



Registration of a Charge

Company name: **SIMEC GHR SHENVAL HYDRO LIMITED**

Company number: **SC489744**



X89KT7Z4

Received for Electronic Filing: **12/07/2019**

Details of Charge

Date of creation: **08/07/2019**

Charge code: **SC48 9744 0008**

Persons entitled: **NATIONAL WESTMINSTER BANK PLC AS SECURITY AGENT**

Brief description:

Contains fixed charge(s).

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**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 489744

Charge code: SC48 9744 0008

The Registrar of Companies for Scotland hereby certifies that a charge dated 8th July 2019 and created by SIMEC GHR SHENVAL HYDRO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th July 2019 .

Given at Companies House, Edinburgh on 12th July 2019

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

DATED

8th July

2019

(1) SIMEC GHR SHENVAL HYDRO LIMITED
(AS ASSIGNOR)

(2) NATIONAL WESTMINSTER BANK PLC
(AS SECURITY AGENT)

ASSIGNMENT AND CHARGE



Pinsent Masons

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THIS DEED is made on

8th July

2019

BETWEEN

- (1) **SIMEC GHR SHENVAL HYDRO LIMITED** a company incorporated in Scotland with company number SC489744 and whose registered office is at Inveralmond Road, Inveralmond Industrial Estate, Perth, PH1 3TW (the "**Assignor**")
- (2) **NATIONAL WESTMINSTER BANK PLC** as security trustee for the Secured Parties under and as defined in the Facilities Agreement (the "**Security Agent**")

RECITALS

- (A) The Finance Parties have agreed to make credit facilities available on the terms of the Facilities Agreement.
- (B) The Assignor has agreed to provide Security to the Security Agent to secure the payment and discharge of the Secured Obligations.

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed:-

"Accounts"	means the ProjectCo Operating Account opened or to be opened by the Assignor with National Westminster Bank plc (and shall include any replacement account, subdivision or sub-account of that account) and all moneys from time to time standing to the credit (including any interest thereon) of such accounts;
"Charged Property"	means all the property, assets and undertaking of the Assignor which from time to time are, or are expressed to be, the subject of the Security created in favour of the Security Agent by or pursuant to this Deed
"Debtors"	has the meaning given to that term in the Intercreditor Agreement
"this Deed"	means these presents, (including the Schedules)
"Default Rate"	means the rate of interest specified in, and calculated in accordance with, clause 10.3 of the Facilities Agreement
"Facilities Agreement"	means the agreement dated on or about the date of this Deed and entered into among <i>inter alios</i> (1) SIMEC GHR Acquisitions Limited (as the company), (2) SIMEC GHR Acquisitions Midco Limited (as the parent), (3) National Westminster Bank PLC among others (as original lender) (4) National Westminster Bank PLC among others (as arranger), (5) NatWest Markets Plc among others (as original hedge counterparty), (6) National Westminster Bank PLC (as agent), and (7) the Security Agent, as amended, supplemented, novated, extended or restated from time to time to which the Assignor acceded pursuant to an Accession Deed dated on or around the date of this Deed

"Intercreditor Agreement"		means the intercreditor agreement dated on or about the date of this Deed and made between (1) SIMEC GHR Acquisitions Limited (as the company), (2) the Security Agent, (3) National Westminster Bank plc (as agent of the other Finance Parties), (4) National Westminster Bank PLC among others (as mandated lead arranger), (5) National Westminster Bank PLC among others (as senior lender), (6) NatWest Markets Plc among others (as original hedge counterparty), and certain others (all as defined in the Intercreditor Agreement) to which the Assignor acceded pursuant to a Debtor Accession Deed (as defined therein) dated on or around the date of this Deed
"Insurances"		means all policies or contracts of insurance or assurance now or hereafter effected by the Assignor or on its behalf or in which it may have an interest which are governed by English law
"Hedging Agreement"		has the meaning given to that term in the Facilities Agreement
"Liabilities"		has the meaning given to that term in the Intercreditor Agreement
"LPA"		means the Law of Property Act 1925
"Notice of Assignment"		means a notice of assignment in the case of the Insurances, in the form set out in Schedule 1 (<i>Form of Notice of Assignment of Insurance Policies</i>) and, in the case of the Accounts, substantially in the form set out in Schedule 2 (<i>Form of Notice of Assignment of Accounts</i>)
"Party"		means a party to this Deed
"ProjectCo Account"	Operating	has the meaning given to that term in the Facilities Agreement
"Receiver"		means any receiver, receiver and manager or administrative receiver of the whole or any part of the Charged Property
"Related Rights"		means in relation to any Charged Property: <ul style="list-style-type: none"> (a) the proceeds of sale of any part of that Charged Property; (b) all rights, benefits, claims, contracts, warranties, remedies, security or indemnities in respect of that Charged Property; and (c) any moneys and proceeds paid or payable in respect of that Charged Property
"Schedule"		means the Schedule annexed as relative to this Deed
"Secured Obligations"		means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor 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

"Shareholder Agreements" **Loan** has the meaning given to that term in the Facilities Agreement

1.2 Facilities Agreement definitions

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

1.3 Interpretation

The provisions of clause 1.2 (*Construction*) of the Facilities Agreement shall apply *mutatis mutandis* to this Deed as if set out in full herein.

1.4 Conflict

If there is any conflict between the provisions of this Deed 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.

1.5 Acknowledgement

The Assignor acknowledges that the Security Agent enters into this Deed for itself and as trustee for the Secured Parties who shall be entitled to the full benefit of this Deed.

1.6 Effect as a deed

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Security Agent.

1.7 Third party rights

1.7.1 Each Secured Party, any Receiver and their respective officers, employees and agents may enforce any term of this Deed which purports to confer a benefit on that person, but no other person who is not a Party has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

1.7.2 Notwithstanding any term of this Deed, the consent of any person who is not a Party is not required for the Parties or any Receiver to rescind or vary this Deed at any time.

2. COVENANT TO PAY

The Assignor covenants that it will on demand pay and discharge any or all of the Secured Obligations when due in accordance with the Facilities Agreement and the other Finance Documents.

3. SECURITY

3.1 As a continuing security for payment of the Secured Obligations, the Assignor with full title guarantee:-

3.1.1 charges by way of first fixed charge (i) all amounts standing to the credit of the Accounts; and (ii) all Related Rights under or in connection with the Accounts;

- 3.1.2 charges by way of first fixed charge (i) the benefit of Hedging Agreements; and (ii) all Related Rights under or in connection with the Hedging Agreements, to the extent not effectively assigned under clause 3.1.4 below;
- 3.1.3 assigns absolutely, subject to a proviso for reassignment on the irrevocable discharge in full of the Secured Obligations (i) all its right, title and interest in the Insurances; and (ii) all Related Rights under or in connection with the Insurances;
- 3.1.4 assigns absolutely, subject to a proviso for reassignment on the irrevocable discharge in full of the Secured Obligations (i) all its right, title and interest in the Hedging Agreements; and (ii) all Related Rights under or in connection with the Hedging Agreements; and
- 3.1.5 assigns absolutely, subject to a proviso for reassignment on the irrevocable discharge in full of the Secured Obligations (i) all its right, title and interest in the Shareholder Loan Agreements; and (ii) all Related Rights under or in connection with the Shareholder Loan Agreements.

3.2 Dealings

- 3.2.1 Until an Event of Default occurs and is continuing, but subject always to Clauses 4 (*Undertakings*) and 5 (*Restrictions and Further Assurance*), the Assignor may continue to deal with each counterparty in relation to the Hedging Agreements, the Insurances, the Shareholder Loan Agreements and the Accounts and make any payments thereunder, or transfers in relation thereto as permitted in accordance with the terms of the Finance Documents.
- 3.2.2 Upon the occurrence of an Event of Default which is continuing, the Assignor shall have no further right to deal with each counterparty and the Security Agent may notify each counterparty that it should deal only with the Security Agent.

3.3 Trust

If or to the extent that for any reason the assignment or charging of any Charged Property is prohibited, the Assignor shall hold it on trust for the Security Agent.

4. UNDERTAKINGS

The Assignor shall, within two (2) Business Days of the date of this Deed, deliver (or procure delivery of) to the Security Agent duly executed Notices of Assignment on the date of this Deed and promptly upon entering into any Insurances or opening any Accounts after the date of this Deed and shall use reasonable endeavours to procure that each Notice of Assignment is acknowledged by the party to whom it is addressed.

5. RESTRICTIONS AND FURTHER ASSURANCE

5.1 Restrictions

Save as otherwise provided in the Intercreditor Agreement or the Facilities Agreement, the Assignor shall not create or permit to subsist any Security over any Charged Property, nor do anything else prohibited by clause 24.15 (*Negative pledge*) of the Facilities Agreement.

5.2 Further Assurance

The Assignor shall promptly do whatever the Security Agent requires:-

5.2.1 to perfect or protect the Security created or expressed to be created by this Deed, or its priority; or

5.2.2 once the Security created by this Deed has become enforceable, to facilitate the realisation of the Charged Property or the exercise of any rights vested in the Security Agent or any Receiver by this Deed or by law,

including executing any transfer, conveyance, charge, assignment or assurance of the Charged Property (whether to the Security Agent or its nominees or otherwise), making any registration and giving any notice, order or direction.

6. DEMAND AND ENFORCEMENT

6.1 Enforcement

The Security created by this Deed shall become enforceable upon:-

6.1.1 the occurrence of an Event of Default which is continuing; or

6.1.2 any request being made by the Assignor to the Security Agent for the appointment of a Receiver or an administrator.

6.2 Powers on enforcement

At any time after the Security created by this Deed has become enforceable, the Security Agent may (without prejudice to any other rights and remedies and without notice to the Assignor) do all or any of the following:-

6.2.1 exercise the power of sale under section 101 of the LPA together with all other powers and rights conferred on mortgagees by the LPA, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the LPA;

6.2.2 apply any sums payable under any Hedging Agreement, the Shareholder Loan Agreements, the Insurances or the Accounts in or towards satisfaction of the Secured Obligations;

6.2.3 exercise all the powers and rights of the Assignor under each Hedging Agreement, each Shareholder Loan Agreement or the Insurances; and

6.2.4 subject to Clause 7.1 (*Method of appointment or removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Charged Property.

6.3 Disposal of the Charged Property

In exercising the powers referred to in Clause 6.2.1 (*Powers on enforcement*), the Security Agent or any Receiver may sell or dispose of all or any of the Charged Property at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

6.4 Same rights as Receiver

Any rights conferred by any Finance Document upon a Receiver may be exercised by the Security Agent or to the extent permitted by law, an administrator, after the Security created by this Deed has become enforceable, whether or not the Security Agent shall have taken possession or appointed a Receiver of the Charged Property.

6.5 Delegation

The Security Agent may delegate in any manner to any person any rights exercisable by the Security Agent under any Finance Document. Any such delegation may be made upon such terms and conditions (including power to sub delegate) as the Security Agent thinks fit.

7. RECEIVERS

7.1 Method of appointment or removal

Every appointment or removal of a Receiver, any delegate or any other person by the Security Agent under this Deed shall be in writing under the hand of any officer or manager of the Security Agent (subject to any requirement for a court order in the case of the removal of an administrative receiver).

7.2 Removal

The Security Agent may (subject to the application of section 45 of the Insolvency Act 1986) remove any person from office in relation to all or any part of the Charged Property of which he is the Receiver and at any time (before or after any person shall have vacated office or ceased to act as Receiver in respect of any of such Charged Property) appoint a further or other Receiver or Receivers over all or any part of such Charged Property.

7.3 Powers

Every Receiver shall have and be entitled to exercise all the powers:-

- 7.3.1 of the Security Agent under this Deed;
- 7.3.2 conferred by the LPA on mortgagees in possession and on receivers appointed under the LPA;
- 7.3.3 of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986, whether or not the Receiver is an administrative receiver;
- 7.3.4 in relation to any Charged Property, which he would have if he were its only beneficial owner; and
- 7.3.5 to do all things incidental or conducive to any functions, powers, authorities or discretions conferred or vested in the Receiver.

7.4 Receiver as agent

The Receiver shall be the agent of the Assignor (which shall be solely liable for his acts, defaults, remuneration, losses and liabilities) unless and until the Assignor goes into liquidation, from which time he shall act as principal and shall not become the agent of the Assignor.

7.5 Joint or several

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

7.6 Receiver's remuneration

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by the Security Agent and the maximum rate specified in section 109(6) of the LPA shall not apply.

8. APPLICATION OF MONEYS

All sums received by virtue of this Deed and/or any other Transaction Security Documents by the Security Agent or any Receiver shall, subject to the payment of any claim having priority to this Deed, be paid or applied in such order as provided in clause 14 (*Application of Proceeds*) of the Intercreditor Agreement and section 109(8) of the LPA shall not apply.

9. POWER OF ATTORNEY

9.1 Appointment

The Assignor hereby irrevocably appoints the Security Agent 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:

9.1.1 to do anything which the Assignor is obliged to do (but has not done) under this Deed including, without limitation, to execute further securities, transfers or assignments of and other instruments relating to, the Charged Property; and

9.1.2 generally to exercise all or any of the rights, powers and discretions conferred on the Security Agent in relation to the Charged Property under this Deed.

9.2 Ratification

The Assignor ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed pursuant to Clause 9.1 (*Appointment*) does or purports to do in the exercise or purported exercise of all or any of the powers, acts or other matters referred to in Clause 9.1 (*Appointment*).

9.3 Exercise of Power

The appointment effected under Clause 9.1 (*Appointment*) shall take effect immediately, but the powers conferred shall only become exercisable upon the occurrence of an Event of Default which is continuing or if the Assignor does not fulfil any of its obligations under Clause 5.2 (*Further assurance*) within five Business Days of notice from the Security Agent to do so.

10. PROTECTION OF THIRD PARTIES

10.1 Statutory powers

In favour of any purchaser, the statutory powers of sale and of appointing a Receiver which are conferred upon the Security Agent, as varied and extended by this Deed, and all other powers of the Security Agent, shall be deemed to arise (and the Secured Obligations shall be deemed due and payable for that purpose) immediately after the execution of this Deed.

10.2 Purchasers

No purchaser from or other person dealing with the Security Agent, any person to whom it has delegated any of its powers, or the Receiver, shall be concerned:-

- 10.2.1 to enquire whether any of the powers which the Security Agent or a Receiver have exercised has arisen or become exercisable;
- 10.2.2 to enquire whether the Secured Obligations remain outstanding or whether any event has happened to authorise the Receiver to act; or
- 10.2.3 as to the propriety or validity of the exercise of those powers,

and the title and position of a purchaser or such person shall not be impeachable by reference to any of those matters.

10.3 Receipts

All the protection to purchasers contained in sections 104 and 107 of the LPA, section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any Receiver or any person to whom any of them have delegated any of their powers.

11. PROTECTION OF THE FINANCE PARTIES AND ANY RECEIVER

11.1 No obligation

Notwithstanding any other term of this Deed no Finance Party shall have any obligation or liability under any of the Hedging Agreements, Shareholder Loan Agreements or the Insurances by reason only of this Deed to:-

- 11.1.1 perform any of the obligations or duties of the Assignor under any of the Hedging Agreements, Shareholder Loan Agreements or the Insurances;
- 11.1.2 make any payment under any of the Hedging Agreements, Shareholder Loan Agreements or the Insurances;
- 11.1.3 present or file any claim or take any other action to collect or enforce any claim for the payment of any sum payable under any Hedging Agreement, Insurances or Shareholder Loan Agreement; or
- 11.1.4 make any enquiries as to the nature or sufficiency of any payments received by it under this Deed.

11.2 No liability

None of the Security Agent, the other Finance Parties, any Receiver or any of their respective officers, employees or delegates shall be liable in respect of any cost, liability, expense, loss or damage which arises out of the exercise, or attempted or purported exercise of, or the failure to exercise, any of their respective rights under this Deed, except to the extent caused by the gross negligence or wilful misconduct of the Security Agent, the other Finance Parties or any of their respective officers, employees or delegates.

11.3 Continuing protection

The provisions of this Clause 11 (*Protection of the Finance Parties and any Receiver*) shall continue in full force and effect notwithstanding any release or discharge of this Deed or the discharge of any Receiver from office.

12. PROVISIONS RELATING TO THE SECURITY AGENT

12.1 Powers and discretions

The rights, powers and discretions given to the Security Agent in this Deed:-

- 12.1.1 may be exercised as often as, and in such manner as, the Security Agent thinks fit;
- 12.1.2 are cumulative, and are not exclusive of any of its rights under the general law; and
- 12.1.3 may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.

12.2 Trusts

The perpetuity period for any trusts constituted by this Deed shall be 125 years.

13. PRESERVATION OF SECURITY

13.1 Continuing Security

This Deed shall be a continuing security to the Security Agent and shall remain in force until expressly discharged in writing by the Security Agent notwithstanding any intermediate settlement of account or other matter or thing whatsoever. The Security Agent shall promptly provide notice in writing to the Assignor upon the Secured Obligations being fully and unconditionally paid and discharged.

13.2 Additional Security

This Deed is without prejudice and in addition to, and shall not merge with, any other right, remedy or Security of any kind which the Security Agent may have now or at any time in the future for or in respect of any of the Secured Obligations.

13.3 Waiver of Defences

Neither the Security created by this Deed nor the obligations of the Assignor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to it or the Security Agent or any other Finance Party including:-

- 13.3.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;
- 13.3.2 the release of any Obligor or any other person under the terms of any composition or arrangement with any person;
- 13.3.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 13.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor or any other person;
- 13.3.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Finance Document or any other document or Security;

13.3.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Finance Document or any other document; or

13.3.7 an insolvency, liquidation, administration or similar procedure.

13.4 Immediate recourse

The Assignor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights of Security or claim payment from any person before claiming from the Assignor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

13.5 Appropriations

Any Finance Party may:-

13.5.1 refrain from applying or enforcing any monies, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Obligations, or, subject to Clause 8 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Obligations or otherwise) and the Assignor shall not be entitled to the same; and

13.5.2 hold in an interest-bearing suspense account any moneys received from the Assignor on or account of the Secured Obligations 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 14 (*Release*), forthwith apply the same towards settlement of the Secured Obligations.

13.6 New Accounts

At any time after the Security Agent has received or is deemed to be affected by notice (whether actual or otherwise) of the creation of any subsequent security, charge or encumbrance over or affecting any part of the Charged Property or the proceeds of realisation, the Security Agent may open a new account or accounts with the Assignor. 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 Deed.

13.7 Tacking

For the purposes of section 94(1) of the LPA and section 49(3) of the Land Registration Act 2002 the Security Agent confirms on behalf of the Lenders that the Lenders shall make further advances to the Borrower on the terms and subject to the conditions of the Finance Documents.

14. RELEASE

14.1 Release

When the Secured Obligations have been fully and unconditionally paid or discharged the Security Agent shall at the Assignor's request, and at its expense, discharge the Security created by or pursuant to this Deed. 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.

14.2 Reinstatement

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

14.3 Consolidation

Section 93 of the LPA dealing with the consolidation of mortgages shall not apply to this Deed.

15. MISCELLANEOUS PROVISIONS

15.1 Severability

The provisions of this Deed 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 Deed shall not in any way be affected or impaired thereby.

15.2 Non impairment

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

- 15.2.1 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 Assignor or any other person in respect of any of the Secured Obligations; or
- 15.2.2 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 Assignor or any other person in respect of the Secured Obligations; or
- 15.2.3 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
- 15.2.4 any grant of time, indulgence, waiver or concession to the Assignor or any other person; or
- 15.2.5 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 Assignor or any other person; or
- 15.2.6 any invalidity, illegality, unenforceability, irregularity or frustration of the Secured Obligations; or

- 15.2.7 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 Assignor under this Deed.

15.3 Remedies and waivers

Failure or delay on the part of the Security Agent in exercising any right, power or discretion under or pursuant to this Deed 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 Deed 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.

15.4 Counterparts

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

16. GOVERNING LAW

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

17. ENFORCEMENT

- 17.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").
- 17.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 17.1.3 This Clause 17 (*Enforcement*) is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

EXECUTED as a **DEED** and delivered on the date appearing at the beginning of this Deed.

SCHEDULE 1 - FORM OF NOTICE OF ASSIGNMENT FOR INSURANCE POLICIES

[ASSIGNOR'S HEADED PAPER]

To be printed on the headed notepaper of the relevant Chargor

To: [Insert name and address of relevant insurer]

Copy: [Insert name and address of relevant insurance broker]

Date: []

Dear Sirs,

**[DESCRIPTION OF RELEVANT INSURANCE POLIC[Y][IES] INCLUDING POLICY NUMBER]
(THE "POLIC[Y][IES]") [refer to an attached schedule if there are a number of policies]**

1. We give you notice that we have entered into an assignment and charge dated [] in favour of [SECURITY AGENT] (the "Security Agent") (the "Assignment and Charge").
2. Pursuant to the terms of the Assignment and Charge, we have assigned (and, to the extent not validly or effectively assigned, we have charged by way of fixed charge) to the Security Agent by way of security all of our rights, title, interest and benefits in to or in respect of the Polic[y][ies] including the benefit of all claims and returns of premiums in respect thereof to which we are or may at any time become entitled.
3. Following the Security Agent's notification to you that the security created by the Assignment and Charge has become enforceable:-
 - 3.1.1 all payments and claims under or arising from the Polic[y][ies] are to be made to the Security Agent to such account (or to its order) as it may specify in writing from time to time;
 - 3.1.2 all remedies provided for in the Polic[y][ies] or available at law or in equity are to be exercisable by the Security Agent; and
 - 3.1.3 all rights to compel the performance of the Polic[y][ies] are to be exercisable by the Security Agent.
4. Subject to the foregoing, you may continue to deal with us in relation to the Polic[y][ies] until you receive written notice to the contrary from the Security Agent. Thereafter, we will cease to have any right to deal with you in relation to the Polic[y][ies] and you must deal only with the Security Agent.
5. The authority and instructions contained in this notice cannot be revoked or varied by us without the prior written consent of the Security Agent.
6. By countersigning this letter, you confirm that you have not received notice of any previous assignments or charges of or over any of the rights, title and interests and benefits referred to in this notice.
7. This notice, and any dispute or claim arising out of or in connection with it, shall be governed by and construed in accordance with English law.

Please acknowledge receipt of this notice and your acknowledgement of the matters and instructions set out above by signing, dating and returning the enclosed copy of this letter directly to the Security Agent at [] marked for the attention of [].

Yours faithfully,

for and on behalf of
[Chargor]

Acknowledged:

.....

For and on behalf of [*Name of insurer*]

SCHEDULE 2 - FORM OF NOTICE OF ASSIGNMENT OF ACCOUNTS

To be printed on the headed notepaper of the Chargor

To: [Insert name and address of relevant account bank]

Date: []

Dear Sirs,

1. We give you notice that we have entered into an assignment and charge dated [] in favour of National Westminster Bank PLC (the "**Security Agent**") (the "**Assignment and Charge**").
2. We refer to the following bank account[s] which we hold with you (and any replacement account or subdivision or subaccount of [that][each] account) (the "**Assigned Account[s]**"):

Account holder	Account name	Account number	Sort code

3. We give you notice that, pursuant to the terms of the Assignment and Charge, we have assigned (and, to the extent not validly or effectively assigned, we have charged by way of fixed charge) to the Security Agent by way of security all of our rights, title and interest from time to time in the Assigned Account[s] including, without limitation all amounts at any time standing to the credit of the Assigned Account[s] (whether in sterling or any other currency and whether in addition to or by way of renewal or replacement for any sums previously deposited or otherwise) together with all interest accruing from time to time in respect of such money.
4. With effect from the Security Agent's notification to you that the security created by the Assignment and Charge has become enforceable (an "**Enforcement Notice**"):
 - 4.1 any existing payment instructions affecting the Assigned Account[s] are to be terminated and all payments and communications in respect of the Assigned Account[s] should be made to the Security Agent or to its order (with a copy to us);
 - 4.2 all moneys standing to the credit of the Assigned Account[s] are to be held to the order of the Security Agent; and
 - 4.3 all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Assigned Account[s] belong to the Security Agent.

5. By countersigning this letter, you confirm that:-
- 5.1 no fees or periodic charges are payable in respect of the Assigned Account[s] and there are no restrictions on:
- 5.1.1 the payment of the credit balance on the Assigned Account[s]; or
- 5.1.2 the assignment of the Assigned Account[s] to the Security Agent or any third party;
- 5.2 you have not received notice of any previous assignments of, charges over or trusts in respect of, the Assigned Account[s];
- 5.3 you will not, without the Security Agent's consent:-
- 5.3.1 exercise any right of combination, consolidation or set-off which you may have in respect of the Assigned Account[s]; or
- 5.3.2 amend or vary any rights attaching to the Assigned Account[s];
- 5.4 you shall send all statements and other notices given by you relating to the Assigned Account[s] to the Security Agent; and
- 5.5 following receipt of an Enforcement Notice, you will comply with the instructions in paragraph 4 above and act only in accordance with instructions given by persons authorised by the Security Agent.
6. The authority and instructions contained in this notice cannot be revoked or varied by us without the prior written consent of the Security Agent.
7. This notice, and any dispute or claim arising out of or in connection with it, shall be governed by and construed in accordance with English law.

Please acknowledge receipt of this notice and your acknowledgement of the matters and instructions set out above within [5] days of receipt by signing, dating and returning the enclosed copy of this letter directly to the Security Agent at [] marked for the attention of [].

Yours faithfully,

for and on behalf of

SIMEC GHR SHENVAL HYDRO LIMITED

SIGNATURES

The Assignor

EXECUTED as a Deed
By **SIMEC GHR SHENVAL HYDRO LIMITED**
acting by a Director

$$\left. \begin{array}{l}) \\) \\) \\) \\) \\) \end{array} \right\} \quad \left. \begin{array}{l}) \\) \\) \\) \\) \\) \end{array} \right\}$$

Director/Authorised Signatory

before this witness

Witness:

Full Name:

Full Name: Keith Marti

Address:

Address: CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London
EC4N 6AF

The Security Agent

EXECUTED as a Deed
By **NATIONAL WESTMINSTER BANK PLC**
acting by an Authorised Signatory

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)
)
)
)

Director/Authorised Signatory

before this witness

Witness

Full Name:

Sam Williams

Address:

Pinsent Masons
30 Crown Place
London
EC2A 4ES