

# MEMORANDUM OF UNDERSTANDING

between

**THE GOVERNMENT OF ICELAND**

and

**LANDSVIRKJUN**

and

**ALCOA INC.**

This MEMORANDUM OF UNDERSTANDING (**MOU**) dated 19<sup>th</sup> July 2002 sets forth the basic understandings between

the **Government of Iceland** (the **Government**), represented by the Minister of Industry and Commerce, with offices at Arnarhvoll, Lindargata, 150 Reykjavík,

and

**Landsvirkjun** (the National Power Company), an independent company owned by the Republic of Iceland, the City of Reykjavík and the Township of Akureyri, with offices at Háaleitisbraut 68, 103 Reykjavík,

and

**Alcoa Inc. (Alcoa)**, a Pennsylvania corporation with a mailing address of 201 Isabella Street, Pittsburgh, Pennsylvania, USA,

regarding the evaluation and potential implementation of an industrial project involving the development of an aluminum reduction plant in eastern Iceland.

## Introduction

The overall project as now conceived (the **Project**) consists of:

- (1) a hydropower project in eastern Iceland (the **Kárahnjúkar Facilities**) to be developed and operated by Landsvirkjun (and/or a limited liability company wholly or partly owned by Landsvirkjun),
- (2) a primary aluminum plant at Reyðarfjörður in eastern Iceland, along with necessary physical infrastructure, to be built and operated by an Icelandic limited liability company or other entity organised by Alcoa for the purpose (the **Plant Company**),
- (3) plant site facilities on land owned by the Government at Mjóeyri in Reyðarfjörður,

- (4) harbour facilities at Mjóeyri, to be provided by the Municipality of Fjarðabyggð (the **Municipality**) and built and operated by its Harbour Fund (the **Harbour Fund**), and
- (5) other related infrastructure.

The Project has been under active consideration in Iceland for some time and was through the years 2000-2001 the subject of discussions held by the Government, the Municipality and Landsvirkjun with Reyðarál hf. (**Reyðarál**), an Icelandic limited liability company founded by Hæfi hf. of Reykjavík (**Hæfi**) and Hydro Aluminium a.s. of Oslo, Norway, with extensive preparatory work being carried out by the respective parties. Those discussions have now been suspended, and the Government, the Municipality and Landsvirkjun are fully prepared to discuss the Project with Alcoa on an exclusive basis, and have established for this purpose a Special Committee appointed by the Minister of Industry.

The Government and the Municipality are interested in utilizing available energy resources, stimulating economic activity in eastern Iceland and ensuring continuity in economic growth as well as stability of the national economy.

Alcoa is a world-leading producer of primary aluminum, fabricated aluminum and alumina. It is active in all major aspects of the aluminum industry – technology, mining, refining, smelting, power generation, fabricating and recycling. Alcoa is interested in expanding its primary aluminum production capacity, and believes that participation in the Project will fit in with its long term objectives.

Landsvirkjun is engaged in the wholesale supply of power to public distribution networks and to industrial enterprises in Iceland and is prepared to enter into an arrangement for long-term power supply to the aluminum plant.

Accordingly, preliminary discussions about the possibility of Alcoa engaging in the Project were begun in early April 2002, and on the 19<sup>th</sup> of that month, a JOINT ACTION PLAN (**JAP**) was agreed and signed between Alcoa and Invest in Iceland Agency - Energy Marketing (**Invest in Iceland**), an agency jointly owned by the Government and Landsvirkjun, with a view to enabling Alcoa to carry out a first-stage review of the Project and providing for cooperation by Invest in Iceland and its owners in the effort to evaluate the feasibility of the aluminum plant project and other issues relevant to its implementation and to the Project as a whole, on which Alcoa has since spent significant time and utilised significant resources. The JAP was amended and extended by agreement between Alcoa and Invest in Iceland on May 23, 2002, to enable Alcoa to perform certain additional reviews in order to present the plant project to its Board of Directors for preliminary consideration. Alcoa's Board of Directors considered the project at its meeting on July 11-12, 2002, and has confirmed Alcoa's continued interest in it, and authorized Alcoa's senior management to proceed with the steps outlined in this MOU.

In the course of this review and cooperation, Alcoa has also had discussions with Hæfi related to securing rights to the preliminary work and work products previously developed in relation to the aluminum plant project by Reyðarál. At the same time, Alcoa has conducted preliminary discussions with Landsvirkjun on the preconditions for delivery of power, as well as engaging in a preliminary due diligence investigation

of the aluminum plant project, including such matters as siting conditions, harbour facilities, road access, utility conditions and other infrastructure requirements, the premises for supply of electric power to the plant and environmental aspects of the plant and the planned facilities for power generation.

Furthermore, to facilitate the immediate commencement by Landsvirkjun of certain site preparation work with respect to the Kárahnjúkar Facilities which needs to be carried out during the summer and autumn of 2002 in order to maintain the possibility of having power available for the plant in early 2007 or sooner, Alcoa and Landsvirkjun have on the date hereof entered into an agreement (the **Cost Sharing Agreement**) whereby Alcoa will share the financial risk incurred by Landsvirkjun in undertaking such work, without thereby committing itself to the implementation of the aluminum plant project or of the overall Project in other respects.

It is the considered opinion of the parties hereto that the results of the first-stage review and cooperation carried out on the basis of the JAP are such as to give cause for continuing their work and cooperation on the Project, with the aim of completing the evaluation of the feasibility of the aluminum plant project, together with a review of the timing and other aspects of development of the related power projects, harbour facilities and other infrastructure, and engaging at the same time in discussions on the commercial and other parameters for Alcoa's investment in the plant project and for the implementation of the Project as a whole in mutual good faith.

Therefore, the Government, Landsvirkjun and Alcoa (the **Parties**) enter into this MOU for the purposes of setting forth their desires, plans and undertakings with respect to the Project, including the possible development of the aluminum reduction plant in Reyðarfjörður (the **Plant**).

In consideration of the undertakings contained, the Parties agree as follows:

## 1. PROJECT

The Government (acting also in the interest of the Municipality), Landsvirkjun and Alcoa will continue their discussions about the possibility of Alcoa investing in the aluminum reduction plant in Iceland. Under this MOU, the Parties commit to take the steps summarised below to evaluate and discuss the arrangements and agreements necessary and appropriate in relation to the construction and operation of the Plant and in order to enable them to reach a final decision on the implementation of the Project.

The Plant is currently envisaged as having a production capacity of approximately 295,000 metric tons per year of primary aluminium, utilizing the Alcoa P817 technology, and will require approximately 4300 GWh/year or 500 MW supplied on a continuous basis under a long-term agreement.

For meeting the power requirements of the Plant, Landsvirkjun proposes to develop the Kárahnjúkar Facilities to a rated capacity of approximately 630 MW as authorized by an Act of the Alþingi No. 38 of 16 April 2002.

The site and harbour facilities for the Plant at Mjóeyri in Reyðarfjörður will be provided by the Government and the Municipality of Fjarðabyggð under agreements respectively

established for the purpose. The Government and the Municipality will also take responsibility for developing other necessary infrastructure requirements.

## 2. PROJECT REVIEW AND OTHER TASKS

From the date of this MOU, the Government and Landsvirkjun and Alcoa will continue the work initiated pursuant to the JAP and agree to cooperate to enable Alcoa to fully evaluate the Plant Project. Such evaluation by Alcoa will include further due diligence examination into the siting, construction and infrastructure required by the Plant, including harbour access and development, highway links and facilities, transshipment and other material handling facilities, electric, gas and water utility requirements, solid waste and water treatment facilities, emission control technology, labour requirements, and a further assessment of applicable statutory and regulatory requirements (including environmental approvals and/or permits). In addition, Alcoa will analyse the basis for electricity supply, including the due diligence around the assumptions and parameters for the construction of the Kárahnjúkar Facilities and other new power plants, the transmission infrastructure necessary to transmit the power to the Plant, and the terms and conditions of the long-term power supply. Alcoa will also consider ownership structure issues and opportunities as part of its analysis.

Invest in Iceland will continue to assist the Parties and coordinate the work hereunder and to provide all necessary general information on Iceland to Alcoa.

At the same time, the Parties will proceed with work and mutual discussions concerning the terms and conditions of the various agreements and legal documents necessary to the implementation of the Plant Project and appropriate milestones or steps towards their final preparation, including the following:

- An **Investment Agreement** between the Government and Alcoa;
- A **Power Contract** between Landsvirkjun and the Plant Company;
- A **Site Agreement** between the Government and the Plant Company;
- A **Harbour Agreement** between the Fjarðabyggð Harbour Fund and the Plant Company.

The Government will continue preparations for legislation related to the Project, including necessary exemptions to existing laws to be negotiated in the pending Investment Agreement. Furthermore the Government will continue its investments in road construction and other infrastructure measures related to the Project.

Landsvirkjun has received the necessary legislative approval for the development of the Kárahnjúkar Facilities, following the completion of an Environmental Impact Assessment process in December 2001. Accordingly, a Power Project License and an Environmental Operating License for the Kárahnjúkar Facilities are expected to be issued when required. Landsvirkjun will set in motion the preparatory work referred to in the introduction above, and commits itself to carrying it through consistently with the Cost Sharing Agreement and to carry out all other work which needs to be performed during the period covered by this MOU in order to sustain a work program for the Kárahnjúkar Project calculated to ensure that power for the Plant may become available

in early 2007 or sooner. Among other things, this will include beginning design work and the issue of bidding documents for contracts covering dam construction and tunnelling work.

The projected site for the Plant is owned by the Government and can be made immediately available on lease to the Plant Company.

The Municipality and the Harbour Fund will continue to prepare the construction of the harbour and port facilities at Mjóeyri in Reyðarfjörður. An Environmental Impact Assessment for the harbour was approved by the Planning Agency in August 2001. A Government investment grant for the harbour is included in the current Harbour Plan approved by the Alþingi in late 2001.

Alcoa, with assistance from Invest in Iceland, will engage in work relating to the environmental statutory and regulatory requirements of the Plant Project and such licenses and approvals as are necessary to the development of the Plant and related facilities, including in particular the requisite conditions for the following:

- The completion of Alcoa's environmental modeling of the Plant's emissions.
- The completion of an Environmental Impact Assessment (EIA) with respect to the Plant as appropriate.
- The issue of an Environmental Operating License for the Plant.
- The completion of zoning measures and other requisites for the issue of a Building License for the Plant.

The environmental assessment process in respect of the Plant will proceed from the fact that an EIA has already been completed for an aluminium plant of 420,000 tons/year proposed to be located in Reyðarfjörður, where that plant was approved both by the Planning Agency and the Minister for Environmental Affairs, and that the smaller plant may be expected to have a lesser overall environmental impact.

Landsvirkjun, with assistance from its financial advisors, will begin the process of ensuring that the Kárahnjúkar Facilities can be financed on terms acceptable to Landsvirkjun, and compatible with the planned terms of supply of power to the Plant Company under the Power Contract.

Alcoa, with assistance from Invest in Iceland where appropriate, will continue its engineering work on the Plant Project to confirm its preliminary information and conclusion that the project is economically viable.

Alcoa as well as Landsvirkjun declare their intention to lend support to efforts by the Government and local authorities to establish a protected area such as a national park in the vicinity of the Kárahnjúkar hydropower project, which has been under preparation by the Ministry for the Environment. While establishing the scope and boundaries of such an area is a matter for the Government and the local authorities, Alcoa and Landsvirkjun support the concept in order to protect areas like Snæfell for the benefit of all stakeholders.

It is the mutual aim of the Parties to carry the work here contemplated forward to such extent within the term of this MOU as to enable the management of Alcoa to present the

complete Plant Project to its Board of Directors for full approval, as well as to enable the management of Landsvirkjun to submit the Power Contract and other matters for full approval by its Board of Directors and enable the Government and the Municipality to affirm the premises of their participation in the Project.

### **3. TIMING AND TERM**

The actions by the Parties provided for in the foregoing Sections will begin immediately following the signing of this MOU and will be pursued to substantial completion as soon as reasonably feasible.

The actions will be aimed at enabling the Parties to arrive at a firm and mutually acceptable determination of the overall concept of the Project and its principal parameters in technical, commercial and financial respects, furnishing a clear basis for the approvals to be sought as above provided. This will include mutually acceptable parameters for the construction and operation of the Plant, the new power facilities and the harbour facilities, for the environmental aspects of the Project, and for the long-term arrangement for power supply to the Plant. It will also include the mutually acceptable establishment of definitive texts for the Investment Agreement, the Site Agreement and the Harbour Agreement and other agreements and documents of primary importance with respect to the finalization of the Project concept.

The actions will be conducted as mutually agreed with a view to the requirements of each Party, with the aim of completing the work on the agreements above mentioned to such extent that the processing of enabling legislation with respect to the Project in the Alþingi can be commenced within its autumn session with the aim of having the parliamentary processing completed as soon as possible.

The management of Alcoa will aim at presenting the Plant Project to its Board of Directors for full approval not later than in the Board meeting of January 2003.

Landsvirkjun will aim at submitting the Power Contract, and the Harbour Fund will aim at submitting the Harbour Agreement, to their respective Boards of Directors for full approval before the end of December 2002.

In the event that Alcoa, the Government and Landsvirkjun are unable to ultimately agree upon the basic premises for binding definitive agreements on implementation of the Plant Project, or on interim milestones for the establishment of such agreements before the end of March 2003, this MOU will terminate, unless the Parties mutually agree to extend the term of the MOU or replace it by a further Memorandum.

### **4. EXCLUSIVITY**

It is understood that Alcoa will continue to spend significant time and utilise significant resources, both internal and external, for the purpose of completing a careful and full review of the feasibility of the Plant Project and other aspects of the Project as a whole during the term of this MOU. In consideration of this and consistently with the aims and undertakings expressed in this MOU, the Government and Landsvirkjun agree that they will not initiate or engage in any similar discussions

or cooperation on the Project with any other party during the term of this MOU, without the prior written consent of Alcoa.

## 5. CONFIDENTIALITY

In order to undertake and carry out the matters set out in this MOU, the Parties have requested and will request of each other, and have provided and will provide to each other, certain non-public, confidential and/or proprietary information (the **Information**), which will be exchanged between them in good faith in so far as the material is available to or obtainable by the Party concerned and not subject to confidentiality obligations towards third parties, on the basis of the following:

- (a) The Information will be used solely in connection with the work on the Project.
- (b) Regardless of whether the transactions between them are consummated, during the time for which the obligations set forth in this MOU are in effect, and for a period of 3 months after any termination of this MOU, unless a further time limit is mutually agreed, the Parties will keep the Information confidential.
- (c) The Parties will safeguard the Information against disclosure by employing the same means to protect the Information as they use to protect their own non-public, confidential or proprietary information; provided, however, that if a Party providing Information requests that the receiving Party employ specific measures against disclosure (e.g., restrictions on copying), the receiving Party will agree to be bound by such measures by accepting the Information, provided that the Party delivering the Information makes such request in writing on or before the date the Information is provided and identifies with specificity the Information that is to be subject to such specific measures.
- (d) No receiving Party shall itself, or permit its employees or agents at any time to use, reveal, report, publish, transfer or otherwise disclose to any person, corporation or other entity any of the Information without the prior written consent of the Party providing the Information, except that a receiving Party may distribute the Information, subject to any specific measures directed against disclosure under paragraph (c), to responsible board members, officers, employees and consultants of the receiving Party or its affiliates who have a need for such Information for purposes of evaluating the transaction, provided that any disclosure by such board members, officers, employees or consultants in violation of the provisions of this MOU shall be a breach of this MOU by the recipient Party.
- (e) Immediately upon request by the Party providing Information, the Party receiving the Information shall promptly return such Information and all copies or other reproductions thereof that are in the receiving party's control. The receiving Party agrees to represent in writing to the Party providing the Information that it has complied with the provisions of this paragraph.
- (f) No Party providing Information shall be deemed to have made any representation or warranty in connection with such Information.
- (g) In the event that any Party receiving the Information becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, the legally compelled Party shall give the other Party providing the Information prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the

terms of this MOU. In the event that such protective order or other remedy is not obtained, or that the providing Party waives compliance with the terms hereof, the Party legally compelled to disclose the Information agrees to provide only that limited portion of the Information that it is advised by opinion of counsel is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded such Information.

- (h) The term “Information” does not include any information which (i) at the time of disclosure or thereafter is or is required to be generally available to the public (other than as a result of a disclosure by any Party in violation of this MOU), (ii) was available to any Party on a non-confidential basis from a source other than the Party providing the Information, provided that such a source is not and was not known by the recipient Party to be bound by a confidentiality agreement that was applicable to the Information or (iii) has been independently acquired or developed by any Party without violating any of its obligation under this MOU.

## **6. COMMUNICATIONS**

The Parties agree to coordinate the development and release of any public announcement about the subject matter of this MOU, subject to any legal obligations of disclosure (for example, under the U.S. Securities and Exchange Commission regulations or the New York Stock Exchange rules). Neither the Government or Landsvirkjun nor Alcoa will disclose the progress or nature of the discussions between them without informing the other in advance. Each Party will designate a coordinator for any public communications.

## **7. SETTLEMENT OF DISPUTES**

Any dispute arising and of or in connection with this MOU which cannot be amicably settled between the Parties shall, upon the request of any of them, be referred to and finally resolved by arbitration, applying Icelandic substantive law, in accordance with the arbitration rules of the Arbitration Institute of the Stockholm Chamber of Commerce as in force at the date of this MOU, which rules are, subject to the provisions of this Section 7, deemed to be incorporated herein by reference. The arbitration tribunal shall consist of three arbitrators, one of whom shall be appointed by the claimant party, another by the respondent party and the third, who shall act as Chairman, jointly by the two party-appointed arbitrators. If the claimant party and/or the respondent party do not appoint their arbitrator in their request and reply respectively, the other party to the arbitration shall have the right to apply to the Arbitration Institute of the Stockholm Chamber of Commerce for it to appoint the relevant arbitrator. If the two party-appointed arbitrators cannot agree upon the appointment of the third arbitrator, he shall be appointed by the Arbitration Institute of the Stockholm Chamber of Commerce at the request of either party. The third arbitrator, however appointed, shall not be of the same nationality as that of the Parties to this Agreement, unless the Parties otherwise agree. The arbitrators shall meet the qualifications set out in Article 6 of the Act No. 53/1989 on Contractual Arbitration. The arbitration proceedings shall be held in Reykjavík and shall be conducted in English, except as otherwise agreed.

The Parties hereby undertake to carry out any award of the arbitration tribunal without delay and to waive their right to any form of appeal on any question of fact or law

insofar as such waiver may be validly made. The awards of the arbitration tribunal hereunder shall be final and binding on the Parties as from the date they are issued, and provided always may if necessary be enforced by any court or other competent authority. The Parties shall continue to perform their obligations under this MOU notwithstanding any dispute which may be outstanding between them.

### 8. STATUS OF THE MOU

The Parties are in agreement that the provisions of this MOU, other than those of Section 4 (Exclusivity), Section 5 (Confidentiality), Section 6 (Communications) and Section 7 (Settlement of Disputes), have binding effect between them only to the extent expressly stated therein and in relation to the work and other effort to be made by each of them according to such provisions within the term of the MOU, and that any final binding agreement between them in respect of the Project shall be conditioned upon:

- (a) The execution of mutually acceptable definitive agreements;
- (b) the receipt of necessary or desirable governmental approvals in relation to the Project and such definitive agreements;
- (c) the approval of the Boards of Directors of Alcoa and of Landsvirkjun, as well as approval and/or ratification by the Minister of Industry of Iceland and the Council of the Municipality;
- (d) the adoption by the Alþingi of enabling legislation as necessary or appropriate for authorization of the Project, generally or in specific respects; and
- (e) such other conditions as the Parties may mutually agree.

IN WITNESS WHEREOF the Parties have duly executed this MOU as of the date below written.

Signed on 19<sup>th</sup> July 2002.

THE GOVERNMENT OF ICELAND

ALCOA INC.

By \_\_\_\_\_  
Valgerður Sverrisdóttir  
Minister of Industry

By \_\_\_\_\_  
G. John Pizzey  
Executive Vice President

LANDSVIRKJUN

By \_\_\_\_\_  
Friðrik Sophusson  
Managing Director