

**XXX REACH Consortium**

**SECRECY AGREEMENT**

**("AGREEMENT")**

**Reference No.** (P-I---/ + date)

**between the members of the XXX REACH Consortium as set out in Annex 1  
(hereinafter referred to individually as "MEMBER" and collectively as "MEMBERS")**

**and**

**YYY, [insert name and address of YYY]**

**("YYY")**

The MEMBERS own valuable proprietary information relating to [redacted] chemical substances produced and/or imported and/or used in the European Union by the MEMBERS or their affiliates which is designated as confidential by the MEMBER providing it or which by virtue of its character or the circumstances or manner of its disclosure is evidently of a confidential nature, including but not limited to the operating rules resulting in the consortium agreement of the XXX REACH Consortium, any agreements signed by the MEMBERS or the Secretariat for the account of the MEMBERS as well as studies or other scientific, statistical, technical data or information and know-how relating to any chemical substances ("INFORMATION").

YYY desires to receive INFORMATION for the purpose of enabling YYY to evaluate it and determine its interest to join as a member the XXX REACH Consortium in order to comply with its obligations and duties under Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH"), hereinafter referred to as "PURPOSE".

Therefore YYY undertakes as follows:

1. The MEMBERS may disclose themselves or through third parties, such as but not limited to the secretariat of the XXX REACH Consortium provided it is entitled to do so, to YYY INFORMATION that they in their sole discretion deem appropriate to fulfill the PURPOSE. All INFORMATION shall be treated as confidential and not disclosed to any third party by YYY, whether it is disclosed in written, oral, electronic or any other form such as but not limited to observation. YYY shall not copy any documents

containing INFORMATION nor take any extracts from such documents without the prior written consent of all MEMBERS and then only on such terms as the MEMBERS stipulate.

2. All disclosures hereunder shall be completed within six (6) weeks from the date of signing of this AGREEMENT. YYY agrees to keep the INFORMATION provided by the MEMBERS themselves or through third parties secret and confidential for a period of twenty (20) years from the date of disclosure of the INFORMATION and to use the INFORMATION solely for the PURPOSE stated above. In no event during the period of confidentiality shall any disclosure of the INFORMATION be made to any third party without the prior written approval of all MEMBERS.

3. YYY shall have no confidentiality or use restriction regarding any INFORMATION which:

- (i) is or hereafter becomes, through no fault of YYY, part of the public domain by publication or otherwise,
- (ii) YYY can show was received by it from a third party as a matter of right without any restriction on disclosure,
- (iii) YYY can prove was in its possession at the time of disclosure by one or more of the MEMBERS and was not previously acquired directly or indirectly from one or more of the MEMBERS, or
- (iv) YYY can show was developed by its employees who did not have access or recourse to INFORMATION.

INFORMATION disclosed under this AGREEMENT shall not be deemed to be within the foregoing exceptions merely because such INFORMATION is embraced by more general INFORMATION in the public domain or in the possession of YYY. Neither will a combination of features be deemed within the foregoing exceptions merely because individual features are in the public domain or in YYY's possession, unless the combination itself is in the public domain or in YYY's possession.

4. Notwithstanding the provisions of Paragraphs 2 and 3, in the event YYY is reasonably required by law (except patent law) to disclose the INFORMATION pursuant to a governmental and/or judicial obligation or order YYY shall be permitted to do so and thereby not be in breach of this AGREEMENT provided that written notice of such requirement is promptly provided to the MEMBERS (where possible, of at least ten (10) days) prior to the disclosure to enable them to seek from a court a protective order relating to the disclosure of said INFORMATION.

In any event, in the case where YYY discloses INFORMATION under this Paragraph 4, it shall furnish only that portion of the INFORMATION that it is legally required to disclose.

5. In case of INFORMATION proprietary not to all MEMBERS but to one or more of the MEMBERS the obligations and duties of YYY regarding such INFORMATION are fully enforceable by those MEMBERS or MEMBER to whom the INFORMATION is proprietary.

6. In the event YYY acts as an only representative as defined in Article 8 REACH ("OR") YYY shall convincingly document its appointment as OR for a chemical substance covered by the XXX REACH Consortium and shall disclose the full identity of the legal entities that have appointed it as their OR (hereinafter referred to as "PRINCIPALS"). Such legal entities shall be listed in Annex 2 of this Agreement.

In the event YYY acts as duly appointed OR for a chemical substance covered by the XXX REACH Consortium YYY may disclose to the extent necessary for the PURPOSE INFORMATION to those of its PRINCIPALS which are bound in writing by confidentiality obligations, use restrictions and obligations at least as strict as those set out in this Agreement. Upon request of one or more of the MEMBERS YYY shall provide tangible and convincing proof regarding such obligations of its PRINCIPALS. YYY remains fully liable to the MEMBERS for disclosure or misuse of the INFORMATION by one or more of its PRINCIPALS.

7. Upon the MEMBERS' request YYY shall destroy or return or have destroyed or returned by its PRINCIPALS all documents containing INFORMATION or any copies thereof or extracts therefrom made by YYY or its PRINCIPALS, including documents, copies and extracts in electronic format and the like. YYY and its PRINCIPALS shall provide written confirmation of such destruction. However, in any event, YYY may retain while observing the secrecy obligations set out in this AGREEMENT one secured copy of the documents for record keeping purposes only.

8. Nothing in this AGREEMENT shall be construed as granting or obligating the MEMBERS to grant to YYY an express or implied license under any existing or future patent or other intellectual property law or ownership or use right for any INFORMATION or any invention, discovery or improvement as a result of the use of INFORMATION.

9. Subject as provided below, this Agreement shall be construed in accordance with and all disputes or differences arising in conjunction with this Agreement shall be governed by the laws of Germany, excluding its conflict of law provisions, and be subject to the courts of jurisdiction of the Party who would be the prospective defendant in the legal action on the issue. Nothing in this clause shall limit the right of the MEMBERS to take proceedings against YYY in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

10. YYY undertakes and warrants that it and its PRINCIPALS will not remove, obscure, amend or deface any confidentiality notice or notice of ownership or origin on or contained in the INFORMATION. YYY acknowledges that unless otherwise agreed in writing the MEMBERS do not accept any responsibility for and make no representation, express or implied, with respect to the accuracy or completeness of the INFORMATION except that at the time it is disclosed it is believed in good faith to be substantially accurate, fair and not misleading.

11. The provisions of paragraphs 1 to 10 shall survive termination of this AGREEMENT.

12. This AGREEMENT shall be effective as of the date it is signed by YYY and shall terminate twenty (20) years thereafter, unless it is extended by mutual written consent, or earlier terminated by the MEMBERS by giving at least thirty (30) days' prior written notice to YYY.

13. This AGREEMENT constitutes the entire agreement between the parties as to its subject matter. No representations have been made by either of the parties except as are specifically set forth herein. No rights or obligations other than those expressly recited herein are to be implied from this AGREEMENT.

Made in [YYY to insert place] on [YYY to insert date]

YYY

Represented by

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Name \_\_\_\_\_  
Print

Name \_\_\_\_\_  
Print

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Annex 1: Members of the XXX REACH consortium**

*Insert here a list with all current members of the respective consortium*

**Annex 2: Principals of YYY**

*Insert here a list of all PRINCIPALS*

*If YYY is not an OR state accordingly in this annex.*