

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]

Witness:

[REDACTED]

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 [REDACTED] ...,its duly authorised attorney

at WALES

on 07/07/2020

[REDACTED]

Duly Authorised Attorney

in the presence of:

Witness: [REDACTED]

Full Name: [REDACTED]

Address: [REDACTED]

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

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

Witness: [REDACTED]

Full Name: .. [REDACTED]

[REDACTED]

Attorney-in-Fact/ Director

Address: [REDACTED]



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

| | | |
|-----|----------------------------|------------|
| I | [REDACTED] | [REDACTED] |
| II | [REDACTED] | [REDACTED] |
| III | [REDACTED] | [REDACTED] |
| IV | [REDACTED] | [REDACTED] |
| V | [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: