



Registration of a Charge

Company name: **OUR HYDRO LIMITED**

Company number: **SC367358**



X85LWIC0

Received for Electronic Filing: **16/05/2019**

Details of Charge

Date of creation: **16/05/2019**

Charge code: **SC36 7358 0002**

Persons entitled: **SOCIAL GROWTH FUND LLP**

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: **WE 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.**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 367358

Charge code: SC36 7358 0002

The Registrar of Companies for Scotland hereby certifies that a charge dated 16th May 2019 and created by OUR HYDRO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th May 2019 .

Given at Companies House, Edinburgh on 17th May 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

BOND AND FLOATING CHARGE

by

OUR HYDRO LIMITED

in favour of

SOCIAL GROWTH FUND LLP

2019

SC9/BW2

DATE OF DELIVERY: 16th May 2019

SIS Social
Investment
Scotland

BOND AND FLOATING CHARGE

by

Our Hydro Limited, incorporated under the laws of Scotland (Registered Number SC367358) whose registered office is at C/O Here We Are, Clachan, Cairndow, Argyll, PA26 8BL [registered as a charity in Scotland (the "**Chargor**")];

in favour of

SOCIAL GROWTH FUND LLP, a Limited Liability Partnership incorporated under the Limited Liability Partnerships Act in Scotland (No SO304839) and having its Registered Office at 6 Broughton Street Lane, Edinburgh, EH1 3LY (the "**Chargee**")

CONSIDERING THAT the Chargor has agreed to secure its obligations to the Chargee by the grant to the Chargee of (inter alia) a floating charge in Scottish form, being this instrument.

NOW IT IS HEREBY PROVIDED AND DECLARED THAT:

1 Interpretation

1.1 In this Instrument;

"**the Act**" means the Companies Act 2006;

"**Charged Assets**" means the whole of the property (including uncalled capital) which is or may be from time to time while this Instrument is in force comprised in the property and undertaking of the Chargor;

"**Default Rate**" means the rate of interest payable in accordance with the terms of any agreements or letters setting out the terms of or constituting the Secured Liabilities in relation to any amount which is not paid on the due date therefor;

"**Encumbrance**" includes any standard security, assignation in security, floating charge, pledge, lien, hypothecation, encumbrance, title retention, or any other agreement or arrangement having the effect of conferring a security interest (whether fixed or floating);

"**Event of Default**" has the meaning given to it in the Facility Letter;

"**Facility Letter**" means the Facility Letter dated 10th May 2019 between the Chargor and the Chargee in relation to a Term Loan Facility of up to £719,366 as amended, varied or updated from time to time;

"**Insolvency Act**" means the Insolvency Act 1986;

"**Permitted Encumbrance**" means:

- a) any Encumbrances in favour of the Chargee;
- b) any lien arising solely by operation of law in the ordinary course of business of the Chargor in respect of any obligation which is not overdue for settlement; and
- c) Encumbrances granted with the prior written consent of the Chargee;

"**Receiver**" means any receiver or administrative receiver appointed in respect of the Charged Assets (whether pursuant to this Instrument, pursuant to any statute, by a Court or otherwise) and includes joint receivers;

"Secured Liabilities" means all or any monies and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatever manner to the Chargee by the Chargor, whether actually or contingently, solely or jointly and whether as principal or surety and whether or not the Chargee shall have been an original party to the relevant transaction and including interest, discount, commission and other lawful charges or expenses which the Chargee may in the course of its business charge or incur in respect of any of those matters or for keeping the Chargor's account, and so that interest shall be computed and compounded according to the Chargee's usual rates and practice as well after as before any demand made or decree obtained under this Instrument; and

"Security Period" means the period beginning on the date hereof and ending on the date upon which all the Secured Liabilities (actual or contingent) which have arisen or which may arise have been irrevocably paid and discharged or the floating charge hereby created has been finally released and discharged.

- 1.2 References in this Instrument to a **"fixed security"** shall be construed as a reference to a fixed security as defined by Section 70 of the Insolvency Act as in force at the date hereof.
- 1.3 The expressions **"the Chargor"** and **"the Chargee"** shall include the successors, assignees and transferees of the Chargor and the Chargee.
- 1.4 Unless any provision of this Instrument or the context otherwise requires, any reference herein to any statute or any section of any statute shall be deemed to include a reference to any statutory modification or re-enactment thereof for the time being in force.
- 1.5 In this Instrument the singular includes the plural and vice versa. Clause headings are for convenience of reference only.
- 1.6 Any reference in this Instrument to a document of any kind whatsoever (including this Instrument) is to that document as amended or varied or supplemented or novated or substituted from time to time.
- 1.7 Any appointment of a Receiver or administrator under Clause 5 hereof may be made by any successor or assignee or transferee of the Chargee, and the Chargor hereby irrevocably appoints each such successor or assignee or transferee to be its attorney in the terms and for the purposes stated in Clause 11 hereof.
- 1.8 Any reference to a "working day" means a day (other than a Saturday or Sunday) on which banks are open for business in Edinburgh.

2 **Bond**

The Chargor shall on demand in writing made to it pay or discharge the Secured Liabilities when the same are due and payable.

3 **Floating Charge**

- 3.1 The Chargor, being a company incorporated in Scotland, as a continuing security for the payment and discharge of all the Secured Liabilities HEREBY GRANTS in favour of the Chargee a *first* ranking floating charge over the whole of the Charged Assets.
- 3.2 The floating charge hereby created shall, subject to Section 464(2) of the Companies Act 1985, rank in priority to any fixed security which shall be created by the Chargor after its execution hereof, other than a fixed security in favour of the Chargee, and to any other floating charge which shall be created by the Chargor on or after its execution hereof and, subject as aforesaid, no such fixed security or

other floating charge shall rank in priority to or equally with the floating charge hereby created by it.

- 3.3 Except with the prior written consent of the Chargee (such consent not to be unreasonably withheld or delayed), the Chargor shall not during the Security Period create, incur, assume or permit to subsist any Encumbrance save for any Permitted Encumbrance on all or any part of the Charged Assets.
- 3.4 Except with the prior written consent of the Chargee or as expressly permitted by the terms of any agreement relating to the Secured Liabilities, the Chargor shall not sell, feu, transfer, lease, hire out, lend, discount, factor, charge or otherwise dispose of, deal in or remove all or any of the Charged Assets other than in the ordinary course of business.

4 Undertakings

- 4.1 The Chargor hereby undertakes with the Chargee, for the duration of the Security Period, that the Chargor will comply with all its obligations under this Instrument and all agreements relating to the Secured Liabilities.
- 4.2 The Chargor will, if the Chargee so requires at any time, deposit with the Chargee all certificates, deeds and other documents of title or evidence of ownership in relation to all or any of the Charged Assets.

5 Enforcement

- 5.1 This Instrument is a qualifying floating charge and Paragraph 14 of Schedule B1 to the Insolvency Act (incorporated by Schedule 16 to the Enterprise Act 2002) shall apply to this Instrument.
- 5.2 This Instrument shall become enforceable upon and at any time after:
 - 5.2.1 the occurrence of an Event of Default (whether or not the same is then continuing);
 - 5.2.2 the Chargor has failed to pay all or any of the Secured Liabilities in accordance with Clause 2;
 - 5.2.3 any step is taken (including, without limitation, the making of an application or the giving of any notice) by the Chargor or by any other person to appoint an administrator in respect of the Chargor;
 - 5.2.4 any step is taken (including, without limitation, the making of an application or the giving of any notice) by the Chargor or by any other person to wind up or dissolve the Chargor or to appoint a liquidator (whether provisional, interim or otherwise), trustee, receiver, administrative receiver or similar officer to the Chargor or any part of its undertaking or assets;
 - 5.2.5 the making of a request by the Chargor for the appointment of a Receiver or administrator.
- 5.3 At any time after this Instrument has become enforceable the Chargee shall be and is entitled to appoint in writing any one or more persons as:
 - 5.3.1 a Receiver of all or any of the Charged Assets; and/or
 - 5.3.2 an administrator of the Chargor, in each case in accordance with and to the extent permitted by applicable laws.

- 5.4 In addition and without prejudice to the foregoing provisions of this Clause, in the event that any person appointed in pursuance hereof to be a Receiver as aforesaid shall be removed by a Court or shall otherwise cease to act as such, then the Chargee shall be entitled so to appoint another person or persons as Receiver or Receivers in his place.
- 5.5 A Receiver so appointed shall have and be entitled to exercise all the powers conferred upon such a Receiver by the Insolvency Act and in addition to and without limiting these powers, such Receiver shall have power to:
- 5.5.1 implement and exercise all or any of the Chargor's powers and/or rights and/or obligations under any contract or other agreement forming a part of the Charged Assets;
 - 5.5.2 make any arrangement or compromise which he shall reasonably think expedient of or in respect of any claim by or against the Chargor;
 - 5.5.3 promote or procure the formation of any new company or corporation;
 - 5.5.4 subscribe for or acquire for cash or otherwise any share capital of such new company or corporation in the name of the Chargor and on its behalf and/or in the name(s) of a nominee(s) or trustee(s) for it;
 - 5.5.5 sell, feu, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise the Charged Assets or any part thereof to any such new company or corporation and accept as consideration or part of the consideration therefor in the name of the Chargor and on its behalf and/or in the name(s) of any nominee(s) or trustee(s) for it any shares or further shares in any such company or corporation or allow the payment of the whole or any part of such consideration to remain deferred or outstanding by way of loan or debt or credit;
 - 5.5.6 sell, feu, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise on behalf of the Chargor any such shares or deferred consideration or part thereof or any rights or benefits attaching thereto;
 - 5.5.7 convene an extraordinary general meeting of the Chargor;
 - 5.5.8 acquire any property on behalf of the Chargor;
 - 5.5.9 in respect of any assets of the Chargor situated in England and Wales, exercise in addition to the foregoing all the powers conferred by the Insolvency Act or any other enactment or under law on Receivers appointed in that jurisdiction; and
 - 5.5.10 do all such other acts and things as he may consider reasonably necessary for protecting or realising the Charged Assets or any part thereof or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of or pursuant to this Instrument, and exercise in relation to the Charged Assets or any part thereof all such powers and authorities and do all such things as he would be capable of exercising or doing if he were the absolute beneficial owner of the same; and use the name of the Chargor for all and any of the purposes aforesaid.
- 5.6 In the exercise of the powers hereby conferred any Receiver may sever and sell plant machinery or other fixtures separately from the property to which they may be annexed.

6 Office of Receiver

- 6.1 Any Receiver appointed under Clause 5 shall be the agent of the Chargor for all purposes and (subject to the provisions of the Insolvency Act) the Chargor alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him in good faith and for his reasonable remuneration and his reasonable costs, charges and expenses, and the Chargee shall not incur any liability therefor (either to the Chargor or any other person) by reason of the Chargee making his appointment as such Receiver or for any other reason whatsoever.
- 6.2 Any Receiver appointed under Clause 5 shall be entitled to reasonable remuneration for his services and the services of his firm appropriate to the responsibilities involved upon the basis of charging from time to time adopted by the Receiver in accordance with the current practice of receivers of his firm.

7 Application of Enforcement Monies

All monies received under the powers conferred by this Instrument will, subject to the claims of any creditors ranking in priority to or *pari passu* with the claims of the Chargee hereunder, be paid or applied in payment or discharge of the Secured Liabilities (subject to the terms of section 60 of the Insolvency Act) provided that nothing contained in this Instrument shall limit the right of any Receiver or administrator (and the Chargor acknowledges that any Receiver or administrator is so entitled) if and for so long as the Receiver or administrator in their discretion, shall consider it appropriate, to place all or any monies arising from the enforcement of the security interest hereby granted or any security created pursuant hereto into a suspense account without any obligation to apply the same or any part thereof in or toward the discharge of any Secured Liability.

8 Release and Discharge

- 8.1 The Chargee may at any time release the Chargor from any or all of its obligations under or pursuant to this Instrument and/or all or any part of the Charged Assets from the security created by this Instrument upon such terms as the Chargee may think fit but nothing in this Instrument does, shall constitute or is intended to constitute a release of any of the Charged Assets.
- 8.2 Upon irrevocable payment or discharge in full of the Secured Liabilities, the Chargee shall at the Chargor's request and cost release to the Chargor (or as it may direct) the Charged Assets from the floating charge hereby created.

9 Protection of Security

- 9.1 The security created by this Instrument shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever, and in particular (but without prejudice to the generality of the foregoing) shall not be considered satisfied by an intermediate repayment or satisfaction of part only of the Secured Liabilities, and shall continue in full force and effect until total and irrevocable satisfaction of all the Secured Liabilities.
- 9.2 The security created by this Instrument shall be in addition to and shall not in any way prejudice or be prejudiced by any collateral or other security, right or remedy which the Chargee may now or at any time hereafter hold for all or any part of the Secured Liabilities.
- 9.3 No failure on the part of the Chargee to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Instrument or any other document relating to or securing all or any part of the Secured Liabilities will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of

any other right or remedy. The rights and remedies provided in this Instrument and any such other document are cumulative and not exclusive of any right or remedies provided by law.

- 9.4 Each of the provisions in this Instrument 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 howsoever the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 9.5 If the Chargee receives or is deemed to be affected by notice whether actual or constructive of any subsequent security or other interest affecting any part of the Charged Assets and/or the proceeds of sales thereof, the Chargee may open a new account or accounts for the Chargor. If the Chargee does not open a new account it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice and as from that time all payments made to the Chargee shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount for which this Instrument is security.
- 9.6 Neither the security created by this Instrument nor the rights, powers, discretions and remedies conferred upon the Chargee by this Instrument or by law shall be discharged, impaired or otherwise affected by reason of:
 - 9.6.1 any present or future security, guarantee, indemnity or other right or remedy held by or available to the Chargee being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Chargee from time to time exchanging, varying, realising, releasing or failing to perfect or enforce any of the same;
 - 9.6.2 the Chargee compounding with, discharging or releasing or varying the liability of, or granting any time, indulgence or concession to, the Chargor or any other person or renewing, determining, varying or increasing any accommodation or transaction in any manner whatsoever or concurring in accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from the Chargor or any other person;
 - 9.6.3 any act or omission which would not have discharged or affected the liability of the Chargor had it been a principal debtor instead of cautioner or by anything done or omitted which but for this provision might operate to exonerate the Chargor from the Secured Liabilities; or
 - 9.6.4 any legal limitation, disability, incapacity or other similar circumstance relating to the Chargor.
- 9.7 The Chargee shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Instrument or by law, to:
 - 9.7.1 take any action or obtain judgement or decree in any Court against the Chargor;
 - 9.7.2 make or file any claim to rank in a winding-up or liquidation of the Chargor; or
 - 9.7.3 enforce or seek to enforce any other security taken, or exercise any right or plea available to the Chargee.

10 Further Assurance

The Chargor shall execute and do all such assurances, acts and things as the Chargee may reasonably require for perfecting or protecting the security created by or pursuant to this Instrument over the Charged Assets or for facilitating the realisation of such assets and the exercise of all powers, authorities and discretions vested in the Chargee or in any Receiver or administrator and shall, in particular, execute all fixed securities, floating charges, assignments, securities, transfers, dispositions and assurances of the Charged Assets whether to the Chargee or to its nominee(s) or otherwise and give all notices, orders and directions which the Chargee may think expedient including, if so required by the Chargee in the case of securities over heritable property, any such clauses as are contained in any of the Chargee's standard or usual forms of standard security from time to time (including variations to the standard conditions set out in Schedule 3 of the Conveyancing & Feudal Reform (Scotland) Act 1970).

11 Mandate and Attorney

11.1 The Chargor hereby irrevocably appoints the Chargee (whether or not a Receiver or administrator has been appointed) and also (as a separate appointment) any Receiver or administrator severally to be its mandatory and attorney for it and on its behalf and in its name or otherwise and as its act or deed to create or constitute, or to make any alteration or addition or deletion in or to, any documents which the Chargee, Receiver or administrator may require for perfecting or protecting the title of the Chargee, Receiver or administrator to the Charged Assets or for vesting any of the Charged Assets in the Chargee, Receiver or administrator or its nominees or any purchaser and to re-deliver the same thereafter and otherwise generally to sign, seal and deliver and otherwise perfect any fixed security, floating charge, transfer, disposition, assignment, security and/or assurance or any writing, assurance, document or act which may be required or may be deemed proper by the Chargee, Receiver or administrator on or in connection with any sale, lease, disposition, realisation, getting in or other enforcement by the Chargee, Receiver or administrator of all or any of the Charged Assets.

11.2 The Chargor hereby ratifies and confirms and agrees to ratify and confirm whatever any such mandatory or attorney shall do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 11.

12 Expenses

12.1 The Chargor binds and obliges itself for the whole proper and reasonable expenses of enforcing the security hereby granted and the proper and reasonable expenses of any discharge hereof.

12.2 All reasonable costs, charges and expenses properly incurred and all reasonable payments made by the Chargee or any Receiver hereunder in the lawful exercise of the powers hereby conferred whether or not occasioned by any act, neglect or default of the Chargor shall carry interest from the date of the same being incurred or becoming payable at the Default Rate. The amount of all such reasonable costs, charges, expenses and payments and all interest thereon and all reasonable remuneration payable hereunder shall be payable by the Chargor on demand and shall be a Secured Liability. All such reasonable costs, charges, expenses and payments shall be paid and charged as between the Chargee or any Receiver and the Chargor on the basis of a full and unqualified indemnity.

13 Indemnity

The Chargee and every Receiver, attorney, manager, agent or other person appointed by the Chargee or any such Receiver in connection herewith shall be entitled to be indemnified out of the Charged Assets in respect of all reasonable liabilities and expenses properly incurred by them or him in the execution or purported execution of any of the powers, authorities or

discretions vested in them or him pursuant hereto and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in anywise relating to the Charged Assets, and the Chargee and any Receiver may retain and pay all sums in respect of the same out of any monies received under the powers hereby conferred.

14 Avoidance of Payments

Any amount which has been paid by the Chargor to the Chargee and which is, in the reasonable opinion of the Chargee, capable of being reduced or restored or otherwise avoided in whole or in part in the liquidation or administration of the Chargor, shall not be regarded as having been irrevocably paid for the purposes of this Instrument.

15 Notices

15.1 All notices, requests and demands under or in connection with this Instrument shall be validly served or made:

15.1.1 if hand delivered, or sent by letter to, the address shown above for each of the parties or to such other address as a party may have notified to the other in writing; or

15.1.2 if sent by facsimile to the facsimile number most recently provided to each party by the other.

15.2 Any such notice, request or demand, if served personally, will take effect upon its service and, if sent by post, will take effect at 10.00am on the second (first class post) or third (second class post) working day after the day of its posting and, if transmitted by facsimile, will take effect upon its transmission.

16 Governing Law and Jurisdiction

16.1 This Instrument shall be governed by, and construed in all respects in accordance with, the law of Scotland.

16.2 For the benefit of the Chargee, the Chargor irrevocably agrees that the Court of Session in Edinburgh is to have jurisdiction to settle any disputes which may arise out of or in connection with this Instrument and that, accordingly, any suit, action or proceedings arising out of or in connection with this Instrument (Proceedings) may be brought in that Court. The Chargor irrevocably waives any objection to Proceedings in that Court on the grounds of venue or on the ground that the Proceedings have been brought in an inconvenient forum.

16.3 Nothing in this Clause 16 shall affect any right any person may have to take Proceedings in any other jurisdiction nor shall the taking of Proceedings in any jurisdiction preclude any person from taking Proceedings in any other jurisdiction.

16.4 The Chargor irrevocably consents to any process in any Proceedings anywhere being served by mailing a copy by registered or certified prepaid post to it in accordance with the terms of Clause 15 above. Nothing shall affect the right to serve process in any other manner permitted by law.

17 Certificate

A Certificate signed by an authorised officer of the Chargee shall, in the absence of manifest error, conclusively determine the Secured Liabilities at any relevant time and shall constitute a balance and charge against the Chargor, and no suspension of a charge or of a threatened charge for payment of the balance so constituted shall pass nor any sist of execution thereon be granted except on consignment.

18 Consent to Registration

The Chargor hereby consents to the registration of this Instrument and of any such certificate for preservation and execution.

19 Counterparts

- 19.1 This Instrument may be executed in any number of counterparts and by each of the parties on separate counterparts, all as permitted by The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015.
- 19.2 If executed in counterparts:
- 19.2.1 this Instrument will not take effect until each of the counterparts have been delivered;
- 19.2.2 each counterpart of this Instrument will be held as undelivered until the parties agree a date on which all of the counterparts are to be treated as delivered; and
- 19.2.3 the date of delivery of this Instrument may be inserted on the front page of this Instrument in the blank provided for the delivery date.

IN WITNESS WHEREOF these presents consisting of this and the preceding nine pages have been executed as follows:

SUBSCRIBED for and on behalf of Our Hydro Limited
by JOHN MAC DONALD
at HONG KONG
on 14/5/19
in the presence of:-


Director

Witness

Full Name

Address



SUBSCRIBED for and on behalf of SOCIAL GROWTH FUND LLP
by ARISTAIR JOHNSTONE
at EDINBURGH
on 16th MAY 2019
in the presence of:-


Member AUTHORIZED SIGNATORY

Witness

Full Name

Address

