

IN THE MATTER OF THE GRASSE RIVER
(a.k.a ALCOA AGGREGATION) SUPERFUND
SITE

Settling Party.

PROCEEDING UNDER SECTION 122(h)(1)
OF CERCLA 42 U.S.C. § 9622(h)(1)

U.S. EPA Region 2 Docket No.
CERCLA-02-2014-2031

1. This Settlement Agreement for Recovery of Past Response Costs ("Settlement Agreement") is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D and was further delegated in Region 2 to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated November 23, 2004.

2. This Settlement Agreement is made and entered into by EPA and Alcoa Inc. ("Settling Party"). Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

3. This Settlement Agreement concerns the Grasse River (a.k.a. Alcoa Aggregation) Superfund Site in Massena, St. Lawrence County, New York ("Site"). EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. The Site includes portions of the Grasse River and any associated tributaries and wetlands to which polychlorinated biphenyls ("PCBs") and other hazardous substances released from Settling Party's Alcoa West Facility in Massena, New York, have been disposed of or migrated.

5. In response to the release or threatened release of hazardous substances at or from the Alcoa Study Area, on September 28, 1989, EPA issued to Settling Party an Administrative Order, Index No. II-CERCLA-90229 ("Administrative Order"), pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a). EPA amended the Administrative Order on May 28, 1995.

6. Pursuant to the Administrative Order, Settling Party has been conducting various response actions at the Alcoa Study Area. EPA has incurred response costs in overseeing Settling Party's performance of such response actions.

7. On April 4, 2013, EPA issued a Record of Decision ("ROD") in which it selected a remedial action to address PCB-contaminated sediments at the Site, which is within the Alcoa Study Area. By letter to EPA dated September 5, 2013, Settling Party confirmed its intent to implement, pursuant to the Administrative Order, the design, construction, operation and maintenance of the remedy selected in the ROD.

8. In response to the release or threatened release of hazardous substances at or from the Site, EPA has undertaken response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. Such actions have included, but are not limited to: overseeing response activities and sediment sampling at the Site being conducted by Settling Party pursuant to the Administrative Order, reviewing various technical reports and submissions from Settling Party, preparation of the ROD, and conducting community relations activities.

9. In August 1995, EPA and Settling Party entered into an Administrative Cost Recovery Agreement, Index No. II-CERCLA-95-0210, pursuant to which Settling Party reimbursed \$300,957.49 in response costs incurred and paid by EPA at or in connection with the Site through November 30, 1993, plus interest. On March 26, 2001, the U.S. District Court for the Northern District of New York entered a consent decree in *United States of America v. Alcoa, Inc.*, 00-CV-131 (N.D.N.Y.), pursuant to which Settling Party reimbursed \$695,117.26 in past response costs paid by EPA at or in connection with the Site from December 1, 1993 through February 29, 2000 (February 26, 2000 with respect to EPA payroll and indirect costs), plus interest. A July 24, 2007, Agreement for Recovery of Response Costs, Index No. CERCLA-02-2007-2016, memorialized Settling Party's reimbursement of \$1,394,982.07 in past response costs that EPA paid at or in connection with the Site from March 1, 2000 through December 31, 2005. Pursuant to an April 12, 2013, Settlement Agreement for Recovery of Past Response Costs, Index No. CERCLA-02-2013-2013, Settling Party reimbursed EPA for \$1,172,793.78 in past response costs paid by EPA from January 1, 2006 through August 31, 2011.

10. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred or to be incurred at or in connection with the Site.

11. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

12. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. The signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind Settling Party.

IV. DEFINITIONS

13. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply:

- a. "Administrative Order" shall mean the September 28, 1989, Administrative Order, Index No. II-CERCLA-90229, issued by EPA to Settling Party with respect to the Alcoa Study Area pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). The term "Administrative Order" includes the Amendment to the Administrative Order that EPA issued to Settling Party on May 28, 1995.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.
- c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- e. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States pays after September 30, 2013, in reviewing or developing plans, reports, and other items pursuant to the Administrative Order, verifying the work required by the Administrative Order, or otherwise implementing, overseeing or enforcing the Administrative Order and this Settlement Agreement, including but not limited to payroll costs, contractor costs, travel costs, enforcement costs, and laboratory costs. Future Response Costs

include all costs, including enforcement costs, incurred by EPA in taking over performance or the O&M pursuant to Paragraph 124 of the Administrative Order. Future Response Costs include all Interim Response Costs, and all Interest on those Past Response Costs that Settling Party has agreed to pay under this Settlement Agreement and that has accrued pursuant to 42 U.S.C. § 9607(a) from the date of EPA's September 24, 2014, demand letter to the effective date of this Settlement Agreement.

- f. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- g. "Interim Response Costs" shall mean all costs, including but not limited to direct and indirect costs, (1) paid by EPA in connection with the Site between October 1, 2013 and the effective date, or (2) incurred prior to the effective date, but paid after that date.
- h. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300.
- i. Operation and Maintenance ("O&M") shall mean all post-construction operation, monitoring and maintenance of the remedial action selected by EPA in the ROD.
- j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.
- k. "Parties" shall mean EPA and Settling Party.
- l. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA has paid at or in connection with the Site from September 1, 2011 through September 30, 2013.
- m. "Remedial Action" shall mean the remedy selected in EPA's April 4, 2013, Record of Decision for the Grasse River Superfund Site.
- n. "ROD" shall mean EPA's April 4, 2013, Record of Decision for the Grasse River Superfund Site;
- o. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

- p. "Settlement Agreement" shall mean this Settlement Agreement for Recovery of Response Costs, Index No. 02-CERCLA-2014-2031.
- q. "Settling Party" shall mean Alcoa Inc.
- r. "Site" shall mean the Grasse River (a.k.a. Alcoa Aggregation) Superfund Site in Massena, St. Lawrence County, New York. The Site includes the approximately 7.2 miles of the lower Grasse River that runs from the intersection of the Massena Power Canal and the Grasse River, to the confluence of the Grasse and St. Lawrence Rivers. For purposes of this Settlement Agreement, the Site also includes the approximately 1.3 miles of the Lower Grasse River upstream of the confluence of the Grasse River and the Massena Power Canal, Robinson Creek (which discharges to the St. Lawrence River), the Massena Power Canal, and the Unnamed Tributary.
- s. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities

V. PAYMENT OF RESPONSE COSTS

14. Payment of Past Response Costs

- a. Within 14 days of the effective date of this Settlement Agreement, Settling Party shall pay to the EPA Hazardous Substance Superfund the amount of \$1,096,663.16, plus Interest on such amount from the date of EPA's September 24, 2014, demand through the effective date of this Settlement Agreement, in reimbursement of Past Response Costs. The total amount paid by Settling Party pursuant to this Settlement Agreement shall be deposited in the Alcoa Study Area Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.
- b. The payment to be made pursuant to Paragraph 14.a, above, shall be remitted to EPA by check made payable to the United States Environmental Protection Agency, or to EPA's account at Federal Reserve Bank of New York via Electronic Funds Transfer ("EFT"). To make payment by EFT, Settling Party shall provide the following information to its bank:
 - i. EFT to be directed to: **Federal Reserve Bank of New York**
 - ii. Bank Routing Number: **021030004**
 - iii. Bank Account number receiving the payment: **68010727**
 - iv. SWIFT Address: **FRNYUS33**

- v. Address: **Federal Reserve Bank of New York**
33 Liberty Street
New York, NY 10045
- vi. Field Tag 4200 of the Fedwire message should read (for Fedwire payments):
D 68010727 Environmental Protection Agency
- vii. Case number: **CERCLA-02-2014-2031**
- viii. Amount of payment
- ix. Name of remitter: **Alcoa Inc.**
- x. Site name: **Alcoa Aggregation (a.k.a. Grasse River) Superfund Site**
- xi. Site/Spill identifier: **024E**

Along with this information, Settling Party shall instruct its bank to remit payment in the required amount via EFT to EPA's account with Federal Reserve Bank of New York.

- c. At the time of payment, Settling Party shall send notice that such payment has been made to the EPA contacts listed in Paragraph 48 and also to:

Cincinnati Finance Center
U.S. Environmental Protection Agency
26 W. Martin Luther King Drive, MS: NWD
Cincinnati, Ohio 45268

E-mail: **CINWD_ACCTSRECEIVABLE@EPA.GOV**

The notice referenced above shall include the date of the EFT, the payment amount, the name of this Site, the Index Number of this Settlement Agreement, and the name and address of Settling Party.

15. Payments of Future Response Costs

- a. Settling Party shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will periodically send billings to Settling Party for Future Response Costs. The billings will include cost data in EPA's financial management system (sometimes referred to as a "SCORPIOS Report"). Settling Party shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 17 of this Settlement Agreement. Future Response Costs paid by Settling Party pursuant to this Settlement Agreement shall be deposited in the Alcoa Study Area Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.
- b. Settling Party shall make all payments required by this Paragraph to EPA via EFT as instructed in Paragraph 14.

- c. At the time of payment, Settling Party shall send notice that payment has been made to the EPA contacts listed in Paragraph 48 and also to the EPA Cincinnati Finance Center at the address provided in Paragraph 14.c. Such notice shall include the date of the EFT and the following information: the payment amount, the name of this Site, the Index Number of this Settlement Agreement, and the name and address of Settling Party.

16. In the event that the payment for Past Response Costs is not made within 30 days of the effective date of this Settlement Agreement, or the payments for Future Response Costs are not made within 30 days of Settling Party's receipt of a bill, Settling Party shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the effective date and shall continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Settling Party's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section VIII.

17. Settling Party may contest payment of any Future Response Costs billed under Paragraph 15.a if it believes that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 21 days of receipt of the bill and must be sent to the EPA addressees in Paragraph 48. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Party shall either:

- a. Within the 30-day period specified in Paragraph 15.a pay all billed Future Response Costs to EPA in the manner described in Paragraph 14. Simultaneously with Settling Party's payment of the billed Future Response Costs, Settling Party shall initiate the Dispute Resolution procedures in Section VI (Dispute Resolution) with regard to any of the billed Future Response Costs that it contests. If Settling Party prevails in the dispute with regard to any aspect of the contested costs, EPA will credit the amount of the costs for which Settling Party prevailed against the costs sought by EPA in its next bill(s) for Future Response Costs, until Settling Party has received a credit for all of the costs for which it prevailed in the dispute; or
- b. Within the 30-day period specified in Paragraph 15.a pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 14. Simultaneously, Settling Party shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested

Future Response Costs. Settling Party shall send to the EPA RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Party shall initiate the Dispute Resolution procedures in Section VI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Settling Party shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 15. If Settling Party prevails concerning any aspect of the contested costs, Settling Party shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 15. Settling Party shall be disbursed any balance of the escrow account.

VI. DISPUTE RESOLUTION

18. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement regarding (1) payment of Future Response Costs or (2) the amount, release, cancellation or discontinuance of any financial assurance. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

19. If Settling Party objects to any EPA billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 21 days of receipt of such billing, unless the objection(s) has/have been resolved informally. If Settling Party objects to an EPA determination regarding the amount, release, cancellation or discontinuance of any financial assurance, Settling Party shall provide EPA written notification of its objection(s) within seven days of its receipt of such determination, unless the objection(s) has/have been resolved informally.

20. EPA and Settling Party shall have twenty days from EPA's receipt of Settling Party's written notice of a dispute to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

21. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Deputy Director of the Emergency and Remedial Response Division, EPA Region 2, will issue to Settling Party a written decision on the dispute. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Settling Party's obligations under this Settlement Agreement or the Administrative Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following

resolution of the dispute, as provided by this Section, Settling Party shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

VII. FINANCIAL ASSURANCE

22. In order to ensure full and final completion of the O&M, Settling Party shall secure and maintain financial assurance for the benefit of EPA as follows:

- a. Financial assurance in the amount of \$8,498,398, to be obtained in accordance with Paragraphs 23 through 25, below; and
- b. Additional financial assurance in the amount of \$5,035,890, to be obtained in accordance with Paragraphs 23, 24 and 26, below. Upon obtaining the \$5,035,890 in financial assurance, Alcoa may reduce by \$225,000 (to \$8,273,398) the amount of financial assurance maintained pursuant to subparagraph a., above, for a total amount of financial assurance required pursuant to subparagraphs 22.a and 22.b of \$13,309,288, subject to any adjustments in the amount of financial assurance as provided in this Settlement Agreement.

23. The financial assurance obtained pursuant to Paragraph 22 must be one or more of the mechanisms listed below, in a form that is satisfactory to EPA. EPA will determine the sufficiency or acceptability of any financial assurance mechanisms submitted pursuant to this paragraph.

- a. A payment bond guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of Paragraph 24, below, and that does not deviate substantially from the sample standby trust agreement attached hereto as Appendix A. The surety company issuing the bond must be a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury. The payment bond shall not deviate substantially from the sample payment bond attached hereto as Appendix B;
- b. One or more irrevocable letters of credit, payable at the direction of EPA into a standby trust fund that meets the requirements of Paragraph 24, below, and that does not deviate substantially from the sample standby trust agreement attached hereto as Appendix A. The letter of credit must be issued by one or more financial institution(s) (1) that has the authority to issue letters of credit and (2) whose letter-of-credit operations are regulated and examined by a federal or state agency, and shall not deviate substantially from the sample irrevocable letter of credit attached hereto as Appendix C;
- c. An interest-bearing Escrow Account established pursuant to an Escrow Agreement that is in a form acceptable to EPA and that shall not deviate substantially from the sample Escrow Agreement attached hereto as Appendix D. At the same time Settling Party creates the Escrow Agreement, Settling Party shall also execute a Security Agreement in favor of EPA which provides EPA

with a security interest in the Escrow Account. The terms of such Escrow Account Security Agreement shall not deviate substantially from the Draft Security Agreement attached hereto as Appendix E, and shall have been approved in advance by EPA; and/or

- d. A policy of insurance that (1) provides EPA with acceptable rights as a beneficiary thereof; and (2) is issued by an insurance carrier (i) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (ii) whose insurance operations are regulated and examined by a federal or state agency.

24. If Settling Party seeks to establish financial assurance by using a payment bond and/or letter of credit, Settling Party shall, within 120 days of the effective date, establish, and thereafter maintain, a standby trust fund pursuant to a standby trust agreement that is satisfactory to EPA and into which funds from the other financial assurance mechanism(s) can be deposited, if the financial assurance provider is notified to do so by EPA pursuant to Paragraph 28.b. The standby trust shall be administered by a trustee (1) that has the authority to act as a trustee and (2) whose trust operations are regulated and examined by a federal or state agency. The standby trust agreement shall not deviate substantially from the sample standby trust agreement attached hereto as Appendix A. Funds deposited into the standby trust shall be used by the trustee to perform the O&M as provided in the standby trust agreement. An originally signed duplicate of the standby trust agreement must be submitted with the other financial mechanism submitted to EPA in accordance with Paragraph 25. Until the standby trust fund is funded pursuant to Paragraph 28 (Funding for O&M), payments into the standby trust fund are not required.

25. Settling Party has selected an initial financial assurance of an irrevocable letter of credit, which mechanism EPA has found satisfactory, in the amount of \$8,498,398 as required by Paragraph 22.a, above. Within 120 days after the effective date, Settling Party shall execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance(s) legally binding, and such financial assurance(s) shall be fully effective. Within 120 days after the effective date, Settling Party shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance(s) legally binding to the EPA personnel specified in Section XIII (Notices and Submissions).

26. Within 45 days of EPA's approval of the final O&M Plan for the Site, Settling Party shall execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance(s) required by Paragraph 22.b, above, legally binding and fully effective in a form that meets the requirements of Paragraph 23 for the selected financial assurance(s) and that is satisfactory to EPA. Within 45 days after EPA's approval of such O&M Plan, Settling Party shall submit copies of all such executed and/or otherwise finalized instruments or other documents to the EPA personnel specified in Section XIII (Notices and Submissions).

27. Settling Party shall diligently monitor the adequacy of the financial assurance. In the event that EPA determines at any time that the financial assurance provided by Settling Party pursuant to this Section is inadequate or otherwise no longer satisfies the requirements of this Section, whether due to an increase in the estimated cost of the O&M or for any other reason, or in the event that Settling Party becomes aware of information indicating that a financial assurance provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the O&M or for any other reason, Settling Party, within 45 days after receipt of notice of EPA's determination or, as the case may be, within 45 days after Settling Party becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of financial assurance listed in Paragraph 23 that satisfies all requirements set forth in this Section VII; provided, however, that if Settling Party cannot obtain such revised or alternative form of financial assurance within such 45-day period, and provided further that the Settling Party shall have commenced to obtain such revised or alternative form of financial assurance within such 45-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for Settling Party in the exercise of due diligence to obtain such revised or alternative form of financial assurance, such additional period not to exceed 60 days. On day 30, Settling Party shall provide to EPA a status report on its efforts to obtain the revised or alternative form of financial assurance. In seeking approval for a revised or alternative form of financial assurance, Settling Party shall follow the procedures set forth in Paragraph 31.b.ii. Settling Party's inability to post financial assurance for completion of the O&M shall in no way excuse performance of any other requirements of this Settlement Agreement or the Administrative Order, including, without limitation, the obligation of Settling Party to perform the O&M in strict accordance with the terms of the Administrative Order.

28. Funding for O&M.

- a. Settling Party's failure to perform any of the O&M pursuant to the Administrative Order shall trigger EPA's right to receive the benefit of any financial assurance(s) provided pursuant to this Section, and it is agreed and understood that at such time the resources guaranteed under any such financial assurance(s) shall become available as needed to ensure the performance of the O&M.
- b. In the event that Settling Party ceases to perform any of the O&M required by the Administrative Order, EPA may issue a written notice of Settling Party's failure to perform ("Performance Failure Notice") to both the Settling Party and the entity or entities that issued the financial assurance mechanism(s) provided pursuant to paragraphs 22 and 23. Immediately upon receipt by such entity or entities of such Performance Failure Notice, the entity or entities that issued the financial assurance mechanism(s) shall, and/or Settling Party shall cause the entity or entities that issued the financial assurance mechanism(s) to, in accordance with such mechanism(s), deposit into the standby trust fund or, at EPA's election, the Alcoa Study Area Special Account within the EPA Hazardous

Substance Superfund, all funds guaranteed under the financial assurance mechanism(s).

- c. Following any failure by Settling Party to perform O&M as required by the Administrative Order, if for any reason the entity or entities that issued the financial assurance mechanism(s) do not immediately place the funds guaranteed under the financial assurance mechanism(s) into the standby trust fund or, at EPA's election, the Alcoa Study Area Special Account within the EPA Hazardous Substance Superfund, Settling Party shall immediately upon written demand from EPA, and as directed by EPA, deposit into the standby trust fund or, at EPA's election, the Alcoa Study Area Special Account, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the O&M as of such date, as determined by EPA.

29. If at any time EPA is notified by the issuer of any financial assurance that such issuer intends to cancel the financial assurance mechanism(s) it has issued, then, unless Settling Party provides a substitute financial assurance mechanism(s) in accordance with this Section VII no later than 30 days prior to the impending cancellation date, and so notifies the entity or entities that issued the financial assurance mechanism(s), such entity or entities shall, in accordance with the financial assurance mechanism(s) (as of and after the date that is 30 days prior to the impending cancellation), deposit into the standby trust fund or, at EPA's election, the Alcoa Study Area Special Account within the EPA Hazardous Substance Superfund, all funds guaranteed under the financial assurance mechanism(s). All costs incurred by EPA in taking over the O&M and not reimbursed under this Paragraph shall be reimbursed as Future Response Costs under Section V (Payment of Response Costs).

30. Settling Party shall immediately notify EPA of any failure by Settling Party to pay a premium or fee for a financial assurance mechanism(s) no later than ten days after the due date of such premium or fee.

31. Modification of Amount and/or Form of Financial Assurance.

a. Reduction of Amount of Financial Assurance.

- i. If Settling Party believes that the estimated cost of the O&M has diminished below the amounts set forth in Paragraph 22, Settling Party may, on any anniversary of the effective date, or at any other time agreed to by EPA, petition EPA in writing to request a reduction in the amount of the financial assurance provided pursuant to this Section so that the amount of the financial assurance is equal to the estimated cost of the O&M.

- ii. Settling Party shall submit to EPA a written proposal for such reduction that shall specify, at a minimum, the estimated cost of the O&M and the basis upon which such cost was calculated. In seeking approval for a reduction in the amount of the financial assurance, Settling Party shall follow the procedures set forth in Paragraph 31.b.ii for requesting a revised or alternative form of financial assurance, except as specifically provided in this Paragraph 31.a. If EPA decides to accept Settling Party's proposal for a reduction in the amount of the financial assurance, either to the amount set forth in Settling Party's written proposal or to some other amount as selected by EPA, EPA will notify Settling Party of such decision in writing. After receiving EPA's written decision, Settling Party may reduce the amount of the financial assurance in accordance with and to the extent permitted by such written acceptance and shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance(s) legally binding in accordance with Paragraph 31.b.ii. In the event of a dispute, Settling Party may reduce the amount of the financial assurance required hereunder only in accordance with EPA's final decision resolving such dispute pursuant to Section VI (Dispute Resolution). No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 27 or 31.b.

b. Change of Form of Financial Assurance.

- i. If, after the effective date, Settling Party desires to change the form or terms of any financial assurance(s) provided pursuant to this Section, Settling Party may, on any anniversary of the effective date, or at any other time agreed to by EPA, petition EPA in writing to request a change in the form or terms of the financial assurance(s) provided hereunder. The submission of such proposed revised or alternative financial assurance shall be as provided in Paragraph 31.b.ii. Any decision made by EPA on a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Party pursuant to the dispute resolution provisions of this Settlement Agreement or in any other forum.
- ii. Settling Party shall submit a written proposal for a revised or alternative financial assurance to EPA that shall specify, at a minimum, the estimated cost of the O&M, the basis upon which such cost was calculated, and the proposed revised financial assurance, including all proposed instruments or other documents required in order to make the proposed financial assurance legally binding. The proposed revised or alternative financial assurance must satisfy all requirements set forth or incorporated by

reference in this Section. Settling Party shall submit such proposed revised or alternative financial assurance to the EPA personnel identified in Section XIII (Notices and Submissions) and to the EPA Cincinnati Finance Center in Paragraph 14.c. EPA will notify Settling Party in writing of its decision to accept or reject a revised or alternative financial assurance submitted pursuant to this Paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative financial assurance, Settling Party shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance(s) legally binding in a form that shall not deviate substantially from the documents submitted to EPA as part of the proposal, and such financial assurance(s) shall thereupon be fully effective. Settling Party shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance(s) legally binding to the EPA personnel identified in Section XIII (Notices and Submissions) and to the EPA Cincinnati Finance Center in Paragraph 14.c within 30 days after receiving a written decision approving the proposed revised or alternative financial assurance in accordance with Section XIII (Notices and Submissions).

32. Release, Cancellation, or Discontinuation of Financial Assurance. Settling Party shall not release, cancel, or discontinue any financial assurance provided pursuant to this Section except as provided in this Paragraph. If Settling Party receives written notice from EPA in accordance with Paragraph 131 of the Administrative Order that the O&M has been fully carried out in accordance with the terms of the Administrative Order, or if EPA otherwise so notifies Settling Party in writing, Settling Party may thereafter release, cancel, or discontinue the financial assurance(s) provided pursuant to this Section. In the event of a dispute, Settling Party may release, cancel, or discontinue the financial assurance(s) required hereunder only in accordance with EPA's decision resolving such dispute pursuant to Section VI (Dispute Resolution).

VIII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

33. If Settling Party violates any requirement of this Settlement Agreement, Settling Party shall pay to EPA, as a stipulated penalty, (i) \$1,000 per violation per day, for the first seven days of noncompliance, (ii) \$2,000 per day, per violation, for the 8th through 15th day of noncompliance, and (iii) \$3,000 per violation per day, for the 16th day of noncompliance and beyond.

34. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA required under Paragraph 33 shall be identified as "stipulated penalties" and shall be made in accordance with the procedures set forth in

Paragraph 14.b.

35. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but such payment need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

36. In addition to the Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

37. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

IX. COVENANT NOT TO SUE BY EPA

38. Covenant Not to Sue by EPA. Except as specifically provided in Section X (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Past Response Costs and Future Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Paragraph 14 (Payment of Past Response Costs) and any Interest or stipulated penalties due thereon under Section VIII (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement including, but not limited to, payment of Future Response Costs as required by Paragraph 15 (Payments of Future Response Costs). This covenant not to sue extends only to Settling Party and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY EPA

39. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 38. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs or Future Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

40. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

XI. COVENANT NOT TO SUE BY SETTLING PARTY

41. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs, Future Response Costs or this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs or Future Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of New York, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs or Future Response Costs.

42. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

43. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XI (Covenant Not to Sue by Settling Party), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 113), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to CERCLA Section 113(f)(2).

44. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II of this Settlement Agreement.

45. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Settling Party is entitled, as of the effective date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Past Response Costs and Future Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Party has, as of the effective date, "resolved its liability to the United States . . . for some or all of a response action or for some or all of the costs of such action."

46. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

47. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion,

claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section IX.

XIII. NOTICES AND SUBMISSIONS

48. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA: Emergency and Remedial Response Division
 U.S. Environmental Protection Agency, Region 2
 290 Broadway, 20th Floor
 New York, NY 10007-1866
 Attn: Young Chang, Remedial Project Manager

and to: Office of Regional Counsel
 U.S. EPA, Region 2
 290 Broadway, 17th Floor
 New York, NY 10007-1866
 Attn: Douglas Fischer, Grasse River Superfund Site Attorney

As to Settling Party: Alcoa Inc.
 Director, Corporate Remediation
 201 Isabella St.
 Pittsburgh PA 15212
 Attn: Kirk Gribben

 Alcoa Inc.
 Legal Division
 201 Isabella St.
 Pittsburgh, PA 15212
 Attn: Gregory J. Pfeifer, Esq.

XIV. INTEGRATION

49. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

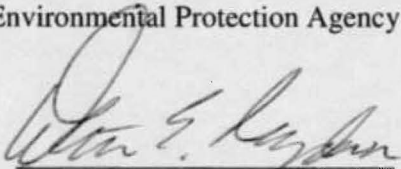
XV. EFFECTIVE DATE

50. The effective date of this Settlement Agreement shall be the date upon which it is signed by the Director of the Emergency and Remedial Response Division of EPA Region 2 or his delegatee.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:



WALTER E. MUGDAN

Director

Emergency and Remedial Response Division

U.S. Environmental Protection Agency

Region 2

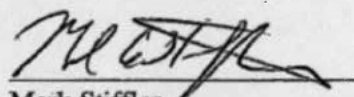
Sept. 29, 2014

Date

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement for Recovery of Response Costs, Index Number CERCLA-02-2014-2031 relating to the Grasse River (a.k.a. Alcoa Aggregation) Superfund Site located in Massena, St. Lawrence County, New York:

Alcoa, Inc.

By:



Mark Stiffler
Vice President
Asset Management
Alcoa Inc.
201 Isabella St.
Pittsburgh PA 15212

9/27/14
Date

APPENDIX A

STANDBY TRUST AGREEMENT

This standby trust agreement (the "Trust Agreement") is entered into as of **[insert date]** by and between Alcoa Inc., a corporation (the "Grantor") and **[insert name of corporate trustee]**, **[insert "incorporated in the State of [name of state]" or "a national bank"]** (the "Trustee"). The United States Environmental Protection Agency ("EPA"), an agency of the United States Government, is not a party hereto, but is the Beneficiary of the trust established by this Trust Agreement.

Recitals

WHEREAS, on September 28, 1989, EPA issued Administrative Order, Index No. II-CERCLA-90229 ("Order"), to Grantor under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9606(a), requiring Grantor, among other things, to provide for the operation, monitoring and maintenance ("O&M") of the remedial action selected by EPA in an April 4, 2013, Record of Decision ("ROD") for the Grasse River (a.k.a. Alcoa Aggregation) Superfund Site in Massena, New York ("Site").

WHEREAS, EPA and the Grantor have entered into Settlement Agreement for Recovery of Response Costs, Index, No. _____ ("Settlement Agreement"), under which Grantor has provided assurance that funds will be available when needed for performance of the O&M at the Site.

WHEREAS, Grantor is establishing this trust to further provide all or part of such financial assurance for the O&M at the Site.

WHEREAS, Grantor, acting through its duly authorized officers, has selected Trustee to be Trustee under this Trust Agreement, and Trustee is willing to act as trustee.

NOW, THEREFORE, Grantor and Trustee agree as follows:

Section 1. Definitions: As used in this Trust Agreement:

- (A) "Beneficiary" means EPA.
- (B) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.
- (C) "EPA" means the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.
- (D) "Grantor" means Alcoa Inc. and any and all successors or assigns of Alcoa Inc.

- (E) "Order" means Administrative Order, Index No. II-CERCLA-90229, issued to Grantor by EPA on September 28, 1989.
- (F) "ROD" means the remedy (including O&M) EPA selected for the Site on April 4, 2013 and any modifications thereto.
- (G) "Settlement Agreement" means this Settlement Agreement for Recovery of Response Costs, Index, No. _____.
- (H) "Site" means the Grasse River (a.k.a. Alcoa Aggregation or Study Area) Superfund Site in Massena, New York. The Site includes the approximately 7.2 miles of the lower Grasse River that runs from the intersection of the Massena Power Canal and the Grasse River, to the confluence of the Grasse and St. Lawrence Rivers. For purposes of this Settlement Agreement, the Site also includes the approximately 1.3 miles of the Lower Grasse River upstream of the confluence of the Grasse River and the Massena Power Canal, Robinson Creek (which discharges to the St. Lawrence River), the Massena Power Canal, and the Unnamed Tributary.
- (I) "Trust" means this has the meaning provided in Section 3.
- (J) "Trust Agreement" means this Standby Trust Agreement.
- (K) "Trust Assets" means money the cash provided in Section 3.
- (L) "Trustee" shall mean the trustee identified in the first paragraph of this Agreement, along with any successor trustee appointed pursuant to the terms of this Agreement.
- (M) "O&M" shall mean the Operation, Monitoring and Maintenance of the remedy for the Site required by EPA pursuant to the Order.

Terms not otherwise defined herein shall have the meanings provided for in CERCLA and/or the National Contingency Plan, 40 C.F.R. Part 300.

Section 2. Purpose of Trust Agreement and O&M Cost Estimate. This Trust Agreement pertains to funding and performance of the O&M at the Site, the estimated cost of which is \$ _____. The Trustee agrees to conduct, manage and/or fund the O&M with respect to the Site in accordance with the provisions of the Order and the ROD. All expenditures from the Trust shall be made to fulfill the legal obligations of Grantor under the Order or as otherwise provided in this Trust Agreement. The Trust shall have no objective or authority to engage in any trade or business. The performance by the Trustee of its duties under this Trust Agreement and the Settlement Agreement shall not be considered to be the Trustee's engagement in a trade or business. This Trust is intended to satisfy all of the requirements of,

and is intended by the Parties to be properly classified as, a qualified settlement fund pursuant to section 468B of the IRC and related Treasury Regulations.

Section 3. Establishment of Trust. Grantor and Trustee hereby establish a trust (the "Trust"), for the benefit of EPA (the "Beneficiary"). The Trust is established initially as consisting of \$0.00 which is acceptable to Trustee. Immediately upon the date that EPA issues a Performance Failure Notice pursuant to Paragraph 28.b. of the Settlement Agreement, Grantor and/or the entity or entities that issued the **[letter(s) of credit or surety bond]** established by Grantor under the Settlement Agreement shall deposit all funds secured by the **[letter(s) of credit/bond]** into the Trust. The funds so deposited, along with any other monies and/or property subsequently transferred to Trustee, together with all earnings and profits thereon, less any payments or distributions made by Trustee pursuant to this Trust Agreement, are referred to herein collectively as the "Trust Assets." The Grantor and the Trustee intend that no third party shall have access to the Trust Assets except as herein provided. The Trust Assets shall be held by Trustee, IN TRUST. Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from Grantor, any payments necessary to discharge any liabilities of Grantor under the Order.

Section 4. Payment for and Performance of O&M. Trustee shall make payments from the Trust to perform and finance the O&M under EPA's oversight in accordance with the following procedures:

- a. Grantor's failure to perform any or all of the O&M under the terms of the Order shall trigger EPA's right to receive the benefit of any financial assurance(s) provided pursuant to the Settlement Agreement. If, at any time during the term of the Order, Grantor ceases to perform any or all of the O&M required pursuant to the Order, EPA may notify Trustee in writing of EPA's right to receive the benefit of such financial assurance(s) pursuant to the Settlement Agreement ("Performance Failure Notice"). Upon (i) receiving such written notice from EPA, and (ii) the Trust's receipt of funds guaranteed by the financial assurance mechanism(s) established pursuant to the Settlement Agreement, Trustee shall thereafter make payments from the Trust for the sole purpose of performing the O&M required by the Order or as otherwise provided in this Trust Agreement.
- b. If, at any time during the term of this Trust Agreement, EPA takes over the performance of all or any portion(s) of the O&M, EPA will notify the Trustee in writing of EPA's commencement of such work and direct Trustee to deposit the Trust Assets into the Alcoa Study Area Special Account within the EPA Hazardous Substance Superfund.
- c. Grantor may request that EPA authorize Trustee to return to Grantor any funds that remain in the Trust after all of the O&M has been completed. If EPA advises Trustee in writing that Trust Assets are no longer necessary to fulfill Grantor's obligations under the Order, Trustee shall promptly return any remaining Trust Assets to Grantor.

Section 5. Payments Comprising the Trust. Payments made by Grantor to Trustee for the Trust shall consist of cash from the **[letter(s) of credit or surety bond]** established pursuant to the Settlement Agreement.

Section 6. Investment and Safekeeping of Trust Assets. The sole purpose of this Section is to authorize the investment and safekeeping of the Trust Assets or any portions thereof as may be reasonably prudent pending use of the proceeds for the purpose of the Trust. Trustee shall invest and reinvest the principal and income of the Trust Assets and keep the Trust Assets invested as a single fund, without distinction between principal and income. The right and power of the Trustee to invest the Trust Assets, Trust proceeds, or any income earned by the Trust, shall be limited to the right and power to invest such assets in demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured, or other liquid investments, such as U.S. Treasury bills, or such other investment as approved by EPA. In investing, reinvesting, exchanging, selling, and managing the Trust Assets, Trustee shall discharge its duties with respect to the Trust solely in a fiduciary capacity consistent with the purpose of this Trust Agreement and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; *except that*:

- a. Securities or other obligations of any person or entity shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- b. Trustee is authorized to invest the Trust Assets in time or demand deposits in Trustee;
and
- c. Trustee is authorized to hold cash awaiting investment or distribution un-invested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Express Powers of Trustee. In connection with the administration of the Trust, except as otherwise set forth in this Trust Agreement or the Order, Trustee is expressly authorized to perform any and all acts necessary to accomplish the purpose of the Trust. However the Trustee shall take all best efforts to take no action that causes the Trust to fail to qualify as a qualified settlement fund (for which no grantor trust election has been made) under section 468B of the Internal Revenue Code and the Treasury Regulations thereunder. The powers of Trustee shall include, without limitation, each of the following, but shall not include the ability to challenge EPA's Performance Failure Notice under the Settlement Agreement or Section 4, above, or EPA's authorities under the Order or the Settlement Agreement:

- (a) To receive, manage, invest, supervise and protect the Trust Assets, withdraw, make distributions and pay taxes, if applicable or required, and other obligations owed by the Trust from funds held by the Trust;

- (b) To retain and pay employees and professionals as Trustee may deem necessary or appropriate to assist Trustee with respect to the responsibilities described herein; provided, however, that EPA may review and approve of the qualifications for environmental contractors and/or consultants Trustee proposes to perform the O&M;
- (c) To prepare budgets of projected expenditures from the Trust for EPA's review in order to ensure compliance with the Order and the Settlement Agreement;
- (d) To seek approval from EPA of any O&M plans or activities to be undertaken by the Trust under the oversight of EPA;
- (e) To comply with any requirements set forth in the Order relating to O&M including access and institutional controls;
- (f) To utilize funding from the Trust, in the event of an emergency at the Site requiring the performance of a response action within hours or days of the Trustee first receiving notice of the emergency, in order to undertake actions necessary to respond to the emergency;
- (g) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale;
- (h) To compromise or otherwise adjust all claims in favor of or against the Trust; and
- (i) To effect all actions and execute all agreements, instruments and other documents necessary to implement this Trust Agreement.

Section 8. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Trust Assets shall be paid from the Trust. All expenses incurred by Trustee in connection with the administration of the Trust shall be paid by Grantor; provided, however, that if Grantor is unable to pay expenses incurred by Trustee in connection with the administration of the Trust, such expenses shall be paid from the Trust.

Section 9. Annual Valuation. Until the Trust is funded, annual valuations are not required. Once the Trust is funded, Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Trust, furnish to Grantor and to EPA a statement confirming the value of the Trust. The annual valuation shall include an accounting of any fees or expenses levied against the Trust. Trustee shall also provide such information concerning the Trust Assets and this Trust as EPA may request from time to time. The failure of Grantor to object in writing to Trustee within 90 days after the statement has been furnished to Grantor and the designated EPA official shall constitute a conclusively binding assent by Grantor, barring Grantor from asserting any claim or liability against Trustee with respect to matters disclosed in the statement.

Section 10. Advice of Counsel. Trustee may from time to time consult with counsel, who may be counsel to Grantor, with respect to questions relating to the construction of this Trust Agreement or any action to be taken hereunder, except for questions relating to EPA's determinations under Section 4 or EPA's authorities under the Order. Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with Grantor subject to EPA approval; provided, however, the parties acknowledge that, before the Trust is funded, Trustee shall have minimal duties and shall be entitled to appropriate minimum compensation, if any.

Section 12. Successor Trustee. Trustee may resign or Grantor may replace Trustee, but the resignation or replacement shall not be effective until Grantor has appointed a successor trustee and this successor accepts the appointment. Trustee and any replacement Trustee must be approved in writing by EPA and must not be affiliated with Grantor. The successor trustee shall have the same powers and duties as those conferred upon Trustee hereunder. Upon the successor trustee's acceptance of the appointment, Trustee shall assign, transfer, and pay over to the successor trustee the funds and property then constituting the Trust Assets. If for any reason Grantor cannot or does not act in the event of the resignation of Trustee, Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to Grantor, EPA, and the present Trustee by certified mail 10 days before the change becomes effective. Any expenses incurred by Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 8.

Section 13. Instructions to Trustee. All orders, requests, and instructions by Grantor to Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit B or such other designees as Grantor may designate by amendment to Exhibit A. Trustee shall be fully protected in acting without inquiry in accordance with Grantor's orders, requests, and instructions. All orders, requests, and instructions by EPA to Trustee shall be in writing, signed by an authorized EPA official as designated in Section 20(c) or his or her designee, and Trustee may rely on these instructions. Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of Grantor or EPA hereunder has occurred. Trustee shall have no duty to act in the absence of such orders, requests, and instructions from Grantor and/or EPA, except as provided for herein. In the event of conflict between Grantor's instructions and EPA's instructions, EPA's instructions shall control.

Section 14. Amendment of Trust Agreement. This Trust Agreement may be amended by an instrument in writing executed by Grantor and Trustee, with the consent of EPA, or by Trustee and EPA if Grantor ceases to exist; provided.

Section 15. Cancellation, Irrevocability and Termination. Subject to the right of the parties to amend this Trust Agreement as provided in Section 14, this Trust shall be irrevocable and shall

continue until terminated at the written agreement of Grantor and Trustee, with the concurrence of EPA, or by Trustee and EPA if Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to Grantor or, if Grantor ceases to exist, deposited into the EPA Hazardous Substance Superfund in accordance with instructions to be provided by EPA.

Section 16. Liability of Trustee. Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith and in its official capacity, in the administration of this Trust, or in carrying out any directions by Grantor or EPA so long as such directions are not inconsistent with this Trust Agreement and/or the Order. No provision of this Trust Agreement or the Order shall require Trustee to expend or risk its own personal funds or otherwise incur any personal liability in the performance of any of its duties or in the exercise of any of its authorities as Trustee hereunder. Notwithstanding the foregoing, Trustee shall satisfy from its own funds any liability imposed by a final order of a court of competent jurisdiction, which is not reversed on appeal, on account of Trustee's fraud or willful misconduct in relation to its duties under this Trust Agreement.

Section 17. Indemnification. The Trustee shall be indemnified and saved harmless by Grantor or from the Trust, or both, from and against any personal liability of any nature in connection with any act or omission, made in good faith and in its official capacity, in the administration of this Trust, or in carrying out any directions by the Grantor or EPA issued in accordance with this Agreement, including all expenses reasonably incurred in its defense in the event Grantor fails to provide such defense.

Section 18. Choice of Law. This Trust Agreement shall be administered, construed, and enforced according to the laws of New York with regard to claims by Grantor, Trustee, or any party other than EPA. Claims involving EPA are subject to federal law.

Section 19. Interpretation. As used in this Trust Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Trust Agreement shall not affect the interpretation or the legal efficacy of this Trust Agreement. In the event of a conflict in the wording of this Trust Agreement and the Order, the wording of the Order shall prevail.

Section 20. Notices. All notices and other communications given under this Trust Agreement shall be in writing and shall be addressed to the parties as follows or to such other address as the parties shall by written notice designate:

- (a) If to Grantor, to: [insert name, title, address, and contact information (phone, e-mail)];
- (b) If to Trustee, to: [insert name, title, address, and contact information (phone, e-mail)];
and

(c) If to EPA, to: Director
Emergency and Remedial Response Division
EPA Region 2
290 Broadway, 19th Floor
New York, NY 10007-1866

With copies to:

Remedial Project Manager
Grasse River Superfund Site
Emergency and Remedial Response Division
EPA Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866

and

Site Attorney
Grasse River Superfund Site
Emergency and Remedial Response Division
EPA Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

Section 21. Other. Grantor shall provide a copy of the Order and the Settlement Agreement to Trustee, and Grantor shall provide a copy of this Trust Agreement to EPA in accordance with the Settlement Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

Signature of Grantor: _____
Printed Name of Grantor: _____
Title: _____
Mailing Address of Grantor: _____
Seal¹: _____

Attest (Signature): _____
Title: _____

¹ A corporate seal is only recommended if the company has a corporate seal.

Signature of Trustee: _____

Printed Name of Trustee: _____

Title: _____

Mailing Address of Trustee: _____

Seal²:

Attest (Signature): _____

Title: _____

² A corporate seal is only recommended if the company has a corporate seal.

The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund.

[insert State/Commonwealth] of [insert name of state]

County of [insert name of county]

On this [insert date], before me personally came [insert name of owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [insert address], that she/he is [insert title] of [insert name of corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

Signature of Notary Public: _____

Schedule A
Initial Trust Funding

DATE	FUNDING VALUE FOR O&M
[Insert relevant initial date (e.g., within 30 days of the Effective Date of the Order)]	[Insert initial funding amount for funded trusts or "0" for standby trusts]

Exhibit A
Sample Payment Request

[Date]

[Insert Trustee's name pursuant to the trust agreement's preamble]

[Insert Trustee's address pursuant to Section [20(b)] of the trust agreement]

[Insert Trustee's city, state, zip pursuant to Section [20(b)] of the trust agreement]

[Insert authorized Regional official pursuant to Sections [13 and 20(c)] of the trust agreement]

[Insert address pursuant to Section [20(c)] of the trust agreement]

[Insert city, state, zip pursuant to Section [20(c)] of the trust agreement]

Re: Request for payment from the [standby] trust [insert trust account number or other identifying information] established as financial assurance for the [site name] Site,
[insert name of City or Town, County, State]

Dear [insert name of Trustee and authorized Regional official]:

Pursuant to Section [4(a)] of the subject trust, Grantor (as defined therein) and/or its representatives or contractors, or contractors selected by Trustee (as defined therein), are authorized to request that Trustee make payment from the trust for O&M (as defined therein) performed or to be performed under the Order (as defined therein) by delivering to Trustee and EPA (as defined therein) a written request for payment signed by an officer of the requesting entity. By this letter, [insert requesting entity] requests payment from the trust. The bases for the payment request are more fully described below.

1. Certification: [officer of the requesting entity must certify that the request is submitted for O&M performed or to be performed in accordance with the Order].
2. Description of Applicable O&M: [provide a description of the O&M that has been or will be performed].
3. Amount of Payment Request: [specify the amount of funds requested from the trust].
4. Proposed Payee: [identify the payee(s) of the funds requested].

Please let me know if you have any questions. I can be reached at [insert telephone number and e-mail address].

Sincerely,

[insert name of officer of the requesting entity]

[insert address of the requesting entity]

[insert city, state, and zip of the requesting entity]

[cc: [insert other EPA staff to receive payment requests pursuant to Section [20(c)] of the

trust agreement]

Exhibit B

Grantor-Designated Individuals Authorized for Orders, Requests, and Instructions

[Grantor to insert person(s) (and relevant contact information) designated to provide/make orders, requests, and instructions to Trustee pursuant to Section 13 of the Agreement.]

APPENDIX B

[Letterhead of Bond Issuer]

PAYMENT BOND

Surety's Payment Bond Number: _____
Date of Execution of Payment Bond: _____
Effective Date of Payment Bond: _____
Total Dollar Amount of Payment Bond: _____

Principal:

Legal Name and Address: Alcoa Inc.
201 Isabella St.
Pittsburgh PA 15212

Type of Organization: Corporation

State of Organization: Pennsylvania

Surety:

Legal Name and Address: [name and business address of surety providing
the bond]
Type of Organization: [insert "individual," "partnership," "limited
liability company," "corporation," etc.]
State of Organization:

Beneficiary:

Legal Name and Address: U.S. Environmental Protection Agency, Region 2
c/o Director, Emergency and Remedial Response
Division
290 Broadway, 19th Floor
New York, NY 10007

Site Information:

Name and Location of Site: Grasse River (a.k.a. Alcoa Aggregation)
Massena, St. Lawrence County, NY

Superfund Site Identification Number:	NYD980506232
Enforcement Instrument Governing Site Work:	September 28, 1989 Administrative Order, Index No. II-CERCLA-90229 ("Administrative Order"), as amended on May 28, 1995
Agreement Governing Financial Assurance for Site Work:	Administrative Settlement Agreement for Recovery of Response Costs by and between U.S. Environmental Protection Agency and Alcoa Inc. (the "Agreement")

KNOW ALL PERSONS BY THESE PRESENTS, THAT:

WHEREAS, said Principal is required, under the above-described Administrative Order issued pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675, to, among other things, perform all post-construction operation, monitoring and maintenance ("O&M") of the remedial action selected by EPA in the April 3, 2014, Record of Decision for the Site; and

WHEREAS, said Principal is required by the Agreement to provide financial assurance securing its full and final completion of the O&M.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Principal and Surety hereto are firmly bound to the United States Environmental Protection Agency, Region 2 (hereinafter, "EPA"), in the above Total Dollar Amount, for the payment of which we, the Principal and Surety, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, subject to and in accordance with the terms and conditions hereof.
2. The conditions of the Surety's obligation hereunder are such that if the Principal shall promptly, faithfully, fully, and finally complete the O&M in accordance with the terms of the Administrative Order, the Surety's obligation hereunder shall be null and void; otherwise it is to remain in full force and effect.

3. The Surety shall become liable on the obligation evidenced hereby only upon the issuance by EPA to the Principal of a Performance Failure Notice pursuant to Paragraph 28.b of the Agreement. At any time and from time to time upon notification by the Director of the Emergency and Remedial Response Division of EPA Region 2 ("Director") (or designee) that EPA has issued a Performance Failure Notice to the Principal, the Surety shall promptly (and in any event within fifteen (15) days after receiving such notification) pay funds up to the Total Dollar Amount in such amounts and to such person(s), account(s), or otherwise as the EPA Director (or designee) may direct. If the Surety does not render such payment within the specified 15-day period, the Surety shall be deemed to be in default of this Payment Bond and EPA shall be entitled to enforce any remedy available to it at law, in equity, or otherwise.

4. The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the Total Dollar Amount of this Payment Bond, but in no event shall the aggregate obligation of the Surety hereunder exceed the amount of said sum.

5. The Surety may cancel this Payment Bond only by sending notice of cancellation to the Principal and to the Director, provided, however, that no such cancellation shall be effective during the 120-day period beginning on the date of receipt of the notice of cancellation by both the Principal and the Director. If after ninety (90) days of such 120-day period, the Principal has not established a replacement financial assurance mechanism pursuant to and in accordance with the terms of the Agreement, EPA shall have the right to draw upon the full amount of this Payment Bond.

6. The Principal may terminate this Payment Bond only by sending written notice of termination to the Surety and to the Director, provided, however, that no such termination shall become effective unless and until the Surety receives written authorization for termination of this Payment Bond by the Director (or his or her designee).

7. Any modification, revision, or amendment which may be made in the terms of the Agreement, the Administrative Order or in the O&M to be performed thereunder, or any extension of the Agreement or the Administrative Order, or other forbearance on the part of either the Principal or EPA to the other, shall not in any way release the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors or assigns from liability hereunder. The Surety hereby expressly waives notice of any change, revision, or amendment to the Administrative Order or the Agreement or to any related obligations between the Principal and EPA.

8. The Surety will immediately notify EPA of any of the following events: (a) the filing by the Surety of a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; (b) the Surety's

consent to (or failure to contest in a timely manner) any petition filed against it in an involuntary case under such bankruptcy or other laws; (c) the Surety's application for (or consent to or failure to contest in a timely manner) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of all or a substantial part of its assets; (d) the Surety's making a general assignment for the benefit of creditors; or (e) the Surety's taking any corporate action for the purpose of effecting any of the foregoing.

9. Any provision in this Payment Bond that conflicts with CERCLA or any other applicable statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or legal requirement shall be deemed incorporated herein.

10. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, to the address shown on the first page of this Payment Bond.

All notices, elections, requests and demands under this Payment Bond shall be effective and deemed received upon the earliest of (a) the actual receipt of the same by personal delivery or otherwise; (b) one (1) business day after being deposited with a nationally recognized overnight courier service as required above; or (c) three (3) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

11. The Surety hereby agrees that the obligations of the Surety under this Payment Bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy or reorganization of the Principal or by any other arrangement or rearrangement of the Principal for the benefit of creditors.

12. No right of action shall accrue on this Payment Bond to or for the use of any person other than EPA or the successors or assigns of EPA.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Principal and Surety have executed this Payment Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby represent, warrant, and certify that they are authorized to execute this Payment Bond on behalf of the Principal and Surety, respectively.

PRINCIPAL:

Alcoa Inc., a corporation organized and in good standing in the State of Pennsylvania

Attest: _____
Name: _____

By: _____
Name: _____
Title: _____

SURETY:

[_____] ,
a [corporation/partnership/limited liability
company] organized and in good standing in
the State of [_____]

Attest: _____
Name: _____

By: _____
Name: _____
Title: _____

CORPORATE ACKNOWLEDGMENTS

STATE OF _____)
SS:
COUNTY OF _____)

On _____, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF _____)
SS:
COUNTY OF _____)

On _____, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary Public

APPENDIX C

[Letterhead of Issuing Bank]

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: [_____]

ISSUANCE DATE: [_____]

MAXIMUM AMOUNT: [U.S.\$ _____]

BENEFICIARY:

U.S. Environmental Protection Agency, Region 2
c/o Director, Emergency and
Remedial Response Division
290 Broadway, 19th Floor
New York, NY 10007

APPLICANT:

Alcoa Inc.
1201 Isabella St.
Pittsburgh PA 15212

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. [_____] in your favor, at the request and for the account of the Applicant, Alcoa Inc., in the amount of exactly [in words] U.S. dollars (\$XX.XX) (the "Maximum Amount"). We hereby authorize you, the U.S. Environmental Protection Agency, Region 2 (the "Beneficiary"), to draw at sight on us, [Insert name and address of issuing bank], an aggregate amount equal to the Maximum Amount upon presentation of:

- (1) your sight draft bearing reference to this Letter of Credit No. [_____] (which may, without limitation, be presented in the form attached hereto as Exhibit A); and
- (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to that certain Settlement Agreement for Recovery of Response Costs by and between U.S. Environmental Protection Agency ("EPA") and Alcoa Inc., EPA Index No. _____ (the "Agreement"), dated _____, 2014, by and between EPA and Alcoa Inc., and entered into by the parties thereto in accordance with the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The amount of the draft shall be payable to [Standby Trust No. _____, established pursuant to paragraph 24 of the Agreement, or to the Alcoa Study Area Special Account within the EPA Hazardous Substance Superfund]."

This letter of credit is effective as of [insert issuance date] and shall expire on [a date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [the date which is at least 1 year later] and on each successive expiration date, unless, at least one hundred twenty (120) days before the current expiration date, we notify both the

Beneficiary and the Applicant by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event of such notification, any unused portion of the credit shall immediately thereupon be available to you upon presentation of your sight draft for a period of at least 120 days after the date of receipt by both you and the Applicant of such notification, as shown on signed return receipts.

Multiple and partial draws on this letter of credit are expressly permitted, up to an aggregate amount not to exceed the Maximum Amount. Whenever this letter of credit is drawn on, under, and in compliance with the terms hereof, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft in immediately available funds directly into such account or accounts as may be specified in accordance with your instructions.

All banking and other charges under this letter of credit are for the account of the Applicant.

This letter of credit is subject to the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce.

Very Truly Yours,

[Name and address of issuing institution]

[Signature(s), name(s), and title(s) of official(s) of issuing institution]

[Date]

Exhibit A - Form of Sight Draft

United States Environmental Protection Agency, Region 2

Sight Draft

TO: [Insert name of Issuing Bank]
[Insert address of Issuing Bank]
[]
[]

RE: Letter of Credit No. []

DATE: [Insert date that draw is made]

TIME: [Insert time of day that draw is made]

This draft is drawn under your Irrevocable Letter of Credit No. [].

Pay to the order of [Standby Trust No. _____ or to Alcoa Study Area Special Account within the EPA Hazardous Substance Superfund], in immediately available funds, the amount of [in words] U.S. Dollars (U.S.\$[]) or, if no amount certain is specified, the total balance remaining available under your Irrevocable Letter of Credit No. [].

Pay such amount specified in the immediately preceding paragraph to [Standby Trust No. _____ or to Alcoa Study Area Special Account within the EPA Hazardous Substance Superfund] referencing the [date] Settlement Agreement for Recovery of Response Costs by and between U.S. Environmental Protection Agency ("EPA") and Alcoa Inc., EPA Index No. _____, and Site/Spill Identifier 024E, as follows:

[Insert instructions for payment to Trust No. _____ or Alcoa Study Area Special Account.]

This Sight Draft has been duly executed by the undersigned, an authorized representative or agent of EPA, whose signature hereupon constitutes an endorsement.

By: _____ [signature]
_____ [name]
_____ [title]

APPENDIX D

ESCROW AGREEMENT
GRASSE RIVER SUPERFUND SITE

THIS ESCROW AGREEMENT (hereinafter referred to as "Agreement"), made and entered into as of _____ 20____, by and among Alcoa Inc., a Pennsylvania corporation (hereinafter referred to as "Alcoa"), THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (hereinafter referred to as "EPA"), and _____ a national banking association with an office at _____ (the "Escrow Agent").

WITNESSETH:

WHEREAS, this Settlement Agreement concerns the Grasse River (a.k.a. Alcoa Aggregation) Superfund Site in Massena, St. Lawrence County, New York (the "Site"). EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

WHEREAS, the Site includes portions of the Grasse River and any associated tributaries and wetlands to which polychlorinated biphenyls ("PCBs") and other hazardous substances released from Alcoa's Alcoa West Facility in Massena, New York, have been disposed of or migrated;

WHEREAS, in response to the release or threatened release of hazardous substances at or from the Alcoa Study Area, on September 28, 1989, EPA issued to Alcoa an Administrative Order, Index No. II-CERCLA-90229 ("Administrative Order"), pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERLA"), 42 U.S.C. § 9606(a). EPA amended the Administrative Order on May 28, 1995;

WHEREAS, pursuant to the Administrative Order, Alcoa has been conducting various response actions at the Site. EPA has incurred response costs in overseeing Alcoa's performance of such response actions;

WHEREAS, on April 4, 2013, EPA issued a Record of Decision ("ROD") in which it selected a remedial action to address PCB-contaminated sediments at the Site. By letter to EPA dated September 5, 2013, Alcoa confirmed its intent to implement, pursuant to the Administrative Order, the design, construction, and operation and maintenance ("O&M") of the remedy selected in the ROD;

WHEREAS, EPA and Alcoa have entered into a Settlement Agreement for Recovery of Response Costs, Index No. _____ ("Settlement Agreement");

WHEREAS, Alcoa, pursuant to the Settlement Agreement, has committed to certain

obligations including, but not limited to, paying EPA Past and Future Response Costs (as those terms are defined in the Settlement Agreement) and posting financial assurance for the O&M;

WHEREAS, EPA alleges that Alcoa is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred or to be incurred at or in connection with the Site;

WHEREAS, pursuant to the Settlement Agreement, Alcoa has agreed to deposit \$_____ (the "Escrow Funds") into the escrow account created by this Agreement which will be held and disbursed by the Escrow Agent pursuant to the terms of this Agreement;

WHEREAS, Alcoa has agreed to establish the Escrow Account for the benefit of EPA and to deposit the Escrow Funds into the Escrow Account as provided in Section VII of the Settlement Agreement; and

WHEREAS, upon Alcoa's completion of the O&M pursuant to the Administrative Order, or the termination of the Settlement Agreement, the Escrow Funds then held by the Escrow Agent in the Escrow Account will be disbursed to Alcoa pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the aforesaid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Preambles. The above preambles to this Agreement are hereby incorporated herein by reference and made a part hereof.
2. Acceptance by Escrow Agent. The Escrow Agent hereby accepts the appointment as escrow agent hereunder and agrees to act on the terms and conditions hereinafter set forth.
3. Establishment of Escrow Account. Alcoa and the Escrow Agent, in its capacity as escrow agent, hereby establish the Escrow Account for the benefit of EPA and specifically to fund costs and expenses related to the O&M.
4. Use of Escrow Funds. During the pendency of the O&M, the Escrow Funds shall be used to fund costs and expenses related to the O&M and for no other purposes except as specifically provided for herein. Alcoa hereby acknowledges and agrees that until the O&M has been completed neither Alcoa nor any third party shall have any right to access or use the Escrow Funds except as set forth herein.
5. Funding of Escrow Account. The parties to this agreement acknowledge and accept that the amount of and timing for the funding of the Escrow Account is governed by the obligations of Alcoa as set forth in Paragraph 31 of the Settlement Agreement.
6. Investment of Escrow Funds. EPA and Alcoa authorize the Escrow Agent to invest the Escrow Funds in a money market account offered by and maintained with the Escrow

Agent, and in demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured, or other liquid investments, including in securities or other obligations of the federal or a state government.

7. Rights and Responsibilities of Escrow Agent. The acceptance by the Escrow Agent of its duties hereunder is subject to the following terms and conditions, which the parties to this Agreement hereby agree shall govern and control with respect to the Escrow Agent's rights, duties, liabilities and immunities:

- a. The Escrow Agent shall act hereunder as a depositary only, and it shall not be responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of any document furnished to the Escrow Agent or any asset deposited with it.
- b. The Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, authorization or other paper or document which the Escrow Agent, in good faith, believes to be genuine and what it purports to be. The Escrow Agent may assume that the person purporting to give any notice or make any statement in connection with the provisions thereof has been authorized to do so, without further inquiry or investigation.
- c. The Escrow Agent may confer with legal counsel, including its own in-house counsel, in the event of any dispute or question as to the construction of any of the provisions hereof, or its duties hereunder, and it shall incur no liability and it shall be fully protected in acting in accordance with the opinions of such counsel.
- d. The Escrow Agent shall have no duties except those specifically set forth in this Agreement. This Agreement represents the entire understanding of the parties hereto with respect to the specific subject matter contained herein and supersedes any and all other prior agreements between them.
- e. The Escrow Agent shall have the right at any time it reasonably deems appropriate to seek adjudication in a court of competent jurisdiction as to the respective rights of the parties hereto and shall not be held liable by any party hereto for any delay or the consequences of any delay occasioned by such resort to court.
- f. For its services as escrow agent, Escrow Agent shall charge Alcoa a fee of \$_____ payable upon execution of this Agreement. The Escrow Agent shall not be authorized, unless agreed, and with the prior written consent of EPA, to charge said fee or any other fees, expenses or costs except as expressly authorized herein.

8. Statements. During the term of this Agreement, the Escrow Agent at no additional charge shall provide all parties separately with monthly statements containing the beginning balance in the Escrow Account as well as all principal and income transactions for the statement period.

9. Distributions. The Escrow Funds shall be disbursed as follows:

- a. If at any time EPA issues to Alcoa a Performance Failure Notice pursuant to Paragraph 28 of the Settlement Agreement then, immediately upon the Escrow Agent's receipt of such Performance Failure Notice, the Escrow Agent shall deposit into the standby trust fund established pursuant to the Settlement Agreement or, at EPA's election, the Alcoa Study Area Special Account within the EPA Hazardous Substance Superfund, the balance of the Escrow Funds, together with all accrued interest.
- b. Notwithstanding any other provision of this Agreement, if, at any time, the Escrow Agent receives joint written disbursement instructions executed by Alcoa and EPA, then the Escrow Agent shall promptly make such disbursement(s) as are specified in such joint written instructions.

10. Final Payout and Termination.

- a. Upon receipt of the written notice from EPA pursuant to Paragraph 131 of the Administrative Order that the O&M has been fully carried out in accordance with the terms of the Administrative Order, or upon other termination of the Settlement Agreement, Alcoa shall provide written notice of such event to the Escrow Agent with a copy to EPA. Upon receipt of such notice, the Escrow Agent shall, within fifteen Days of receipt of such notice, pay any remaining fees due and owing to the Escrow Agent pursuant to Paragraph 7.f, and thereafter pay all remaining Escrow Funds to or at the direction of Alcoa.
- b. Upon completion of all disbursements contemplated by Paragraphs 9 and 10.a and the payment of fees pursuant to Paragraph 7.f above, this Agreement shall be terminated and the Escrow Agent shall be discharged of any further duties and obligations hereunder.
- c. The Escrow Account shall be irrevocable from the date it is signed until the completion of all disbursements as set forth in Paragraph 10.a.

11. Income. All income, including interest and dividends, earned on the Escrow Funds deposited hereunder shall be added to and held in the Escrow Account created hereunder, for disbursement in accordance with the terms of this Agreement.

12. Tax Identification Number. All interest on the Escrow Funds shall be for the account of Alcoa Inc. and shall be reported under applicable federal regulations using the tax identification number of _____, which has been separately supplied by Alcoa, Inc. to the Escrow Agent.

13. Indemnification as to Taxes, Penalties and Interest. Alcoa shall indemnify and hold harmless the Escrow Agent against and in respect of any liability for income taxes attributable to the investment of funds held in escrow by the Escrow Agent pursuant to this Agreement and for any penalties or interest in respect of such income taxes.

14. Amendment. This Agreement may not be amended or supplemented and no provision hereof may be modified or waived, except by an instrument in writing, signing by all of the parties hereto; provided, however, that in the event that a party is no longer in existence (e.g., it has liquidated or dissolved), its signature shall not be required to amend this Agreement.

15. Resignation. The Escrow Agent may resign at any time by giving sixty days written notice of such resignation separately to each party to this Agreement. Within thirty days of receipt of such written notice, Alcoa shall select a mutually acceptable successor Escrow Agent and shall notify the Escrow Agent and EPA in writing of such successor Escrow Agent. If Alcoa is unable, or otherwise fails, to provide written notice of a mutually acceptable successor Escrow Agent within such thirty day period, EPA may submit the matter for dispute resolution in accordance with the provisions of Paragraph 16, below. Upon notification by Alcoa and EPA of the appointment of a successor, the Escrow Agent shall promptly deliver the Escrow Fund and all materials in its possession relating to the Escrow Fund to such successor, and the duties of the resigning Escrow Agent shall thereupon in all respects terminate, and it shall be released and discharged from all further obligations hereunder. Similarly, the Escrow Agent may be discharged from its duties as Escrow Agent under this Agreement upon thirty days joint written notice from Alcoa and EPA and upon payment of any and all fees due to the Escrow Agent. In such event, the Escrow Agent shall be entitled to rely on joint instructions from Alcoa and EPA as to the disposition and delivery of the Escrow Fund.

16. Resolution of Disputes. In the event of a dispute concerning this Escrow Agreement, Alcoa and EPA may seek dispute resolution and shall utilize the dispute resolution procedures of Section VI (Dispute Resolution) of the Settlement Agreement.

17. Notice. Unless otherwise specifically set forth herein, all notices and other communications hereunder shall be in writing and shall be delivered personally at, or sent by telecopy or overnight courier, or mailed by registered or certified mail (return receipt requested) to, the following addresses (or such other address as a party shall specify by like notice):

To Alcoa: Alcoa Inc.
Director, Corporate Remediation
201 Isabella St.
Pittsburgh PA 15212
Attn: _____

To EPA: Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866
Attn: Grasse River Superfund Site Attorney

Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866
Attn: Remedial Project Manager, Grasse River Superfund Site

To Escrow Agent:

Notice shall be deemed to have been received on the day it is delivered personally or by overnight courier, the day it is sent via electronic mail, or the date of receipt of any correspondence delivered by registered or certified mail.

18. Governing Law. The parties hereto agree that this Agreement shall be deemed to have been executed and delivered in the State of New York and this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its principles of conflict of laws.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

20. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The rights and obligations of a party under this Agreement may not be assigned without the prior written consent of all parties.

21. Further Action. The parties hereto agree to execute and deliver any and all documents and to take such further action as shall be reasonably required to effectuate the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the day and year first set forth above.

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____

Date

ALCOA, INC.

By: _____

Date

APPENDIX E

**SECURITY AGREEMENT
GRASS RIVER SUPERFUND SITE**

This SECURITY AGREEMENT ("Security Agreement"), dated _____, 20__, is made by Alcoa Inc., a Pennsylvania corporation (the "Grantor"), in favor of the United States Environmental Protection Agency, an agency of the federal government of the United States of America ("EPA").

RECITALS

WHEREAS, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675 ("CERCLA"), Grantor has entered into a Settlement Agreement for Recovery of Response Costs, dated _____, 2014, Index No. CERCLA-02-2014-_____ ("Settlement Agreement"), for payment of certain past and future response costs paid by EPA with respect to the Grasse River (a.k.a. Alcoa Aggregation) Superfund Site (the "Site"), located in Massena, St. Lawrence County, New York;

WHEREAS, Section VII of the Settlement Agreement requires that the Grantor provide financial assurance to EPA in order to secure the full and final completion of the operation and maintenance ("O&M") of the remedial action selected by EPA in the April 4, 2013, Record of Decision for the Site, as the term "Operation and Maintenance" is defined in the Settlement Agreement; and

WHEREAS, in order to provide such financial assurance required by the Settlement Agreement, the Grantor has (i) established an [escrow account or trust fund] with _____ ("Bank"), Account No. _____ (the "Account"), by and through a certain [Escrow or Trust] Agreement, dated _____, 2014, among Grantor, EPA and Bank (the ["Escrow Agreement" or "Trust Agreement"]); and (ii) agreed to grant EPA a security interest in the Account in order to secure the Grantor's obligation to EPA to complete the Work.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** Unless otherwise defined herein, all capitalized terms used herein that are defined in the Settlement Agreement shall have their respective meanings as defined in the Settlement Agreement. For purposes of this Security Agreement, all other undefined terms used herein, whether capitalized or not, but that are defined in Article 8 or Article 9 of the Uniform Commercial Code ("UCC"), as the UCC may be in effect from time to time in the State

of New York shall have their respective meanings as therein defined, except for the capitalized term "Account," which shall have the meaning set forth for such term in the above Recitals.

2. **Grant of Security Interest.**

a. **Collateral.** As security for the prompt and complete payment and performance when due of any and all of the Obligations (as defined below), the Grantor hereby collaterally assigns, conveys, pledges, hypothecates, and transfers to EPA, and grants and creates a lien on and first priority security interest (the "Security Interest") in favor of EPA in, all right, title, and interest of the Grantor in, to, and under the following, whether now existing or hereafter arising or acquired (the "Collateral"):

- i. the Account, together with all funds, cash, monies, financial assets, investments, instruments, certificates of deposit, promissory notes, and any other property at any time on deposit therein or credited thereto, all rights to payment or withdrawal therefrom, and all income, profits, gains, and interest thereon; and
- ii. all proceeds, products, substitutions, replacements, and accessions of and to the Collateral, or any rights arising out of the Collateral, and any and all other amounts paid or payable in connection with any of the Collateral.
- iii. Items (i) and (ii), above, are subject to the proviso that any distributions, payments, or releases of Collateral (whether in the form of cash, instruments, or otherwise) properly made pursuant to the [Escrow Agreement/Trust Agreement] shall be released from the Security Interest granted hereunder and shall no longer be part of the Collateral upon the making of such distribution.

b. **Sufficiency of Collateral Description.** It is the intention of the parties hereto that the description of the Collateral set forth in Section 2.a be sufficient to enable EPA, upon exercise of its remedies set forth in this Security Agreement, to take possession of, and foreclose upon, all of the right, title, and interest of the Grantor in and to the Collateral upon the occurrence and during the continuance of an Event of Default (as defined below) and subject to the limitations set forth in this Security Agreement; provided, however, that the Collateral is hereby assigned to EPA solely as security, and EPA shall have no duty, liability, or obligation whatsoever with respect to the Collateral, unless EPA so elects in a writing delivered to the Grantor.

c. **Obligations.** This Security Agreement secures, in accordance with the provisions hereof, the following obligations now existing or hereafter arising (collectively, the "Obligations"):

- i. Grantor's payment for and performance of each and every obligation, covenant, and agreement of the Grantor set forth in Section VII of the Settlement Agreement (Financial Assurance); and
- ii. payment of all sums advanced in accordance herewith by or on behalf of EPA to protect, retake, or hold, or realize upon, the Collateral.

d. **Event of Default.** EPA shall have the right, but not the obligation, to exercise any or all of its rights and remedies against the Collateral as set forth in this Security Agreement and the [Trust Agreement/Escrow Agreement] upon the occurrence and during the continuance of any of the following (each, an "Event of Default"):

- i. Grantor fails to perform all or any portion of the O&M required by the Administrative Order;
- ii. Grantor files a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; Grantor consents to (or fails to contest in a timely manner) any petition filed against it in an involuntary case under such bankruptcy or other laws; Grantor applies for (or consents to or fails to contest in a timely manner) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of all or a substantial part of its assets; Grantor makes a general assignment for the benefit of creditors; or Grantor takes any corporate action for the purpose of effecting any of the foregoing; or
- iii. Grantor fails or refuses to comply with Section VII of the Settlement Agreement, and EPA assesses or is awarded stipulated penalties and/or statutory penalties for such failure or refusal to comply.

3. **Perfection of Collateral.** In order to insure the attachment, perfection, and first priority of, and the ability of EPA to enforce, the Security Interest in the Collateral, the Grantor agrees, in each case, at the Grantor's sole expense, to take the following actions with respect to the Collateral:

- a. **Financing Statement(s).** The Grantor shall execute, file, or cause to be filed, registered, and recorded all financing statements, notices, instruments, and other documents as are necessary or required by applicable law to create, preserve, perfect, or validate the Security Interest in favor of EPA, and each such document shall have been properly filed, registered, or recorded in each jurisdiction in which the filing, registration, or recordation thereof shall be necessary or required by applicable law to grant in favor of EPA a perfected security interest in the Collateral, and EPA shall have received an acknowledgment copy, or other evidence

reasonably satisfactory to it, of each such filing, registration, or recordation.

- b. Establishment of and Perfection of Security Interest. The Grantor shall ensure that the Account is established and maintained in accordance with the terms hereof and of the [Trust Agreement/Escrow Agreement] until the termination of the [Trust Agreement/Escrow Agreement] and the final disposition of the Account in accordance therewith. Amounts shall be deposited into, managed and administered, and withdrawn from the Account in strict accordance with the provisions the [Trust Agreement/Escrow Agreement].
- c. Further Assurances. To the extent not included in the foregoing, the Grantor shall, from time to time at the Grantor's expense, promptly execute and deliver all further agreements, instruments, and documents, and take all further action, that may be necessary in order to create, perfect, or protect the Security Interest granted or purported to be granted hereby or to enable EPA to exercise and enforce its rights and remedies hereunder with respect to the Collateral.

4. **Representations and Warranties.** The Grantor hereby represents and warrants as of the date hereof as follows:

- a. Title; No Other Liens. The Grantor has full power and authority to grant the Security Interest in and to the Collateral hereunder. The Collateral on the date hereof is free and clear of any and all liens, pledges, encumbrances, charges, or security interests other than the Security Interest created by this Security Agreement. Except with respect to the Security Interest, no security agreement, financing statement, or other public notice with respect to all or any part of the Collateral is on file or of record in any public office.
- b. Perfection Representations. The exact legal name of the Grantor is Alcoa Inc., the Grantor is a duly formed and validly existing corporation organized under the laws of the State of Pennsylvania, and its certificate of incorporation is duly filed with the Secretary of State of the State of Pennsylvania. The Grantor's chief executive office is located at 201 Isabella St., Pittsburgh, Pennsylvania 15212. The Account is held, maintained, and administered by the Bank.
- c. Other Perfection Matters. Financing statements or other appropriate instruments have been filed pursuant to the UCC in the public office(s) set forth in Schedule A as may be necessary to perfect the Security Interest granted or purported to be granted hereby. Subject to the requirements contained in the UCC with respect to the filing of continuation statements,

this Security Agreement creates a valid, continuing, and perfected first-priority security interest in the Collateral in favor of EPA, subject to no liens or security interests other than the Security Interest, and is enforceable as against creditors of the Grantor.

5. **Covenants and Agreements.** The Grantor hereby covenants and agrees that the Grantor shall observe and fulfill, and shall cause to be observed and fulfilled, each and all of the following covenants until all Obligations have been indefeasibly paid and performed in full or this Security Agreement has terminated in accordance with its terms:

- a. **Legal Status.** The Grantor shall not change its name, place of business, chief executive office, or its mailing address, or change its type of organization or jurisdiction of organization, without notifying EPA in writing at least 60 days in advance of any such change.
- b. **Prohibition against Transfer of Collateral.** The Grantor shall not dispose of any part of the Collateral, whether in one or a series of transactions, or otherwise undertake disposal of any of the Collateral, except as permitted pursuant to this Security Agreement and the [Trust Agreement/Escrow Agreement].
- c. **Filing Fees, Taxes, etc.** The Grantor shall pay all filing, registration, and recording fees or re-filing, re-registration, and re-recording fees, and all federal, state, county, and municipal stamp taxes and other similar taxes, duties, imposts, assessments, and charges arising out of or in connection with the execution and delivery of this Security Agreement.
- d. **Maintenance of Collateral Records.** The Grantor shall keep and maintain at all times and at its own cost and expense complete records of the Collateral. The Grantor shall furnish to EPA such other information regarding the Collateral as EPA may reasonably request, all in reasonable detail.
- e. **Limitation on Liens on the Collateral.** The Grantor shall not create, assume, incur, suffer to exist, or permit to be created, assumed, incurred, or suffered to exist, shall defend the Collateral against, and shall take such other action as is necessary to remove, any lien, pledge, charge, security interest, encumbrance, or claim on or to the Collateral, other than the Security Interest, and shall defend the right, title, and interest of EPA in and to any of the Collateral against the claims and demands of all persons whomsoever other than with respect to the Security Interest.
- f. **Location of Collateral.** The Collateral, to the extent not delivered to EPA in accordance with the terms of this Security Agreement or disposed of in

accordance with the terms of the [Trust Agreement/Escrow Agreement], will be kept at the Bank, and the Grantor will not cause or permit the Collateral to be removed from such location without providing at least sixty (60) days' prior written notice to EPA.

6. **Remedies; Rights upon Event of Default.** Upon the occurrence and during the continuance of an Event of Default, EPA may do one or more of the following consistent with the terms of the [Trust Agreement/Escrow Agreement]:

- a. Take the following enforcement action with respect to the Collateral: (i) direct the Bank or the Grantor to deliver all or any part of the Collateral to EPA at any place or places designated by EPA, it being understood that such obligations are of the essence under this Security Agreement and that, accordingly, upon application to a court of equity having jurisdiction, EPA shall be entitled to a decree requiring specific performance by the Bank or the Grantor, as the case may be, of such obligations; (ii) withdraw any and all cash and liquidate any and all investments, other financial assets, and other property not constituting cash in the Account, and apply such cash and the liquidation proceeds of any investments, financial assets, or other property, if any, then held in the Account, in satisfaction of all or any part of the Obligations then due and owing; and (iii) assign or otherwise liquidate the Account;
- b. Make such payments and do such acts as EPA may deem necessary to protect, perfect, or continue the perfection of the Security Interest in the Collateral, including, without limitation, commencing, appearing, or otherwise participating in or controlling any action or proceeding purporting to affect the Security Interest in or ownership of the Collateral;
- c. Foreclose on the Collateral as herein provided or in any manner permitted by applicable laws and exercise any and all of the rights and remedies conferred upon EPA either concurrently or in such order as EPA may determine. The Grantor hereby waives, to the extent permitted by applicable laws, and except as expressly provided in the [Trust Agreement/Escrow Agreement], notice and hearing in connection with EPA's taking possession or commencing any collection, recovery, receipt, appropriation, set-off, conveyance, assignment, transfer, or other disposition of or realization upon any or all of the Collateral, including any and all prior notice and hearing for any prejudgment remedy or remedies and any such right that the Grantor would otherwise have under the constitution or any statute or other law of the United States of America or of any state thereof;
- d. In accordance with applicable laws, accept the Collateral in full or partial satisfaction of the Obligations; and

- e. Exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party after default under the UCC and any relevant laws in any jurisdiction.

7. **Application of Proceeds.** The net proceeds of any enforcement, foreclosure, collection, recovery, receipt, appropriation, or realization on, or other disposition of, the Collateral by EPA shall be applied in the following order:

- a. to the payment and/or performance in full of the Obligations; and
- b. if all Obligations have been indefeasibly paid, performed, satisfied, and discharged in full, any surplus then remaining shall be paid to the Grantor or at the Grantor's direction.

8. **EPA Appointed Attorney-in-Fact.** The Grantor hereby irrevocably constitutes and appoints EPA and any agent thereof, with full power of substitution, as its true and lawful attorney-in-fact (which appointment as attorney-in-fact shall be coupled with an interest), with full authority in the place and stead of the Grantor and in the name of the Grantor or otherwise, from time to time upon the occurrence and during the continuance of an Event of Default and in EPA's discretion, to take any action and to execute any and all documents and instruments that EPA may deem necessary or advisable to accomplish the purposes of this Security Agreement in a commercially reasonable manner to the extent required by the UCC.

9. **Duty on EPA's Part; Limitation on EPA's Obligations.**

- a. The powers conferred on EPA hereunder are solely to protect the interest in the Collateral and shall not impose any duty upon EPA to exercise any such powers, including, without limitation, any calls, conversions, maturities, tenders, or other matters relating to the Collateral. EPA shall be accountable only for amounts that it receives as a result of the exercise of such powers.
- b. Except as provided in the next sentence, anything herein to the contrary notwithstanding, the Grantor shall remain liable under the [Trust Agreement/Escrow Agreement], the Administrative Order and the Settlement Agreement to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Security Agreement had not been executed. The exercise by EPA of any of the rights or remedies hereunder shall not release the Grantor from any of its duties or obligations under the [Trust Agreement/Escrow Agreement] unless expressly assumed by EPA in writing. The Collateral is hereby assigned to EPA solely as security, and EPA shall have no duty, liability,

or obligation whatsoever with respect to the Collateral, including, without limitation, the filing of any continuation statements, unless EPA so elects in writing consistent with its rights under this Security Agreement.

10. **Absence of Fiduciary Relation.** EPA in its capacity as beneficiary of the Security Interest is not a fiduciary of, and shall not owe or be deemed to owe any fiduciary duty to, the Grantor or any other party.

11. **Notices.** All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall be given in accordance with the Settlement Agreement.

12. **No Waiver; Cumulative Remedies.** By exercising or failing to exercise any of its rights, options, or elections hereunder (without also expressly waiving the same in writing), EPA shall not be deemed to have waived any breach or default on the part of the Grantor or to have released the Grantor from any of its obligations secured hereby. No failure on the part of EPA to exercise, and no delay in exercising (without also expressly waiving the same in writing) any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law. EPA shall have all of the rights and remedies granted under the [Trust Agreement/Escrow Agreement], the Administrative Order and the Settlement Agreement and available at law or in equity and these same rights and remedies may be pursued separately, successively, or concurrently against the Grantor or the Collateral, at the discretion of EPA. The application of the Collateral to satisfy the Obligations pursuant to the terms hereof shall not operate to release the Grantor from its Obligations until payment or performance in full of any deficiency has been made.

13. **Exculpatory Provisions.** EPA shall not be liable or responsible in any manner to any person for any recitals, statements, representations, or warranties made by the Grantor or any officer thereof contained in this Security Agreement or in any certificate, report, statement, or other document referred to or provided for in, or received by EPA under or in connection with, this Security Agreement.

14. **Severability.** In the event any one or more of the provisions contained in this Security Agreement should be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

15. **Amendment.** This Security Agreement may not be modified, amended or otherwise changed in any manner, except by written amendment executed by the Grantor, subject to prior written approval of EPA of any such modification, amendment, or change.

16. **Successors and Assigns.** This Security Agreement shall be binding upon and inure to the benefit of the Grantor and its successors and assigns, as well as EPA and any successor agency thereto.

17. **Headings.** Article and Section headings used herein are for convenience of reference only, are not part of this Security Agreement, and are not to affect the construction of, or to be taken into consideration in interpreting, this Security Agreement.

18. **Governing Law.** This Security Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

19. **Entire Agreement.** The terms of this Security Agreement are intended by the parties hereto as a final expression of their agreement with respect to the subject matter hereof, and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Security Agreement constitutes the complete and exclusive statement of all related terms and that no extrinsic evidence whatsoever may be introduced in any proceedings (whether judicial or otherwise) involving this Security Agreement, except for evidence of a subsequent written amendment to this Security Agreement.

20. **Continuing Security Interest; Termination.** This Security Agreement shall create a continuing Security Interest in the Collateral and shall remain in full force and effect for the benefit of EPA until the date that the [Trust Agreement/Escrow Agreement] terminates in accordance with its terms. Upon the happening of such event, the Security Interest granted hereby shall terminate.

IN WITNESS WHEREOF, Grantor has caused this Security Agreement to be duly executed as of the day and year first written above.

ALCOA INC., as Grantor

By _____

Name:

Title:

[NOTARY CERTIFICATE BLOCK]

FINANCING STATEMENT FILINGS

Grantor: Alcoa Inc.

Secured Party: United States Environmental Protection Agency, an agency of the federal
government of the United States of America

Jurisdiction: Secretary of State of the State of New York