

Between

**4ENERGY INVEST NV**

as **Borrower**

and

**GIMARCO BVBA**

**LIMBURGSE RECONVERSIE MAATSCHAPPIJ NV**

as the **Lenders**

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**FACILITY AGREEMENT**

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[•]2014

**THIS FACILITY AGREEMENT** (the “**Agreement**”) is entered into on \_\_\_\_\_ 2014,

**BETWEEN:**

- (1) **4Energy Invest NV**, a limited liability company (“*naamloze vennootschap*” / “*société anonyme*”) organized and existing under the laws of Belgium, having its registered office at De Snep 3324, 3945 Ham, Belgium, and with company number 0876.488.436 (the “**Borrower**”);

**AND:**

- (2) **GIMARCO BVBA**, a limited liability company (“*besloten vennootschap met beperkte aansprakelijkheid*” / “*société privée à responsabilité limitée*”) organised and existing under the laws of Belgium, having its registered office at 9111 Belsele, Ernest Claeslaan 22, and with company number 0452.635.652 (“**Gimarco**”);

**AND:**

- (3) **LIMBURGSE RECONVERSIE MAATSCHAPPIJ NV**, a limited liability company (“*naamloze vennootschap*” / “*société anonyme*”) organized and existing under the laws of Belgium, having its registered office at Kempische Steenweg 555, 3500 Hasselt, Belgium, and with company number 0452.138.972 ( “**LRM**”, and together with Gimarco, the “**Lenders**”);

The parties referred to above are individually referred to as a “**Party**” and jointly as the “**Parties**”.

**WHEREAS:**

- (A) The Borrower is a holding company holding 100% of the shares in 4HamCogen (and Renogen SA and AmelBio SA. The Borrower and its subsidiaries are active in the business of cogeneration (the “**Business**”).
- (B) Taking into account the Borrower's current financial situation, the Lenders are willing to grant the Borrower a loan for a total maximum aggregate amount of EUR 2,000,000.00. This Agreement serves the best interests of the Borrower, as it sets out the terms and conditions on which the Lenders are willing to provide financing to the Borrower in order to provide the Borrower with the necessary financial resources for the purposes set out in Clause 3.
- (C) The Parties wish to enter into the Agreement to make certain arrangements in view of determining the terms and conditions under which they are willing to grant the Loan.

**THE PARTIES HAVE AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

For the purposes of this Agreement, the terms and expressions that have not been defined elsewhere in this Agreement, shall have the following meaning:

**Agreement** : means the present loan agreement, as may be amended or modified from time to time.

<b>Belgian Companies Code</b>	: means the Belgian <i>wetboek van vennootschappen / code des sociétés</i> , as amended from time to time.
<b>Business</b>	: has the meaning as defined in Recital (A).
<b>Business Days</b>	: means any day from Monday to Friday (included), excluding banking holidays in Belgium.
<b>Clause</b>	: a clause of this Agreement, unless specified otherwise.
<b>Default Interest</b>	: has the meaning as set out in Clause 10.
<b>Event of Default</b>	: has the meaning as set out in Clause 10.
<b>Facility</b>	: has the meaning as defined in Clause 2.
<b>Outstanding Facility Amount</b>	: the sum of all Drawdown amounts, increased with annual interest accrued in accordance with Clause 5.
<b>Repayment Date</b>	: has the meaning as set out in Clause 6.
<b>Signing Date</b>	: means [●] February 2014.
<b>Tax</b>	: means all applicable federal, state, local and foreign taxes, whether or not deferred, (including, without limitation, income, profit, VAT, use, real property, personal property, ad valorem, excise, social security and withholding taxes) and tax prepayments, assessments, levies, imports, duties, license fees, registration duties, withholdings, or other similar charges of every kind, character or description and any interest, penalties or additions to tax imposed thereon or in connection therewith.
<b>Term Sheet</b>	: means the term sheet dated 19 February 2014, entered into between the Borrower acting in its own name and on behalf of its subsidiaries 4HamCogen NV, Renogan SA and AmelBio NV, LRM, Mr. Philiep Van Eeckhouut, CI2I BVBA and Mr. Jean-François Meys.

## 2. FACILITY

On the Signing Date, the Lenders unconditionally and irrevocably grant a loan (the “**Facility**”) to the Borrower, who accepts, for a total maximum aggregate amount of EUR 2,000,000.00 (the “**Facility Amount**”), subject to the terms and conditions as set out in this Agreement.

The allocation of the Facility Amount between the Lenders shall be as follows:

Name of Lender	Participation	Maximum individual Facility Amount
Gimarco	86.50%	EUR 1,730,000.00
LRM	13.50%	EUR 270,000.00

The Facility is granted by each of the Lenders for its individual portion of the Facility Amount and not on a joint and several basis for the entire Facility.

### 3. THE PURPOSE

3.1 The Borrower shall apply the amounts drawn down under the Facility exclusively for the following purposes:

- (a) funding the transaction costs associated with the transactions described in or relating to the transactions described in the Term Sheet, including any legal, financial and other advisors' fees;
- (b) funding the cash collateral account in relation to certain bank guarantees as described in section 1 of the Term Sheet;
- (c) financing short term capital expenditures of the Borrower of any of its direct or indirect subsidiaries;
- (d) to provide a cash buffer for unforeseen events.

3.2 The Lenders shall not be bound to monitor the use by the Borrower of any amounts borrowed hereunder.

### 4. AVAILABILITY OF THE FACILITY AND DRAWDOWN

The Lenders shall make the Facility available in one or more drawdowns (each a "**Drawdown**") to the Borrower upon written demand thereto by the board of directors of the Borrower, by wire transfer to the bank account and in the amount specified by the Borrower. The Lenders shall make available each Drawdown to the Borrower within 2 Business Days as from the written demand by the Borrower.

If a certain amount is called by the Borrower under the Facility, the Lenders undertake to make available their part of such amount in proportion to the participation percentage as specified in

Clause 2. Each Lender shall be liable only for its pro rata amount and not jointly for the entire Facility Amount.

The management of the Borrower commits itself to minimize any Drawdown under the Facility and to only draw under the Facility if reasonably necessary.

5. **INTEREST**

- 5.1 Each Drawdown shall bear interest at the rate of 5% per annum, compounded annually, calculated for each year (or a fraction thereof) (the "**Interest Period**") from the respective date on which the amount of such Drawdown is received by the Borrower, until the Repayment Date (as defined below) or the date on which such Drawdown is voluntarily prepaid in accordance with Clause 6.2 or mandatorily prepaid in accordance with Clause 10.3 (as applicable). The accrued interests shall be added to the principal of the Drawdown outstanding at the end of the Interest Period.
- 5.2 Interest on the Facility shall accrue from day to day and shall be calculated on the basis of actual days elapsed and a year of 365 days effective as of the effective payment of the relevant amounts to the Borrower.
- 5.3 All payments made hereunder to the Lenders shall be made by the Borrower without deduction for any and all present or future Taxes, levies withholdings, or other amounts imposed, levied, collected or assessed with respect hereto.

6. **REPAYMENT**

- 6.1 The Outstanding Facility Amount, together with any interest accrued but not yet capitalised in accordance with Clause 5, shall become due for repayment on the earlier of:
- (a) the day falling two years as from the Signing Date;
  - (b) the day on which any person other than Gimarco gains control (meaning the power to direct management and policies of that company, whether through voting rights attached to ownership of capital (at least 50% + one vote), by contract or otherwise) of the Borrower,

such date being the "**Repayment Date**".

- 6.2 The Borrower may at any time voluntarily prepay any Drawdown in whole or in part, together with the interests accrued on the prepaid amount up to the prepayment date in accordance with Clause 5. No break cost, funding loss or any similar amount will be due by the Borrower upon any voluntary prepayment in accordance with this Clause 6.

## **7. SECURITY**

The Facility shall be secured in a manner to be agreed upon between the Parties.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1 The Borrower represents and warrants to each of the Lenders that:

- 8.1.1 Status: the Borrower is duly incorporated, organised and validly existing under the laws of Belgium.
- 8.1.2 Powers and authorizations: it shall have full legal power and authority to perform any and all obligations to be assumed and performed under the Facility and no further legal action is necessary to authorize the Facility and the performance of the transactions contemplated hereby. The Facility includes legal, valid and binding obligations of the Borrower, enforceable in accordance with its terms.
- 8.1.3 No Violation: neither the execution and delivery of, and the fulfilment of, compliance and performance of its obligations under the Facility does or shall contravene or constitute a default under, or cause to be exceeded any limitation on it or the powers of its directors imposed by or contained in (i) any law by which it or any of its assets is bound or affected, (ii) any document which contains or establishes its constitution, or (iii) any agreement to which it or any of its subsidiaries or connected persons is a party or by which any of its or their assets is bound.
- 8.1.4 Consents: no authorization, approval, consent, license, exemption, registration, recording, filing or notarization and no payment of any duty or tax and no other action whatsoever which has not been duly and unconditionally obtained, made or taken is necessary or desirable to ensure the validity, enforceability or priority of the liabilities and obligations of the Borrower or the rights of the Lenders under the Facility.
- 8.1.5 No insolvency: the Borrower is not in a situation of bankruptcy, liquidation, or judicial composition.

8.2 All the representations and warranties set out in this Clause 8 as well as any other information hereunder is accurate and not misleading. All representations and warranties have been made in good faith at the time of their issue. No event other than those notified to the Lenders has occurred which may result in any of such information to be inaccurate or misleading.

## **9. UNDERTAKINGS**

- 9.1 The obligations of the Borrower pursuant to this Clause 9 shall remain in full force as from the Signing Date for so long as any amount is or may be outstanding under the Agreement.
- 9.2 The Borrower undertakes to promptly inform the Lenders of any Event of Default (and of any actions undertaken in order to remedy thereto) as soon as the Borrower has been informed or becomes aware of the occurrence of any such events.
- 9.3 On the occurrence of an Event of Default or on the occurrence of an event or series of events which might give rise to an Event of Default, the Borrower undertakes to co-operate with the Lenders in assessing the extent and consequences of the said events.

## 10. EVENTS OF DEFAULT

### 10.1 Events of default

The occurrence of any of the following events constitutes an Event of Default:

- 10.1.1 Non-payment - the non-payment by the Borrower on the due date of any amount payable by it under the Agreement and in case such non-payment is not remedied within five (5) Business Days from the notice by a Lender.
- 10.1.2 Representations and Warranties – a representation, warranty or statement made in or in connection herewith is inaccurate or misleading in any material respect when made and the circumstances giving rise to such misrepresentation are not remedied within ten (10) Business Days from the notice by a Lender.
- 10.1.3 Violation of these conditions – the Borrower fails to observe or perform any of its obligations under these conditions, this Agreement or under any undertaking or arrangement entered into in connection therewith, and in case of a failure capable of being remedied, the failure is not remedied by the Borrower within ten (10) Business Days after the Borrower becomes aware of the failure.
- 10.1.4 Insolvency – in case the Borrower is declared bankrupt or judicial composition is declared in respect of any of its indebtedness.
- 10.1.5 Cross-default - in relation to any financial indebtedness, an acceleration against the Borrower pursuant to any agreement of the Borrower with any bank, financial entity (including factoring or leasing companies) or other party, is declared, or the Borrower receives from such party or parties a request for prepayment in whole, unless such request for prepayment is renounced by the party who made it within ten (10) Business Days after making such request.
- 10.1.6 Effectiveness of these conditions - it is or becomes illegal for the Borrower to perform its obligations hereunder, these conditions are ineffective or void or their ineffectiveness or voidance is notified to the Borrower and such circumstances, if

capable of being remedied, are not remedied within ten (10) Business Days following the notification of such event or the Borrower disclaims the validity or the enforceability of these conditions or shows the intention to disclaim the validity or the enforceability of the Facility.

## **10.2 Waiver**

As soon as the Lenders become aware that an Event of Default has occurred, the Lenders shall notify the Borrower thereof. After the expiry of the cure period as provided for in the relevant provision of the Events of Default, set out here above in Clause 10.1, as the case may be, the Lenders can, at their own discretion, waive such Event of Default. Such waiver shall only apply to the declarations expressly stated therein and shall only be valid if given in writing and signed by a duly authorised representative of the Lenders and only in respect of such Lender.

## **10.3 Acceleration in case of an Event of Default**

Unless in case of a waiver in accordance with Clause 10.2 above, following a written notice by which the Lenders notify the occurrence of an Event of Default in respect of the Borrower and their decision to accelerate the Facility in accordance with this Clause 10.3 to the Borrower:

- 10.3.1 the Borrower shall be bound to immediately repay to the Lenders all Drawdowns as well as any accrued Interest thereon that has not yet been capitalised in the principal of such Drawdown;
- 10.3.2 any Interest, commissions, expenses and any other amounts due by the Borrower hereunder, and already paid prior to the application of the above remedy or remedies, shall be finally acquired by the Lenders, without any restitution obligation;
- 10.3.3 on any amount outstanding and due by virtue of the present Clause, interest shall accrue automatically at a rate equal to the interest rate contractually provided for in this Agreement increased by four (4) per cent, for a period starting on the date on which an Event of Default has occurred and end on the day on which all amounts due by virtue of the present Clause and the Agreement are effectively repaid in their entirety ("**Default Interest**"); and
- 10.3.4 any reasonable costs that the Lenders have incurred due to the occurrence of an Event of Default and without prejudice to the right of the Lenders to evidence the effectively incurred damages and to claim payment thereof, if it deems necessary.



## **11. TERMINATION**

These terms and conditions of the Facility shall cease to exist and do not longer apply upon full repayment of the Facility in accordance with the terms of this Agreement.

## **12. CONFIDENTIALITY**

12.1 The Parties agree to keep secret and confidential and not to use, disclose or divulge to any third party (other than to their respective professional advisers) or to enable or cause any person to become aware of (except for the purposes of the Business activities of the Borrower) any confidential information relating to the Borrower and this Agreement unless they are required to disclose such information by law or by the rules of any regulatory body to which the Borrower is subject.

12.2 Notwithstanding Clause 12.1 above, any disclosure of this Agreement can only be made after prior and written approval from all Parties. For the purpose of this Agreement, the Parties hereby approve the disclosure of this Agreement to any financial institution to which the Borrower owes any financial debt.

## **13. GENERAL PROVISIONS**

### **13.1 Collaboration**

Without prejudice to any of their rights and obligations under this Agreement, the Parties shall cooperate in good faith, taking into account the best interests of the Borrower and agree (i) to take the necessary arrangements and to use their voting rights and powers of control available to them in relation to its subsidiaries (as applicable) so as to give full effect to the terms and conditions of this Agreement and (ii) to procure that the directors nominated upon proposal of the respective Parties and their other representatives shall support and implement all reasonable proposals put forward for the proper conduct of Business as contemplated in this Agreement.

### **13.2 Amendments and Waivers**

13.2.1 Unless in case explicitly otherwise provided for herein, no amendment of this Agreement shall be effective unless it is made in writing and signed by duly authorized representatives of all Parties.

13.2.2 Except as otherwise provided herein, no failure or delay of a Party to exercise any right or remedy under this Agreement shall be considered as a waiver of such right or remedy, or any other right or remedy under this Agreement.

13.2.3 Except as otherwise provided herein, no waiver shall be effective unless given in writing and signed by a duly authorized representative of the Party giving the waiver.

### **13.3 Notices in connection with this Agreement**

13.3.1 Any notice in connection with this Agreement must be in writing to the address mentioned under such Party's name and shall be validly given with respect to each Party if:

- (A) delivered by hand (with written confirmation of receipt);
- (B) sent by registered mail or an internationally recognized courier company to the addresses set out on the first page of this Agreement;

or to such other addressee or address as a Party may notify to the other Parties in accordance with this Clause.

13.3.2 Any notice shall be effective upon receipt and shall be deemed to have been received:

- (A) at the time of delivery, if delivered by hand or a courier company;
- (B) on the first (1) Business Day following the date of posting if sent by registered mail.

### **13.4 Severability**

13.4.1 If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any applicable law, that provision shall be deemed not to form part of this Agreement, and the legality, validity or enforceability of the remainder of this Agreement shall not be affected.

13.4.2 In such case, each Party shall use its reasonable best efforts to immediately negotiate in good faith and implement a valid replacement provision with an economic effect which is as close as possible to that of the invalid, void or unenforceable provision.

### **13.5 No partnership**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties or any of them.

### **13.6 Transferability**

No Party may assign or transfer all or any of its rights and/or obligations under this Agreement to any other person, without the other Parties' prior written consent.

**13.7 Counterparts**

This Agreement may be executed in counterparts, in the number of originals stated hereinafter on the signature page and, when taken together, the counterparts executed by all Parties shall constitute one and the same instrument.

**13.8 Costs and expenses**

Each Party shall bear its own costs and expenses in connection with the Facility.

**13.9 Governing Law**

This Agreement shall be governed by and construed in accordance with Belgian law.

**13.10 Jurisdiction**

All disputes arising out of or in connection with this Agreement and which the Parties are unable to settle amicably shall be subject to the exclusive jurisdiction of the courts of Brussels.

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Done on [●] 2014,

**4Energy Invest NV**

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Name: CIZI BVBA, represented by Mr. Filip  
Lesaffer  
Function: Director

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Name: Hamaco BVBA, represented by Mr.  
Henri Meyers  
Function: Director

**Gimarco BVBA**

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Name: Philiep Van Eeckhout  
Function: Manager

**LIMBURGSE RECONVERSIE MAATSCHAPPIJ NV**

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Name: Roeland Engelen  
Function: Head of Sustainable Societies