
24 NOVEMBER 2013

AMENDMENT N°2

to

THE BASIC AGREEMENT

between


THE REPUBLIC OF GUINEA

and

GUINEA ALUMINA CORPORATION LTD

and

GUINEA ALUMINA CORPORATION SA



ORA0028/002/9207/102F/393/76025

THIS AMENDMENT N°2 is made on 24 November 2013

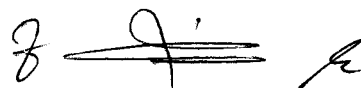
BETWEEN:

- (1) **THE REPUBLIC OF GUINEA**, represented by His Excellency Mohamed Lamine Fofana, Minister for Mines and Geology (the "**State**"); and
- (2) **GUINEA ALUMINA CORPORATION, LTD.**, a company limited by shares with its registered office at P.O. Box 4041, Road Town, Tortola, British Virgin Islands ("**GAC**"), represented by Khaled Al Rashedi, Director (*Administrateur*); and
- (3) **GUINEA ALUMINA CORPORATION SA**, a *société anonyme* with its registered office at Immeuble Mamou, P.O. Box 5090, Conakry, Republic of Guinea ("**GAC SA**", and together with GAC, the "**Investor**"), represented by Khaled Al Rashedi, Director (*Administrateur*),

(the State, GAC and GAC SA are referred to together as the "**Parties**" and each individually as a "**Party**").

WHEREAS:

- A. Following the recent acquisition of 100% of the equity in GAC by Affiliated Companies of Mubadala Development Company PJSC ("**Mubadala**") and Dubai Aluminium ("**DUBAL**"), as approved by the State, the Parties wish to reaffirm their joint desire to develop the Sangarédi alumina refinery project and commence operations in a reasonable timeframe.
- B. The Parties also wish to continue to further their mutual commercial and socio-economic objectives, including the creation of a significant number of new jobs in Guinea and the continued development and diversification of the economies of the Republic of Guinea and United Arab Emirates.
- C. Having regard to:
 - (i) the Basic Agreement for the Construction and Operation of an Alumina Refinery at Sangarédi dated 15 October 2004 (as amended, the "**Basic Agreement**");
 - (ii) Amendment No. 1 to the Basic Agreement dated 16 May 2005 between the State, GAC and Global;
 - (iii) Law No. L/2005/015/AN of 4 July 2005 relating to the ratification of the Basic Agreement;
 - (iv) the Tripartite Agreement dated 13 January 2006 between the State, CBG and Global;
 - (v) Presidential Decree No. D/2005/053/PRG/SGG of 22 November 2005 relating to the grant of the mining concession to Global;
 - (vi) Ministerial Order (*Arrêté*) No. A/2006/6361/MMG/CAB of 16 November 2006 relating to the transfer of the mining concession from Global to GAC SA;
 - (vii) the Accounting & Tax Exhibit dated 21 November 2008, which forms Exhibit 2 to the Basic Agreement;



(viii) Letter dated 23 April 2010 from GAC SA, Global and GAC to the Minister of Mines and Geology relating to the accession by GAC to the Basic Agreement;

(ix) Letter No. 0560/MMG/CAB/2010 dated 17 May 2010 from the Minister of Mines and Geology to GAC SA relating to the accession by GAC to the Basic Agreement;

(x) the Infrastructure Agreement dated 14 May 2010 between the State, ANAIM, GAC and GAC SA, which forms Exhibit 3 to the Basic Agreement;

(xi) the Operations Agreement dated 14 May 2010 between the State, ANAIM, CBG, GAC and GAC SA; and

(xii) the Port Agreement dated 14 May 2010 between the State, ANAIM, GAC and GAC SA, which forms Exhibit 7 to the Basic Agreement.

- D. The Parties acknowledge the previous agreements entered into with respect to the Infrastructure, including the Infrastructure Agreement, the Operations Agreement and the Port Agreement referred to in paragraphs C(x), (xi) and (xii) above (the "**Existing Agreements**"). The State also acknowledges that the right for the Investor to accede and use the Infrastructure in a manner commercially and operationally sustainable during the whole duration of the Project is strictly essential to the implementation of the Project.
- E. The Parties also acknowledge the continuous development of the mining sector in Guinea in general and, in particular, the different existing or contemplated projects related to bauxite and alumina in the Boké area. The Parties acknowledge the ongoing willingness of the State to promote the operations and the improvement of industrial and mining activities in Guinea, including through the development of sustainable commercial and operational Infrastructure.
- F. The Parties acknowledge and agree that the Investor has started the development works of the Project in accordance with the Mining Code, the Decree relating to the grant of the Mining Concession and the Basic Agreement, in order to encourage the continued development of the Project on an agreed scope with a phased implementation.
- G. Accordingly, the Parties have negotiated and signed this Amendment, which becomes an integral part of the Basic Agreement.

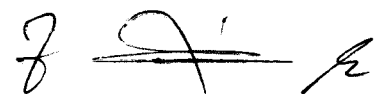
IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Capitalised terms used in this Amendment N°2 and not otherwise defined shall have the meaning given in the Basic Agreement. Except where the context requires otherwise, the following terms shall have the meaning set forth besides them:

"Basic Agreement" has the meaning given in the Recitals;

"Mining Code" means the *Code Minier de la République de Guinée (Loi L/2011/006/CNT)* of 9 September 2011, as amended by Law L/2013/No. 053/CNT dated 8 April 2013;



"mtpa"	means million tonnes per annum;
"Steering Committee"	means the steering committee set up by the Parties pursuant to Clause 5;
"UAE"	means the United Arab Emirates; and
"Working Group"	has the meaning given in Clause 5.

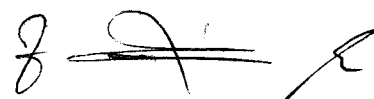
- 1.2 Any reference to **"writing"** or **"written"** means any method of reproducing words in a legible and non-transitory form (excluding, for the avoidance of doubt, email).
- 1.3 References to **"include"**, **"includes"** or **"including"** are to be construed without limitation.
- 1.4 The headings are inserted for convenience only and do not affect the construction of this Amendment N°2.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and vice versa and a reference to any gender includes all other genders.
- 1.6 References to Clauses, paragraphs and Schedules are to clauses and paragraphs of and schedules to, this Amendment N°2.
- 1.7 The Recitals and each of the Schedules forms part of this Amendment N°2.
- 1.8 References to any agreement, including this Amendment N°2, are to the agreement as amended or varied from time to time but only in accordance with its terms.
- 1.9 References to any statute or statutory provision include a reference to that statute or statutory provision as amended, consolidated or replaced from time to time (whether before or after the date of this Amendment N°2) and include any subordinate legislation made under the relevant statute or statutory provision; provided that unless otherwise agreed, as between the Parties, no such amendment or modification shall apply for the purposes of this Amendment N°2 to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Party.
- 1.10 References to a **"Party"** means a party to this Amendment N°2 and includes its successors in title, personal representatives and permitted assigns.
- 1.11 References to a **"person"** includes any individual, entity, partnership, body corporate, state or agency of a state, and any unincorporated association or organisation, in each case whether or not having separate legal personality.

2. PROJECT DESCRIPTION

The Parties agree to amend and restate Article 2 of the Basic Agreement as follows:

"2.1.: The scope of the Project is as follows:

- the exploration and exploitation of the bauxite resources within the Mining Concession granted to the Investor for the purposes of extracting bauxite and the production of alumina, in each case, for local and international consumption;



- the construction of an alumina refinery (capable of one or more Expansions);
- the construction of Port Installations and Industrial Installations and Equipment at Kamsar necessary for the handling of all Intrants, alumina and bauxite;
- the improvement of the Channel;
- the improvement of the principal railway line as defined in the Infrastructure Agreement;
- the design, construction, development, management, ownership and maintenance of other Infrastructure, particularly road and rail, required for the implementation of the Project (including, without limitation, port, Channel, warehousing, transport, energy production and use of water resources for the purposes of the Project); and
- the construction of social infrastructure of a residential, community and sanitary nature relating thereto."

3. INFRASTRUCTURE

3.1 In the light of Recitals D and E, the State will assist the Investor in the assessment of the technical, environmental and commercial feasibility of, and in the development of a proposal for, the construction and the improvement of transportation and logistics infrastructure to support the Project. The infrastructure may be used by other industrial and general transportation participants in the Boké region of Guinea on a commercial basis. This assessment will have regard to several key components, including the following: (a) multi-user access; (b) appropriate priority use rights for the Project and other existing projects; (c) third party participation beyond the existing group of participants; (d) best-practice operatorship and management; (e) technical and health, safety & environmental feasibility; (f) financing considerations for lenders and investors; and (g) efficient and effective resolution of technical issues.

3.2 The Parties agree that the implementation of the Project (including the terms of this Article 3) will necessitate amendments to the Existing Agreements in order to accommodate the Parties' interests and requirements. Further, given the proposed multi-user framework contemplated for this infrastructure, the Investor may implement the Project Activities contemplated in this Clause 3 directly or through Affiliated Companies. The Parties undertake to support the negotiations in good faith with the parties to the Existing Agreements and other third parties for the required amendments.

4. SCHEDULE OF THE PROJECT

4.1 Further to Clauses 2 and 3 above, the Parties agree to amend Article 2 of the Basic Agreement as follows: a new Article 2.2 shall be inserted as follows immediately after the new Article 2.1 of the Basic Agreement (as inserted pursuant to Clause 2 above):

"2.2.: The Parties agree to develop the Project in the following successive phases: "Phase I", "Phase II" and "Phase III":

Phase I:

- (a) Realization and update of the Implementation Studies for:



- i. a bauxite mine project with production capacity of approximately 4-6 mtpa of bauxite destined for export, with the possibility of expansion to up to 8-12 mtpa;
 - ii. one or more infrastructure projects comprising a port, roads, railways and other related and ancillary Infrastructure, to support the Project and possibly other existing or future potential customers on a multi-user basis; and
 - iii. a modular alumina refinery project with an initial production capacity of 2 mtpa, with the possibility of expansion to up to 4 mtpa, together with the associated necessary expansion of bauxite production;
- (b) Execution of agreements with the State, ANAIM, CBG and other existing or future potential Infrastructure users in relation to the Infrastructure associated with the Project or otherwise necessary in support of the development of the Republic of Guinea in general and of the Boké region in particular;
- (c) Implementation of a program to develop a team of Guinean managers and technicians (at least 200 persons) trained and skilled in refinery project development, construction, project management and operations;
- (d) Undertaking developmental investments and initiatives in local community infrastructure and social development, small-medium enterprise support and health, safety and environmental programs;
- (e) Development of a financing plan, including identifying the key financing requirements for the implementation of the Project;
- (f) Collaboration with other companies in the Boké region to support the development of each other's businesses and projects, including through the shared use of natural and human resources, and equipment on arm's-length terms;
- (g) Securing of financing for Phase I on the best possible terms, including the debt and equity required, as well as the provision of guarantees, insurance, hedges and other financial security arrangements;
- (h) Finalisation of detailed design and award of contracts with various Direct Sub-Contractors and other third parties relating to the implementation of Phase I;
- (i) Development of a bauxite mine with an initial production capacity of approximately 4-6 mtpa of bauxite destined for export;
- (j) Construction of Infrastructure in accordance with the provisions of the agreements referred to in paragraph (b) above; and
- (k) Commencement of commercial production of bauxite and of transportation and export activities.

It is agreed that Phase I will be completed by 31 December 2017. The implementation of Phase II may commence following the successful completion of Phase I to the Parties' reasonable satisfaction.

Phase II:

- (a) Implementation of appropriate financing for this Phase II in a manner consistent with that described in paragraph (g) of Phase I;
- (b) Detailed design of the Refinery;
- (c) Execution of appropriate agreements for Phase II in a manner consistent with that described in paragraph (b) of Phase I;
- (d) Construction of a modular alumina refinery with anticipated initial production capacity of 2 mtpa;
- (e) Expansion of bauxite mining operations to satisfy the needs of the Refinery and, after consultation with the State, any additional export requirements; and
- (f) Commencement of commercial operations of this Phase II.

It is agreed that Phase II will be completed by 30 September 2022.

Phase III:


Following completion of Phase II, the Investor may undertake one or more Expansions of the Refinery to increase production capacity to 4 mtpa or greater, with the associated increases in production capacity of the bauxite mining operations.

Phase I, Phase II and Phase III described in this Article 2 shall take place in accordance with a schedule (which automatically shall become Exhibit 8) which may be changed from time to time by written agreement of the Parties in the agreed form to reflect the development of the Project and the actual implementation of its various components."

- 4.2 The Investor undertakes to implement the Project in accordance with the schedule attached as Schedule 1. This new schedule replaces entirely all previous versions of Exhibit 8 with respect to those elements of the Project that have not yet been completed. The Parties agree that further changes to Article 2 and/or Exhibit 8 may be made at any time by written agreement of the Parties. The Investor undertakes to explore all reasonable means to accelerate the timeline for the execution of each phase of the Project and, at the request of the State, the Parties will jointly engage an independent expert to review and comment upon the timeline.
- 4.3 The State commits to give the Investor all assistance necessary, in accordance with applicable law, to implement the schedule set out in Schedule 1. The State shall use its best efforts to secure the necessary support of the third parties involved in negotiating the agreements arising under Clauses 3 or 4 or otherwise in furtherance of the Project.

5. FRAMEWORK FOR IMPLEMENTATION

- 5.1 As soon as reasonably practicable after the execution of this Amendment N°2, the Parties shall agree and establish a steering committee (the "**Steering Committee**") and working groups (the "**Working Group(s)**") to undertake the activities detailed in Clauses 3 or 4 above. The membership and working procedures of the Steering Committee and Working Group(s) shall be agreed by the State and the Investor in writing save that initially: (a) the Steering Committee shall be comprised of three senior members from each of the State and the



Investor; (b) the Steering Committee shall meet on a regular basis at a location agreed by the State and the Investor or via telephone or video conference; and (c) any decision of the Steering Committee shall be adopted only by the unanimous approval.

5.2 Decisions of the Steering Committee shall be recorded either by minutes of a meeting approved in writing and signed by the members or, if any decision is made without a meeting, by written consent of the members.

5.3 Neither the Steering Committee, the Working Groups, nor any representatives of any Party who are members of the Steering Committee or a Working Group shall have any power to bind such Party with respect to any matter.

6. OTHER PROVISIONS RELATING TO THE BASIC AGREEMENT

6.1 The Parties agree as follows:

(a) The State confirms that GAC SA is party to the Basic Agreement with effect from 17 May 2010. Accordingly, the Parties agree to amend and restate Article 4.3 of the Basic Agreement in its entirety as follows:

"4.3.: From the date of 17 May 2010, the Company is the beneficiary of the rights and obligations resulting from this Agreement and, from that date, the Company and GAC, in their capacity as Investor, shall act jointly and severally for the purposes of this Agreement."

(b) Further to Article 36.2 of the Basic Agreement, in the event the ICSID, for any reason, declines its jurisdiction over a dispute arising under the Basic Agreement, such dispute shall be referred to arbitration by the International Chamber of Commerce in accordance with its rules. Article 36.2 of the Basic Agreement shall otherwise apply *mutatis mutandis*.

(c) The State hereby confirms that it has no claims or demands against the Investor under or in connection with the Basic Agreement, the Tripartite Agreement or any of the Existing Agreements arising prior to the effective date of this Amendment N°2.

6.2 The Parties agree to amend the Recitals and the Definitions of the Basic Agreement as follows:

6.2.1 to replace the definition of the term "Project" with the following definition:

""Project"

means the project consisting of the design, development, engineering, financing, ownership, construction, operation and management of (i) bauxite mines, (ii) an alumina refinery at Sangarédi in the Republic of Guinea with an anticipated initial capacity of approximately 2 mtpa (capable of one or more Expansions), and (iii) all required or ancillary Infrastructure."

6.2.2 to replace the definition of the term "Industrial Installations and Equipment" with the following definition:

“Industrial Installations and Equipment”

means the installations and equipment for the warehousing of alumina, bauxite and Intrants to be constructed and upgraded for the handling of the products which will be and shall remain the property of the Investor in their entirety and which are all necessary to the functioning of the Project.”

6.2.3 to replace the definition of the term “Intrants” with the following definition:

“Intrants”

means any product, raw materials, equipment and other goods used in the Project.”

6.3 The Parties agree to amend and restate Article 5.2 of the Basic Agreement to read as follows:

“The Parties agree that the Investor shall have, during the term of this Agreement, the right to produce and market bauxite and alumina according to its requirements.”

6.4 The Parties agree to amend and restate Article 6 of the Basic Agreement to read as follows:

“The start-up of the commercial production of bauxite shall be effective only when the threshold of production of the Project shall have reached one hundred and fifty thousand (150,000) metric tonnes each month over a continuous period of two (2) months. The start-up of the commercial production of alumina shall be effective only when the threshold of production of the Refinery shall have reached one hundred and fifty thousand (150,000) metric tonnes each month over a continuous period of four (4) months.”

6.5 The Parties agree to amend and restate Article 10 of the Basic Agreement to read as follows:

“The Investor shall have the right to export from Guinea without any restriction, its production of bauxite and alumina throughout the entire duration of this Agreement.”

6.6 The Parties agree to amend and restate Article 12.1 of the Basic Agreement to read as follows:

“12.1.: The State hereby grants to the Investor the right to design, develop and exploit for the purposes of the Project:

(i) On the Port Area: the Port Installations and the modification of the Channel and turning basin as it exists and the turning basin at the new quays with provisions for improved navigation systems.

(ii) On the Industrial Zone: the Industrial Installations and Equipment which shall include:

a. A deep water port capable of accommodating the necessary vessels for the import and export of bulk, commodity and freight cargo, including all Intrants, energy materials, hydrocarbons, bauxite and alumina;

- b. Storage facilities for all imported and exported operation materials including equipment, all Intrants, including energy materials and hydrocarbons, and bauxite and alumina destined for export; and
- c. A centre for logistics and operations for the management of the import and export of all equipment and material for the design, construction, commissioning and operation of the Project."

6.7 The Parties agree to amend and restate Article 16.3 of the Basic Agreement to read as follows:

"The State agrees to participate actively in this process and to respond favourably to any request which may be made of it in this regard by the Investor or the Lenders. In particular, the State will enter into a direct agreement governed by English or New York law with each Lender regarding the financing in respect of the Basic Agreement, the Existing Agreements and any other material agreement to which the State is a party in order to facilitate the implementation of the Project. The direct agreement will conform with typical terms and conditions for a direct agreement for a project of similar size and scope including: (i) the Lenders' rights to transfer the rights and obligations of the Investor and any of its Affiliated Companies under all such agreements after an event of default under any financing to a permitted transferee, and (ii) the Lenders' rights to enforce the security interests."

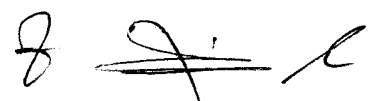
6.8 The Parties agree to insert a new Article 16.4 of the Basic Agreement as follows:

"16.4.

16.4.1 The Investor and any of its Affiliated Companies involved in the implementation of the Project shall have the right to provide guarantees and grant security interests on any and all of their rights and assets to secure their obligations with respect to any financing. The foregoing right to grant security shall include the right for any such entity to assign by way of security its rights under any agreement (including the Basic Agreement, the Existing Agreements and any other agreement to which it is a party) and to mortgage, pledge or in any other way encumber any and all assets owned by such entity for the purpose of securing any financing.

16.4.2. The State shall permit any and all Lenders (including any agent or nominee of any such Lender), the right to exercise their rights and pursue any remedies provided under the terms of any financing for the Project, including the right to enforce any security granted by any party over its assets or ownership interests in the Project or in the Investor or any of its Affiliated Companies to secure obligations with respect to the financing; provided that each such Lender (or its agent, nominee or successor) shall comply with any applicable laws and all requirements under the Basic Agreement, any Existing Agreements or any other material agreement while owning and operating the Project or any portion thereof."

6.9 In the event of a serious breach of one of the material obligations of the Basic Agreement (including Article 2 and Exhibit 8, as amended by this Amendment N°2), and following the provisions for notice and, if applicable, the settlement of differences, the provisions of Articles 41 and 88 of the Mining Code shall apply.



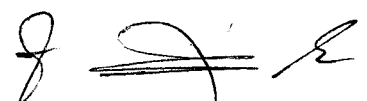
- 6.10 In the event of delay in the execution of contracts with ANAIM and CBG contemplated in Article 2 of the Basic Agreement, the time periods for the performance by the Investor of its obligations under the Basic Agreement (as amended by this Amendment N°2) shall be extended equivalently.

7. CONDUCT OF BUSINESS

Each Party represents and warrants to the other Parties that it has not improperly made, offered or promised and will not make, offer or promise, whether directly or indirectly, in connection with any aspect of this Amendment N°2, including but not limited to any inducement or reward for the award or execution of this Amendment N°2, any payment, gift, or thing of value, in whatever form, to or for the use of any public or government official (i.e. any person holding a legislative, administrative or judicial office, or employed by a government entity, including but not limited to any person exercising a public or government function for a public or government agency, a public or government enterprise or a public international organisation), or any family member or other associate of such official. Each Party further represents and warrants to the other Parties that no person or entity acting on its behalf has acted or will act in any manner contrary to this representation and warranty. Any breach of these representations and warranties will constitute a material breach of this Amendment N°2 and will be grounds for terminating this Amendment N°2 or taking any other corrective action as appropriate. Each Party shall defend, indemnify and hold the other Parties harmless from and against all claims, damages, losses, penalties, costs and/or expenses arising from or related to any breach by such Party of this warranty.


8. FINAL PROVISIONS

- 8.1 This Amendment N°2 shall be ratified in accordance with the constitutional procedures applicable in Guinea in order to ensure its full effect, and particularly its effect relative to other laws of Guinea. The State shall give notice to the Investor when ratification in accordance with this Clause 8.1 has been accomplished.
- 8.2 This Amendment N°2 shall become effective upon signature by the Parties and ratification in accordance with Clause 8.1 above.
- 8.3 In the event this Amendment N°2 is not ratified within four (4) months of its date of execution, the time periods for the performance by the Investor of its obligations under the Basic Agreement (as amended by this Amendment) shall be extended equivalently.
- 8.4 In the event this Amendment N°2 does not become effective within nine (9) months of its date of execution, the Parties shall meet as soon as possible to examine the effects of such events or the performance of the Basic Agreement, and, in particular, on the financial obligations of any nature of the Investor or of its Affiliated Companies. The Parties shall seek a solution allowing the Project to be adapted to the new situation in such a manner as to allow the Investor to continue with the Project. In the event the Parties do not reach such an agreement within an additional period of one (1) month, the Investor shall have the right to terminate the Agreement by written notice to the State, whereupon the State undertakes to pay to the Investor a compensation payment in an amount equal to the historical costs incurred by the Investor. Such compensation shall be determined by an independent expert according to the criteria set out above, selected by mutual agreement of the Parties within forty-five (45) days following the date of termination of the Agreement or, if no agreement is reached, by the secretariat of ICSID, upon the request of the most diligent Party.

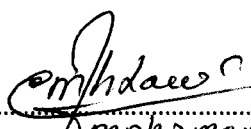


- 8.5 The amendments set forth in this Amendment N°2 shall be applicable solely with respect to the matters expressly provided herein and no other amendments may be construed or implied. Except as provided in this Amendment N°2, all other provisions of the Basic Agreement shall remain unchanged and in full force and effect. In addition, Articles 39, 41 and 42 shall apply to this Amendment N°2 as if expressly set out herein (*mutatis mutandis*).
- 8.6 This Amendment N°2 and any non-contractual rights or obligations arising out of or in connection with it shall be governed by and construed in accordance with the law applicable to the Basic Agreement.
- 8.7 In the event of any dispute between the Parties arising out of or relating to this Amendment N°2, Article 36 of the Basic Agreement shall apply to this Amendment N°2 as if expressly set out herein (*mutatis mutandis*).

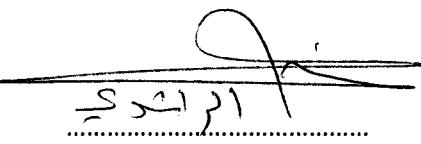
IN WITNESS WHEREOF each Party has executed this Amendment N°2, or caused this Amendment N°2 to be executed by its duly authorised representatives.



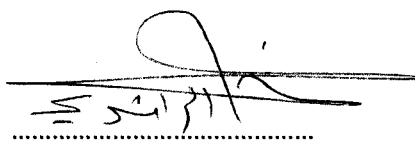
SIGNED for and on behalf
of THE REPUBLIC OF GUINEA


Name: Mohamed Lamine FOFANA
Title: Ministre des Mines et de la Géologie

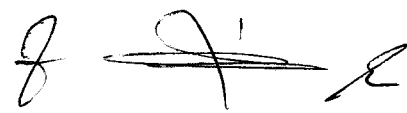
SIGNED for and on behalf
of GUINEA ALUMINA CORPORATION, LTD.


Name: KHALED AL RASHEDI
Title: DIRECTOR / AUTHORIZED SIGNATORY

SIGNED for and on behalf
of GUINEA ALUMINA CORPORATION SA


Name: KHALED AL RASHEDI
Title: DIRECTOR / AUTHORIZED SIGNATORY

Signature page of Amendment No. 2



SCHEDULE 1

Exhibit 8 to the Basic Agreement: Schedule for the Project

8-9-2

