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10 TERM AND DEFAULT

10.1 Subject to Clause 10.2 below, this Agreement shall take effect on the Effective Date and shall terminate on the date which is the later of:

- (a) the date on which the Guarantor is no longer subject to a claim or demand, or any potential or contingent claim or demand, under the SG Guarantee, in accordance with Clause 11 (Expiry) of the SG Guarantee; and
- (b) the date on which all amounts payable to the Guarantor by the Obligors under this Agreement have been paid in full.

10.2 The provisions of Clauses 1 (Definitions and Interpretation), 6 (Reimbursement), 8 (Indemnities) and this Clause 10 shall survive any termination of this Agreement.

10.3 In the event of:

- (a) any failure by the Obligors to make any payment due pursuant to Clauses 5 (Payment by Obligors) or 6 (Reimbursement) of this Agreement, after making the relevant demands for payment referred to in Clause 6.3; and/or
- (b) any failure by the Obligors to comply with the provisions of:
 - (A) Paragraph 6.2.5 of Part 9 of the Schedule (Amendment & Restatement Undertakings and Rights)
 - (B) any material term of the Supplemental Security Document;
- (c) the entering into of any form of insolvency or analogous proceeding or any process for suspension of payments by any Obligor or by any shareholder of an Obligor or by any Corporate Undertaker, or if any such Obligor or shareholder or Corporate Undertaker shall cease or threaten to cease making payments of its obligations as they fall due; and/or

then the Guarantor shall be entitled to declare by notice to the Purchaser that an enforcement event (an "**Enforcement Event**") has occurred and may thereafter subject to the Agreed Security Principles and to the provisions of any applicable Ranking Agreement, take such steps by way of enforcement of any of the Security Documents as it may require

11 NATURE OF PARTIES' RIGHTS AND OBLIGATIONS

11.1 Neither the obligations of the Obligors under this Agreement nor the rights, powers and remedies conferred on the Guarantor in respect of the Obligors by this Agreement or by law shall be discharged, impaired or otherwise affected by:

- (a) the winding-up, dissolution, administration, moratorium or re-organisation of any of the Obligors or any other person or any change in its status, control, function or ownership;
- (b) any of the obligations of SmelterCo under the Guaranteed Documents being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- (c) any time or other indulgence being granted to SmelterCo in respect of its obligations under the Guaranteed Document;
- (d) any amendment to, or any variation, waiver, exchange or release of, any obligation of SmelterCo under the Guaranteed Document;
- (e) the existence of any claim, set-off or any other right that any Obligor may have against the Guarantor;
- (f) any other circumstances, other than payment in full, that might otherwise constitute a defence available to, or discharge of, SmelterCo in respect of the Guaranteed Document;
- (g) any document presented in connection with the Guaranteed Document proving to be forged, fraudulent, invalid or insufficient in any respect or any statement in any document being untrue or inaccurate in any respect; or
- (h) any breach by any Obligor of any undertaking, representation or warranty contained in this Agreement or any Security Document.

11.2 The Guarantor shall not be liable or responsible for the validity of documents delivered to the Guarantor in connection with any claim under the SG Guarantee, or of any signatures thereon, even if such documents or signatures should in fact prove to be in any or all respects invalid, insufficient or (unless relevant officers of the Guarantor shall have actual knowledge thereof) fraudulent or forged.

12 PAYMENT PROCEDURE

- 12.1 The Guarantor may rely on any documents delivered to it in connection with any claim under the SG Guarantee which appear on their face to be in order, without responsibility for further investigation.
- 12.2 All payments by a Party under this Agreement must be made to the other Party in immediately available funds to its account at such office or bank, as it may notify in writing to the other Party for this purpose by not less than four Business Days' prior notice.
- 12.3 Payments under this Agreement to the Guarantor must be made for value on the due date at such times and in such funds as the Guarantor may specify to the Obligors as being customary at the time for the settlement of transactions in Edinburgh.
- 12.4 All payments made by any Obligor to the Guarantor under this Agreement must be calculated and be made without (and free and clear of any deduction for) any set-off or counterclaim.
- 12.5 Each Obligor must make any and all payments to be made under this Agreement on the date on which such payment becomes due and payable or, if not a Business Day, on the next succeeding Business Day (and in respect of any payment made by the Guarantor under the SG Guarantee, within 5 Business Days of the date on which the Guarantor makes such payment). During any extension of the due date for payment of any principal under this Agreement interest is payable on that principal at the rate payable on the original due date.
- 12.6 All payments to be made by any Obligor under this Agreement shall bear interest at the Default Rate from the date due to (and including) the date paid (both before and after any judgment or other order of a court of competent jurisdiction).
- 12.7 Any certification or determination by the Guarantor of a rate or amount made pursuant to the terms of this Agreement will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

13 AMENDMENTS AND WAIVERS

- 13.1 Any term of the Guaranteed Document may be amended (other than in respect of minor administrative matters) or waived only with the written agreement of the Guarantor. The rights of the Guarantor under this Agreement:
- (a) may be exercised as often as is necessary;
 - (b) are cumulative and not exclusive of its rights under the general law or under any relevant agreement;
 - (c) are in addition to any rights and remedies provided for in the SG Guarantee; and

(d) may be waived only in writing.

13.2 Any delay in exercising or non-exercise by the Guarantor of any right of the Guarantor under this Agreement is not a waiver of that right, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.

13.3 The Guarantor shall have the right to exercise in its complete discretion the waiver of any actual or potential breach by any Obligor of any provision of this Agreement by written notice setting forth the terms, conditions and extent of such waiver. Unless such notice expressly provides to the contrary, any waiver so granted shall extend only to the specific event or occurrence which gave rise to the actual or potential breach so waived, and not to any other similar event or occurrence which occurs subsequent to the date of such waiver.

14 FURTHER ASSURANCE

Each Obligor shall, so far as permitted by applicable law and regulatory requirements, at its own expense, take whatever action the Guarantor may reasonably require at any time to give effect to the provisions of this Agreement.

15 CHANGES TO THE PARTIES

15.1 No Obligor may assign or transfer any of its rights and obligations under this Agreement without the prior written consent of the Guarantor (not to be unreasonably withheld or delayed).

15.2 HydroCo shall become a Party to this Agreement as an Obligor on the closing date of the Acquisition by signing and delivering to the Purchaser, SmelterCo, the Corporate Undertakers and the Guarantor a duly completed and executed Accession Agreement.

15.3 The rights and obligations of the Guarantor under this Agreement in relation to any payment or reimbursement obligation of any Obligor and to any security or other assurance granted in respect of those obligations (but not any other right or obligation) may after any claim has been made on the SG Guarantee which has not been reimbursed as provided for hereunder (but not at any other time) be assigned, novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any legislation or otherwise) to any person without the prior written consent of any Obligor.

15.4 A transfer of obligations permitted under this Clause 15 will be effective only if the new Party confirms to the other Party in form and substance satisfactory to the other Parties, acting reasonably, that it is bound by the terms of this Agreement. On the transfer becoming effective in this manner the original Party will be released from its obligations under this Agreement to the extent that they are transferred to the new Party.

16 DISCLOSURE OF INFORMATION

16.1 Each Party must keep confidential any information supplied to it by or on behalf of the other Party in connection with this Agreement. However, each Party is entitled to disclose information:

- (a) which is publicly available, other than as a result of a breach by it of this Clause;
- (b) in connection with any legal or arbitration proceedings;
- (c) If required to do so under any law or regulation or by order of a court or other public body that has jurisdiction over the relevant Party;
- (d) to any UK, Scottish, Hong Kong or Singapore government department or a governmental, banking, taxation or other regulatory authority;
- (e) to its officers, employees and professional advisers;
- (f) to any rating agency, provided that the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement;
- (g) with the agreement in writing of the other Party; or
- (h) in the case of the Guarantor, for the purposes of the Freedom of Information (Scotland) Act 2002 or other laws or regulations relating to the disclosure of information to which the Guarantor is subject (and the Guarantor shall be responsible for determining whether it is subject to such laws or regulations and whether or not the information is exempt from disclosure). The Guarantor shall use reasonable endeavours to inform the Obligors of any relevant request for disclosure and to consider any representations the Obligors might make where practicable and lawful to do so.

16.2 This Clause 16 supersedes any previous confidentiality undertaking given by the Obligors or the Guarantor in connection with this Agreement.

17 NOTICES

17.1 In writing

- (a) Any communication in connection with this Agreement must be in writing and, unless otherwise stated, may be given:
 - (A) in person, by post: or

- (B) to the extent agreed between the Guarantor and the Obligors, by e-mail or other electronic communication.
- (b) An electronic communication will be treated as being in writing.
- (c) Unless it is agreed to the contrary, any consent or agreement required under this Agreement must be given in writing.

17.2 Contact details

- (a) The contact details of each Obligor for this purpose are:

Address: Liberty House Group, 7 Hertford Street, London W1J 7RH

Email: [REDACTED]

Attention: [REDACTED]

- (b) The contact details of the Guarantor for this purpose are:

Address: Director General Economy, Room 1N.01, St Andrews House, Regent Road, Edinburgh, EH1 3DG

E-mail: DGEconomy@gov.scot

Attention: Liz Ditchburn or [REDACTED]

- (c) The Obligors or the Guarantor may change their contact details by giving five Business Days' notice to the other Party.
- (d) Where a Party nominates a particular department or officer to receive a communication, a communication will not be effective if it fails to specify that department or officer.

17.3 Effectiveness

- (a) Except as provided below, any communication in connection with this Agreement will be deemed to be given as follows:
 - (A) if delivered in person, at the time of delivery;
 - (B) if posted, when it has been received at the relevant address, or (if earlier) five Business Days after being deposited in the post, postage prepaid, in a correctly addressed envelope; and

- (C) if by e-mail or any other electronic communication, when received in legible form.
- (b) A communication given under Clause 17.3(a) above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.
- (c) A communication to the Guarantor will only be effective on actual receipt by it.

18 SEVERABILITY

- 18.1 If a term of this Agreement is or becomes illegal, Invalid or unenforceable in any respect under any jurisdiction, that will not affect:
- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or
 - (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this Agreement.

19 GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

20 JURISDICTION

- 20.1 The courts of Scotland have exclusive jurisdiction to settle any dispute including a dispute relating to any non-contractual obligation arising out of or in connection with this Agreement.
- 20.2 The courts of Scotland are the most appropriate and convenient courts to settle any such dispute in connection with this Agreement. Each Obligor agrees not to argue to the contrary and waives objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.
- 20.3 This paragraph is for the benefit of the Guarantor only. To the extent allowed by law, the Guarantor may take:
- (a) proceedings in any other court; and
 - (b) concurrent proceedings in any number of jurisdictions.
- 20.4 References in this Clause 20 to a dispute in connection with this Agreement include any dispute as to the existence, validity or termination of this Agreement.

THIS IS THE SCHEDULE IN NINE (9) PARTS TO THE FOREGOING AMENDED & RESTATED
GUARANTEE AND REIMBURSEMENT AGREEMENT ENTERED INTO BETWEEN THE
SCOTTISH MINISTERS, SIMEC LOCHABER HYDROPOWER LIMITED, LIBERTY ALUMINIUM
LOCHANER LIMITED AND THE CORPORATE UNDERTAKERS NAMED THEREIN AND
ENTERED INTO ON [] 2020

THE SCHEDULE

PART 1

FORM OF SG GUARANTEE

GUARANTEE by

THE SCOTTISH MINISTERS, Victoria Quay, Edinburgh, EH6 6QQ (the "**Guarantor**")

in favour of

GREENSILL CAPITAL (UK) LIMITED, a company incorporated in England & Wales with registered number 08126173 and having its registered office at One Southampton Street, Covent Garden, London WC2R 0LR (the "**Funder**") ; and

Each other **TRANSFeree** (defined below).

BACKGROUND:

(a) Simec Lochaber Hydropower Limited (the "**Purchaser**") and Liberty have entered into a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IT IS AGREED AS FOLLOWS

(A) DEFINITIONS

1.1 In this Guarantee:

1.1.1 "**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in Edinburgh;

1.1.2 "**Commencement Date**" means 16 December 2016;

1.1.3 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1.1.4 "**Liberty**" means Liberty Aluminium Lochaber Limited, a company incorporated in Scotland with registered number SC549732 and having its registered office at 15 Atholl Crescent, Edinburgh EH3 8HA;

4. Scope of the Guarantee

█ [REDACTED]

5. Payments under the Guarantee

- 5.1 All payments made under this Guarantee shall be denominated in the same currency as the Payment Obligations and shall be made free and clear of any deduction or withholding for or on account of any present or future taxes, levies, imposts, duties, charges or fees (together, "Deductions").
- 5.2 If the Guarantor is required by law to make any such Deductions, the Guarantor will (subject to Clause 3.1) gross up the payment so that the net sum received by the Funder and any Transferee is equal to the full amount which the Funder or Transferee would have received had no such Deduction been made.

█ [REDACTED]

- 5.4 The Funder or any Transferee may appropriate any payments received under this Guarantee in respect of any part or type of the outstanding Payment Obligations owed to them in such manner and order as they may decide.

6. Notice of Payment Demand

- 6.1 If Liberty fails or refuses to pay any of the Payment Obligations when due, the Funder and any Transferee to whom such Payment Obligations are owed may make a demand upon the Guarantor substantially in the form as set out in Part 1 of the Schedule (a "Payment Demand").
- 6.2 The Guarantor shall have no obligation under this Guarantee in respect of any Payment Obligation until the Guarantor receives a Payment Demand in respect of that Payment Obligation.
- 6.3 The Guarantor shall pay any amount due under this Guarantee within 5 Business Days after receipt of the Payment Demand.
- 6.4 Neither the Funder nor any Transferee (nor any trustee or agent on its or their behalf, as applicable) shall be obliged, before issuing a Payment Demand or exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Guarantee or by law, to:

- 6.4.1 take any action or obtain judgment or decree in any court against Liberty;
- 6.4.2 make or file any claim to rank in a winding up or liquidation of Liberty; or
- 6.4.3 enforce or seek to enforce any other security taken or exercise any right or plea available to them in respect of the obligations of Liberty to them .

7. Warranties

█ █ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

8. Further assurance

8.1 The Guarantor shall execute and deliver any further instruments and documents and do all such assurances, acts and things as the Funder or any Transferee may require for perfecting or protecting its obligations under this Guarantee and for the exercise of all powers, authorities and discretions conferred on the Funder or any Transferee by this Guarantee.

9. Defences and set-off

9.1 The Guarantor may not claim any set-off or counterclaim in respect of any payment due from the Guarantor to the Funder or to any Transferee under this Guarantee.

10. Continuing Guarantee

- 10.1 The obligations of the Guarantor under this Guarantee:
 - 10.1.1 shall be continuing obligations and shall extend to the ultimate balance of all sums payable by the Guarantor under this Guarantee and shall not be considered satisfied by an intermediate payment or satisfaction of part only of the Guarantor's liability for Payment Obligations; and
 - 10.1.2 shall continue in full force and effect until total and irrevocable satisfaction of all the Payment Obligations or the expiry of this Guarantee pursuant to Clause 11.