

4. **Scope of the Guarantee**

4.1 This Guarantee is not cancellable by the Guarantor for any reason, including the failure of the Guarantor to receive payment of any fees due to it in respect of the provision 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**

7.1 The Guarantor represents and warrants to the Funder (and to each Transferee) as follows:

- 7.1.1 the obligations expressed to be assumed by the Guarantor in this Guarantee are legal, valid, binding and enforceable obligations;
- 7.1.2 the entry into and performance of the obligations set out in this Guarantee do not and will not conflict with any law or regulation applicable to the Guarantor or any agreement or instrument binding it; and
- 7.1.3 the Guarantor has the power to enter into, perform and deliver and has taken all necessary action to authorise its entry into, performance and delivery of this Guarantee.

## **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.

10.2 Neither the obligations of the Guarantor under this Guarantee nor the rights, powers, discretions and remedies conferred upon the Funder or any Transferee by this Guarantee shall be discharged, impaired or otherwise affected by:

10.2.1 any insolvency, bankruptcy, sequestration, liquidation, administration, winding up, receivership, dissolution, incapacity, invalidity, unenforceability, limitation, disability, or the discharge by operation of law of Liberty or any other person,

10.2.2 any change in the constitution or name of Liberty or any other person;

10.2.3 any present or future security, guarantee, indemnity or other right or remedy held by or available to the Guarantor being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Guarantor from time to time exchanging, varying, realising or failing to perfect or enforce any of the same;

10.2.4 the Funder or any Transferee discharging or releasing the liability of Liberty, granting any time, indulgence or concession to Liberty or omitting to claim or enforce payment from Liberty;

10.2.5 any act or omission that would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of a guarantor or indemnifier; or

10.2.6 anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Guarantor or otherwise reduce or extinguish its liability under this Guarantee.

## 11. Expiry

11.1 This Guarantee shall expire on the date falling 25 years and 60 days after the Commencement Date (at 24.00 hours GMT time) without any requirement for written notice being served upon the Funder or any Transferee.

11.2 Expiry of this Guarantee in accordance with Clause 11.1 shall be without prejudice to any Payment Demands validly made prior to such expiry or termination, but subject thereto the Guarantor shall have no further obligations to the Funder or any Transferee following such expiry or termination.

## 12. Other guarantees and security

12.1 This Guarantee is in addition to and shall not in any way prejudice or be prejudiced by any other guarantee, collateral or other security, right or remedy which the Funder or any Transferee may now or at any time hereafter hold for all or part of the Payment Obligations. This Guarantee shall not merge with or prejudice such other guarantee or security or any contractual or other rights of the Funder or any Transferee.

### 13. Variations

- 13.1 Any variation to this Guarantee shall be in writing and signed by or on behalf of each party.
- 13.2 Neither the Funder nor any Transferee shall agree to any variation of the [REDACTED] without the prior consent in writing of the Guarantor.

### 14. Delay and waiver

- 14.1 No delay of the Funder or any Transferee in the exercise of, or failure to exercise, any rights hereunder or under the [REDACTED] shall operate as a waiver of such rights, a waiver of any other rights, or a release of the Guarantor from any obligations hereunder.

### 15. Severable obligations

- 15.1 Each of the provisions of this Guarantee shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise, the validity, legality and enforceability of the remaining provisions of this Guarantee shall not in any way be affected or impaired thereby.

### 16. Notices

- 16.1 Any communication to be made under or in connection with this Guarantee shall be made (in English) in writing and, unless otherwise stated, may be made by fax or letter.
- 16.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of the Guarantor and the Funder for any communication or document to be made or delivered under or in connection with this Guarantee is:

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

Fax number: N/A

E-mail: [DGEconomy@gov.scot](mailto:DGEconomy@gov.scot)

For the attention of: Liz Ditchburn or [REDACTED]

16.2.2 Funder : Address : One Southampton Street, Covent Garden, London WC2R 0RR

Fax number : N/A

For the attention of : General Counsel and Client Director



or any substitute address, fax number or department or officer as the Guarantor or the Funder may notify to the other from time to time.

16.3 Any notice or other communication given to a party shall be deemed to have been received:-

16.3.1 if sent by facsimile, with a confirmed receipt of transmission from the receiving machine, on the day on which transmitted;

16.3.2 in the case of a written notice given by hand, on the day of actual delivery; and

16.3.3 if posted, on the second Business Day following the day on which it was despatched by first class mail postage prepared following the date of despatch by prepaid first class postage,

provided that a notice given in accordance with the above but received on a day which is not a Business Day or after normal business hours in the place of receipt shall only be deemed to have been received on the next Business Day.

## 17. Assignment

17.1 The Funder and any Transferee may at any time sell, assign and/or transfer all or any of its rights and/or obligations under this Guarantee to any person to which its right, title and interest (in whole or in part) in the [REDACTED] is sold, assigned, novated or otherwise transferred.

17.2 Any Transferee that is not a party to this Guarantee shall be entitled to rely on the terms of this Guarantee as a third party beneficiary.

17.3 The Guarantor may not assign or transfer any of its rights and/or obligations under this Guarantee.

## 18. Interpretation

18.1 Unless otherwise indicated any reference in this Guarantee to:

18.1.1 a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (in each case whether or not having separate legal personality);

18.1.2 any person shall include that persons successors in title, permitted assignees or permitted transferees;

18.1.3 a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;

18.1.4 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

- 18.1.5 a clause heading is a reference to a clause or a sub-clause of this Guarantee and is for ease of reference only and shall not affect interpretation;
- 18.1.6 this Guarantee (and any provisions of it) or any other document referred to in this Guarantee shall be construed as references to it for the time being as amended, varied, supplemented, restated, substituted or novated from time to time;
- 18.1.7 a time of day is a reference to London time; and
- 18.1.8 "set off" includes any right of retention, claim for compensation or right to balance accounts on insolvency.

**19. Governing law and jurisdiction**

This Guarantee shall be governed by and construed in all respects in accordance with the law of Scotland and the parties irrevocably submit to the non-exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents consisting of this and the preceding [7] pages and the Schedule hereto in two parts are executed as follows:

Executed (but not delivered until the date of )  
 delivery specified below) for and on behalf of )  
**THE SCOTTISH MINISTERS** )  
 acting by: )

Signature of authorised signatory \_\_\_\_\_

Signature of authorised signatory \_\_\_\_\_

at \_\_\_\_\_

on \_\_\_\_\_

Date of delivery: December 2016

THIS IS THE SCHEDULE TO THE FOREGOING GUARANTEE ENTERED INTO BETWEEN THE SCOTTISH MINISTERS, GREENSILL CAPITAL (UK) LIMITED AND OTHERS

PART 1 OF THE SCHEDULE

FORM OF PAYMENT DEMAND

SCOTTISH MINISTERS  
[DATE]

Dear Sirs,

We refer to the guarantee given by you dated [ ] (the "Guarantee"), a copy of which is attached. Unless otherwise defined herein, all capitalised terms used herein and defined in the Guarantee shall have the meanings given to them in the Guarantee.

[We hereby certify that we are a Transferee (as defined in the Guarantee).]

Liberty is in breach of the Payment Obligations and accordingly the sum of [£ ] is properly due to us.

This amount was included in the invoice issued by us to Liberty dated [DATE], was due to be paid on [DATE], and has not been paid as at the date hereof.

Payment of the relevant amount should be made to the following account:

Name: [account name]

Account number: [insert details]

Bank: [name and code]

Yours faithfully

[ ]  
for and on behalf of [Funder][ OtherTransferee]

.....

Name

.....

Title









PART 2

Initial Conditions

1 The PPA;

[REDACTED]

3 Bond and Floating Charge by the Purchaser;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 Bond and Floating Charge by SmelterCo;

[REDACTED]

8 Standard security granted by HydroCo over the Lochaber Hydro Plant, tailrace and smelter site shown shaded [ ] on the relevant Standard Securities Plan;


9 Standard security granted by HydroCo over that part north of Mamore Estate necessary to encompass the Nevis Diversion Dam shown shaded pink within the blue box on the relevant Standard Securities Plan;

10 Standard security granted by HydroCo over Glensherro Estate shown shaded [ ] on the relevant Standard Securities Plan;

11 Standard security granted by HydroCo over Achintee Estate shown shaded [ ] on the relevant Standard Securities Plan;

12 Standard security granted by HydroCo over Killiechonate Estate shown shaded [ ] on the relevant Standard Securities Plan;

13 Standard security granted by HydroCo over Inverlochry Estate shown shaded [ ] on the relevant Standard Securities Plan;

- 14 Floating Charge by HydroCo;
- 15 Share Charge in respect of all the shares in HydroCo by the Purchaser;
- 16 Legal opinions in relation to the capacity and authority of SEP, SGL and LHG;
- 17 Net Worth Certificates in respect of SGL, LHG and SEP;
- 
- 19 The Due Diligence Reports received by the Obligors in connection with the Acquisition; and
- 20 An Accession Agreement duly signed by HydroCo.



**PART 3****Subsequent Conditions**

1. Step-in Agreements by HydroCo in relation to any material contracts of the Lochaber Hydro Plant, by no later than 31 March 2017;
2. Step-in Agreements by SmelterCo in relation to any material contracts of the Smelter Factory, by no later than 31 March 2017; and
3. Assignment in Security by HydroCo over any material Lochaber Hydro Plant grid connection contracts, by no later than three months after completion date.

**PART 4****Form of Accession Agreement**

To: Scottish Ministers, Purchaser and SmelterCo [and Corporate Undertakers]

From: HydroCo

Dated:

Dear Sirs

**Guarantee and Reimbursement Agreement dated [●] (the Agreement)**

1. We refer to the Agreement. This Agreement (the **Accession Agreement**) shall take effect as an Accession Agreement for the purposes of the Agreement. Terms defined in the Agreement have the same meaning in this Accession Agreement unless given a different meaning in this Accession Agreement.
2. HydroCo agrees to become an Obligor and to be bound by the terms of the Agreement as an Obligor pursuant to Clause 15 (Changes to the Parties). HydroCo is a limited company duly incorporated under the laws of England and Wales with registered number 750143.
3. HydroCo's administrative details for the purposes of Clause 17.2 of the Agreement are as follows:

Address:

[Email:]

Attention:

4. HydroCo confirms that as from the date hereof it intends to be party to the Agreement as an Obligor, undertakes to perform all the obligations expressed to be assumed by an Obligor under the Agreement, and agrees that it shall be bound by all the provisions of the Agreement as if it had been an original party to the Agreement.
5. The Scottish Ministers, the Purchaser and SmelterCo agree that HydroCo shall be a party to the Agreement as an Obligor as from the date hereof as indicated in paragraph 4.

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

**IN WITNESS WHEREOF:**

PART 5

Agreed Security Principles

1. All business-related or commercial obligations of the Obligors will be contained in this Agreement, and no additional such provisions will be included in any Security Document;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. The Parties will give all practicable support, including the timely provision by the Guarantor of letters of non-crystallisation and confirmations of approval for disposals, so as to enable the commercial intent of these the Agreed Security Principles to be achieved.



PART 6

Form of Net Worth Certificate

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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**PART 7**

**Property Transfer Plan**

**PART 8**

**Standard Securities Plans**

