-910 Belo Horizonte,
Brazil

[Signature]

Authorized signature  Place  Date

[Company stamp]
Quay Magnesium Ltd.
represented by Ritchie Lees,
3 Spring Street, 2000 Sydney, Australia

Authorized signature  Place  Date
Husqvarna AB
represented by Håkan Herbertsson,
Drottninggatan 2, 56182 Jönköping-Huskvarna, Sweden

Authorized signature

Place

Date
SKW Stahl Metallurgie GmbH
represented by Hery Rakotobe,
Fabrikstraße 6, 84579 Unterneukirchen, Germany

__________________________  __________________________  ________________
Authorized signature       Place                           Date
DEUMU Deutsche Erz- und Metall-Union GmbH represented by Swetlana Flentje, Gerhard-Lucas-Meyer-Straße 3-5, 31226 Peine, Germany

Authorized signature  Place  Date
WIMEX Handelsgesellschaft mbH
represented by Helmut Unfried,
Theresiengasse 67, 1180 Wien, Austria

Authorized signature  Place  Date
CMC Cometals
2050 Center Avenue, Suite 250 Fort Lee, New Jersey 07024, USA,
Division: CMC COMETALS EUROPE
represented by Tom van Houts,
Krijgsbaan 113 a, 9140 Temse, Belgium

______________________________  ______________________  ________________
Authorized signature          Place                              Date
Aleris Europe
represented by Franz-Rudolf Brenk,
Victor-von-Bruns-Straße 19, 8212 Neuhausen am Rheinland, Switzerland
TAKATA-PETRI AG
represented by André Sander,
Bahnweg 1, 63743 Aschaffenburg, Germany

Annexes 1 – 11a
Annex 1:
Substance Specification

EINECS Name: Magnesium
IUPAC Nomenclature: Mg
EINECS No.: 231-104-6
CAS No.: 7439-95-4
Molecular Formula: Mg
## Annex 2:
### Names and Addresses

1. **Information on Regular Members**

<table>
<thead>
<tr>
<th>No.</th>
<th>Regular Member</th>
<th>Affiliation to Tonnage Band (Art. 23, REACH Reg.)</th>
<th>Affiliation to Industry Sector</th>
<th>Representative (Name, address, contact dates)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

2. **Industry Sectors and assigned Members**

<table>
<thead>
<tr>
<th>No.</th>
<th>Industry sector</th>
<th>Affiliating Regular Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Primary Producer</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Secondary Producer</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Particulate Producer</td>
<td></td>
</tr>
</tbody>
</table>
### 3. Members and Representative of Members in the Steering Committee

<table>
<thead>
<tr>
<th>№</th>
<th>Name of MaREC SC - member</th>
<th>Company represented</th>
<th>Sector represented</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Nir Moscovitch</td>
<td>DEAD SEA Magnesium Ltd.</td>
<td>Primary producer</td>
</tr>
<tr>
<td></td>
<td>Tel.: +972 8 6282422</td>
<td>POB 1195 8411 Beer-sheva Israel</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fax: +972 8 6282428</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mail: <a href="mailto:NirM@dsmag.co.il">NirM@dsmag.co.il</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Georg Reif</td>
<td>ECKA Granulate GmbH &amp; Co. KG</td>
<td>Particulate producer</td>
</tr>
<tr>
<td></td>
<td>Tel.: +49 9152 9211820</td>
<td>Kaiserstr. 30 D-90763 Fürth</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fax: +49 9152 9211829</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mail: <a href="mailto:g.reif@ecka-granules.com">g.reif@ecka-granules.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Tim Wilks</td>
<td>Magnesium Elektron Ltd.</td>
<td>Secondary producer</td>
</tr>
<tr>
<td></td>
<td>Tel.: +44 161 9111264</td>
<td>PO Box 23, Rake Lane Swinton, Manchester M27 8DD, UK</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fax: +44 161 9111020</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mail: <a href="mailto:Tim.Wilks@magnesium-elektron.com">Tim.Wilks@magnesium-elektron.com</a></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Above listed members of the Steering Committee and Chair persons have been nominated and agreed upon by the MaREC full assembly at the meeting held in Aalen on 20.June 2007.

4. Lead Company

ECKA Granulate GmbH & Co. KG
Kaiserstr. 30; D-90763 Fürth

5. Project Manager

ECKA Granulate GmbH & Co. KG
Kaiserstr. 30, D-90763 Fürth;

Current Remuneration: 100,00 €/h on the basis of 20 h/week plus VAT (currently 19 %);

Reimbursement of expenses, including but not limited to travel expenses on proof.
Annex 3:
Affiliates and Only Representatives of the Regular Members

<table>
<thead>
<tr>
<th>Regular Member</th>
<th>Affiliate (Name, Address, Contact Person)</th>
<th>Only Representative (Name, Address, Contact Person)</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</table>

*Annex 3 to be filled in by Steering Committee on notification or Regular Members*
Annex 4:  
Code of Conduct

I.  
The Members shall not make any agreements concerning coordination of conduct which restrict or affect competition within the meaning of Article 81 EC Treaty and shall observe the prohibition of abusing a dominant market position pursuant to Article 82 EC Treaty:

Article 81 EC Treaty  
[Prohibition of agreements and practices distorting competition]

1. The following shall be prohibited and is incompatible with the common market: all agreements between undertakings, decisions of 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 para. (1) may, however, be declared inapplicable in the case of:

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

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

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

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

**Article 82 EC Treaty**

[Prohibition of abuse of a dominant position within the common market]

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 Members shall act in compliance with the following checklist:
<table>
<thead>
<tr>
<th><strong>DO</strong></th>
<th><strong>DON'T</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Application of competition law</strong></td>
<td>Do not assume that conflicts with competition law are excluded simply by the fact that the Consortium complies with the provisions of the REACH.</td>
</tr>
<tr>
<td>Articles 81 and 82 EC Treaty may be applicable to the foundation and activities of a Consortium.</td>
<td></td>
</tr>
<tr>
<td><strong>Consultation in Matters of Competition Law</strong></td>
<td></td>
</tr>
<tr>
<td>An in-house legal expert or the company compliance officer or an external legal counsel should be consulted whenever there are uncertainties relating to compliance with competition law.</td>
<td>Do not assume that the Code of Conduct deals with all competition law issues exhaustively. Essentially, compliance with Articles 81 and 82 EC Treaty can be determined only on the basis of market impact in each individual case. The Code may therefore be regarded only as a source of general conduct recommendations.</td>
</tr>
<tr>
<td>All Consortium meetings/discussions which are not in compliance with the Code of Conduct shall be stopped until a legal expert is involved.</td>
<td></td>
</tr>
<tr>
<td><strong>Activities of the Consortium</strong></td>
<td>Pursuant to Articles 81 and 82 EC Treaty the following activities are prohibited within the scope of the Consortium:</td>
</tr>
<tr>
<td>Cooperation within the scope of the Consortium should be restricted to the initially defined goals and purposes of the cooperation.</td>
<td>- Coming to arrangements on prices, markets and customers (see Article 81 para. 1 (a) to (e) EC Treaty);</td>
</tr>
<tr>
<td></td>
<td>- Joint boycotting of other companies;</td>
</tr>
<tr>
<td></td>
<td>- Unjustified unequal treatment of trade partners;</td>
</tr>
<tr>
<td></td>
<td>- The abusive exploitation of a dominant market position.</td>
</tr>
<tr>
<td><strong>Exchange of Confidential Information</strong></td>
<td>The exchange of confidential information concerning market behaviour is inadmissible, specifically as it relates to</td>
</tr>
<tr>
<td>A trustee may be involved for the exchange of confidential information, if required.</td>
<td></td>
</tr>
</tbody>
</table>
- production capacities,
- production or sales volumes,
- import volumes,
- market shares,
- price policy,
- distribution and marketing terms,
- marketing strategies,
- information regarding supplier relationships.

**Documentation on Cooperation**

Minutes of all meetings of the Consortium shall be kept, which detail the subject of the meeting.

The contents of the minutes shall be reviewed by an in-house legal expert or the company compliance officer prior to sending them to all participants of the Consortium.

All meetings which are not in compliance with the Code of Conduct shall be stopped until a legal expert is involved.
Annex 5: Valuation Rules

1. General
   a) The REACH registration of a substance requires Studies on physico-chemical, ecotoxicological and toxicological properties, as well as Studies on human and environmental exposure.
   b) In keeping with the Consortium Agreement, each Consortium Member is obliged to contribute all Studies, test data and other Information needed for registration according to REACH and to make such Information available to other Consortium Members, usually against compensation of costs.
   c) The following rules apply for the valuation of the Studies, test data and other Information (i) contributed by Consortium Members to the Consortium or (ii) generated or established by the Consortium, which together with the aforementioned Information are made available to later Members.
   d) The rules also apply if, within the framework of SIEF, the Steering Committee awards third parties with usage rights to Studies, test data and/or other Information contributed to the Consortium by individual Members, or generated or established by the Consortium within the scope of the present Agreement.
   e) The aforementioned reports are initially evaluated with respect to their scientific value for registration pursuant to REACH. In a second step, their financial value is calculated through the use of various mark-ups and deductions.
   f) The object of the valuation is to ensure that adequate compensation is paid to the report owner for the provision of preliminary services and that the recipients’ requirements for a high quality report are satisfied.

2. Scientific Evaluation
   a) For reports which are contributed by individual Members the supplier provides the Consortium with summaries in the form of an IUCLID data set and a robust summary. The robust summary may also be integrated into the IUCLID data set.
b) The quality of the reports is determined by the Steering Committee (or by experts commissioned by it) in accordance with the Klimisch et al\textsuperscript{1} method by classifying the report into one of the following categories:

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

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

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

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

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

f) If the documents (IUCLID data record and/or robust summary) submitted by a party supplying a report are not in conformity with the state of the art or the

\textsuperscript{1} Klimisch/Andreae/Tillmann, A systematic approach for evaluating the quality of experimental toxicological and eco-toxicological data, Regulatory Toxicology and Pharmacology 25 (1997), pp. 1–5.
requirements of the present Valuation Rules, the Steering Committee may demand up to two subsequent improvements.

g) If serious uncertainties or reasonable cause for doubt continue to exist despite the subsequent improvements, the supplier must provide the experts commissioned for the valuation with the original Study report and (if relevant) the accompanying raw data in an appropriate form. If the supplier does not meet this requirement, the report is classified under category (4) as “not assignable”.

3. Financial Valuation

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

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

i) preliminary testing for determining test concentrations

ii) Substance testing according to the standard protocol

iii) development of suitable analytical methods

iv) supplementary analyses
   (1) Substance characterization
   (2) stability in test medium
   (3) concentration in test medium

v) administrative expenses
   (1) processing and professional support by the commissioning party
   (2) travel expenses
   (3) archival of the test Substance and raw data
   (4) preparation of IUCLID data set and robust summary.
The calculation only includes expenses which are verifiably documented or (if such documentation is not available) which can be justified with sufficient plausibility.

c) The expenses for preliminary testing and Substance testing according to the standard protocol are calculated as the mathematical average of the prices charged by the following three European testing institutes according to their price lists:

i) Testing Institute A [determined by the Consortium Members]
ii) Testing Institute B [determined by the Consortium Members]
iii) Testing Institute C [determined by the Consortium Members].

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

d) In cases of testing for inherent Substance properties, the limitation (2) “reliable with restriction” arises mostly from the fact that the Study was conducted at a date prior to the introduction of the GLP standards. The deduction/calculation is determined from the difference presented in the price lists of institutes (or is to be inquired into there).

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

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

i) development of Study concept
ii) exploratory Studies
iii) performance of the Study
iv) analyses
v) expenses for further contractors
vi) administrative costs (fixed sum).
The individual positions are to be presented and justified with sufficient plausibility.

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

i) brief description of the procedure or method, including the limit of detection

ii) estimated costs for the development or provision 2 of the procedure or method

iii) costs per analysis

iv) number of analyses performed.

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

h) A fixed surcharge of 15 %3 of the sum total of experimental costs (Substance testing and analysis) is charged for administrative expenses (processing and professional support by the commissioning party, travel expenses, archival of the test Substance and raw data, preparation of IUCLID data set and robust summary). In the case of significant amounts in excess of the above surcharge, the expenses are to be substantiated and documented individually.

i) The decision to conduct a Study involves the risk that the Study results could adversely affect or prevent future Substance marketing; hence, the individual Member contributing a report to the Consortium exposed himself/herself to the risk that the investments could result in a Study of minor (or no) benefit. The other Members are not exposed to this risk since they already know the Study result. Therefore, the contributing Member is granted a fixed surcharge of 30 %4 of experimental costs.

---

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

3 The Guidance on data sharing issued by the ECHA in September 2007 establishes a surcharge of 3 to 20 % depending on the value of the Study. The percentage declines if the value of the Study rises. The surcharge laid down in par. 3 (h) of this Annex could therefore also be formulated with the same flexibility (ranging from 2 to 30 %).

4 In the Guidance on data sharing issued by the ECHA in September 2007 this surcharge (“risk factor”) of 10 to 30 % is considered as justified for Studies of higher value according to Annexes IX and X REACH. The surcharge laid down in par. 3 (i) of this Annex could therefore also be formulated with the same flexibility (ranging from 10 to 30 %).
j) The current value of a given report is comprised of the experimental and administrative expenses, as well as the risk premium specified above.

4. Example: Determination of Scientific and Financial Value of 2 Reports (Current Value)

a) Preliminary note:

All incoming data used in this example were selected at random and do not necessarily reflect any realistic situations and current costs.

b) Substance testing

<table>
<thead>
<tr>
<th></th>
<th>Report 1</th>
<th>Report 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner</td>
<td>Member A</td>
<td>Member B</td>
</tr>
<tr>
<td>Year of testing</td>
<td>2001</td>
<td>1984</td>
</tr>
<tr>
<td>Method</td>
<td>OECD Guideline xyz</td>
<td>similar to OECD Guideline xyz</td>
</tr>
<tr>
<td>GLP</td>
<td>yes</td>
<td>No</td>
</tr>
<tr>
<td>Analysis of test</td>
<td>pharmaceutical grade 99.9 %</td>
<td>unknown, presumably &gt;99 %</td>
</tr>
<tr>
<td>Substance</td>
<td>yes</td>
<td>unknown, reliably yes</td>
</tr>
<tr>
<td>Stability</td>
<td>yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Concentration</td>
<td>yes</td>
<td>Yes</td>
</tr>
<tr>
<td>monitoring</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reliability</td>
<td>(1) reliable without restriction</td>
<td>(2) reliable with restrictions</td>
</tr>
</tbody>
</table>
Comments | Study conducted in accordance with OECD, EC and EPA test guidelines and in accordance with GLP. | Several details of test conditions are not given, e.g. sex, age or body weight of the test animals, housing conditions etc. However, the Study is acceptable since the general conduct of the Study is acceptable and since a detailed description of the observations is provided in the report.

c) Analyses

| Test Substance | standard | standard |
| Stability | standard | standard |

Concentration monitoring

| Method | literature | literature |
| Development | none | None |

Provision

| Working days | 10 | 8 |
| Per diem rate | € 600 | € 600 |
| Analysis costs | € 100 per analysis | € 100 per analysis |
| Number of analyses | 60 | 50 |

d) Determination of the current value of the reports
<table>
<thead>
<tr>
<th>Type of expense/surcharge/deduction</th>
<th>Report 1</th>
<th>Report 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary test to determine concentration</td>
<td>€ 35,000</td>
<td>€ 35,000</td>
</tr>
<tr>
<td>Test per standard protocol</td>
<td>€ 100,000</td>
<td>€ 100,000</td>
</tr>
<tr>
<td>Without GLP</td>
<td>0</td>
<td>€ - 20,000</td>
</tr>
<tr>
<td>Other deficiencies</td>
<td>0</td>
<td>€ - 10,000</td>
</tr>
<tr>
<td>Costs of Substance testing</td>
<td>€ 135,000</td>
<td>€ 105,000</td>
</tr>
<tr>
<td>Development of analytical procedure/method</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Provision of analytical procedure/method</td>
<td>€ 6,000</td>
<td>€ 4,800</td>
</tr>
<tr>
<td>Analysis of test Substance</td>
<td>€ 1,000</td>
<td>0</td>
</tr>
<tr>
<td>Stability</td>
<td>€ 500</td>
<td>0</td>
</tr>
<tr>
<td>Concentration monitoring (60/50 analyses at € 100)</td>
<td>€ 6,000</td>
<td>€ 5,000</td>
</tr>
<tr>
<td>Analysis costs</td>
<td>€ 13,500</td>
<td>€ 9,800</td>
</tr>
<tr>
<td>Experimental costs</td>
<td>€ 148,500</td>
<td>€ 114,800</td>
</tr>
<tr>
<td>Administrative costs (15 % of experimental costs)</td>
<td>€ 22,275</td>
<td>€ 17,220</td>
</tr>
<tr>
<td>Risk premium (30 % of experimental costs)</td>
<td>€ 44,550</td>
<td>€ 34,440</td>
</tr>
<tr>
<td>Total surcharges</td>
<td>€ 66,825</td>
<td>€ 51,660</td>
</tr>
<tr>
<td>Current report value</td>
<td>€ 215,325</td>
<td>€ 166,460</td>
</tr>
</tbody>
</table>
Annex 6:
Identified Uses to be treated in the Chemical Safety Report

To be set up on decision of the Steering Committee
Annex 7:  
Scheme of Entrance Fee and Membership Fee

<table>
<thead>
<tr>
<th>Year of entrance</th>
<th>Entrance fee (one time charge)</th>
<th>Membership fee (one time charge)</th>
<th>Calculation factor of share for accrued cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>2'000 €</td>
<td>5’000 €</td>
<td>1</td>
</tr>
<tr>
<td>2008</td>
<td>4’000 €</td>
<td>10’000 €</td>
<td>1</td>
</tr>
<tr>
<td>2009</td>
<td>6’000 €</td>
<td>15’000 €</td>
<td>1.25</td>
</tr>
<tr>
<td>2010</td>
<td>10’000 €</td>
<td>30’000 €</td>
<td>1.5</td>
</tr>
<tr>
<td>After 2010</td>
<td>20’000 €</td>
<td>60’000 €</td>
<td>1.5</td>
</tr>
</tbody>
</table>
Annex 8:
Cost Allocation Key

1. General

   a) The cost allocation key serves the fair allocation of costs of Studies, test data and other information required for the REACH registration among the Members.

   b) Cost allocations can be calculated for all reports to end points for which information is required according to Annexes V to VIII REACH unless the Members agreed according to Section III.1 (2) of this Agreement in Annex 5 not to financially evaluate the Study and not to consider it for cost sharing.\(^5\)

   c) A Member can normally submit only one report per end point for a cost allocation. If the Member has several redundant reports at the same end point, they can be used for securing the key Study. For non-redundant reports, the Steering Committee shall make the decision whether and to what extent they can be included in the cost allocation.

   d) For Studies which are not required pursuant to Annex VII to X REACH or Studies which relate to issues for which no standard protocol is available, the Steering Committee shall decide whether or not such Studies are to be included in the Joint Dossier and in cost allocation.

2. Value of the Reports for Exclusive REACH Use

   a) The current value of a given report, determined in accordance with the rules of financial valuation of Studies, test data and other information (Annex 5 of this Agreement) shall serve as the measuring base for cost allocation and compensation.

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\(^5\) Experiences in former consortia have shown that Studies to end points available at low costs (representing the major part of the Studies required pursuant to Annexes VII and VIII) are submitted several times and are complementary in about equal shares. Thus, in practice, the parties might have an interest not to evaluate such Studies or to evaluate them in a simple way (i.e. somewhat superficially and, thus, not according to the elaborate valuation rules laid down in Annex 7) in order to minimize costs and administrative expenses. Accordingly, for those Studies, another option would be to (pursuant to Section 3.1 (2) of this Agreement) either abstain completely from evaluation and cost sharing or to apply a simple/flat assessed-value after mutual consent (see para. (2) a) of this Annex).
b) Other Regular Members should only be granted the right to use the reports for the purpose of Substance registration pursuant to REACH. Any usage of the reports for other purposes requires a separate bilateral agreement.

3. Cost Allocation among the Consortium Members

a) The Regular Members shall share the costs of the Studies, test data and other information that they are required to submit to satisfy their registration requirements within their tonnage bands specified in Annex 2 of the present Agreement according to the calculation factor stipulated in Annex 7.\textsuperscript{6} By written declaration vis-à-vis the Steering Committee Regular Members may share the costs concerning such Studies, test data and other information that they are not or not yet required to submit within their tonnage bands specified in Annex 2 of the present Agreement; in such case, they shall obtain the usage rights specified under No. II.4. of the present Agreement concerning such Studies, test data and other information.

b) If, after conclusion of the Agreement, Regular Members are required to submit appropriate additional information to the Agency in accordance with Article 12 REACH due to a change in the annual quantities manufactured or imported by them, they shall participate in cost if they use Studies, test data or other information which they have not co-financed before.

c) By contribution of a report of category (1) “reliable without restriction”, the prorated share of a Regular Member is considered as paid for the relevant end point. This applies to all Regular Members who contribute reports of equal value. The cost allocation is carried out by the remaining Regular Members.

d) If reports from category (1) “reliable without restriction” and (2) “reliable with restrictions” are available at the same end point, the report with the higher value shall used as a key Study for cost allocation calculation. The party supplying a report of a lesser value shall contribute to cost allocation according to the value difference, calculated for the Report according to Annex 5 of the Agreement.

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\textsuperscript{6} In Section 7 (Cost sharing) of the Guidance on data sharing issued by ECHA a “volume factor” for the tonnage band > 1000 t/a is seen as justified since it makes a difference whether e.g. 1 100 t/a or 50 000 t/a are produced. Thus, a respective quantity scale may be incorporated here. In such case, tonnage bands are recommended instead of precise declarations of production volumes. The latter would entail problems under cartel law which could afford the engagement of a trustee. This would complicate the work in a Consortium. Moreover, great imbalances between the regular Members concerning the benefited affiliates can be taken into consideration through an additional “corporate factor”.

e) If a report from category (1) “reliable without restriction” is not in existence, but only one or several reports from (2) “reliable with restrictions” are available, the current value of the report with the highest value shall be used as a key Study for the calculation of the cost allocation. The party supplying a report of a lesser value shall contribute to cost allocation according to the value difference, calculated for the Report according to Annex 5 of the Agreement.

f) In the case of Studies, test data and other information which are contributed by Associate Members, the Steering Committee shall decide whether they are needed or desired for the Joint Dossier. In the event of a positive decision, for purposes of cost allocation for that respective end point, the Associate Members shall be considered as Regular Members. The Associate Member shall receive the allocated compensation, but shall not pay any compensation to other Members and shall not receive any usage rights to the other reports. Any discrepancies from this procedure are to be agreed upon separately.

4. Compensation

a) The total compensation shall result from the total sum of contributions to be paid by participating Members in consideration of the performance via the submission of reports.

b) The total amount of the compensation shall be divided among the owners of the supplied reports according to the value determined for the respective report under Annex 5 of the present Agreement.

5. Entry of a New Regular Member (New Member)

a) Each new Member shall pay upon entry a Entrance Fee and Membership Fee as determined in Annex 7. Furthermore he shall pay the difference between the total of the Entrance Fee plus the Membership Fee and the share of the costs according to Section VI.1.2 of the Agreement and the following rules. The share shall cover the contribution to costs of Studies, test data and other information and shall take into account the initiative, commitment and any other preliminary performance provided by existing Members.

b) The financial contribution paid by new Members for the Studies, test data and other information shall be determined in accordance with the same criteria as that
of the other Consortium Members. In the cost allocation, the number of shares shall be raised in accordance with the calculation factor determined in Annex 7 for every new Member.

c) If a new Member enters the Consortium following the submission of the Joint Dossier, the Member shall pay the prorated share for all Studies, test data and other information contained in the Joint Dossier in accordance with the calculation factor determined in Annex 7. A cost allocation shall only be possible for the reports of the new Member which are subsequently requested by the authorities.

d) The maximum amount of the share of costs for a new Member may not exceed 50% of the value of the Studies, test data and other information (exclusively used for REACH purposes).

e) The share of costs paid by new Members replacing former Members shall be paid out to the former Members as a refund of the prorated costs of the previously smaller Consortium.

6. Third Parties (Non-Consortium Members)

a) Third parties subject to registration requirements but who are not (nor will be) Members, e.g. as in the case of rejection of an applicant as Member, may be (via the Steering Committee) integrated into the joint submission of Core Data and be granted the right (pursuant to Section VI. para. 1. (3) to (5) of this Agreement) to refer to Studies, test data and other information – e.g. waiving argumentations, reasoning of testing proposals – of the Consortium. Concerning data already registered, such rights shall be granted through issuance of a Letter of Access (model in Annex 10 of this Agreement).

b) The cost share for the joint submission of core data and for the provision of rights to use will be fixed by the Steering Committee analogously to the regulation in par. 5 of this Annex. The cost calculation factor shall be 1.5 since the registrant does not contribute to the work of the Consortium.

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7 This cost settlement is an approximation on the regulations for a Consortium Member joining after registration. It has to be assumed that it constitutes a just, transparent and non-discriminatory cost settlement (see Articles 27. 3 and 30.1 REACH). Furthermore, it is advantageous vis-à-vis the legally prescribed sharing of costs in equal shares in case no agreement on costs can be reached (Article 30.1 REACH).
c) The cost settlement obtained for granting rights to use the Studies generated by the Consortium according to Section III. 2 and according to Section IV.2 (2) of this Agreement shall be allocated at equal shares to the Members participating in cost allocation. For the rest, the owner of the Studies and information submitted shall be entitled to a pro-rata share of costs.

7. **Example of Cost Allocation and Compensation for Reports at End Point XY**

The starting figures cited in this example originate from the example in Annex 5 or, like the figures in the aforesaid Annex, were chosen at random and do not necessarily reflect any realistic situations and current costs.

a) **Assumptions for the calculation**

| Number of Members participating in cost allocation of reports at end point XY | 7 |
| Number of contributed reports at end point XY | 2 |

b) **Value of reports in the case of limitation of usage exclusively for REACH**

<table>
<thead>
<tr>
<th>Current value of reports according to Annex 5</th>
<th>Report 1</th>
<th>Report 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>€ 215,325</td>
<td>€ 166,460</td>
</tr>
<tr>
<td>Deduction for limitation of usage for REACH (30 % of current value) 8</td>
<td>-€ 64,598</td>
<td>-€ 49,938</td>
</tr>
<tr>
<td>Value of reports in case of limitation of usage exclusively for REACH</td>
<td>€ 150,727</td>
<td>€ 116,522</td>
</tr>
</tbody>
</table>

c) **Cost allocation**

| Value of key Study (exclusive usage for REACH) | € 150,727 |

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8 The reduction of 30 % is meant as example, see footnote 16.
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share per Member (150,727 / 7)</td>
<td>€ 21,532</td>
</tr>
<tr>
<td>Financial contribution of Member A (Owner of Report 1)</td>
<td>€ 0</td>
</tr>
<tr>
<td>Financial contribution of Member B (Owner of Report 2) according to the lower value: 21,532 x (150,727 – 116,522) / 150,727</td>
<td>€ 4,886</td>
</tr>
<tr>
<td>Financial contribution of other Members: 5 x 21,532</td>
<td>€ 107,660</td>
</tr>
</tbody>
</table>

### d) Compensation

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total amount of cost allocation (107,660 + 4,886)</td>
<td>€ 112,546</td>
</tr>
<tr>
<td>Share for Member A according to the higher value of Report 1</td>
<td>€ 63,475</td>
</tr>
<tr>
<td>[112,546 \times \frac{150,727}{150,727 + 116,522}]</td>
<td></td>
</tr>
<tr>
<td>Share of Member B according to lower value of Report 2</td>
<td>€ 49,071</td>
</tr>
<tr>
<td>[112,546 \times \frac{116,522}{150,727 + 116,522}]</td>
<td></td>
</tr>
</tbody>
</table>

### e) Entry of a new Member (without own Studies, test data and other information)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share per Member (previously): 150,727 / 7</td>
<td>€ 21,532</td>
</tr>
<tr>
<td>Share per Member (new): 150,727 / (7+1)</td>
<td>€ 18,841</td>
</tr>
<tr>
<td>Benefit premium (e. g. 60 % of the share of a Member (new) for entry one year after the formation of the Consortium)</td>
<td>€ 11,305</td>
</tr>
<tr>
<td>Maximum amount for a new Member (50 % of the value of the key Study)</td>
<td>€ 75,364</td>
</tr>
<tr>
<td>Share of costs for a new Member: 18,841 + 11,305</td>
<td>€ 30,146</td>
</tr>
</tbody>
</table>
Refund to previous Members due to the reduced share per Member: 18,841 / 7  
€ 2,692

Refund to previous Members: 11,305 / 7  
€ 1,615

<table>
<thead>
<tr>
<th>f) Right to use (Letter of Access)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share of costs for a Letter of Access: as under h), but 100 % advantage compensation.</td>
</tr>
</tbody>
</table>
Annex 9:
Declaration of Acceptance of a new Member

Address of the Party

Steering Committee of MaREC - Chairman
[currently: Dr. Georg Reif
c/o Ecka Granulate GmbH Co. KG;
Eckstraße 1, D - 91235 Velden,
Fax: 0049 (0)9152 9211-829]

Dear Dr. Reif

Agreement on Magnesium REACH Consortium

We refer to your offer for admittance on behalf of the members of MaREC of ________ (date) based on the decision of the MaREC-Members Assembly of ________ (date) with the attached MaREC Consortium Agreement in its current version.

We ___________________________ (name)
as authorised representative of _________________________ (name of the party)
declare that we accept the terms and conditions set out in the MaREC Consortium Agreement without any restriction.

With kind regards
Yours sincerely
Annex 10:
Letter of Access (Model)

[address of regulatory authority]

Letter of Access for the registration of the substance ……………………………. [insert the short name of the substance to be registered] under REACH

Dear Sirs,

The Consortium\(^9\) for the registration of the substance ……………………………. [insert the short name of the substance to be registered] under REACH (hereinafter referred to as “the Consortium”) agrees that the data, Studies, summaries, waiving argumentations, reasoning of testing proposals and/or assessments specified in detail below owned by Members and submitted by the Consortium in support of the registration under REACH of

Substance …………………………………. [insert the exact name of the substance to be registered]

(hereinafter collectively referred to as the “Dossier”),

may be referred

by Applicant: Company XYZ

in order to support Applicant’s registration of the above mentioned substance under REACH.

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

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

1. The right of referral only gives access to the Dossier of the substance for the registration as specified above.

\(^9\) At the date of issue of this Letter of Access the Members are: ……………………. [insert names of the Members].
2. The right of referral is solely granted in favour of Company XYZ and is not transferable to any other entity or person.

3. Company XYZ is not authorised to receive any copies of the Dossier nor is Company XYZ authorised to inspect or view the Dossier or any related specific document in whole or in part.\(^{10}\)

4. This Letter of Access shall under no circumstances be construed as granting Company XYZ any property rights whatsoever in the Dossier.

5. Nothing in this letter shall require The Consortium to file any additional data.

[Signature: Authorized Representative of the Consortium]

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\(^{10}\) Depending on the contract between the Consortium and Company XYZ, the latter may receive the results, summaries and/or robust summaries of Studies directly from the Consortium.
Annex 11: Closing Procedure

The Members agreed upon the following procedure for closing the Consortium Agreement at the MaREC full assembly meeting held in Frankfurt on 09 July 2008.

The Steering Committee shall send the final Version of the Agreement as pdf - document via E-Mail and an Letter of Acceptance as attached in Annex 11a at the same date to all potential Members.

The Members then shall have a time limit of 4 weeks to sign the Agreement and send the signature page together with the signed Letter of Acceptance back to the Steering Committee.

The time limit shall be met if the signed signature page is sent back to the Steering Committee by facsimile, provided that the original document arrives during the next two weeks after the set time limit has expired.
Annex 11a:
Letter of Acceptance

Address of the Party

Address of the MaREC Steering Committee
C/o Ecka

Dear Dr. Reif

Agreement on Magnesium REACH Consortium

Referring to your E-mail dated ________ (date) please find attached the signature page of the Agreement on Magnesium REACH Consortium signed by ________ (name) as authorised representative of __________ (name of the party).

We confirm that we want to be a Member of MaREC and agree to proceed for the Closing of this Agreement according to the decision in the MaREC full assembly meeting held in Frankfurt on 09.07.2008Section and according to VII. Para. 1. of the Agreement.

With kind regards
Yours sincerely