

**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]

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[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]

[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]

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[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]

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[REDACTED] PPA;

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