**AGREEMENT ON LETTER OF ACCESS FOR EU/GB MANUFACTURERS/IMPORTERS**

**for the registration of the Substances set out in Schedule 3 (the “Substances”) under the REACH Regulation 1907/2006/EC**

**THE LEAD REACH CONSORTIUM** constituted for the registration of the Substances under the REACH Regulation 1907/2006/EC (hereafter referred to as “the Consortium”);

**PARTIES:**

The Consortium represented by the International Lead Association with registered office located at Lynton House, 7-12 Tavistock Square, London, England, WC1H 9LT and having the registration number 00417640, acting as the Consortium’s Secretariat and duly authorised by the Consortium Members to sign this agreement on their behalf;

and

[**insert company name**]with registered office located at [**insert registered office full address**], having the registration number [**insert COMPANY registration number**] (hereafter referred to as “the Company”);

**WHEREAS:**

1. The Consortium has been approached by the Company with a request to have the Dossier made available to it for the purposes of the Company submitting a registration under the REACH Regulation.
2. The Consortium has given the Company the option of becoming a Member of the Consortium or merely obtaining the Information required by the Company for REACH compliance in the form of a letter of access. The Company has chosen not to become a member of the Consortium but has opted to enter into a letter of access with the Consortium on the terms and conditions hereinafter appearing.

**IT IS AGREED AS FOLLOWS:**

1. Subject to the Company paying the fees as set out below the Consortium shall grant a non-exclusive revocable licence to refer to the core data referred to in Schedule 1 to this Agreement which are in the legal possession of and submitted by the Consortium Members in support of the registration under the REACH Regulation of the Substances as indicated in Schedule 3 together with all other documents or material referred to in clause 3 hereto (hereinafter collectively referred to as the “Dossier”) to the Company provided that the licence to refer to such Dossier shall be restricted to the Company’s fulfilment of their REACH or CLP associated obligations (in the territories of the EU and United Kingdom).
2. Prior to the execution of this Agreement the Company shall have completed a Letter of Access declaration form (the “Declaration Form”) which is set out in Schedule 3 (and which forms part of this Agreement) in which it shall have indicated to which Substances it requires access and also (where required) the applicable tonnage bands that apply to it. The Company shall supply all such information requested of it by the Consortium for the purposes of verification of such declaration and any failure to do so shall be deemed a material breach of this Agreement. Upon acceptance by the Consortium of the Declaration Form the Consortium shall then invoice the Company for the appropriate fee which shall be paid within 28 days of presentation of the invoice. The Company warrants and represents that the information provided within the Declaration Form is accurate and complete and the Company in any event shall (subject to the Consortium’s right of adjustment) pay the fees as set out in Schedule 3.
3. Provided that this Agreement has been signed and the letter of access fee referred to in clause 3 of this Agreement has been duly paid, the Company shall receive from the Consortium:

* a letter of access (herein referred to as the “Letter of Access”).
* a token provided by the Lead Registrant for the purposes of a joint registration.
* a copy of the Chemical Safety Report, if applicable, submitted by the Lead Registrant including a list of identified uses for the Substance according to what is known by the Consortium and any associated exposure scenario and the Classification and Labelling for the Substance.

1. Without prejudice to any other rights the Consortium may have against the Company if it is established by the Consortium that the declaration made by the Company pursuant to this Agreement is incorrect to the extent that a higher fee should have been charged then the Consortium shall be at liberty to demand such additional charge that should have been paid by the Company had the declaration been correct and the Company shall pay such sum immediately upon such demand. In no circumstances shall the Company be entitled to a refund if its declaration is incorrect to the extent that it should have paid a lesser fee.
2. This Agreement shall not grant any property rights whatsoever of the Dossier or any part of it to the Company and the right of use is solely granted in favour of the Company and is not transferable to any other entity or person (including without limitation any other entity within the Company’s group of companies).
3. Nothing in this Agreement shall require the Consortium to provide any consultancy support with regard to the Dossier or Registration or to prepare, procure or provide any additional data or updates other than the Dossier provided that in the event that the Consortium procures or prepares any such additional information or updates the Company shall only be entitled to receive it upon paying such additional fee as shall be set by the Consortium from time to time. The Consortium shall also not assume any responsibility to file or submit any data or application to the European Chemicals Agency and/or any other competent authority on the Company’s behalf.
4. No amendments to or changes or modifications of this Agreement may be made except in writing signed by a duly authorised representative of each of the parties.
5. This Agreement does not give any Consortium membership rights to the Company or its Affiliates.
6. The Company undertakes that it shall comply and procure compliance with the confidentiality and non-disclosure obligations as attached in Schedule 2 to this agreement and shall indemnify the Consortium for any such breach on the basis set out in Schedule 2.
7. The Company confirms that by receiving the Chemical Safety Report submitted by the Lead Registrant it has been notified by the Consortium of the list of identified uses of the Substances for which it has subscribed and associated Exposure Scenarios and agrees with the stated Classification and Labelling and that the Consortium shall not be required to provide the Company with any information related to a process use or exposure not covered on such list. The Company also agrees that the provision of the information to be made pursuant to this Agreement shall represent a full discharge of the Consortium’s SIEF obligations (if any) owed to the Company.
8. Whilst the Consortium agrees to provide the Dossier to the Company the Consortium does not warrant or represent that the Dossier is complete or accurate or fit for any of the purposes for the Company fulfilling its obligations under REACH Regulation or otherwise. The Company acknowledges and agrees that it is the Company’s sole responsibility to ensure that the Dossier is fit for the purpose of its Registration for each Substance applicable to it or otherwise notwithstanding the Lead Registrants obligations to effect joint registration. For the avoidance of doubt the Company also accepts that the responsibility for and fulfillment of its obligations under REACH Regulation (including without limit Registration) and the assessment of the suitability of the Dossier for those purposes rests with it and nothing in this Agreement creates any such obligation upon the Consortium or the Lead Registrant and the Company accepts that neither the Consortium nor the Lead Registrant (who will submit the Dossier to the European Chemicals Agency or other relevant REACH competent authority) shall be liable to ensure the Company’s obligations (including without limit Registration) are met.
9. Except as otherwise stated in this Agreement (or in respect of fraud or personal injury) the Consortium hereby disclaims any and all conditions or warranties express or implied (by operation of law or otherwise) with respect to the Dossier, its contents and its fitness for purpose of the Company fulfilling its obligations under the REACH Regulation or otherwise.
10. In no event shall the Consortium be liable to the Company under contract, tort or otherwise for any;

(a) direct loss or damage; or

(b) special indirect or consequential loss or damage (including loss of profit saving goodwill or of business).

sustained by the Company in connection with this Agreement including without limit any third party loss of whatever nature suffered by the Company arising from or relating to the disclosure of the Dossier or fulfillment of the Company’s obligations under the REACH Regulation.

1. The Company shall indemnify and hold harmless the members of the Consortium against any and all costs claims, demands, losses or liabilities (including all professional fees) arising from any third party claim which may be threatened or claimed against the Consortium or Lead Registrant which arises or relates to the disclosure of the Dossier by the Consortium to the Company.
2. A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement provided that the Lead Registrant shall be entitled to rely upon the exclusions of liability as set out herein.
3. This Agreement is construed and interpreted in accordance with the laws of England and Wales and all disputes arising under or in connection with this Agreement shall be resolved within the exclusive jurisdiction of England and Wales.
4. It is acknowledged and accepted that if fees are paid later than 30th September 2010 then the Consortium may not be able to process the application in time for the Company to meet its obligations under the REACH Regulation.
5. Each undersigned party shall execute two (2) signature pages, retain one for its file and communicate the other to the other party.
6. Defined terms stated herein shall have the same meaning given to them in the REACH Regulation unless otherwise stated in this Agreement (including definitions set out in the Schedules which shall be deemed to form part of this Agreement).
7. The Company shall not assign any benefit under the Agreement without the consent in writing of the Consortium.
8. If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part but would be valid and enforceable if part of the wording were deleted the said provision shall be deemed to apply with such modifications as may be necessary to make it valid and enforceable and any such modification shall not affect the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected hereby.
9. Any notice required or permitted to be given by either party to the other under this Agreement shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified in writing pursuant to this provision to the party giving the notice.
10. A waiver of any right under this Agreement is only effective if it is in writing and signed by the waiving party, and it applies only to the person to whom the waiver is addressed and the circumstances for which it is given.
11. Subject to the other provisions in this Agreement, the Consortium’s total aggregate liability in tort, contract or otherwise (including negligence) however arising out of or in connection with this Agreement shall not exceed the total fees paid by the Company under this Agreement.
12. This Agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements representations or understandings between them and save in the event of fraud the Company shall have no right to rescind this Agreement and the Company’s sole remedy shall be for breach of warranty. For the avoidance of doubt the Company acknowledges that it does not rely on and shall have no remedy in respect of any statement representation warranty or undertaking (whether made negligently or innocently) except as expressly provided in this Agreement.
13. This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original but such counterparts or duplicates shall together constitute but one and the same Agreement.

The Schedules shall be deemed to form part of and shall be construed as one with the Agreement.

**Signed by International Lead Association for and on behalf of the members of the Lead Reach Consortium:**

By:   
 (Signature)

(Print Name)

TITLE:

(Position)

DATE:

**FOR THE COMPANY:**

By:   
 (Signature)

(Print Name)

TITLE:

(Position)

DATE:

**SCHEDULE 1**

**CORE DATA**

Core Data to be submitted jointly by registrants pursuant to REACH and which includes:

* + 1. classification and labelling of the Substance;
    2. summaries of information derived from the application of REACH Annexes VII to XI;
    3. study summaries derived from the application of REACH Annexes VII to XI, if so required under REACH Annex I;
    4. testing proposals where required by the application of REACH Annexes IX and X
    5. Chemical Safety Report (Part B), where applicable.

**Schedule 2**

**Non disclosure agreement**

IN CONSIDERATION OF CONFIDENTIAL INFORMATION BEING MADE AVAILABLE TO THE COMPANY, THE COMPANY AGREES AS FOLLOWS:

1. For purposes of this Schedule the following words shall have the following meanings:

“Associate Company” shall have the meaning given to an associate company in S.416 Income & Corporation Taxes Act 1988.

"Confidential Information" means the Dossier which is referred to in Schedule 1 and 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 Consortium 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 the Consortium Members are disclosing, exchanging or sharing under this Agreement or otherwise for the Purpose or otherwise at any time during the term hereof.

“Downstream User” shall have the same meaning as to the definition set out in the REACH Regulation.

“Group of Companies” shall mean any Company which is in the Company’s group and/or any of its Associate Companies.

“Only Representative” shall mean a person established in the Community appointed by a Non EU/ non UK Manufacturer/Importer to fulfill the obligations applicable to Importers under REACH as permitted by Article 8 of REACH.

“Purpose” means in respect of the Company its strict Registration requirements only as set out in the REACH Regulations.

1. The Company shall:
   1. hold all such Confidential Information confidential and secret;
   2. use such Confidential Information only for the Purpose in accordance with this Agreement or as otherwise directed by the Consortium;
   3. reproduce such Confidential Information only to the extent necessary for the Purpose;
   4. restrict disclosure of such Confidential Information to those of its directors, officers, employees, agents or representatives (to include the Company’s Only Representative, financial advisors, consultants and legal advisors) (collectively, "Representatives") with a need-to-know such information for the Purpose. The Company shall also be entitled to disclose Confidential Information to Downstream Users but only in order for the Company to be able to fulfill its obligations to Downstream Users in strict compliance with the REACH Regulations and in respect of disclosure to Downstream Users they shall only be entitled to disclose such information required for the supply of a Safety Data Sheet including Exposure Scenarios (as defined in REACH). For the avoidance of doubt other than as stated above the Company shall not be entitled to disclose any Confidential Information to any other person. The Company may not disclose any Confidential Information to any other member entity of its Group of Companies or any of that other member entity’s Representatives. The Company agrees to inform its Representatives of the confidential and/or proprietary nature of the Confidential Information, to make them aware of this Agreement, and to require them to comply with this Agreement; the Company nevertheless being responsible to the Consortium members for any breach of this Agreement by any of its Representatives and for the avoidance of doubt the Company shall be strictly liable for any breach of this Non-Disclosure Agreement by its Representative ;
   5. not disclose such Confidential Information to any third party without the prior written approval of the Consortium.
2. The foregoing restrictions on the disclosure and use of Confidential Information shall not apply to any information which is:
   1. at the time of disclosure to the Company, known to the Company free from restrictions on disclosure or use, which shall be evidenced by documentation in such Company 's possession; or
   2. publicly known or later made generally public, through no wrongful act of the Company; or
   3. developed by the Company independently from Confidential Information received by it under this Agreement; or
   4. 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 Company
   5. disclosed pursuant to an order of a court of competent jurisdiction; or
   6. approved for release in writing by the Consortium.
3. In the event that the Company fails to pay the agreed fee as stated in the Letter of Access or fails to comply in any respect with the terms of any Agreement upon which the Confidential Information has been disclosed then upon the Company receiving written notice from the Consortium the Company shall forthwith cease and desist from using the Confidential Information and forthwith shall take such action to return such Confidential Information to the Consortium or destroy, delete or otherwise deal with the Confidential Information as directed by the Consortium and within 7 days of receiving such written notice confirm to the Consortium that it has complied with its obligations under this clause 4.
4. No license to the Company under any trademark, patent, copyright or any other intellectual property right is either granted or implied by the disclosure of Confidential Information to the Company under this Agreement. None of the Confidential Information which may be disclosed or exchanged by the Consortium hereunder shall constitute any representation, warranty, assurance, guarantee or inducement by any Party to the receiving party of any kind and, in particular, with respect to the non-infringement of any trademarks, patents, copyrights or any other intellectual property rights or other rights of third parties.
5. This Agreement shall be valid and binding on the Company for a period of 20 (twenty) years after its execution by the Company, or any other period of time mutually agreed between the parties.
6. The Company acknowledges and agrees that damages would not be an adequate remedy for any breach by the Company or any of its Representatives of the provisions of this Agreement and that the Consortium shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Agreement by the Company or any of its Representatives and that no proof of special damages shall be necessary for the enforcement of this Agreement.
7. The Company hereby agrees to indemnify and keep indemnified the Consortium against any costs claims demands losses or liabilities whatsoever arising directly or indirectly out of any breach by the Company or any act or omission of any of its Representatives which would cause the Company to breach its obligations under this Agreement.
8. No failure by the Consortium in exercising any right, power or privilege hereunder shall constitute a waiver by it of any such right, power or privilege nor shall any single or partial exercise thereof preclude any further exercise of any such right power or privilege.

**Schedule 3**

**DECLARATION FORM**

The fee bands chargeable shall be as follows:

For legal entities registering for the manufacture or import into the European Union or Great Britain a tonnage of lead metal greater or equal to 1,000 tonnes per year and for whom the tonnage of lead manufactured or imported into the European Community, calculated as the average tonnage manufactured or imported over the period 2007-2009 is less than 10,000 tonnes per year a fee of €34,190.

For legal entities registering for the manufacture or import into the European Union or Great Britain a tonnage of a substance listed in Table 1 or Table 2 of Schedule 3 greater or equal to 10 tonnes per year and less than 1,000 tonnes per year a fee of €4800.

For legal entities registering for the manufacture or import into the European Union or Great Britain a tonnage of a substance listed in Table 1 or Table 2 of Schedule 3 greater or equal to 1 tonne per year and less than 10 tonnes per year a fee of €1200.

For legal entities registering for the manufacture or import into the European Union or Great Britain a tonnage of a substance listed in Table 1 or Table 2 of Schedule 3 as an Intermediate Substance a fee of €1,000.

For legal entities registering for the manufacture or import into the European Union or Great Britain a tonnage of substance listed in Table 4 of Schedule 3 as a transported isolated intermediate greater than 1,000 tonnes per year a fee of €5,000 plus the fee listed in Table 4.

For legal entities registering for the manufacture or import into the European Union or Great Britain a tonnage of a substance listed in Table 3 of Schedule 3 as a transported isolated intermediate less than 1,000 tonnes per year a fee of €3,000.

For legal entities registering for the manufacture or import into the European Union or Great Britain a tonnage of a substance listed in Table 3 of Schedule 3 as an on-site isolated intermediate greater than 1,000 tonnes per year a fee of €3,000.

For legal entities registering for the manufacture or import into the European Union or Great Britain a substance listed in Table 3 or Table 4 of Schedule 3, an additional fee to access the jointly submitted Chemical Safety Report (Part B) referred to in Article 10(b) of the REACH Regulation is payable where requested in the declaration (set out in Table 3) or otherwise set out in Table 4.

**Table 1**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Tick the boxes corresponding to the tonnage band and Substances  for which a Letter of Access is required** | | | | |
| **>10,000  tonnes per year  (fee on application)** | **1,000-10,000 tonnes per year**  **(€34,190)** | **10-1,000  tonnes per year**  **(€4800)** | **1-10  tonnes per year**  **(€1200)** | **Intermediate under strictly controlled conditions**  **(€1,000)** |
| **Lead metal (EC 231-100-4)** |  |  |  |  |  |

**Table 2**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Substance** | **EC Number** | **Tick the boxes corresponding to the  tonnage band and Substances  for which a Letter of Access is required** | | | |
| **>1,000  tonnes per year  (fee on application)** | **10-1,000 tonnes per year   (€4800)** | **1-10  tonnes per year   (€1200)** | **Intermediate under strictly controlled conditions**  **(€1,000)** |
| Lead Monoxide | 215-267-0 |  |  |  |  |
| Orange Lead or Lead Tetroxide | 215-235-6 |  |  |  |  |
| Phthalato(2-)]dioxotrilead | 273-688-5 |  |  |  |  |
| Lead Oxide Sulphate | 234-853-7 |  |  |  |  |
| Tetralead Trioxide Sulphate | 235-380-9 |  |  |  |  |
| Pentalead Tetraoxide Sulphate | 235-067-7 |  |  |  |  |
| Fatty acids, C16-C18, lead salts | 292-966-7 |  |  |  |  |
| Dioxobis(stearato)trilead | 235-702-8 |  |  |  |  |
| Trilead Dioxide Phosphonate | 235-252-2 |  |  |  |  |
| Sulfurous acid, Lead salt, Dibasic | 263-467-1 |  |  |  |  |
| Lead Dichloride | 231-845-5 |  |  |  |  |

**Table 3**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Substance** | **EC Number** | **Tick the boxes corresponding to the tonnage band and Substances for which a Letter of Access is required and to indicate if access to the Chemical Safety Report (Part B) referred to in REACH Article 10 (b) is required** | | | | |
| **>1,000  tonnes per year TRANSPORTED ISOLATED INTERMEDIATE UNDER STRICTLY CONTROLLED CONDITIONS  (See Table 4)** | **<1,000 tonnes per year TRANSPORTED ISOLATED INTERMEDIATE UNDER STRICTLY CONTROLLED CONDITIONS  (€3,000)** | **>1,000 tonnes per year ON-SITE ISOLATED INTERMEDIATE UNDER STRICTLY CONTROLLED CONDITIONS  (€3,000)** | **Additional fee to access** **Chemical Safety Report (Part B)** | |
| **(€)** | **Please tick** |
| Lead, Bullion | 308-011-5 |  |  |  | 813 |  |
| Matte, lead | 282-356-9 |  |  |  | 1300 |  |
| Speiss, Lead | 282-366-3 |  |  |  | 6500 |  |
| Slags, Lead smelting | 273-825-9 |  |  |  | 1857 |  |
| Flue dust, lead refining | 273-809-1 |  |  |  | 1300 |  |
| Lead dross | 273-796-2 |  |  |  | 1000 |  |
| Lead, dross, copper rich | 273-925-2 |  |  |  | 2167 |  |
| Lead dross antimony rich | 273-791-5 |  |  |  | 1857 |  |
| zinc, desilverising skims | 273-802-3 |  |  |  | 2600 |  |
| lead antimonial dross | 273-795-7 |  |  |  | 4333 |  |
| lead dross, bismuth rich | 273-792-0 |  |  |  | 4333 |  |
| waste, battery reprocessing | 305-445-7 |  |  |  | 1857 |  |
| residues, lead smelting waste water treatment | 305-424-2 | Not applicable |  | Not applicable | Not applicable | |
| Slimes + sludges, battery scrap antimony + lead -rich | 310-061-8 |  |  |  | Not applicable | |
| Lead alloy, base, Pb,Sn, dross | 273-701-4 |  |  |  | 4333 |  |
| Slags, lead reverbatory smelting | 273-800-2 |  |  |  | 6500 |  |

**Table 4**

Table 4 lists the substance-specific component of the Letter of Access fee for complex intermediates that are transported, isolated, manufactured/imported > 1,000tpy, and the additional fee for access to the Chemical Safety Report (Part B) referred to in Article 10 (b) of the REACH Regulation. The substance-specific and Chemical Safety Report (Part B) fees are payable per Substance and are in addition to a core fixed fee for such intermediates of €5,000 which is payable once irrespective of the number of such intermediates for which a letter of access is required.

|  |  |  |  |
| --- | --- | --- | --- |
| **Substance name** | **EC Number** | **Substance-specific fee**  **(€)** | **Additional fee to access** **Chemical Safety Report  (Part B)**  **(€)** |
| Lead, Bullion | 308-011-5 | 725 | 813 |
| Matte, lead | 282-356-9 | 1208 | 1300 |
| Speiss, Lead | 282-366-3 | 3500 | 6500 |
| Slags, Lead smelting | 273-825-9 | 2071 | 1857 |
| Flue dust, lead refining | 273-809-1 | 552 | 1300 |
| Lead dross | 273-796-2 | 805 | 1000 |
| Lead, dross, copper rich | 273-925-2 | 1812 | 2167 |
| Lead dross antimony rich | 273-791-5 | 1611 | 1857 |
| zinc, desilverising skims | 273-802-3 | 1312 | 2600 |
| lead antimonial dross | 273-795-7 | 1312 | 4333 |
| lead dross, bismuth rich | 273-792-0 | 1750 | 4333 |
| waste, battery reprocessing | 305-445-7 | 1050 | 1857 |
| residues, lead smelting waste water treatment | 305-424-2 | Not applicable | Not applicable |
| Slimes + sludges, battery scrap antimony + lead -rich | 310-061-8 | 2625 | Not applicable |
| Lead alloy, base, Pb,Sn, dross | 273-701-4 | 1500 | 4333 |
| Slags, lead reverbatory smelting | 273-800-2 | 3500 | 6500 |