

Results of the project:

Model Agreements for Consortia and other Forms of Data Sharing according to REACH Reg.

compiled by the law firm of REDEKER SELLNER DAHS & WIDMAIER¹
with the collaboration of the members of the project group² formed for this project

→→ Appendix F

Model Agreement on joint submission of Core Data For registration pursuant to Articles 11 and 19 REACH Reg.

Frankfurt, June 2007

¹ www.redeker.de.

² See listing of the members in the attachment labelled “Members of the Project Group and Contact Persons of the relevant Law Firm”.

Note

This Model Agreement, which is a supplement to the Model Consortium Agreement, was developed on the basis of the practical and legal experience of the aforementioned law firm and the Project-Group. Consideration was given to the practical need for brief and simple provision. Thereby, other conceivable (more) detailed provisions were omitted. Consequently, the Model Preliminary Agreement cannot and does not reflect all possible constellations and problems occurring under actual conditions. Therefore, the model may not be used as a standardised form for a consortium agreement. Rather, it is to be used as a guideline and sample. In each specific case, a separate review must be conducted to determine whether the provisions of the relevant model agreement are appropriate under practical and legal aspects and whether any other provisions are required and suitable.

This Model Agreement is based on Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 and on the European law in force (legislation and court rulings). Adjustments may be necessary in order to comply with the national law applicable according to Section II. par. 10.1 of this Model Agreement.

Agreement on joint submission of Core Data For registration pursuant to Articles 11 and 19 REACH Reg.

between

1. A Inc.

– **A** –

and

2. B Ltd.

– **B** –

Contents

I. Preamble	3
II. Agreement	4
1. Definitions	4
2. Provision of copies of Core Data.....	4
3. Joint submission of Core Data.....	4
4. Right to use	5
5. Exclusion of warranty.....	5
6. Cost-sharing	6
7. Confidentiality	6
8. Competition law compliance	7
9. Retirement from the SIEF.....	7
10. Final provisions	7
Members of the Project Group and Contact Persons of the relevant Law Firm.....	9
Annex 1: Substance Specification by “A”	
Annex 2: Letter of Access	
Annex 3: Code of Conduct	

I. Preamble

“A” and “B” are manufacturers, importers and/or “only representatives” of the substance ... *[designation of the substance with its chemical name, inclusive of CAS- and EINECS-number]* with registered head offices in the European Union.

The substance has phase-in status according to REACH Reg. “A” possesses the Core Data (see definition under Section II par. 1 below) for the registration of the substance specified in **Annex 1** according to REACH Reg.

According to REACH Reg., “A” and “B” must register this substance within the registration deadlines applicable to them. *[optional: They pre-registered each substance according to Article 28 REACH Reg. and are participants of the preliminary SIEF for this substance.]*

“B” obtained from “A” *[optional: within the framework of a “non-disclosure and non-use agreement”]* the information necessary concerning the identity of the substance produced and/or imported by “A”. “B” came to the conclusion that the substance produced and/or imported by “B” is identical to the substance produced and/or imported by “A”. Furthermore, “B” received from “A” *[optional: within the framework of a “non disclosure and non use agreement”]* the Core Data drafted by “A” for registration purposes according to REACH Reg. for information and examination. “B” agrees without restrictions to these Core Data with respect to the substance produced and/or imported by him/her.

Furthermore, “A” and “B” evaluated the studies included in the Core Data according to acknowledged standards. Based on this evaluation, they agreed upon a fair, transparent and non-discriminatory cost-sharing according to Article 27 par. 3 and 6 and Article 30 par. 1 REACH Reg.

For the registration of the substance, “A” prepares the joint submission of the Core Data within the tonnage band of ... *[insert here tonnage band of “A” according to Article 23 REACH Reg.]* agreed to by “B”.

Taking the above into consideration, “A” and “B” agree as follows:

II. Agreement

1. Definitions

Affiliate: a corporation which controls, is controlled by or is under common control of a regular member, with “control” meaning a combined voting stock of at least 50 %, whether via direct or indirect ownership.

Core Data: the data to be submitted jointly by the consortium in all cases pursuant to Article 11 par. 1.2 REACH Reg. The Core Data include:

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

In addition, the definitions in Article 3 REACH Reg. apply.

2. Provision of copies of Core Data

After submission of the Core Data according to par. 3, “A” shall provide “B” with a complete set of copies of the Core Data [*optional*: as well as a copy of the full study reports the Core Data refer to] submitted in accordance with Section II par. 3.

3. Joint submission of Core Data

“A” shall submit the Core Data for the registration of the substance with the agreement of and on behalf of “B” [*optional*: and on behalf of the Affiliates of “B”, whose names and addresses will be notified in writing by “B” to “A” in sufficient time before submission of the registration dossier] according to Article 11 par. 1 or Article 19 par. 1 REACH Reg. as lead registrant until ... [*insert date according to the registration deadline valid for “A”*] and “A” will complete the Core Data upon demand of the Agency if necessary.

“A” will undertake the necessary alignment of the Core Data with the other members of the SIEF on behalf of “B”. “A” and “B” will promptly agree upon their further action if “A” will not succeed in submitting the Core Data prepared by him/her, as lead registrant also on behalf of the other members of the SIEF. In particular, they will determine whether “A” will submit the data separately for “A” and “B” and thereby explain (pursuant to Article 11 par. 3 REACH Reg.) their reasons for their opt-out with respect to joint submission of the Core Data by other members of the SIEF.

“B” authorizes “A” to make the declarations necessary for the above regulations.

“B” solely carries full responsibility to register the substance properly and in due time and to meet his/her obligations according to REACH Reg.

4. Right to use

“A” grants “B” the limited and non-transferable permission to use the Core Data for the purpose of registration of the substance by “B” according to REACH Reg.

[*optional*: The permission also applies to “B’s” Affiliates.]

[*optional*: “B” is entitled to base its registrations of substances of the substance group ... [*designation of the substance group with its chemical name*] produced and/or imported by him/her [*optional*: his Affiliates] on the Core Data if and to the extent the preconditions of the “substance group and read-across approach” pursuant to Annex XI section 1.5 REACH Reg. have been met. “B” shall inform “A” without delay regarding his/her intent to such reference to the Core Data. “A” shall issue to “B” the “letter of access” in **Annex 2** for the rights to use. “B” is entitled to present this “letter of access” to the Agency upon registration of the substance.]

“B” agrees to use the data provided to him exclusively for the agreed purpose and to abstain from any other use – whether commercial or non-commercial. This equally applies “B’s” Affiliates.

[*optional*: clause on contractual penalties]

5. Exclusion of warranty

“A” does not give a warranty for the accuracy and correctness of the study XY or for the acknowledgment of this study by the Agency during the dossier evaluation according to Title VI REACH Reg. or for the transferability of the results to the

substances produced and/or imported by “B”, unless “A” caused the defect deliberately or with gross negligence.

6. Cost-sharing

For the provision and the submission of Core Data and the respective rights to use according to paras. 2, 3 and 4 of this Agreement, “B” shall pay to “A” an amount of ... € (VAT included, if applicable). This payment is due on ... *[date before submission of the documents]*.

[optional: For reference to the Core Data for other registrations within the framework of the “substance group and read-across approach” (according to Annex XI section 1.5 REACH Reg.) “B” shall pay to “A” a share of costs in the amount of ... € (VAT included, if applicable). The payment is due within a one-month period of time after “B” informed “A” about his/her intent to refer to the data.]

7. Confidentiality

The parties shall maintain confidentiality vis-à-vis third parties concerning all information made available to them in the context of the cooperation and marked as confidential, unless REACH Reg. or other laws contain an obligation to disclose the respective information. B’s Affiliates are not “third parties” within the meaning of this provision. Confidentiality shall also be maintained for information commonly regarded as business secrets. The aforementioned obligations do not apply to information which can be demonstrated as having been available to the public before receipt by the respective party or which became public through no fault of the recipient.

[optional: Upon submission of the Core Data, “A” shall file an application for non-disclosure according to Article 10(a)(xi) REACH Reg. with respect to information which may be kept secret according to Article 119 par. 2 REACH Reg. “B” shall assist “A” as far as necessary, especially by giving the necessary reasons for the application. “B” remains responsible for filing an application according to Article 10(a)(xi) REACH Reg.]

“B” shall account for the observance of the above regulations by its Affiliates.

[optional: clause on contractual penalty.]

8. Competition law compliance

The parties are aware that activities under this Agreement could represent a matter to which Articles 81 and 82 EC Treaty apply. The parties explicitly agree to comply with Articles 81 and 82 EC Treaty, Article 25 par. 2 REACH Reg. and the Code of Conduct attached in **Annex 3**.

9. Retirement from the SIEF

“A” will inform “B” without delay if prior to submission of the Core Data pursuant to par. 3 of this Agreement circumstances arise which cause his/her withdrawal from the SIEF or the discontinuation of his/her obligation to register. As a consequence, “A’s” obligations to jointly submit the data and to represent “B’s” interests in the SIEF pursuant to par. 3 of this Agreement cease. “B’s” right to use “A’s” Core Data according to par. 4 of this Agreement persists. For this right to use, “B” shall pay to “A” an amount of ... € (VAT included, if applicable) as share of costs instead of the share of costs according to par. 6 of this Agreement. Other rights and duties pursuant to this Agreement persist.

“B” will inform “A” without delay if prior to submission of the Core Data pursuant to par. 3 of this Agreement circumstances arise which cause his/her withdrawal from the SIEF or the discontinuation of his/her obligation to register. The mutual rights and obligations according to paras. 2 to 6 of this Agreement cease. [*optional*: “B” refunds “A” expenses for an amount of ... € (VAT included, if applicable).] Other rights and duties pursuant to this Agreement persist.

10. Final provisions

The Agreement is subject to the laws of ... [*insert name of the country*] without giving effect to any rules on conflict of laws.

Jurisdiction to resolve disputes of the consortium members shall be given to the Court of ... [*insert town of the court*].

[*optional*: Arbitration clause]

This Agreement is concluded for an indefinite period of time. Unless otherwise provided for, the rights and obligations agreed upon cease by performance.

Party (Company/Representative)	Place	Date
.....
.....
.....

etc.

Annex 1: Substance Specification by “A”

Annex 2: Letter of Access

Annex 3: Code of Conduct

ATTACHMENT:**Members of the Project Group and Contact Persons of the relevant Law Firm**

Dr. Alex Föller (Managing Director TEGEWA) (Chairman)
Hans-Hermann Nacke (Managing Director VCI) (Chairman)
Lothar Noll (Managing Director 6th World Surfactants Congress GmbH)
Claudia Aubel-Pump (VCI)
Dr. Anja von Hahn (BASF)
Dr. Dieter Fink (VCI)
Dr. Jürgen Fluck (BASF)
RA Frank Froeschle (Bayer)
Dr. Claus-Dierk Hager (Sasol)
Marc Alexander Rudnik (Clariant)
Dr. Stefan Scholl (Cognis)
Dr. Markus Schrader (Degussa)
Dr. Michael Top (Kao)

From the Law Firm of REDEKER SELLNER DAHS & WIDMAIER

Please contact:

Dr. Horst von Holleben, Attorney-at-Law
Kurfürstendamm 218
D-10719 Berlin
Phone: +49 / 30 / 88 56 65-0
Fax: +49 / 30 / 88 56 65-99
E-mail: holleben@redeker.de

Hartmut Scheidmann, Attorney-at-Law
Kurfürstendamm 218
D-10719 Berlin
Phone: +49 / 30 / 88 56 65-0
Fax: +49 / 30 / 88 56 65-99
E-mail: scheidmann@redeker.de

Dr. Andreas Rosenfeld, Attorney-at-Law
Avenue de Cortenbergh 60
B-1000 Brussels
Phone: +32 / 2 / 73 80 92-0
Fax: +32 / 2 / 73 80 92-9
E-mail: rosenfeld@redeker.de