

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]
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[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]

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[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

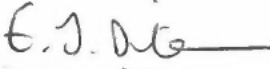
- 9.1 Where the Parties are unable to agree on whether a New Business Plan complies with some or all of the requirements of paragraph 3.2 of this Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights) or are unable to agree upon the terms of the appointment of the Independent Certifier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

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- 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.
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