

■ [REDACTED]

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- [Redacted]

- [Redacted]

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

■ [REDACTED]
[REDACTED]

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: Jay Hambro or Sanjeev Gupta

- (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 of [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.

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 PPA

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] under the PPA.

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;

[REDACTED]

[REDACTED]

[REDACTED] PPA

[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;

- 1.1.5 **"Payment Obligations"** means all amounts payable by Liberty to the Funder or any other Transferee (as applicable) under or in relation to the [REDACTED] in respect of Payment Schedule no. 1 dated 12 December 2016 including without limitation interest on overdue payments;
- 1.1.6 **"PPA"** means the power purchase agreement entered into initially between Liberty and the Purchaser dated on or around the date hereof;
- 1.1.7 **"Quarter"** means each consecutive period of three calendar months starting on the Commencement Date;
- 1.1.8 **"Schedule"** means the schedule to this Agreement in 2 parts; and
- 1.1.9 **"Transferee"** means any person(s) who has the benefit of any Payment Obligation from time to time including, without limitation, the Funder and its successor transferees.

2. Guarantee and indemnity

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]

3. Limit of liability

- [REDACTED]

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

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