



Registration of a Charge

Company name: **SHENVAL HYDRO LIMITED**

Company number: **SC489744**



X615JZ2B

Received for Electronic Filing: **27/02/2017**

Details of Charge

Date of creation: **22/02/2017**

Charge code: **SC48 9744 0001**

Persons entitled: **AIB GROUP (UK) P.L.C (AS SECURITY AGENT)**

Brief description:

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

PINSENT MASONS LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 489744

Charge code: SC48 9744 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 22nd February 2017 and created by SHENVAL HYDRO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th February 2017 .

Given at Companies House, Edinburgh on 28th February 2017

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

DELIVERED ON *22 February* **2017**

FLOATING CHARGE

by

SHENVAL HYDRO LIMITED

in favour of

AIB GROUP (UK) P.L.C
as Security Agent

re: PROJECT PERKINS


Pinsent Masons

CONTENTS

Clause		Page
1	DEFINITIONS AND INTERPRETATION	1
2	FLOATING CHARGE	2
3	PROTECTION OF SECURITY	3
4	POWER OF ATTORNEY	4
5	REPRESENTATIONS AND WARRANTIES	5
6	ENFORCEMENT	5
7	DISCHARGE	7
8	LIABILITY OF RECEIVER AND SECURITY AGENT	8
9	MISCELLANEOUS	8
10	NOTICES	9
11	GOVERNING LAW	9

FLOATING CHARGE DELIVERED ON *22 February* 2017

by

- (1) **SHENVAL HYDRO LIMITED** incorporated in Scotland with company number SC489744 and whose registered office is at Inveralmond Road, Inveralmond Industrial Estate, Perth, PH1 3TW (the "**Company**")

in favour of

- (2) **AIB GROUP (UK) P.L.C.** as Security Agent and trustee for the Secured Parties under and as defined in the Facilities Agreement (the "**Security Agent**")

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Security unless the context requires otherwise:-

"Act"	means the Insolvency Act 1986 as amended
"Default Rate"	means the rate of interest specified in, and calculated in accordance with clause 10.3 of the Facilities Agreement
"Facilities Agreement"	<i>means the agreement so called dated on or around the date of this Security entered into among inter alia (1) Green Highland Hydro Limited as borrower; (2) AIB Group (UK) P.L.C (in their capacities as Agent, Security Agent and Account Bank); (3) AIB Group (UK) P.L.C. and ING Bank, a branch of ING-DiBa AG (in their capacities as Arrangers and Original Lenders); and (4) AIB Group (UK) P.L.C. and ING Bank N.V. (in their capacities as Original Hedge Counterparties) as amended, supplemented, novated, extended or restated from time to time</i>
"Receiver"	means any receiver or administrative receiver appointed in respect of the Secured Assets under this Security (whether by the Company or the Court) and includes <i>joint receivers</i>
"Secured Assets"	means the whole of the property (including uncalled capital) which is or may from time to time, while this Security is in force, be comprised in the property and undertaking of the Company
"Secured Obligations"	means all the liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by each Obligor and any other member of the Group to any Secured Party under the Finance Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.
"Security"	<i>means these presents (and, as the context may require or imply, the floating charge hereby created)</i>

1.2 Facilities Agreement definitions

In this Security, unless the context requires otherwise terms defined in clause 1.1 (*Definitions*) of the Facilities Agreement shall have the same meaning in this Security.

1.3 Interpretation

In this Security unless the context requires otherwise:-

- 1.3.1 words importing the singular shall include the plural and vice versa;
- 1.3.2 references to this Security or any other document shall be construed as references to this Security or such other document as amended, supplemented, novated, extended or restated from time to time;
- 1.3.3 references to any statute or statutory provision (including any subordinate legislation) shall include any statute or statutory provision for the time being in force which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.3.4 references to a "**person**" shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality);
- 1.3.5 references to a "**fixed security**" mean a fixed security as defined by Section 486 of the Companies Act 1985;
- 1.3.6 any reference to the Security Agent includes its permitted successors, transferees and assignees; and
- 1.3.7 "**tax**" means all forms of taxation, duties, imposts and levies whatsoever in the nature of taxation whenever and wherever imposed, including (but without limitation) all stamp duties, imposts, duties, capital and revenue taxes and value added tax, and "**taxes**" and "**taxation**" shall be construed accordingly.

1.4 Conflict

If there is any conflict between the provisions of this Security and the provisions of the Facilities Agreement and the Intercreditor Agreement, the relevant provisions of the Facilities Agreement and the Intercreditor Agreement shall prevail. In the event of any conflict between the Facilities Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall prevail.

2. FLOATING CHARGE

2.1 Payment

The Company undertakes to the Security Agent that it will pay and discharge the Secured Obligations in accordance with the Facilities Agreement and the other Finance Documents.

2.2 Floating Charge

In security for the payment and discharge of the Secured Obligations, the Company hereby GRANTS a FLOATING CHARGE over the Secured Assets in favour of the Security Agent.

2.3 Negative pledge and ranking

Save as otherwise provided in the Intercreditor Agreement or the Facilities Agreement, unless otherwise agreed in writing by the Security Agent and subject to Section 464(2) of the Companies Act 1985:

2.3.1 the Company shall not create any fixed security or other floating charge over any part of the Secured Assets ranking in priority to or equally with this Security after its execution of this Security except any fixed security in favour of the Security Agent; and

2.3.2 this Security shall rank in priority to any fixed security or other floating charge created by the Company after its execution of this Security except any fixed security in favour of the Security Agent.

3. PROTECTION OF SECURITY

3.1 Continuing security

This Security shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Obligations and shall remain in force until the Security Agent confirms in writing to the Company that the Secured Obligations have been fully and unconditionally paid and discharged. The Security Agent shall promptly provide notice in writing to the Company upon the Secured Obligations being fully and unconditionally paid and discharged.

3.2 No prejudice

This Security shall be in addition to and independent of and shall not in any way prejudice or be prejudiced by any other security, right or remedy which the Security Agent and the Finance Parties may now or at any time hereafter hold for all or any part of the Secured Obligations.

3.3 No waiver

Failure or delay on the part of the Security Agent in exercising any right, power or discretion under or pursuant to this Security shall not operate as a waiver thereof, nor will any single or partial exercise of any such right, power or discretion preclude any other or further exercise thereof. The rights, powers and discretions contained in this Security are in addition to and not substitution for any right of set-off, compensation, retention, combination of accounts, lien or other right or remedy provided by law.

3.4 Severability

The provisions of this Security shall be severable and distinct from one another and if at any time one or more of such provisions is or becomes or is declared void, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Security shall not in any way be affected or impaired thereby.

3.5 Non impairment

The Company agrees that none of its obligations or the Security Agent's rights, powers and discretions under this Security shall be reduced, discharged or otherwise adversely affected by:-

3.5.1 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any security or any right or remedy which the Security Agent may have now or in the future from or against the Company or any other person in respect of any of the Secured Obligations; or

- 3.5.2 any failure, act or omission by the Security Agent or any other person in taking up, perfecting or enforcing any security or guarantee from or against the Company or any other person in respect of the Secured Obligations; or
- 3.5.3 any increase in or waiver or discharge of the Secured Obligations or any termination, amendment, variation, supplement, restatement, novation or replacement of the Facilities Agreement or any Finance Document (in each case, however fundamental or of whatever nature); or
- 3.5.4 any grant of time, indulgence, waiver or concession to the Company or any other person; or
- 3.5.5 any of the administration, receivership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name or style of the Company or any other person; or
- 3.5.6 any invalidity, illegality, unenforceability, irregularity or frustration of the Secured Obligations; or
- 3.5.7 *anything done or omitted to be done by the Security Agent or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Company under this Security.*

3.6 Further assurance

The Company shall promptly after being requested to do so by the Security Agent do all such acts and things and execute and deliver all such documents as the Security Agent may require for perfecting or protecting this Security or its priority or for facilitating the realisation or application of the Secured Assets and the exercise of the rights, powers and discretions conferred on the Security Agent or any Receiver under this Security.

3.7 New accounts

At any time after the Security Agent has received or is deemed to be affected by notice (whether actual or constructive) of the creation of any subsequent security, charge or encumbrance over or affecting any part of the Secured Assets or the proceeds of realisation, the Security Agent may open a new account or accounts with the Company. If the Security Agent does not open a new account or accounts it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice and as from that time all payments made to the Security Agent shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount covered by this Security.

4. POWER OF ATTORNEY

4.1 Appointment

The Company hereby irrevocably appoints the Security Agent, whether or not a Receiver has been appointed, and separately also any Receiver, as its attorney on its behalf and in its name or otherwise, at such times and in such a manner as the attorney may think fit:-

- 4.1.1 to do anything which the Company is obliged to do (but has not done) under this Security; and

- 4.1.2 generally to exercise all or any of the rights, powers and discretions conferred on the Security Agent or Receiver in relation to the Secured Assets under this Security.

4.2 Ratification

The Company hereby ratifies and confirms and agrees to ratify and confirm whatever its attorney may do or purport to do in the exercise or purported exercise of the power of attorney given by the Company under this Clause.

4.3 Exercise of power

The appointment effected under Clause 4.1 (*Appointment*) shall take effect immediately (in the case of a Receiver, upon his/her appointment), but the powers conferred shall only become exercisable upon the occurrence of an Event of Default which is continuing (which upon the appointment of a Receiver shall be deemed to be the case) or if the Company does not fulfil any of its obligations under Clause 3.6 (*Further assurance*) within five Business Days of notice from the Security Agent or Receiver to do so.

5. REPRESENTATIONS AND WARRANTIES

Representations and warranties

The Company represents and warrants to the Security Agent that it has not save as provided in the Intercreditor Agreement, the Facilities Agreement or otherwise in the Finance Documents and except for liens or retention of title provisions arising in the ordinary course of its trading activities, granted or created any other security, charge or encumbrance over the Secured Assets or any interest therein, or agreed, conditionally or unconditionally, to do so.

6. ENFORCEMENT

6.1 Enforceable

This Security shall be enforceable immediately upon:-

- 6.1.1 an Event of Default occurring which is continuing;
- 6.1.2 any request being made by the Company to the Security Agent for the *appointment of a Receiver or an administrator, or for the Security Agent to exercise any other power or right available to it.*

6.2 Appointment of Receiver or administrator

6.2.1 At any time after this Security has become enforceable the Security Agent shall be entitled:-

- (a) to appoint one or more persons as a Receiver or Receivers in respect of the Secured Assets, or apply to the Court for such appointment;
- (b) to appoint one or more persons as an administrator or administrators of the Company;
- (c) to make an administration application in respect of the Company; or
- (d) to give notice of intention to appoint an administrator or administrators in respect of the Company.

6.2.2 The appointment of a Receiver or Receivers or an administrator or administrators, or the giving of notice of intention to appoint an administrator or administrators shall be effected by the Security Agent by written instrument or notice in accordance with and in such form as may be prescribed under the Act. If any such person so appointed as Receiver or administrator is removed from office by the Court or otherwise ceases to act, the Security Agent shall be entitled (subject to the provisions of the Act) to appoint a replacement in the same manner.

6.2.3 Paragraph 14 of Schedule B1 to the Act shall apply to this Security.

6.3 Powers of Receiver

A Receiver appointed under this Security shall have the following powers in addition to those specified in Schedule 2 to the Act:-

6.3.1 to promote or procure the incorporation of any new company (whether or not a subsidiary of the Company), to transfer any part of the Secured Assets to such company for any form of consideration (including shares, debentures, loan stock or loan capital in such company), and/or to subscribe for or otherwise acquire shares, debentures, loan stock or loan capital in such company in name of the Company, or the Receiver, or its or his/her nominee or trustee;

6.3.2 subject to the articles of association, to convene extraordinary general meetings of the Company;

6.3.3 generally, without prejudice to the other provisions of this Clause to exercise all the rights, powers and discretions in respect of the Secured Assets it would be entitled to exercise if it were the absolute owner thereof and to do all acts and things the Receiver may consider necessary or expedient for the realisation of the Secured Assets and the application of the proceeds in or towards satisfaction of or their retention as continuing security for the Secured Obligations; and

6.3.4 in respect of any of the Secured Assets situated in England and Wales (or any other jurisdiction) to exercise in addition to the foregoing powers, all the powers conferred by the Act or any other enactment or rule of law on receivers or receivers and managers (or analogous officers) in that jurisdiction.

6.4 Agent of Company

A Receiver shall be the agent of the Company for all purposes of and in all respects arising under this Security and, except as otherwise provided by the Act, the Company alone shall be responsible for his/her acts, omissions, neglects and defaults and for all liabilities and obligations incurred by him/her, and his/her remuneration costs, charges and expenses.

6.5 Application of proceeds

All monies realised by a Receiver or otherwise arising from the enforcement of this Security shall, subject always to Clause 6.6 (*Monies on suspense account*) and Clause 7 (*Discharge*), the claims of creditors ranking in priority to or *pari passu* with the claims of the Security Agent under this Security, and the terms of Section 60 of the Act, be applied by the Receiver in or towards settlement of the Secured Obligations in such order as set out in clause 10 (*Application of Proceeds*) of the Intercreditor Agreement and any surplus shall be paid to the Company or any other person entitled thereto.

6.6 Monies on suspense account

Nothing in this Security shall limit the right of a Receiver and/or the Security Agent (and the Company acknowledges that a Receiver and/or the Security Agent are so entitled) if and for so long as the Receiver and/or the Security Agent in his/her/its discretion shall consider it appropriate, to place all or any monies arising from the enforcement of this Security into a suspense account or accounts (which may be an account or accounts with the Security Agent), without any obligation to apply the same or any part thereof in or toward the discharge of the Secured Obligations provided that if the aggregate of such monies so placed to the credit of such suspense account or accounts shall equal or exceed the Secured Obligations, the Receiver and/or the Security Agent shall, subject always to Clause 7 (*Discharge*), forthwith apply the same towards settlement of the Secured Obligations.

6.7 Balance

The rights powers and discretions conferred on a Receiver under this Clause are subject only to his/her obligation to account to the Company or any other person entitled thereto for any balance of the Secured Assets or their proceeds remaining in his/her hands after the Secured Obligations have been fully and unconditionally paid and discharged.

6.8 Third parties

6.8.1 No purchaser from or other person dealing with a Receiver in relation to the Secured Assets shall be concerned to enquire whether any of the powers exercised or purported to be exercised by him/her hereunder has become exercisable, whether any of the Secured Obligations remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.

6.8.2 The receipt or discharge of a Receiver shall be an absolute discharge to any purchaser or other person dealing with the Receiver in relation to the Secured Assets and any such purchaser or third party shall not have any obligation to enquire after or see to the application of any payments made by it to the Receiver or at his/her direction.

7. DISCHARGE

7.1 Discharge

When the Secured Obligations have been fully and unconditionally paid or discharged the Security Agent shall at the Company's request, and at its expense, discharge this Security. Any payment or realisation in respect of the Secured Obligations which in the reasonable opinion of the Security Agent is liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, shall not be regarded as having been irrevocably settled or discharged until the expiry of the period during which it may be challenged on any such ground.

7.2 Retention of Security

If any payment or realisation in respect of the Secured Obligations is, in the Security Agent's reasonable opinion, liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, the Security Agent shall be entitled to retain this Security undischarged until the expiry of the period during which it may be challenged on any such ground.

7.3 Avoidance of payments

The Security Agent's right to recover the Secured Obligations in full shall not be affected or prejudiced by any payment or realisation which is avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, or by any release or discharge given by the Security Agent on the faith of any such payment or realisation.

8. LIABILITY OF RECEIVER AND SECURITY AGENT

A Receiver and the Security Agent shall not in any circumstances be liable to the Company or any other person for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Security or any realisation, appropriation or application of the Secured Assets or from any act, default or omission of the Receiver or the Security Agent, or his/her or its officers, employees or agents in relation to the Secured Assets or otherwise in connection with this Security, except to the extent caused by the fraud, gross negligence, wilful neglect or default of the Receiver or the Security Agent or his/her or its officers, employees or agents.

9. MISCELLANEOUS

9.1 Non compliance by Company

If the Company fails to make any payment or fulfil any obligation due by it under or pursuant to this Security, a Receiver or the Security Agent, as the case may be, shall be entitled to do so on its behalf and in its name (or in his/her/its own name as it considers expedient) and/or to take such action to remedy or mitigate the consequences of such failure as he/she/it considers expedient, and the amount of any such payment and/or the costs incurred in fulfilling such obligation or mitigating the consequences of such failure, shall be repayable by the Company on demand, together with interest at the Default Rate from the date of demand until settlement and shall constitute Secured Obligations.

9.2 Assignment

9.2.1 The Security Agent may at any time (without notice or consent) assign the benefit of this Security or any of its rights or obligations hereunder in accordance with the Facilities Agreement.

9.2.2 The Company may not assign, transfer or otherwise deal with the benefit or burden of this Security or any of its rights or obligations hereunder.

9.3 Entire agreement

This Security constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Security.

9.4 Non-reliance

Each of the parties acknowledges and agrees that in entering into this Security it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party to this Security or not) other than as expressly set out in this Security.

9.5 **Amendments**

No amendment or variation of this Security shall be effective unless it is in writing and signed by or on behalf of each of the parties.

9.6 **Counterparts And Delivery**

9.6.1 This Security may be executed in any number of counterparts and by each party on a separate counterpart.

9.6.2 Where this Security is executed in counterparts:

- (a) it shall not take effect until all counterparts have been delivered; and
- (b) all counterparts shall be held as undelivered until the parties agree the date on which they are to be treated as delivered.

10. **NOTICES**

The provisions of clause 34 (*Notices*) of the Facilities Agreement shall apply *mutatis mutandis* to this Security as if set out in full herein.

11. **GOVERNING LAW**

This Security shall be governed by and construed in accordance with the law of Scotland and in so far as not already subject thereto the parties irrevocably submit to the non-exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents consisting of this and the 8 preceding pages are executed as follows:-

SUBSCRIBED for and on behalf of
SHENVAL HYDRO LIMITED
at EDINBURGH
on the TWENTY FIRST day
of FEBRUARY 2017

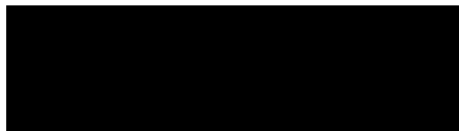


Director/Authorised Signatory

Alexander Reading

Full Name

before this witness

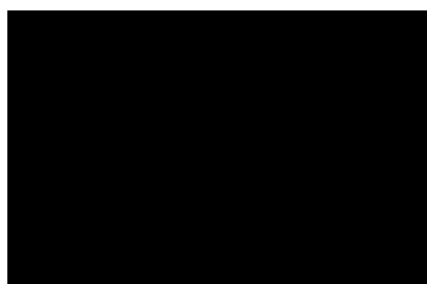


Full Name:

CHLOE SMITH


Address:

.....



SUBSCRIBED for and on behalf of
AIB GROUP (UK) P.L.C

at *Edinburgh*
on the *Twenty Second* day
of *February* 2017
by:-

.....  ~~Director~~ Authorised Signatory
..... *MATT TOOLAN* Full Name

before this witness



Full Name:

..... *Maive Mc Elbourney*

Address:

