

AMENDMENT AND RESTATEMENT AGREEMENT

between

THE SCOTTISH MINISTERS

(as the Guarantor)

SIMEC LOCHABER HYDROPOWER LIMITED

(as the Purchaser)

and

THE CORPORATE UNDERTAKERS

in respect of a Guarantee and Reimbursement Agreement

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Amendment and Restatement Agreement in respect of a Guarantee and Reimbursement Agreement

BETWEEN:

- (1) **THE SCOTTISH MINISTERS**, of Victoria Quay, Edinburgh, EH6 6QQ (the "**Guarantor**"); and
- (2) **SIMEC LOCHABER HYDROPOWER LIMITED**, a company incorporated in Scotland (company number SC549864) of Lochaber, Smelter, Fort William, Scotland, PH33 6TH (the "**Purchaser**");
- (3) **LIBERTY ALUMINIUM LOCHABER LIMITED**, a company incorporated in Scotland (company number SC549732) of Lochaber, Smelter, Fort William, Scotland, PH33 6TH ("**SmelterCo**");
- (4) **LIBERTY INDUSTRIES UK LIMITED**, a company incorporated in Scotland (company number SC550829) of Lochaber, Smelter, Fort William, Scotland, PH33 6TH ("**LUK**");
- (5) **SIMEC GROUP LIMITED**, a company incorporated in Hong Kong (company registration no. 1651874), having its registered office at Suite 2202-2204 Gloucester Tower, The Landmark Building, 11 Pedder Street, Central, Hong Kong ("**SGL**");
- (6) **LIBERTY HOUSE GROUP PTE. LTD.**, a company incorporated in Singapore (company registration no. 201113318W) and having its registered office at 8 Marina View, #40-06, Asia Square Tower 1, Singapore (018960) ("**LHG**");
- (7) **SIMEC ENERGY PTE. LTD.**, a company incorporated in Singapore (company registration no. 201322004G) and having its registered office at 171 Tras Street, #04-171A, Union Building, Singapore 079025 ("**SEP**"); and
- (8) **SIMEC LOCHABER HYDROPOWER 2 LIMITED**, a company incorporated in England & Wales (company number 750143) of 7 Hertford Street, London W1J 7RH ("**HydroCo**").

BACKGROUND:

- A The parties, with the exception of HydroCo, entered into a guarantee and reimbursement agreement dated 16 December 2016 pursuant to which the Scottish Ministers agreed to execute and deliver to the Purchaser the SG Guarantee and each Obligor agreed certain payment and reimbursement obligations and other indemnities and undertakings all in favour of the Guarantor (the "**Original GRA**");

- B Pursuant to an accession agreement dated 16 December 2016, HydroCo (previously incorporated as Alcan Aluminium UK Limited) acceded to the Original GRA as an Obligor; and
- C The parties have agreed to amend and restate the Original GRA as set out in this Amendment and Reinstatement Agreement in respect of the Original GRA (this "**Agreement**").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms defined in the Original GRA (as amended and restated by this Agreement) shall have the same meaning when used in this Agreement, unless defined in this Clause 1.1 (*Definitions*). In addition in this Agreement:

Amended & Restated GRA means the Original GRA as amended and restated by this Agreement in the form set out in Part 3 of the Schedule;

Original GRA has the meaning given in recital (A);

Restatement Date means the date on which the Guarantor informs the Obligors that the conditions precedent have been satisfied in accordance with Clause 2 (*Conditions Precedent*); and

Secured Liabilities means, together, all of the **Secured Obligations**, the **Secured Liabilities** and amounts considered by any similar term, whether or not defined as such, and all as defined or arising under the Security Documents.

1.2 Interpretation

1.2.1 The principles of construction set out at Clause 1.2 (*Construction*) of the Amended & Restated GRA shall apply to this Agreement as if set out in the Agreement save that references in the Amended & Restated GRA to "this Agreement" shall be construed as references to this Agreement.

1.2.2 In this Agreement:

- (a) any reference to a "Clause" or a "Schedule" (or a "Part" thereof) is, unless the context otherwise requires, a reference to a Clause or a Schedule (or a Part thereof) of this Agreement; and
- (b) Clause and Schedule headings are for ease of reference only.

1.2.3 The Schedule and its Parts form part of this Agreement and shall have effect as of set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedule (and Parts thereof).

2. CONDITIONS PRECEDENT

2.1 The Restatement Date is conditional on the Guarantor having received all of the documents and evidence specified in Part 1 of the Schedule (*Conditions Precedent*) in the form, and containing the information that it requires.

2.2 On satisfaction of the conditions precedent referred to in Clause 2.1 (*Conditions Precedent*), the Guarantor shall promptly notify the Obligors in writing that those conditions have been satisfied.

2.3 The Guarantor shall not give the notice referred to in Clause 2.2 (*Conditions Precedent*) if it is aware that an Enforcement Event has occurred.

2.4 The parties confirm to each other that the provisions of:

2.4.1 clause 3 (*Initial Conditions*);

2.4.2 clause 4 (*Subsequent Conditions*);

2.4.3 clause 9.1(a) (*Undertakings*);

2.4.4 clause 9.1(b) (*Undertakings*);

2.4.5 clause 9.1(e) (*Undertakings*);

2.4.6 clause 9.1(n) (*Undertakings*);

2.4.7 clause 9.1(o) (*Undertakings*);

2.4.8 clause 9.2 (b) (*Undertakings*);

2.4.9 clause 9.2(i) (*Undertakings*);

2.4.10 clause 15.2 (*Changes to the Parties*); and

2.4.11 part 8 (*Standard Securities Plans*) of the Schedule,

of the Amended and Restated GRA were satisfied by the Purchaser and the Obligors or, as the case may be, waived by the Guarantor on the terms applicable to any such waiver at either the Effective Date or their respective time for satisfaction and that the conditions in this Clause 2 (*Conditions Precedent*), Clause 3 (*Conditions Subsequent*), Part 1 of the Schedule (*Conditions Precedent*) and Part 2 of the Schedule (*Conditions Subsequent*) are, together, the conditions applicable to this Agreement.

3. CONDITIONS SUBSEQUENT

The Purchaser shall deliver or procure the delivery to the Guarantor of all of the documents and other information set out in Part 2 of the Schedule (*Conditions Subsequent*) in the form, and containing the information, that the Guarantor requires by the date specified alongside each condition, unless the Guarantor waives receipt of any of them.

4. RESTATEMENT OF THE ORIGINAL GRA

4.1 With effect on and from the Restatement Date, the Original GRA shall be amended and restated in the form set out in Part 3 of the Schedule (*Form of Amended and Restated Guarantee and Reimbursement Agreement*) so that the rights and obligations of the parties to the Amended & Restated GRA shall, on and from that date be governed by and construed in accordance with the provisions of the Amended & Restated GRA.

4.2 Without prejudice to Clause 4.1 (*Restatement of the Original GRA*) the provisions in clause 5 (*Payments by Obligors*) and clause 6 (*Reimbursement*) the Original GRA are, for the sake of certainty and for the benefit of the Guarantor, unamended and continue to apply as set out in the Amended & Restated GRA.

5. EXISTING SECURITY

Each of the Obligors confirms that the Security Documents:

- (a) rank as a continuing security for the payment and discharge of the Secured Liabilities including, without limitation, all present and future monies, obligations and liabilities owed by the Obligors to the Guarantor, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity, under or in connection with the Amended & Restated GRA or otherwise; and
- (b) shall continue in full force and effect in all respects and the Security Documents and this Agreement shall be read and construed together.

6. CONTINUITY AND FURTHER ASSURANCE

6.1 The provisions of the Security Documents, the SG Guarantee and the SG Guarantee Fee Letter shall, save as amended from time to time continue in full force and effect.

6.2 The Guarantor confirms that, with effect from the Restatement Date, any and all continuing Enforcement Events under the GRA of which it is aware or which it believes to be subsisting are hereby irrevocably waived, and the other parties hereto confirm that they are not aware of any such subsisting Enforcement Event.

6.3 The parties to this Agreement shall, at their own expense, do all such acts and things as are necessary to give effect to the provisions of this Agreement.

7. MISCELLANEOUS

7.1 The provisions of clauses 15 (*Changes to the Parties*) to 18 (*Severability*) (inclusive) of the Amended & Restated GRA shall apply to this Agreement as if set out in full and so that references in those provisions to "this Agreement" shall be construed as references to this Agreement and references to "party" or "parties" shall be construed as references to parties to this Agreement.

7.2 Each party to this Agreement agrees to each pay the amount of its own costs and expenses (including legal and other adviser fees) incurred by it in connection with the negotiation and execution of this Agreement and with satisfaction of the conditions precedent hereunder and that the provisions of clause 7.2 (*Expenses*) of the Amended & Restated GRA shall not apply to the negotiation and execution of this Agreement.

8. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

9. JURISDICTION

9.1 The courts of Scotland have exclusive jurisdiction to settle any dispute including a dispute relating to any non-contractual obligation arising out of or in connection with this Agreement.

9.2 The courts of Scotland are the most appropriate and convenient courts to settle any such dispute in connection with this Agreement. Each Obligor agrees not to argue to the contrary and waives objection to those courts on the ground of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.

9.3 This Clause 9.3 (*Jurisdiction*) is for the benefit of the Guarantor only. To the extent allowed by law, the Guarantor may take:

9.3.1 proceedings in any other court; and

9.3.2 concurrent proceedings in any number of jurisdictions.


9.4 References in this Clause 9 (*Jurisdiction*) to a dispute in connection with this Agreement include any dispute as to the existence, validity or termination of this Agreement.


IN WITNESS WHEREOF these presents consisting of this and preceding 4 pages are executed as follows and are delivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 on Monday 6 July 2020:

SIGNED on behalf of **THE SCOTTISH MINISTERS** by ELIZABETH JINDITCHBUEN,
Authorised Signatory

at EDINBURGH on 03 JULY 2020

in the presence of:

Witness: 

Full Name: 

E.J. Dite
.....
Authorised Signatory

Address: ST. ANDREWS HOUSE

EDINBURGH EH1 3DG

SIGNED on behalf of **SIMEC LOCHABER HYDROPOWER LIMITED** by

[Redacted]

Director/Authorised Signatory at WALES

on 07/07/2020 in the

presence of:

[Redacted]

[Redacted]

Witness:

Full Name:

[Redacted]

.....
Director/Authorised Signatory

Address:

[Redacted]

SIGNED on behalf of LIBERTY ALUMINIUM LOCHABER LIMITED

by [REDACTED] Director/Authorised Signatory

at WALES on 07/07/2020 in the presence of:

Witness: [REDACTED]

Full Name: [REDACTED]

[REDACTED]
Director/Authorised Signatory

Address: [REDACTED]

SIGNED on behalf of LIBERTY INDUSTRIES UK LIMITED by [REDACTED] [REDACTED]

Director/Authorised Signatory at WALES on 07/07/2020 in the presence of:

Witness: [REDACTED]

Full Name: [REDACTED]

[REDACTED]
Director/Authorised Signatory

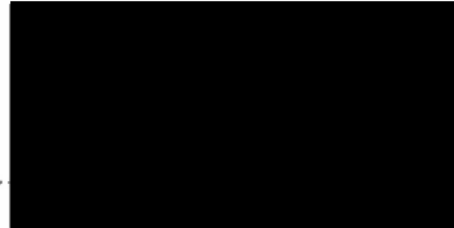
Address: [REDACTED]

SIGNED on behalf of **SIMEC GROUP LIMITED**

by  ...,its duly authorised attorney

at WALES

on 07/07/2020



Duly Authorised Attorney



in the presence of:

Witness: 

Full Name: 

Address: 

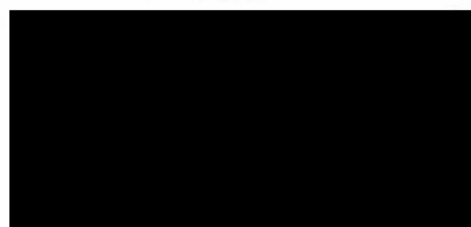
SIGNED, SEALED AND DELIVERED as a deed on behalf of **LIBERTY HOUSE GROUP PTE. LTD.**

by   Attorney-in-Fact/Director at WALES
on 07/07/2020 in the presence of:

Witness: 

Full Name: .. 

Address: 



Attorney-in-Fact/ Director



SIGNED, SEALED AND DELIVERED as a deed on behalf of **SIMEC ENERGY PTE. LTD.**

by [REDACTED] Attorney-in-Fact/Director at **WALES**

on **07/07/2020** in the presence of:

Witness:

[REDACTED]

[REDACTED]



Full Name:

[REDACTED]

Attorney-in-Fact/ Director

Address:

[REDACTED]

SIGNED on behalf of **SIMEC LOCHABER HYDROPOWER 2 LIMITED**

by [REDACTED] Director/Authorised Signatory

at **WALES** on **07/07/2020** in the presence of:

Witness:

[REDACTED]

[REDACTED]

Full Name:

Director/Authorised Signatory

Address:

[REDACTED]

**This is the Schedule in three (3) Parts referred to in the foregoing
Amendment & Restatement Agreement
between THE SCOTTISH MINISTERS, SIMEC LOCHABER HYDROPOWER LIMITED, SIMEC
LOCHABER HYDROPOWER 2 LIMITED and THE CORPORATE UNDERTAKERS**

SCHEDULE

Part 1

Conditions Precedent

1. CONSTITUTIONAL DOCUMENTS, RESOLUTIONS AND CERTIFICATES

1. A copy of the constitutional documents of each Obligor.
2. A copy of the resolutions duly passed by the board of directors of each Obligor:
 - (a) approving the entry into, terms of and transactions contemplated by this Agreement, and (in respect of SmelterCo only) the Supplemental Security Document and resolving that each respective Obligor executes this Agreement and (in respect of SmelterCo only) the Supplemental Security Document;
 - (b) authorising a specified person or persons to execute this Agreement, and (in respect of SmelterCo) the Supplemental Security Document on its behalf, to give all notices and take all other action in connection with this Agreement and (in respect of SmelterCo only) the Supplemental Security Document; and
 - (c) confirming that the entry into of this Agreement and (in respect of SmelterCo only) the Supplemental Security Document is in the commercial interests of each respective Obligor.
3. A Net Worth Certificate in respect of SGL, LHG and SEP.
4. A copy of any power of attorney approved by the relevant Obligor in respect of the execution by such Obligor of this Agreement and documents relating thereto.

2. DOCUMENTS

1. This Agreement duly executed by each Obligor.



3. The complete suite of Agreed Form proposed funding documents comprising:

(a) Facility Agreement between HydroCo (as borrower) and RM Capital Markets Limited ("RM Capital") in its capacity as Arranger, Original Lender, Agent and Security Agent (together with relevant property plans and agreed form title indemnity policy);

(b) Subordination Agreement between Purchaser (as subordinated creditor), HydroCo (as borrower) and RM Capital (as security agent);

(c) standard securities (together with related plans) by HydroCo in favour of RM Capital (as security agent) in respect of the following:

(i) Lochaber hydro scheme (forming part and portion of Title Number: INV1401);

(ii) Nevis diversion at Mamore (Title Number: INV35766);

(iii) Killiechonate (forming part and portion of Title Number: INV15949); and

(iv) Glenshero (forming part and portion of Title Number: INV38523),

(d) floating charge by Purchaser in favour of RM Capital (as security agent); and

(e) floating charge by HydroCo in favour of RM Capital (as security agent).

which the HydroCo and the Purchaser (as applicable) have agreed to enter into with RM Capital for the purposes of the additional secured finance at the Lochaber Hydro Plant as envisaged by and in accordance with clause 9.2(c) (*Undertakings*) of the Amended & Restated GRA.

■ [REDACTED]

5. The Subscription Documents each duly executed by all parties thereto.

3. LEGAL OPINION

Legal opinions in relation to the capacity and authority of SEP, SGL and LHG.

4. OTHER

1. The Inter-Company Loans Schedule.

Part 2

Conditions Subsequent

| | | |
|--|----------------------------|------------|
| | [REDACTED] | [REDACTED] |
| | [REDACTED] | [REDACTED] |
| | [REDACTED] | [REDACTED] |
| | [REDACTED] | [REDACTED] |
| | [REDACTED] PPA. [REDACTED] | [REDACTED] |

Part 3

Form of Amended and Restated Guarantee and Reimbursement Agreement

AMENDED & RESTATED GUARANTEE AND REIMBURSEMENT AGREEMENT

THE SCOTTISH MINISTERS

(as the Guarantor)

and

SIMEC LOCHABER HYDROPOWER LIMITED

(as Purchaser)

and

LIBERTY ALUMINIUM LOCHABER LIMITED

(as SmelterCo)

and

THE CORPORATE UNDERTAKERS

in respect of the SG Guarantee

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AMENDED & RESTATED GUARANTEE AND REIMBURSEMENT AGREEMENT**BETWEEN:**

1. **THE SCOTTISH MINISTERS**, of Victoria Quay, Edinburgh EH6 6QQ (the "**Guarantor**");
2. **SIMEC LOCHABER HYDROPOWER LIMITED**, a company incorporated in Scotland (company number SC549864) of Lochaber, Smelter, Fort William, Scotland, PH33 6TH (the "**Purchaser**");
3. **LIBERTY ALUMINIUM LOCHABER LIMITED**, a company incorporated in Scotland (company number SC549732) of Lochaber, Smelter, Fort William, Scotland, PH33 6TH ("**SmelterCo**").
4. **LIBERTY INDUSTRIES UK LIMITED** incorporated in Scotland, number SC550829, of Lochaber, Smelter, Fort William, Scotland, PH33 6TH ("**LUK**");
5. **SIMEC GROUP LIMITED**, incorporated in Hong Kong, with company registration number 1651874, having its Registered Office at Suite 2202-2204 Gloucester Tower, The Landmark Building, 11 Pedder Street, Central, Hong Kong ("**SGL**");
6. **LIBERTY HOUSE GROUP PTE. LTD.**, incorporated in Singapore, number 201113318W, having its Registered Office at 8 Marina View, #40-06, Asia Square Tower 1, Singapore (018960) ("**LHG**");
7. **SIMEC ENERGY PTE. LTD.**, incorporated in Singapore, number 201322004G, having its Registered Office at 171 Tras Street, 04-171a, Union Building, Singapore 079025 ("**SEP**"); and
8. **SIMEC LOCHABER HYDROPOWER 2 LIMITED**, a company incorporated in England & Wales (company number 750143) of 7 Hertford Street, London W1J 7RH ("**HydroCo**").

BACKGROUND

- (1) The Purchaser, HydroCo and SmelterCo have entered into the PPA (as defined below) and the Guarantor has issued the SG Guarantee (as defined below) in respect of certain payment obligations owed by SmelterCo [REDACTED], pursuant to the terms of the SG Guarantee and in accordance with this Agreement.
- (2) It is intended that SGL is responsible for the obligations of its Subsidiaries, and that LHG is responsible for the obligations of its Subsidiaries, arising in each case hereunder.
- (3) This Agreement was entered into on 16 December 2016 and is amended and restated on the Restatement Date (as defined in the Amendment & Restatement Agreement).

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“Accepted New Business Plan” has the meaning given to that term in paragraphs 3.1 to 3.4 inclusive and paragraph 3.7 of Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights);

“Accession Agreement” means a document substantially in the form set out in Part 4 of the Schedule (Accession Agreement);

“Accounts” means each of the Charged Account and the Float Account;

“Acquisition” means the acquisition of all the existing shares of HydroCo by the Purchaser pursuant to the Acquisition Agreement;

“Acquisition Agreement” means:

(a) the share sale agreement relating to the Acquisition dated 22 November 2016 between British Alcan Aluminium plc and the Purchaser; and

(b) the contribution agreement relating to the Acquisition between British Alcan Aluminium plc and HydroCo dated 22 November 2016;

“Agreed Form” means, in respect of any document, the form of it agreed between the Purchaser and the Guarantor prior to the signing of this Agreement, or prior to the signing of the Amendment & Restatement Agreement (as the context requires);

[REDACTED]

“Agreed Security Principles” means the principles set out in Part 5 of the Schedule (Agreed Security Principles);

“Alloy Wheels Plant” means the proposed industrial activity similar to that described in the existing business plan dated 23 April 2019 or in the Alloy Wheels Plant Business Plan;

“Alloy Wheels Plant Business Plan” means an Accepted New Business Plan pursuant to paragraph 3.1 of Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights);

[REDACTED]

“Amendment & Restatement Agreement” means the agreement of that name entered into on [] July 2020 and by which this Agreement is amended and restated in this form by the parties thereto;

“Approved Activity” means any industrial activity specified in an Accepted New Business Plan, whether that is a Downstream Activity or an Alternative Activity;

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in Edinburgh and London;

“Business Plan Delivery Date” means 31 August 2020 or such later date as applies under Clause 9.4 of this Agreement;

[REDACTED]

“Charged Account” means the Account referred to in the Supplemental Security Document;

“Commencement of Construction” means, in relation to any Approved Activity the first date on which all the following conditions are met in respect of any material phase or stage of works (but excluding any phase or stage solely or principally relating to site survey, site investigation, site preparation (together with grading or compaction as part thereof) and/or site clearance), namely:

- (a) all relevant and necessary pre-start planning conditions in relation to such works in respect of the Approved Activity(ies) have been satisfied;
- (b) all relevant and necessary pre-start authorisations and consents necessary and required in order to commence such works in respect of the Approved Activity(ies) have been obtained and are not subject to the satisfaction of any material unfulfilled conditions precedent
- (c) All Construction Contracts identified in respect of any material work in any phase or stage of works under an Accepted New Business Plan have been agreed and signed by all the parties thereto and come into full force and effect and are not subject to the satisfaction of any material unfulfilled conditions precedent and, if appropriate, a contractor appointed thereunder has in relation to such works taken possession of the site of the Approved Activity and commenced performance;
- (d) All M&E Contracts in relation to the sale and supply of key items of plant and equipment identified in any phase or stage of works under an Accepted New Business Plan have been agreed and signed by all the parties thereto and come into full force and effect and are not subject to the satisfaction of any material

unfulfilled conditions precedent, and all initial deposits or bonding payments stipulated thereunder in relation to such works have been paid; and

- (e) the Obligors, having given Scottish Ministers advance sight of the same, have issued a press release outlining the Approved Activity and its development and have, where the same is reasonably achievable or relevant, organised and invited a representative thereof to attend a launch event of the Approved Activity in Fort William;

“Commencement of Approved Activity” in relation to an Approved Activity means the later of (i) practical completion or taking over has occurred (as such terms have the meaning given thereto (or any similar term) in the Construction Contract and (ii) the date on which all commissioning tests have been passed in respect of the Approved Activity and manufacture and processing activity has been commenced;

[REDACTED]

“Compliant Request” means a request or demand for payment, repayment, withdrawal or transfer of any sum from the Charged Account in accordance with the terms of this Agreement and the Supplemental Security Document which is accompanied by an Independent Certifier Certificate, but excluding any such request made pursuant to paragraph 6.6 of Part 9 of the Schedule;

“Compliant Request Rejection Date” means the date which is five Business Days after a Compliant Request has been received by the Guarantor but such request has not been formally approved by the Guarantor;

“Compliant Request Suspension Period” means any period of time beginning on the Compliant Request Rejection Date and coming to an end on the earlier of (i) the Longstop Date and (ii) the date the Guarantor fully approves the relevant Compliant Request;

[REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

"Corporate Undertaker" means each of the parties 4 to 8 inclusive above;

[REDACTED]

"Default Rate" means six per cent. (6%) per annum over the applicable base rate of the Bank of Scotland (or in the absence of such base rate, such base rate as the Guarantor may reasonably determine) from time to time;

[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

"Effective Date" means 16 December 2016;

"Enforcement Event" is as defined in Clause 10.3;

"First Milestone Date" means the first of the Milestone Dates or such later date as applies under Clause 9.4 of this Agreement;

"First Milestone Investment" means the Milestone Investment made or due to be made on the First Milestone Date;

"Float Account" means the UK bank account of that name opened in the name of SmelterCo;

"Guaranteed Document" means [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Alloy Wheels Factory [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

"Hive-up Agreement" means the contribution agreement between HydroCo and SmelterCo dated 16 December 2016 in respect of the sale of certain assets from HydroCo to SmelterCo as more fully described therein;

"Independent Certifier" has the meaning given to that term in the Supplemental Security Agreement;

"Independent Certifier Certificate" has the meaning given to that term in the Supplemental Security Agreement;

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Inter-Company Loans Schedule” means the schedule in the Agreed Form setting out as at no earlier than 3 Business Days prior to the Restatement Date all outstanding inter-company indebtedness of the Obligors with one another and/or any other member of their group of companies, substantially in the form supplied to the Guarantor or its financial advisers prior to the date of the Amendment and Restatement Agreement, and any update of such schedule provided to the Guarantor pursuant to Clause 9.3(a);

[REDACTED]

“Lochaber Estate Lands” means the estate property (excluding the Lochaber Hydro Plant, tailrace and smelter site) over which standard securities have been granted by HydroCo in favour of the Guarantor;

[REDACTED]

[REDACTED]

[REDACTED]

“Longstop Date” means 31 March 2022 or such later date as applies under Clause 9.4 of this Agreement;

[REDACTED]

[REDACTED]

[REDACTED]

"Milestone Date" means the dates by when each Milestone Investment is to be made as shown in the first column of the table in paragraph 6 of Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights) or each or any of them or such later dates as apply under Clause 9.4 of this Agreement;

"Milestone Investments" means each of the amounts to be funded by the Obligors as more particularly detailed in paragraph 6 of Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights), in each case to be provided by way of loan to SmelterCo pursuant to the terms of the Subscription Documents;

"Milestone Investment Suspension Period" means any period of time beginning on the date the Guarantor notifies the Obligors it does not accept a New Business Plan to which paragraph 3.3 of Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights) applies (and such New Business Plan therefore becomes a Rejected New Business Plan), and coming to an end on the earlier of (i) the Longstop Date; (ii) the date the said Rejected New Business Plan is deemed to become or otherwise becomes an Accepted New Business Plan and (iii) any date on which (or the first such date) the Obligors fail to comply with the provisions of paragraph 3.6 of Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights);

"Net Worth Certificate" means a certificate substantially in the form of Part 6 of the Schedule (Net Worth Certificate), duly completed;

"New Business Plan" means a new business plan compliant with paragraph 1.2 of Part 9 of the Schedule (Amendment and Restatement Undertakings and Rights);

"Obligors" means the Purchaser, each of the Corporate Undertakers and SmelterCo;

[REDACTED]

[REDACTED]

[REDACTED]

"Payment Obligations" has the meaning given to it in the SG Guarantee;

"Party" means a party to this Agreement;

"Prohibited Activity" means any of the manufacture, production, provision, promotion or other development of any business connected with tobacco, banking, insurance, sub-prime lending, gambling, munitions, nuclear energy, or pornography, or any activities which may have an adverse impact on human rights;

"Property Transfer" means the conveyance of that portion of those subjects at Inverloch, Fort William as shown in the disposition by HydroCo in favour of SmelterCo dated 4 February 2019

currently undergoing registration in the Land Register of Scotland under Title Number INV45464;

[REDACTED]

"**PPA**" means the power purchase agreement between the Purchaser (initially), HydroCo as generator and SmelterCo as purchaser dated 12 December 2016;

"**Ranking Agreement**" means agreements in the Agreed Form in relation to the priority of claims and ranking of security under the Security Documents in accordance with the Agreed Security Principles;

"**Rejected New Business Plan**" has the meaning given to that term in paragraph 3.5 of Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights);

"**Relevant Applications**" means any applications for registration under the Land Registration etc. (Scotland) Act 2012 in name of the HydroCo and/or any of the other Obligors and in respect of any land subject to the Security Documents which applications were either outstanding or submitted as at the Effective Date or were or are submitted thereafter;

"**Restatement Date**" means the effective date of the Amendment and Restatement Agreement;

"**Schedule**" means the schedule in nine Parts to this Agreement;

"**Security Document**" means:

- (a) each of the documents referred to in paragraphs 3 to 17 of Part 2 of the Schedule;
- (b) each of the documents referred to in paragraphs 1 to 3 of Part 3 of the Schedule; and
- (c) the Supplemental Security Document.

"**SIMEC Entities Accounts Assessment**" means the ongoing assessment of the accounting treatment, and any related adverse tax consequences, in the accounts of the Purchaser and/or HydroCo in relation to or in connection with the transactions contained in the Boots Letter Agreement;

"**SIMEC Entities Accounts Correction**" means any update to the accounts of the Purchaser and/or HydroCo, having been made as a necessary result of the SIMEC Entities Accounts Assessment (any such SIMEC Entities Accounts Correction being notified to the Guarantor in writing within 5 Business Days) and which does not involve the transfer of assets or cash from HydroCo and/or the Purchaser;

"**SG Guarantee**" means the financial guarantee in respect of the Payment Obligations issued by the Guarantor in accordance with this Agreement and delivered on 16 December 2016;

"**SG Guarantee Fee Letter**" means the fee letter dated 16 December 2016 between the Guarantor and SmelterCo;

"**Subordinated Loan Agreement**" means the subordinated and unsecured term loan agreement among the Corporate Undertakers (as lenders) and SmelterCo (as borrower) in the Agreed Form;

"**Subscription Documents**" means the following documents providing for the funding of Milestone Investments by the Obligors in SmelterCo each in the Agreed Form

- (a) the Subordinated Loan Agreement; and
- (b) subordination agreement between the Guarantor, the Corporate Undertakers and SmelterCo;

"**Supplemental Security Document**" means the fixed charge over all of the right, title and interest to, and sums standing to the credit of at any time, the Charged Account in the Agreed Form and entered into by SmelterCo in favour of the Guarantor on or about the date of the Amendment and Restatement Agreement;

"**Total Milestone Investments**" means the aggregate of all Milestone Investments made or (pursuant to paragraph 6.2.3.1 of Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights) only) deemed made from time to time including, for the avoidance of doubt but without double counting, the Initial Construction Costs Spend to Date; and

"**VAT**" means value added tax provided for in the Value Added Tax Act 1994 and any other tax of a similar nature which may be imposed in place thereof from time to time.

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
 - (A) an **amendment** includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and **amended** will be construed accordingly;
 - (B) a **Clause** or **Sub-clause** or to a **Schedule** or a **Part** of a Schedule is a reference to clause, sub-clause, schedule or part of a schedule of or to (as the case may be) this Agreement;

- (C) a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
 - (D) this **Agreement** shall be deemed to be a reference to this amended and restated guarantee and reimbursement agreement as a whole and not limited to the particular Clause, Schedule (or Part thereof) or provision in which the relevant reference appears and to this Agreement as varied, amended, supplemented or substituted from time to time;
 - (E) **Sterling or £** means the lawful currency from time to time of the United Kingdom;
 - (F) a **Party** or any other person includes its successors in title, permitted assignees and permitted transferees;
 - (G) a provision of law is a reference to that provisions as extended, applied, amended or re-enacted and includes any subordinate legislation; and
 - (H) a time of day is a reference to Edinburgh time.
- (b) Unless a contrary indication appears, a term used in the SG Guarantee has the same meaning in this Agreement.
 - (c) The headings in this Agreement are inserted for convenience only and shall be of no legal effect.
 - (d) Unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.
 - (e) Unless the contrary intention appears, a reference to a Party will not include that Party if it has ceased to be a Party under this Agreement.
 - (f) Where this Agreement refers to a meeting then, during any period in which social distancing is mandated or is otherwise being observed as a consequence of epidemic, pandemic or other significant public health event, that shall include, save where the contrary is expressed, remote meetings and/or video meetings as the Parties may agree, acting reasonably, from time to time, and "met" or "meet" shall be construed accordingly.

2 ISSUE OF SG GUARANTEE

- 2.1 Subject to the provisions of this Agreement, the Guarantor agrees to duly execute and deliver to the Purchaser the SG Guarantee in the form set out in Part 1 of the Schedule (Form of SG Guarantee) on or before the closing of the Acquisition.

[REDACTED]
 [REDACTED] PPA, [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] PPA [REDACTED]
 [REDACTED]

- 2.3 The Guarantor agrees that the execution, delivery and performance of the Amendment & Restatement Agreement, and the amending and restating of this Agreement, shall in no way amend, prejudice or affect the obligations of the Guarantor under the SG Guarantee as issued on 16 December 2016.

3 INITIAL CONDITIONS

- 3.1 The SG Guarantee may not be issued until the Guarantor has notified the Purchaser that it has received (or waived receipt of) duly executed and delivered originals or copies (as relevant) of all of the documents set out in Part 2 of the Schedule (Initial Conditions) in the Agreed Form together with all resolutions, minutes and other documents approving their execution and delivery. This Clause 3.1 is for the benefit of the Guarantor only.
- 3.2 The Guarantor must give the notification referred to in Clause 3.1 above to the Purchaser immediately upon being so satisfied.

4 SUBSEQUENT CONDITIONS

The Purchaser shall procure the delivery to the Guarantor of all of the documents set out in Part 3 of the Schedule (Subsequent Conditions) in the Agreed Form by no later than the date specified alongside each condition, unless the Guarantor waives receipt of any of them.

5 PAYMENTS BY OBLIGORS

- 5.1 Each Obligor shall jointly and severally, on the terms and subject to the conditions of this Agreement:

- (a) pay or procure the payment, from time to time, of any amount due and payable to the Guarantor in accordance with the SG Guarantee Fee Letter, the Amendment & Restatement Agreement and this Agreement; and
- (b) reimburse the Guarantor on the terms of this Agreement.

5.2 Each Obligor agrees for the benefit of the Guarantor that:

- (a) subject to any applicable law, its duties and obligations set out in this Agreement shall continue in full force and effect until all the Payment Obligations of SmelterCo under the [REDACTED] have been fully and irrevocably discharged; and
- (b) to the best of its knowledge no statute, rule, regulation or order has been executed, given or deemed applicable by any government or governmental or administrative agency or court having any relevant jurisdiction that would make the transactions contemplated by the PPA illegal, invalid or unenforceable in any respect under any jurisdiction.

6 REIMBURSEMENT

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED] [REDACTED] [REDACTED]
[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7 EXPENSES

7.1 Each Party must pay the amount of its own costs and expenses (including legal and other adviser fees) incurred by it in connection with the negotiation and execution of the PPA and the SG Guarantee and with the satisfaction of the initial conditions and subsequent conditions hereunder.

7.2 The Obligors must, except as provided in the Amendment & Restatement Agreement, jointly and severally pay to the Guarantor the amount of all reasonable costs and expenses (including legal and other adviser fees) reasonably incurred by it in connection with any amendment, waiver or consent requested by or on behalf of any Obligor or specifically allowed by this Agreement.

7.3 The Obligors must, except as provided in the Amendment & Restatement Agreement, jointly and severally pay to the Guarantor the amount of all costs and expenses (including legal fees) incurred by it in connection with:

- (a) the enforcement of, or the preservation of, any rights under this Agreement; or
- (b) any proceedings instituted by or against the Guarantor as a consequence of it entering into this Agreement.

8 INDEMNITIES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 UNDERTAKINGS

[REDACTED]

[REDACTED] Alloy Wheels Plant [REDACTED]

[REDACTED] Alloy Wheels Plant [REDACTED]

[REDACTED]

[REDACTED] the Alloy Wheels Plant [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] PPA)

[REDACTED] PPA)

[REDACTED] PPA;

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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■ [REDACTED]

[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]

[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

10 TERM AND DEFAULT

10.1 Subject to Clause 10.2 below, this Agreement shall take effect on the Effective Date and shall terminate on the date which is the later of:

- (a) the date on which the Guarantor is no longer subject to a claim or demand, or any potential or contingent claim or demand, under the SG Guarantee, in accordance with Clause 11 (Expiry) of the SG Guarantee; and
- (b) the date on which all amounts payable to the Guarantor by the Obligors under this Agreement have been paid in full.

10.2 The provisions of Clauses 1 (Definitions and Interpretation), 6 (Reimbursement), 8 (Indemnities) and this Clause 10 shall survive any termination of this Agreement.

10.3 In the event of:

- (a) any failure by the Obligors to make any payment due pursuant to Clauses 5 (Payment by Obligors) or 6 (Reimbursement) of this Agreement, after making the relevant demands for payment referred to in Clause 6.3; and/or
- (b) any failure by the Obligors to comply with the provisions of:
 - (A) Paragraph 6.2.5 of Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights)
 - (B) any material term of the Supplemental Security Document;
- (c) the entering into of any form of insolvency or analogous proceeding or any process for suspension of payments by any Obligor or by any shareholder of an Obligor or by any Corporate Undertaker, or if any such Obligor or shareholder or Corporate Undertaker shall cease or threaten to cease making payments of its obligations as they fall due; and/or

■ [REDACTED]

[REDACTED]

then the Guarantor shall be entitled to declare by notice to the Purchaser that an enforcement event (an “**Enforcement Event**”) has occurred and may thereafter subject to the Agreed Security Principles and to the provisions of any applicable Ranking Agreement, take such steps by way of enforcement of any of the Security Documents as it may require

11 NATURE OF PARTIES' RIGHTS AND OBLIGATIONS

11.1 Neither the obligations of the Obligors under this Agreement nor the rights, powers and remedies conferred on the Guarantor in respect of the Obligors by this Agreement or by law shall be discharged, impaired or otherwise affected by:

- (a) the winding-up, dissolution, administration, moratorium or re-organisation of any of the Obligors or any other person or any change in its status, control, function or ownership;
- (b) any of the obligations of SmelterCo under the Guaranteed Documents being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- (c) any time or other indulgence being granted to SmelterCo in respect of its obligations under the Guaranteed Document;
- (d) any amendment to, or any variation, waiver, exchange or release of, any obligation of SmelterCo under the Guaranteed Document;
- (e) the existence of any claim, set-off or any other right that any Obligor may have against the Guarantor;
- (f) any other circumstances, other than payment in full, that might otherwise constitute a defence available to, or discharge of, SmelterCo in respect of the Guaranteed Document;
- (g) any document presented in connection with the Guaranteed Document proving to be forged, fraudulent, invalid or insufficient in any respect or any statement in any document being untrue or inaccurate in any respect; or
- (h) any breach by any Obligor of any undertaking, representation or warranty contained in this Agreement or any Security Document.

11.2 The Guarantor shall not be liable or responsible for the validity of documents delivered to the Guarantor in connection with any claim under the SG Guarantee, or of any signatures thereon, even if such documents or signatures should in fact prove to be in any or all respects invalid, insufficient or (unless relevant officers of the Guarantor shall have actual knowledge thereof) fraudulent or forged.

12 PAYMENT PROCEDURE

- 12.1 The Guarantor may rely on any documents delivered to it in connection with any claim under the SG Guarantee which appear on their face to be in order, without responsibility for further investigation.
- 12.2 All payments by a Party under this Agreement must be made to the other Party in immediately available funds to its account at such office or bank, as it may notify in writing to the other Party for this purpose by not less than four Business Days' prior notice.
- 12.3 Payments under this Agreement to the Guarantor must be made for value on the due date at such times and in such funds as the Guarantor may specify to the Obligors as being customary at the time for the settlement of transactions in Edinburgh.
- 12.4 All payments made by any Obligor to the Guarantor under this Agreement must be calculated and be made without (and free and clear of any deduction for) any set-off or counterclaim.
- 12.5 Each Obligor must make any and all payments to be made under this Agreement on the date on which such payment becomes due and payable or, if not a Business Day, on the next succeeding Business Day (and in respect of any payment made by the Guarantor under the SG Guarantee, within 5 Business Days of the date on which the Guarantor makes such payment). During any extension of the due date for payment of any principal under this Agreement interest is payable on that principal at the rate payable on the original due date.
- 12.6 All payments to be made by any Obligor under this Agreement shall bear interest at the Default Rate from the date due to (and including) the date paid (both before and after any judgment or other order of a court of competent jurisdiction).
- 12.7 Any certification or determination by the Guarantor of a rate or amount made pursuant to the terms of this Agreement will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

13 AMENDMENTS AND WAIVERS

- 13.1 Any term of the Guaranteed Document may be amended (other than in respect of minor administrative matters) or waived only with the written agreement of the Guarantor. The rights of the Guarantor under this Agreement:
- (a) may be exercised as often as is necessary;
 - (b) are cumulative and not exclusive of its rights under the general law or under any relevant agreement;
 - (c) are in addition to any rights and remedies provided for in the SG Guarantee; and

(d) may be waived only in writing.

13.2 Any delay in exercising or non-exercise by the Guarantor of any right of the Guarantor under this Agreement is not a waiver of that right, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.

13.3 The Guarantor shall have the right to exercise in its complete discretion the waiver of any actual or potential breach by any Obligor of any provision of this Agreement by written notice setting forth the terms, conditions and extent of such waiver. Unless such notice expressly provides to the contrary, any waiver so granted shall extend only to the specific event or occurrence which gave rise to the actual or potential breach so waived, and not to any other similar event or occurrence which occurs subsequent to the date of such waiver.

14 FURTHER ASSURANCE

Each Obligor shall, so far as permitted by applicable law and regulatory requirements, at its own expense, take whatever action the Guarantor may reasonably require at any time to give effect to the provisions of this Agreement.

15 CHANGES TO THE PARTIES

15.1 No Obligor may assign or transfer any of its rights and obligations under this Agreement without the prior written consent of the Guarantor (not to be unreasonably withheld or delayed).

15.2 HydroCo shall become a Party to this Agreement as an Obligor on the closing date of the Acquisition by signing and delivering to the Purchaser, SmelterCo, the Corporate Undertakers and the Guarantor a duly completed and executed Accession Agreement.

15.3 The rights and obligations of the Guarantor under this Agreement in relation to any payment or reimbursement obligation of any Obligor and to any security or other assurance granted in respect of those obligations (but not any other right or obligation) may after any claim has been made on the SG Guarantee which has not been reimbursed as provided for hereunder (but not at any other time) be assigned, novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any legislation or otherwise) to any person without the prior written consent of any Obligor.

15.4 A transfer of obligations permitted under this Clause 15 will be effective only if the new Party confirms to the other Party in form and substance satisfactory to the other Parties, acting reasonably, that it is bound by the terms of this Agreement. On the transfer becoming effective in this manner the original Party will be released from its obligations under this Agreement to the extent that they are transferred to the new Party.

16 DISCLOSURE OF INFORMATION

16.1 Each Party must keep confidential any information supplied to it by or on behalf of the other Party in connection with this Agreement. However, each Party is entitled to disclose information:

- (a) which is publicly available, other than as a result of a breach by it of this Clause;
- (b) in connection with any legal or arbitration proceedings;
- (c) If required to do so under any law or regulation or by order of a court or other public body that has jurisdiction over the relevant Party;
- (d) to any UK, Scottish, Hong Kong or Singapore government department or a governmental, banking, taxation or other regulatory authority;
- (e) to its officers, employees and professional advisers;
- (f) to any rating agency, provided that the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement;
- (g) with the agreement in writing of the other Party; or
- (h) in the case of the Guarantor, for the purposes of the Freedom of Information (Scotland) Act 2002 or other laws or regulations relating to the disclosure of information to which the Guarantor is subject (and the Guarantor shall be responsible for determining whether it is subject to such laws or regulations and whether or not the information is exempt from disclosure). The Guarantor shall use reasonable endeavours to inform the Obligors of any relevant request for disclosure and to consider any representations the Obligors might make where practicable and lawful to do so.

16.2 This Clause 16 supersedes any previous confidentiality undertaking given by the Obligors or the Guarantor in connection with this Agreement.

17 NOTICES

17.1 In writing

- (a) Any communication in connection with this Agreement must be in writing and, unless otherwise stated, may be given:
 - (A) in person, by post: or

- (B) to the extent agreed between the Guarantor and the Obligors, by e-mail or other electronic communication.
- (b) An electronic communication will be treated as being in writing.
- (c) Unless it is agreed to the contrary, any consent or agreement required under this Agreement must be given in writing.

17.2 Contact details

- (a) The contact details of each Obligor for this purpose are:

Address: Liberty House Group, 7 Hertford Street, London W1J 7RH

Email: [REDACTED]

Attention: Jay Hambro or Sanjeev Gupta

- (b) The contact details of the Guarantor for this purpose are:

Address: Director General Economy, Room 1N.01, St Andrews House, Regent Road, Edinburgh, EH1 3DG

E-mail: DGEconomy@gov.scot

Attention: Liz Ditchburn of [REDACTED]

- (c) The Obligors or the Guarantor may change their contact details by giving five Business Days' notice to the other Party.
- (d) Where a Party nominates a particular department or officer to receive a communication, a communication will not be effective if it fails to specify that department or officer.

17.3 Effectiveness

- (a) Except as provided below, any communication in connection with this Agreement will be deemed to be given as follows:
 - (A) if delivered in person, at the time of delivery;
 - (B) if posted, when it has been received at the relevant address, or (if earlier) five Business Days after being deposited in the post, postage prepaid, in a correctly addressed envelope; and

- (C) if by e-mail or any other electronic communication, when received in legible form.
- (b) A communication given under Clause 17.3(a) above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.
- (c) A communication to the Guarantor will only be effective on actual receipt by it.

18 SEVERABILITY

- 18.1 If a term of this Agreement is or becomes illegal, Invalid or unenforceable in any respect under any jurisdiction, that will not affect:
- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or
 - (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this Agreement.

19 GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

20 JURISDICTION

- 20.1 The courts of Scotland have exclusive jurisdiction to settle any dispute including a dispute relating to any non-contractual obligation arising out of or in connection with this Agreement.
- 20.2 The courts of Scotland are the most appropriate and convenient courts to settle any such dispute in connection with this Agreement. Each Obligor agrees not to argue to the contrary and waives objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.
- 20.3 This paragraph is for the benefit of the Guarantor only. To the extent allowed by law, the Guarantor may take:
- (a) proceedings in any other court; and
 - (b) concurrent proceedings in any number of jurisdictions.
- 20.4 References in this Clause 20 to a dispute in connection with this Agreement include any dispute as to the existence, validity or termination of this Agreement.

THIS IS THE SCHEDULE IN NINE (9) PARTS TO THE FOREGOING AMENDED & RESTATED
GUARANTEE AND REIMBURSEMENT AGREEMENT ENTERED INTO BETWEEN THE
SCOTTISH MINISTERS, SIMEC LOCHABER HYDROPOWER LIMITED, LIBERTY ALUMINIUM
LOCHANER LIMITED AND THE CORPORATE UNDERTAKERS NAMED THEREIN AND
ENTERED INTO ON [] 2020

THE SCHEDULE

PART 1

FORM OF SG GUARANTEE

GUARANTEE by

THE SCOTTISH MINISTERS, Victoria Quay, Edinburgh, EH6 6QQ (the "**Guarantor**")

in favour of

GREENSILL CAPITAL (UK) LIMITED, a company incorporated in England & Wales with registered number 08126173 and having its registered office at One Southampton Street, Covent Garden, London WC2R 0LR (the "**Funder**") ; and

Each other **TRANSFeree** (defined below).

BACKGROUND:

(a) Simec Lochaber Hydropower Limited (the "**Purchaser**") and Liberty have entered into a PPA

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] under the PPA.

IT IS AGREED AS FOLLOWS

(A) DEFINITIONS

1.1 In this Guarantee:

1.1.1 "**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in Edinburgh;

1.1.2 "**Commencement Date**" means 16 December 2016;

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] PPA
[REDACTED]

1.1.4 "**Liberty**" means Liberty Aluminium Lochaber Limited, a company incorporated in Scotland with registered number SC549732 and having its registered office at 15 Atholl Crescent, Edinburgh EH3 8HA;

1.1.5 "Payment Obligations" means all amounts payable by Liberty to the Funder or any other Transferee (as applicable) under or in relation to the [REDACTED] in respect of Payment Schedule no. 1 dated 12 December 2016 including without limitation interest on overdue payments;

1.1.6 "PPA" means the power purchase agreement entered into initially between Liberty and the Purchaser dated on or around the date hereof;

1.1.7 "Quarter" means each consecutive period of three calendar months starting on the Commencement Date;

1.1.8 "Schedule" means the schedule to this Agreement in 2 parts; and

1.1.9 "Transferee" means any person(s) who has the benefit of any Payment Obligation from time to time including, without limitation, the Funder and its successor transferees.

2. Guarantee and indemnity

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Limit of liability

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Scope of the Guarantee

- 4.1 This Guarantee is not cancellable by the Guarantor for any reason, including the failure of the Guarantor to receive payment of any fees due to it in respect of the provision of the Guarantee.

[REDACTED]

5. Payments under the Guarantee

- 5.1 All payments made under this Guarantee shall be denominated in the same currency as the Payment Obligations and shall be made free and clear of any deduction or withholding for or on account of any present or future taxes, levies, imposts, duties, charges or fees (together, "Deductions").
- 5.2 If the Guarantor is required by law to make any such Deductions, the Guarantor will (subject to Clause 3.1) gross up the payment so that the net sum received by the Funder and any Transferee is equal to the full amount which the Funder or Transferee would have received had no such Deduction been made.

[REDACTED]

- 5.4 The Funder or any Transferee may appropriate any payments received under this Guarantee in respect of any part or type of the outstanding Payment Obligations owed to them in such manner and order as they may decide.

6. Notice of Payment Demand

- 6.1 If Liberty fails or refuses to pay any of the Payment Obligations when due, the Funder and any Transferee to whom such Payment Obligations are owed may make a demand upon the Guarantor substantially in the form as set out in Part 1 of the Schedule (a "Payment Demand").
- 6.2 The Guarantor shall have no obligation under this Guarantee in respect of any Payment Obligation until the Guarantor receives a Payment Demand in respect of that Payment Obligation.
- 6.3 The Guarantor shall pay any amount due under this Guarantee within 5 Business Days after receipt of the Payment Demand.
- 6.4 Neither the Funder nor any Transferee (nor any trustee or agent on its or their behalf, as applicable) shall be obliged, before issuing a Payment Demand or exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Guarantee or by law, to:

- 6.4.1 take any action or obtain judgment or decree in any court against Liberty;
- 6.4.2 make or file any claim to rank in a winding up or liquidation of Liberty; or
- 6.4.3 enforce or seek to enforce any other security taken or exercise any right or plea available to them in respect of the obligations of Liberty to them .

7. Warranties

- 7.1 The Guarantor represents and warrants to the Funder (and to each Transferee) as follows:
 - 7.1.1 the obligations expressed to be assumed by the Guarantor in this Guarantee are legal, valid, binding and enforceable obligations;
 - 7.1.2 the entry into and performance of the obligations set out in this Guarantee do not and will not conflict with any law or regulation applicable to the Guarantor or any agreement or instrument binding it; and
 - 7.1.3 the Guarantor has the power to enter into, perform and deliver and has taken all necessary action to authorise its entry into, performance and delivery of this Guarantee.

8. Further assurance

- 8.1 The Guarantor shall execute and deliver any further instruments and documents and do all such assurances, acts and things as the Funder or any Transferee may require for perfecting or protecting its obligations under this Guarantee and for the exercise of all powers, authorities and discretions conferred on the Funder or any Transferee by this Guarantee.

9. Defences and set-off

- 9.1 The Guarantor may not claim any set-off or counterclaim in respect of any payment due from the Guarantor to the Funder or to any Transferee under this Guarantee.

10. Continuing Guarantee

- 10.1 The obligations of the Guarantor under this Guarantee:
 - 10.1.1 shall be continuing obligations and shall extend to the ultimate balance of all sums payable by the Guarantor under this Guarantee and shall not be considered satisfied by an intermediate payment or satisfaction of part only of the Guarantor's liability for Payment Obligations; and
 - 10.1.2 shall continue in full force and effect until total and irrevocable satisfaction of all the Payment Obligations or the expiry of this Guarantee pursuant to Clause 11.

10.2 Neither the obligations of the Guarantor under this Guarantee nor the rights, powers, discretions and remedies conferred upon the Funder or any Transferee by this Guarantee shall be discharged, impaired or otherwise affected by:

10.2.1 any insolvency, bankruptcy, sequestration, liquidation, administration, winding up, receivership, dissolution, incapacity, invalidity, unenforceability, limitation, disability, or the discharge by operation of law of Liberty or any other person,

10.2.2 any change in the constitution or name of Liberty or any other person;

10.2.3 any present or future security, guarantee, indemnity or other right or remedy held by or available to the Guarantor being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Guarantor from time to time exchanging, varying, realising or failing to perfect or enforce any of the same;

10.2.4 the Funder or any Transferee discharging or releasing the liability of Liberty, granting any time, indulgence or concession to Liberty or omitting to claim or enforce payment from Liberty;

10.2.5 any act or omission that would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of a guarantor or indemnifier; or

10.2.6 anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Guarantor or otherwise reduce or extinguish its liability under this Guarantee.

11. Expiry

11.1 This Guarantee shall expire on the date falling 25 years and 60 days after the Commencement Date (at 24.00 hours GMT time) without any requirement for written notice being served upon the Funder or any Transferee.

11.2 Expiry of this Guarantee in accordance with Clause 11.1 shall be without prejudice to any Payment Demands validly made prior to such expiry or termination, but subject thereto the Guarantor shall have no further obligations to the Funder or any Transferee following such expiry or termination.

12. Other guarantees and security

12.1 This Guarantee is in addition to and shall not in any way prejudice or be prejudiced by any other guarantee, collateral or other security, right or remedy which the Funder or any Transferee may now or at any time hereafter hold for all or part of the Payment Obligations. This Guarantee shall not merge with or prejudice such other guarantee or security or any contractual or other rights of the Funder or any Transferee.

13. Variations

13.1 Any variation to this Guarantee shall be in writing and signed by or on behalf of each party.

13.2 Neither the Funder nor any Transferee shall agree to any variation of the [REDACTED] without the prior consent in writing of the Guarantor.

14. Delay and waiver

14.1 No delay of the Funder or any Transferee in the exercise of, or failure to exercise, any rights hereunder or under the [REDACTED] shall operate as a waiver of such rights, a waiver of any other rights, or a release of the Guarantor from any obligations hereunder.

15. Severable obligations

15.1 Each of the provisions of this Guarantee shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise, the validity, legality and enforceability of the remaining provisions of this Guarantee shall not in any way be affected or impaired thereby.

16. Notices

16.1 Any communication to be made under or in connection with this Guarantee shall be made (in English) in writing and, unless otherwise stated, may be made by fax or letter.

16.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of the Guarantor and the Funder for any communication or document to be made or delivered under or in connection with this Guarantee is:

16.2.1 Guarantor: Address: Director General Economy, Room 1N.01, St Andrews House, Regent Road, Edinburgh, EH1 3DG

Fax number: N/A

E-mail: DGEconomy@gov.scot

For the attention of: Liz Ditchburn or [REDACTED]

16.2.2 Funder : Address : One Southampton Street, Covent Garden, London WC2R 0RR

Fax number : N/A

For the attention of : General Counsel and Client Director

or any substitute address, fax number or department or officer as the Guarantor or the Funder may notify to the other from time to time.

16.3 Any notice or other communication given to a party shall be deemed to have been received:-

16.3.1 if sent by facsimile, with a confirmed receipt of transmission from the receiving machine, on the day on which transmitted;

16.3.2 in the case of a written notice given by hand, on the day of actual delivery; and

16.3.3 if posted, on the second Business Day following the day on which it was despatched by first class mail postage prepared following the date of despatch by prepaid first class postage,

provided that a notice given in accordance with the above but received on a day which is not a Business Day or after normal business hours in the place of receipt shall only be deemed to have been received on the next Business Day.

17. Assignment

17.1 The Funder and any Transferee may at any time sell, assign and/or transfer all or any of its rights and/or obligations under this Guarantee to any person to which its right, title and interest (in whole or in part) in the [REDACTED] is sold, assigned, novated or otherwise transferred.

17.2 Any Transferee that is not a party to this Guarantee shall be entitled to rely on the terms of this Guarantee as a third party beneficiary.

17.3 The Guarantor may not assign or transfer any of its rights and/or obligations under this Guarantee.

18. Interpretation

18.1 Unless otherwise indicated any reference in this Guarantee to:

18.1.1 a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (in each case whether or not having separate legal personality);

18.1.2 any person shall include that persons successors in title, permitted assignees or permitted transferees;

18.1.3 a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;

18.1.4 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

18.1.5 a clause heading is a reference to a clause or a sub-clause of this Guarantee and is for ease of reference only and shall not affect interpretation;

18.1.6 this Guarantee (and any provisions of it) or any other document referred to in this Guarantee shall be construed as references to it for the time being as amended, varied, supplemented, restated, substituted or novated from time to time;

18.1.7 a time of day is a reference to London time; and

18.1.8 "set off" includes any right of retention, claim for compensation or right to balance accounts on insolvency.

19. Governing law and jurisdiction

This Guarantee shall be governed by and construed in all respects in accordance with the law of Scotland and the parties irrevocably submit to the non-exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents consisting of this and the preceding [7] pages and the Schedule hereto in two parts are executed as follows:

Executed (but not delivered until the date of)
delivery specified below) for and on behalf)
of **THE SCOTTISH MINISTERS**)

acting by:

Signature of authorised signatory _____

Signature of authorised signatory _____

at _____

on _____

Date of delivery: December 2016

THIS IS THE SCHEDULE TO THE FOREGOING GUARANTEE ENTERED INTO BETWEEN THE SCOTTISH MINISTERS, GREENSILL CAPITAL (UK) LIMITED AND OTHERS

PART 1 OF THE SCHEDULE

FORM OF PAYMENT DEMAND

SCOTTISH MINISTERS

[DATE]

Dear Sirs,

We refer to the guarantee given by you dated [] (the "**Guarantee**"), a copy of which is attached. Unless otherwise defined herein, all capitalised terms used herein and defined in the Guarantee shall have the meanings given to them in the Guarantee.

[We hereby certify that we are a Transferee (as defined in the Guarantee).]

Liberty is in breach of the Payment Obligations and accordingly the sum of [£] is properly due to us.

This amount was included in the invoice issued by us to Liberty dated [DATE], was due to be paid on [DATE], and has not been paid as at the date hereof.

Payment of the relevant amount should be made to the following account:

Name: *[account name]*

Account number: *[insert details]*

Bank: *[name and code]*

Yours faithfully

[]

for and on behalf of [Funder][OtherTransferee]

.....
Name

.....
Title

PART 2

INITIAL CONDITIONS

1 THE PPA;

█ [REDACTED]

3 Bond and Floating Charge by the Purchaser;

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

6 Bond and Floating Charge by SmelterCo;


█ [REDACTED]

8 Standard Security granted by Hydroco over the Lochaber Hydro Plant and Tailrace dated 16 December and registered in the Land Register of Scotland under Title Number INV1401 on 23 December 2016 as varied by Deed of Restriction by the Scottish Ministers in favour of Hydroco dated 12 February 2019 and undergoing registration in the Land Register of Scotland under Title Number INV1401;

9 Standard Security granted by Hydroco over that part of north of Mamore Estate dated 16 December and registered in the Land Register of Scotland under Title Number INV35766 on 23 December 2016;

10 Standard security granted by HydroCo over Glensherro Estate dated 16 December 2016 and registered in the Land Register of Scotland under Title Number INV38523 on 28 December 2016;

11 Standard security granted by HydroCo over Achintee Estate dated 16 December 2016 and undergoing registration in the Land Register of Scotland under Title Number INV37890;

- 12 Standard Security granted by Hydroco over Killiechonate Estate dated 4 and 10 May 2017 and undergoing registration in the Land Register of Scotland under Title Number INV15949;
- 13 Standard security granted by HydroCo over Inverlochty Estate dated 4 and 10 May 2017 and undergoing registration in the Land Register of Scotland under Title Number INV39415;
- 14 Standard Security by Simec Lochaber Hydropower 2 Limited in favour of the Scottish Ministers dated 4 and 10 May 2017 and undergoing registration in the Land Register of Scotland under Title Number INV39415;
- 15 Standard Security by Liberty Aluminium Lochaber Limited in favour of the Scottish Ministers over Lochaber Smelter dated 9 May 2018 and undergoing registration in the Land Register of Scotland under Title Number INV45464;
- 16 Floating Charge by HydroCo;
- 17 Share Charge in respect of all the shares in HydroCo by the Purchaser;
- 18 Legal opinions in relation to the capacity and authority of SEP, SGL and LHG;
- 19 Net Worth Certificates in respect of SGL, LHG and SEP;
- 20 
- 21 The Due Diligence Reports received by the Obligors in connection with the Acquisition; and
- 22 An Accession Agreement duly signed by HydroCo.

PART 3

SUBSEQUENT CONDITIONS

1. Step-in Agreements by HydroCo in relation to any material contracts of the Lochaber Hydro Plant, by no later than 31 March 2017;
2. Step-in Agreements by SmelterCo in relation to any material contracts of the Lochaber Smelter, by no later than 31 March 2017; and
3. Assignment in Security by HydroCo over any material Lochaber Hydro Plant grid connection contracts, by no later than three months after completion date.

6. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

IN WITNESS WHEREOF:

PART 5

AGREED SECURITY PRINCIPLES

1. All business-related or commercial obligations of the Obligors will be contained in this Agreement, and no additional such provisions will be included in any Security Document;

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

8. The Parties will give all practicable support, including the timely provision by the Guarantor of letters of non-crystallisation and confirmations of approval for disposals, so as to enable the commercial intent of these the Agreed Security Principles to be achieved.

PART 6

Form of Net Worth Certificate

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[]

PART 7

NOT USED

PART 8

[DELETED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2 OBLIGOR APPROVAL OF NEW BUSINESS PLAN

2.1 The Obligors agree and undertake to the Guarantor that any New Business Plan will, prior to its submission to the Guarantor in accordance with paragraph 1.1 of this Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights):

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.2 The Obligors agree and undertake to the Guarantor that prior to the submission of the New Business Plan to the Guarantor in accordance with paragraph 1.1 of this Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights) [REDACTED]

3 GUARANTOR APPROVAL OF THE NEW BUSINESS PLAN

3.1 [REDACTED]

[REDACTED] Alloy Wheels Plant, [REDACTED]

3.2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Alloy Wheels Plant;

3.7 No later than 20 Business Days after any Rejected New Business Plan Meeting the Obligors will prepare and submit a further New Business Plan which shall, so far as they are able, comply with the requirements of paragraph 1.2 of this Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights). The Guarantor shall in its absolute discretion decide whether to approve or reject such further New Business Plan and shall promptly give notice of the same to the Obligors. Where any such resubmitted New Business Plan is so:

3.7.1 accepted it shall therefrom be deemed an "Accepted New Business Plan"; or

3.7.2 rejected the provisions of paragraphs 3.5 and 3.6 of this Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights) shall apply to it.

█ [REDACTED]

4.1 No material amendments, alterations or variations to an Accepted New Business Plan will be permitted save in accordance with this paragraph 4.

█ [REDACTED]

4.3 The Guarantor shall consider such amendments, alterations or variations to an Accepted New Business Plan and approve or reject such amendments, alterations or variations on the basis of paragraph 3 of this Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights) as if the submission of such amendments, alterations or variations was a New Business Plan.

4.4 Where any such amendments, alterations or variations are accepted the relevant Accepted New Business Plan, subject to such amendments, alterations or variations, shall be deemed to be an Accepted New Business Plan.

4.5 Where any amendments, alterations or variations are rejected the relevant Accepted New Business Plan, subject to such amendments, alterations or variations, shall be deemed to be a

Rejected New Business Plan and the provisions of paragraphs 3.5 to 3.7 (inclusive) of this Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights) shall apply.

5 REPORTING

5.1 The Obligors agree and undertake to the Guarantor that:

5.1.1 they will provide the Guarantor, its agents and advisers promptly on demand by the Guarantor with all supporting evidence (including without limitation books accounts and records) that the Guarantor, its agents or advisers may reasonably require in order to undertake its or their own assessment of all Construction Costs and the New Business Plan to which they relate; and

5.1.2 they will allow the Guarantor and its agents and advisers (excluding legal and financial advisers) on 2 Business Days' notice from the Guarantor to the Obligors access to the Lochaber Smelter or such other site on which the Approved Activity is situated to undertake its or their own assessment of the expenditure of all Construction Costs and progress of the New Business Plan to which they relate;

5.1.3 they will provide to the Guarantor, its agents and advisers:

5.1.3.1 a monthly report within 28 days of the end of each month beginning the month after the Business Plan Delivery Date detailing:

5.1.3.1.1 the progress of the Approved Activity;

5.1.3.1.2 any material variance of the progress of the Approved Activity against the planned progress in the Accepted New Business Plan;

5.1.3.1.3 progress towards the construction milestones set out in the Accepted New Business Plan;

5.1.3.1.4 any anticipated delay to achieving any construction milestone set out in the Accepted New Business Plan;

5.1.3.1.5 a reconciliation of the expenditure of Milestone Investments on Construction Costs incurred on the Approved Activity in the Accepted New Business Plan;

| | | |
|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |

[REDACTED]

[REDACTED]
[REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.2.5 they will maintain the Accounts with a third party clearing bank domiciled in England or Wales and will at all times operate the Accounts in accordance with the terms of the Supplemental Security Document and in accordance with the terms of any account mandate applicable thereto; and

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

then the Guarantor shall be entitled to:

(A) promptly demand the repayment to the Float Account of such sum (and any associated costs and expenses) by the Obligors within 2 Business Days of the date of such demand and the Obligors shall comply with such demand; and

(B) where the Obligors do not repay such sums as demanded under paragraph 6.2.7(A) of this Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights), then until such time as the Obligors comply with Paragraph 6.2.7(A) of this Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights) suspend the operation of paragraphs 6.2.4, 6.5 and 6.6 of this Part 9 of the Schedule

(Amendment & Restatement Undertakings and Rights) by notice to that effect; and

(C) be entitled to review all fees payable to it under the terms of the SG Guarantee Fee Letter whether or not it has already reviewed such fees in the 12 months prior to that date;

6.3 Any Milestone Investments which would become due during a Milestone Investment Suspension Period will not become due until the fifth Business Day after the end of that Milestone Investment Suspension Period. Any Milestone Investments which would become due during a Compliant Request Suspension Period will not become due until the fifth Business Day after the end of that Compliant Request Suspension Period. Any Milestone Investments which would become due during a Compliant Request Suspension Period and a Milestone Investment Suspension Period will not become due until the fifth Business Day after the later of (i) the end of that Compliant Request Suspension Period and (ii) the end of that Milestone Investment Suspension Period.

6.4 The parties agree that requests or demands for payment, repayment, withdrawal or transfer of any sum from the Charged Account shall be made only in accordance with the terms of the Supplemental Security Document.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.7 Notwithstanding any other provision of this Agreement or the Supplemental Security Document, no payment, repayment, withdrawal or transfer of all or any part of the sums in the Charged Account may be made without the consent of the Guarantor (in its sole discretion).

6.8 The Guarantor shall use all reasonable endeavours to promptly, and in any event within 5 Business Days, provide a response (including, if and when applicable and always in the sole discretion of the Guarantor, the execution and delivery of any release notices required in connection with the Charged Account) to each Compliant Request.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 APPOINTMENT OF INDEPENDENT CERTIFIER

8.1 The Independent Certifier shall be a reputable company or business with recent, relevant and substantial experience and relevant expertise in development and project monitoring in the process plant or industrial manufacturing industry/sector.

8.2 The Independent Certifier shall:

8.2.1 be independent of all the parties;

8.2.2 act as Independent Certifier pursuant to the terms of this Agreement and the Supplemental Security Document;

8.2.3 agree to keep all matters arising from the appointment as confidential; and

8.2.4 have professional indemnity insurance to the value of at least £10,000,000.

8.3 The Independent Certifier's scope shall comprise the following, and such other activities which the proposed Independent Certifier (in her reasonable opinion) considers necessary to enable her to effectively discharge her obligations under paragraph 8.3.3 below:

- 8.3.1 review of all relevant construction, appointment and design documentation in relation to the Approved Activity(ies) and the Accepted New Business Plan;
 - 8.3.2 advise on when Commencement of Construction has occurred;
 - 8.3.3 provide a quarterly report to the Guarantor in relation to the progress of the development and works against the programme, which report shall after the Commencement of Construction be provided monthly or otherwise as determined by the Independent Certifier;
 - 8.3.4 promptly on receipt report to the Guarantor (at the Independent Certifier's discretion) on all requests or demands for payment, repayment, withdrawal or transfer of any sum from the Charged Account and where it is appropriate to do so, and having regard to the progress of the development and works against the programme, provide an Independent Certifier Certificate without undue delay; and
 - 8.3.5 regularly inspect each phase, and again at completion, and report on findings;
- 8.4 The Independent Certifier shall be appointed by SmelterCo, and SmelterCo shall provide the Guarantor with a true and complete copy of the appointment contract within 5 Business Days of such appointment being made. The Independent Certifier shall issue a letter of reliance and duty of care to the Guarantor in respect of such appointment and all matters arising therefrom in terms acceptable to the Guarantor, acting reasonably.
- 8.5 The Independent Certifier's fees shall be met by SmelterCo, and SmelterCo shall indemnify the Guarantor in respect thereof.
- 8.6 Within 10 Business Days of the Restatement Date each of the Guarantor and SmelterCo shall provide the other with a notice containing not fewer than three nominees to be the Independent Certifier. The Guarantor and SmelterCo shall attempt to agree a single Independent Certifier.
- 8.7 If 20 Business Days after the Restatement Date the Guarantor and SmelterCo have not agreed upon the identity of the Independent Certifier then SmelterCo or the Guarantor (either with SmelterCo's agreement, or otherwise without such agreement on the date falling 5 Business Days following a request from the Guarantor to SmelterCo) (the "**Requesting Party**"), having regard for the characteristics and nature of the Proposed Activity or Approved Activity (as applicable), may request that the chair (or other senior office holder) for the time being of any of The Royal Institute of Chartered Surveyors in Scotland, the Institution of Chemical Engineers or the Institute of Mechanical Engineers (as each may be constituted, re-constituted, formed or re-formed from time to time) (the "**Relevant Chair**") (as appropriate) selects an Independent Certifier. The Requesting Party shall (i) request that the Independent Certifier meets the requirements of paragraph 8.1 above, and (ii) supply the relevant provisions of this Agreement

and the Supplemental Security Document as executed by the parties to the Relevant Chair with its request.

- 8.8 Upon selection of the Independent Certifier, the parties or either of them, shall forthwith notify the Independent Certifier of her selection and request her to confirm to both parties within three Business Days whether or not she is willing and able to accept the appointment. The parties will co-operate with each other to appoint the Independent Certifier and ensure that the terms of the appointment of the Independent Certifier are consistent with paragraph 8.3 of this Part of the Schedule (Amendment & Restatement Undertakings and Rights) and are agreed with her within 15 Business Days of the Restatement Date.
- 8.9 If:
- 8.9.1 an Independent Certifier upon whose identity the parties have agreed refuses to accept the appointment; or
- 8.9.2 an Independent Certifier whom the Relevant Chair has selected refuses to accept the appointment; or
- 8.9.3 at any time the appointed Independent Certifier becomes unable or unwilling to act, the parties shall appoint another Independent Certifier to begin the reference afresh (or complete it if the parties so agree) in accordance with the procedure set out in paragraph 8.6 of this Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights).
- 8.10 If 15 Business Days after the Restatement Date the Guarantor and SmelterCo have not agreed upon the terms of the appointment of the Independent Certifier then the terms of paragraph 9 of this Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights) shall apply.
- 8.11 Subject to Clause 16, all matters concerning the selection and appointment of the Independent Certifier shall be kept confidential among the parties, the Relevant Chair and the Independent Certifier.
- 8.12 The Guarantor and SmelterCo shall comply with their obligations pursuant to any agreement documenting the terms of the appointment of the Independent Certifier.
- 8.13 The parties agree that notwithstanding any other term of this Agreement the Independent Certifier shall be provided with a redacted copy of this Agreement and the Supplemental Security Document (such redactions being made in relation to commercially sensitive information not required in connection with the Independent Certifier's role pursuant to this paragraph 8 of Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights)) as executed by the parties and such other redacted agreements between the parties as the Independent Certifier reasonably requires to perform their duties.

- 8.14 When following either (i) selection of the Independent Certifier or (ii) the appointment of the Independent Certifier, any New Business Plan becomes an Accepted New Business Plan in the reasonable opinion of either SmelterCo or the Guarantor, or in the opinion of the Independent Certifier itself, the characteristics and nature of the Approved Activity contained in the Accepted New Business Plan are such that the Independent Certifier is no longer suitable to act in such capacity then SmelterCo and the Guarantor shall agree and appoint a new Independent Certifier in accordance with the provisions of this paragraph 8 of Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights), but substituting for "Restatement Date" the date when the New Business Plan becomes an Accepted New Business Plan. On appointment of a new Independent Certifier SmelterCo will terminate the appointment (if any) of the previous Independent Certifier.

9 DISPUTE RESOLUTION PROCEDURE

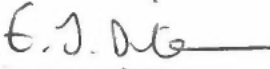
- 9.1 Where the Parties are unable to agree on whether a New Business Plan complies with some or all of the requirements of paragraph 3.2 of this Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights) or are unable to agree upon the terms of the appointment of the Independent Certifier then:

9.1.1 either Party shall give to the other written notice of the matter requiring to be resolved (the "**Dispute**"), setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, either or both of Liz Ditchburn or [REDACTED] on behalf of the Guarantor and either or both of Jay Hambro or Sanjeev Gupta on behalf of all the Obligors shall attempt in good faith to resolve the Dispute;

9.1.2 if those individuals on behalf of all Parties are for any reason unable to resolve the Dispute within 10 Business Days of the Dispute Notice, the Parties agree to request (i) where the Dispute relates to a New Business Plan the president of the Institute of Chartered Accountants in England and Wales ("**ICAEW**") to appoint an independent expert accountant of repute with international experience in advising businesses in the same sector as that proposed by the Approved Activity or (ii) where the Dispute relates to the terms of the appointment of the Independent Certifier the President of the Chartered Institute of Arbitrators ("**CIA**") to appoint an appropriately qualified expert party with recent, relevant and substantial experience in development and project monitoring (in the process plant or industrial manufacturing industry/sector) to determine the Dispute.

- 9.2 The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of 20 Business Day of the matter being referred to the Expert.

- 9.3 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this paragraph then:
- 9.3.1 either party may apply to the president of the ICAEW or CIA (as applicable) to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- 9.3.2 this paragraph shall apply to the new Expert as if they were the first Expert appointed.
- 9.4 All matters under this paragraph must be conducted, and the Expert's decision shall be written, in the English language.
- 9.5 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the dispute which may include any issue involving the interpretation of any provision of this Agreement, their jurisdiction to determine the matters and issues referred to them and/or their terms of reference. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.
- 9.6 Each Party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Parties equally or in such other proportions as the Expert shall direct.
- 9.7 Subject to Clause 16, all matters concerning the process and result of the determination by the Expert shall be kept confidential among the Parties and the Expert.
- 9.8 Each Party shall act reasonably and co-operate to give effect to the provisions of this paragraph and otherwise do nothing to hinder or prevent the Expert from reaching their determination.
- 9.9 The Expert and shall have no liability to the parties for any act or omission in relation to this appointment; save in the case of bad faith.


ON BEHALF OF
THE SCOTTISH MINISTERS

- 9.3 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this paragraph then:
- 9.3.1 either party may apply to the president of the ICAEW or CIA (as applicable) to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- 9.3.2 this paragraph shall apply to the new Expert as if they were the first Expert appointed.
- 9.4 All matters under this paragraph must be conducted, and the Expert's decision shall be written, in the English language.
- 9.5 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the dispute which may include any issue involving the interpretation of any provision of this Agreement, their jurisdiction to determine the matters and issues referred to them and/or their terms of reference. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.
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