



**Registration of a Charge**

Company Name: **SMS MAPCO 1 LIMITED**

Company Number: **11022594**



Received for filing in Electronic Format on the: **09/09/2021**

XACP69YX

**Details of Charge**

Date of creation: **03/09/2021**

Charge code: **1102 2594 0004**

Persons entitled: **BARCLAYS BANK PLC AS SECURITY TRUSTEE FOR THE SECURED PARTIES**

Brief description: **NOT APPLICABLE.**

**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: **ADDLESHAW GODDARD LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 11022594

Charge code: 1102 2594 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 3rd September 2021 and created by SMS MAPCO 1 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 9th September 2021 .

Given at Companies House, Cardiff on 10th September 2021

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                      3 September                      2021**

**THE ENTITIES LISTED IN SCHEDULE 1 TO THIS DEED  
as Chargors**

**BARCLAYS BANK PLC  
as Security Trustee**

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**SUPPLEMENTAL FLOATING  
CHARGE AND ASSIGNMENT**

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**This Floating charge and assignment** is made on

3 September 2021

**Between**

- (1) **The entities listed in Schedule 1** (each a Chargor and together the **Chargors**)
- (2) **Barclays Bank PLC** (registered in England with number 1026167) as security trustee for the Secured Parties (**Security Trustee**, which term shall include any person appointed as security trustee or as an additional trustee in accordance with the terms of the Facility Agreement).

**It is agreed**

**1 Definitions and interpretation**

**1.1 Definitions**

In this Deed:

**Charged Contracts** means the Customer Agreements and any Customer Security Agreements

**Customer Agreement Rights** means in relation to a Customer Agreement, the whole benefit of and all the right, title and interest, present and future, actual or contingent of a Chargor in and to:

- (a) the Customer Agreement, including all sums due and to become due under a Customer Agreement, including any sums payable to a Chargor on termination of the relevant Customer Agreement
- (b) all claims, rights and remedies of a Chargor arising out of or in connection with a breach of or default under or in connection with the relevant Customer Agreement and
- (c) any Customer Security Agreement

**Customer Agreements** means each Customer Agreement (as defined in the Facility Agreement) entered into by any Chargor from time to time

**Customer Security Agreement** means any indemnity, guarantee or other form of security or credit enhancement relating to any Customer Agreement

**Enforcement Event** means the occurrence of an Event of Default which has resulted in a notice being served in accordance with clause 26.15 (Acceleration) of the Facility Agreement

**Facility Agreement** the facility agreement between, amongst others, Smart Metering Systems PLC as the parent, UKMA (AF) Limited as the company, the companies listed in part 1 of schedule 1 thereto as original borrowers, the companies listed in part 2 of schedule 1 thereto as original guarantors, the financial institutions listed in part 3 of schedule 1 thereto as original lenders and Barclays Bank PLC as Agent and Security Trustee and dated 21 December 2018, as amended on 20 March 2020 and as further amended and restated on or about the date of this Deed

**Floating Charge Assets** means all the assets and undertaking from time to time subject to the floating charge created under clause 3.3 (Floating charge)

**Intellectual Property** means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, topography rights, domain names, moral rights, inventions, confidential information, knowhow and any other associated or similar intellectual property rights and interests anywhere in the world (which may now or in the future subsist), and in each case whether registered or unregistered and
- (b) the benefit of all applications, rights to apply for and rights to use such assets (including, without limitation, any licences and sub-licences of the same) (which may now or in the future subsist)

**Investments** means any shares, stocks, debenture security, securities, bonds and investments of any type whatever, including but not limited to, negotiable instruments, certificates of deposit, eligible debt securities, interests in collective investment schemes, or other investments referred to in section 22 of, and as defined in Part II of Schedule 2 to, the Financial Services and Markets Act 2000 and Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, whether certificated or uncertificated, physical or dematerialised, registered or unregistered, held by each Chargor or by a trustee or clearance system or nominee

**Original Floating Charge and Assignment** means the floating charge and assignment dated 21 December 2018 entered into by the Chargors in favour of the Security Trustee

**Party** means a party to this Deed

**Receiver** means any receiver, manager or administrative receiver appointed by the Security Trustee in respect of each Chargor or any of the Secured Assets

**Related Rights** means, in respect of any Investment:

- (a) all monies paid or payable in respect of that Investment (whether as income, capital or otherwise)
- (b) all shares, investments or other assets derived from that Investment; and
- (c) all rights derived from or incidental to that Investment

**Secured Assets** means all of the Chargor's assets and undertaking the subject of any Security created by, under or supplemental to, this Deed in favour of the Security Trustee

**Secured Obligations** means all monies and liabilities now or after the date of this Deed due owing or incurred by any Chargor to the Secured Parties (or any of them) under the Finance Documents (or any of them) in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, together with all interest accruing on such monies and liabilities and all costs, charges and expenses incurred by any Secured Party under any Finance Document except for any obligation which, if it were included here, constitutes unlawful financial assistance, or its equivalent in any other jurisdiction

**Security Period** means the period beginning on the date of this Deed and ending on the date that the Secured Obligations have been irrevocably and unconditionally satisfied in full and all facilities made available by the Secured Parties (or any of them) under the Finance Documents (or any of them) have been cancelled and all obligations of the Hedge Counterparties under the Hedging Agreement have been terminated

## 1.2 Interpretation

- (a) Unless otherwise defined in this Deed, a term defined in the Facility Agreement has the same meaning when used in this Deed or any notices, acknowledgements or other documents issued under or in connection with this Deed.
- (b) In this Deed the term **dispose** includes any sale, lease, licence, transfer or loan.
- (c) Clause 1.2 (Interpretation) of the Facility Agreement is incorporated in this Deed as if set out here in full but so that each reference in that clause to **this Agreement** shall be read as a reference to this Deed.

## 1.3 Third party rights

- (a) Unless expressly provided to the contrary in any Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other Finance Document issued or entered into under or in connection with it but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.
- (b) Unless expressly provided to the contrary in any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Deed or any other Finance Document entered into under or in connection with it.

## 1.4 Administration

- (a) Any reference in this Deed, or any other Finance Document entered into under or in connection with it, to the making of an administration order shall be treated as including a reference to the appointment of an administrator under paragraph 14 (by the holder of a qualifying floating charge in respect of a Chargor's assets) or 22 (by a Chargor or the directors of a Chargor) of Schedule B1 to the Insolvency Act 1986 or any steps taken toward such order or appointment.
- (b) Any reference in this Deed or any other Finance Document entered into under or in connection with it, to making an application for an administration order by petition shall be treated as including a reference to making an administration application to the court under Schedule B1 to the Insolvency Act 1986, appointing an administrator under paragraph 14 or 22 of that Schedule, or giving notice under paragraph 15 or 26 of that Schedule of intention to appoint an administrator or any steps taken towards such application or notice.

## 1.5 Incorporated Terms

The terms of the Finance Documents and of any side letters relating to the Finance Documents and the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of any Secured Assets contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

## 2 Covenant to pay

Each Chargor covenants with the Security Trustee as security trustee for the Secured Parties, to pay and discharge the Secured Obligations when they become due for payment and discharge in accordance with the terms of the Finance Documents.

### **3 Charging provisions**

#### **3.1 General**

All Security created by the Chargors under clauses 3.2 and 3.3 is:

- (a) a continuing security for the payment and discharge of the Secured Obligations;
- (b) granted with full title guarantee;
- (c) granted in respect of all the right, title and interest (if any), present and future, of each Chargor in and to the relevant Secured Asset; and
- (d) granted in favour of the Security Trustee as security trustee for the Secured Parties.

#### **3.2 Assignments**

- (a) Each Chargor assigns the Charged Contracts (to the extent that the assignment of those Charged Contracts is permitted under the terms of the Charged Contracts) and the Customer Agreement Rights; and
- (b) Each Chargor shall remain liable to perform all its obligations under each Charged Contracts.

#### **3.3 Floating charge**

Each Chargor charges by way of first floating charge all its assets and undertaking wherever located both present and future.

#### **3.4 Qualifying floating charge**

This Deed contains a qualifying floating charge and paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by or under this Deed.

#### **3.5 Conversion of floating charge to a fixed charge**

The Security Trustee may, at any time by notice in writing to a Chargor, convert the floating charge created under clause 3.3 into a fixed charge as regards any Floating Charge Asset as it shall specify in the notice if:

- (a) an Event of Default is continuing; or
- (b) in the opinion of the Security Trustee that Floating Charge Asset is in danger of being seized or any legal process or execution is being enforced against that Floating Charge Asset.

#### **3.6 Automatic conversion of floating charge to a fixed charge**

If (unless permitted in writing by the Security Trustee or expressly permitted under the terms of any Finance Document):

- (a) a Chargor creates or attempts to create any Security over any of its Floating Charge Assets;



- (b) any person levies or attempts to levy any distress, attachment, execution or other legal process against any Floating Charge Asset; or
- (c) any corporate action, legal proceedings or other procedures or steps are taken for the winding up, dissolution, administration or reorganisation of a Chargor,

the floating charge created by this Deed will automatically and immediately without notice be converted into a fixed charge over the relevant assets or, in the circumstances described in clause 3.6(c), over all of the Floating Charge Assets.

### **3.7 Small company moratorium**

Where the Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986, then the obtaining of a moratorium, including any preliminary decision, or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986 shall not cause the floating charge created by this Deed to crystallise into a fixed charge, nor cause restrictions which would not otherwise apply to be imposed on the disposal of its property and assets by the Chargor.

## **4 Continuing security**

### **4.1 Continuing security**

The Security constituted by this Deed shall be continuing security and shall remain in full force and effect regardless of any intermediate payment or discharge by any Chargor or any other person of the whole or any part of the Secured Obligations.

### **4.2 Recourse**

The Security constituted by this Deed:

- (a) is in addition to any other Security which any Secured Party may hold at any time for the Secured Obligations (or any of them)(including but not limited to the Original Floating Charge and Assignment); and
- (b) may be enforced without first having recourse to any other rights of any Secured Party.

## **5 Negative pledge**

**5.1** No Chargor shall create or permit to subsist any Security over any of its assets.

**5.2** No Chargor shall:

- (a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by it;
- (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

- 5.3 Clauses 5.1 and 5.2 do not apply to any Security or arrangement which is Permitted Security.

## **6 Restrictions on disposals**

- 6.1 No Chargor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any Secured Assets except in the ordinary course of business where the Secured Asset is only subject to an uncrystallised floating charge.
- 6.2 Clause 6.1 does not apply any Permitted Leasing, any Permitted Disposal or any Permitted Transaction.

## **7 Further assurance**

- 7.1 Each Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require) in favour of the Security Trustee or its nominee(s):
- (a) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Security Trustee or the Secured Parties provided by or pursuant to this Deed or by law;
  - (b) to confer on the Security Trustee or confer on the Secured Parties Security over any property and assets of a Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Deed; and/or
  - (c) (if an Event of Default is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by or under this Deed.
- 7.2 Each Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Trustee or the Secured Parties by or pursuant to this Deed.

## **8 Undertakings**

- 8.1 Each Chargor hereby undertakes with the Security Trustee that during the Security Period:
- (a) it will not sell, lease, transfer or otherwise dispose of any Charged Contract unless permitted under the terms of the Facility Agreement; and
  - (b) it will discharge all its obligations under the Charged Contracts in accordance with the provisions thereof.
- 8.2 Each Chargor hereby represents, warrants and undertakes to the Security Trustee that subject to the Legal Reservations, so far as it is aware each Charged Contract is valid, binding and enforceable on the other parties thereto.

## **9 Notices of assignments and charges**

### **Charged Contracts**

- 9.1 Save as where already served under the Original Floating Charge and Assignment, following an Event of Default which is continuing, each Chargor shall give notice in the form specified in Part 1 (Form of notice of assignment) of Schedule 2 to the other parties to each Charged Contract that the relevant Chargor has assigned to the Security Trustee all its right, title and interest in that Charged Contract.
- 9.2 Each Chargor shall post, by special delivery, the notices referred to in clause 9.1 no later than two Business Days after the date that the Security Trustee requests such notice to be served.
- 9.3 Each Chargor shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that notice in substantially the form specified in Part 2 (Form of acknowledgement) of Schedule 2 within 5 Business Days of that notice being given.

## **10 Security power of attorney**

- 10.1 Subject to clause 10.3 below, each Chargor hereby irrevocably appoints the Security Trustee and any Receiver appointed hereunder jointly and also severally to be its attorney or attorneys (with full power of substitution) and in its name and otherwise on its behalf:
- (a) to do all acts and things and to sign, seal, execute, deliver, perfect and do all deeds, instruments, documents, acts and things which may be required for carrying out any obligation imposed on the relevant Chargor by or pursuant to this Deed and generally for enabling the Security Trustee and such Receiver to exercise the respective powers conferred on them by or pursuant to this Deed or by law;
  - (b) to do all acts and to execute, sign and (if required) register in its name all documents which the relevant Chargor itself could do, execute, sign or register in relation to the Charged Contracts; and
  - (c) to execute, sign, perfect, do and (if required) register every such further assurance, document, act or thing as is referred to in clause 7 (Further assurance).
- 10.2 The exercise by the Security Trustee of such power shall be conclusive evidence of its right to exercise the same.
- 10.3 The Security Trustee, any Receiver or any of their delegates or sub-delegates shall only be able to exercise a power of attorney under this Deed:
- (a) following the occurrence of an Event of Default which is continuing; or
  - (b) if a Chargor has failed to comply with a provision or perfection obligation (or any of them) under this Deed, within 5 Business Days of being notified of such failure (with a copy of such notice being served on the relevant Chargor).

## **11 Enforcement of security**

### **11.1 When security is enforceable**

On the occurrence of any Enforcement Event, the Security created by and under this Deed is immediately enforceable.

### **11.2 Acts of enforcement**

The Security Trustee may, at its absolute discretion, at any time after the Security created by or under this Deed is enforceable:

- (a) enforce all or any part of the Security created by or under this Deed in any manner it sees fit;
- (b) exercise its rights and power conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not it has taken possession or appointed a Receiver to any of the Secured Assets;
- (c) appoint a Receiver to all or any part of the Secured Assets;
- (d) appoint an administrator in respect of any Chargor and take any steps to do so
- (e) exercise its power of sale under section 101 of the Law of Property Act 1925; or
- (f) if permitted by law, appoint an administrative receiver in respect of any Chargor.

### 11.3 Right of appropriation

To the extent that the Security created by this Deed constitutes a "security financial collateral arrangement" and the Secured Assets constitute "financial collateral" for the purpose of the Financial Collateral Arrangements (No 2) Regulations 2003 (**Regulations**), the Security Trustee shall have the right on giving prior notice to the relevant Chargor, at any time after the Security becomes enforceable, to appropriate all or any part of those Secured Assets in or towards discharge of the Secured Obligations. The parties agree that the value of the appropriated Secured Assets shall be, in the case of cash, the amount of cash appropriated and, in the case of Investments, determined by the Security Trustee by reference to any publicly available market price in the absence of which by such other means as the Security Trustee (acting reasonably) may select including, without limitation, an independent valuation. For the purpose of Regulation 18(1) of the Regulations, each Chargor agrees that any such determination by the Security Trustee will constitute a valuation "in a commercially reasonable manner".

### 11.4 Statutory powers – general

- (a) For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the Law of Property Act 1925 and section 93 of the Law of Property Act 1925 do not apply to the Security constituted by or under this Deed.
- (c) The statutory powers of leasing conferred on the Security Trustee are extended so that, without the need to comply with any provision of section 99 or section 100 of the Law of Property Act 1925, the Security Trustee is empowered to lease and make agreements for least at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as it may think fit.
- (d) Each Receiver and the Security Trustee is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and Receivers.

### 11.5 Contingencies

If the Security Trustee enforces the Security constituted by or under this Deed at a time when no amounts are due to any Secured Party under the Finance Documents but at a time when

amounts may or will become so due, the Security Trustee (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.

#### **11.6 Mortgagee in possession – no liability**

Neither the Security Trustee nor any Receiver will be liable, by reason of entering into possession of a Secured Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

#### **11.7 Redemption of prior mortgages**

At any time after the Security created by or under this Deed has become enforceable, the Security Trustee may, at the sole cost of the Chargors (payable to the Security Trustee on demand):

- (a) redeem any prior form of Security over any Secured Asset; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, charge or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargors.

### **12 Receiver**

#### **12.1 Appointment of Receiver**

- (a)
  - (i) At any time after any Security created by or under this Deed is enforceable, the Security Trustee may appoint a Receiver to all or any part of the Secured Assets in accordance with clause 10.2(c) (Acts of enforcement).
  - (ii) At any time, if so requested in writing by any Chargor, without further notice, the Security Trustee may appoint a Receiver to all or any part of the Secured Assets as if the Security Trustee had become entitled under the Law of Property Act 1925 to exercise the power of sale conferred under the Law of Property Act 1925.
- (b) Any Receiver appointed under this Deed shall be the agent of the relevant Chargor and that Chargor shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall the Security Trustee be in any way responsible for any misconduct, negligence or default of the Receiver.
- (c) Where a Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986:
  - (i) obtaining a moratorium, or
  - (ii) anything done with a view to obtaining a moratorium including any preliminary decision or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986,

shall not be grounds for appointment of a Receiver.

## 12.2 Removal

The Security Trustee may by written notice remove from time to time any Receiver appointed by it (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receiver) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

## 12.3 Powers of Receiver

### (a) General

- (i) In addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 11.3.
- (ii) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.
- (iii) A Receiver of a Chargor has all the rights, powers and discretions of an administrative receiver under the Insolvency Act 1986.
- (iv) A Receiver may, in the name of any Chargor:
  - (A) do all other acts and things which he may consider expedient for realising any Secured Asset; and
  - (B) exercise in relation to any Secured Asset all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.

### (b) Borrow money

A Receiver may raise and borrow money (either unsecured or on the security of any Secured Asset, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

### (c) Carry on business

A Receiver may carry on the business of any relevant Chargor as he thinks fit and, for the avoidance of doubt, a Receiver may apply for such Authorisations as he considers in his absolute discretion appropriate.

### (d) Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of any relevant Chargor or relating in any way to any Secured Asset.

### (e) Delegation

A Receiver may delegate his powers in accordance with clause 13 (Delegation).

(f) **Employees**

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of any relevant Chargor or for itself as Receiver, may:

- (i) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and
- (ii) discharge any such persons appointed by the relevant Chargor.

(g) **Leases**

A Receiver may let any Secured Asset for any term and at any rent (with or without a premium) which he thinks proper and may accept a surrender of any lease or tenancy of any Secured Assets on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

(h) **Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the relevant Chargor in relation to any Secured Asset as he considers expedient.

(i) **Possession**

A Receiver may take immediate possession of, get in and collect any Secured Asset.

(j) **Protection of assets**

A Receiver may, in each case as he may think fit:

- (i) make and effect all repairs and insurances and do all other acts which the relevant Chargor might do in the ordinary conduct of its business be they for the protection or for the improvement of the Secured Assets;
- (ii) commence and/or complete any building operations on the Secured Property or other Secured Asset; and
- (iii) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence.

(k) **Receipts**

A Receiver may give valid receipts for all monies and execute all assurances and things which may be expedient for realising any Secured Asset.

(l) **Sale of assets**

A Receiver may sell, exchange, convert into monies and realise any Secured Asset by public auction or private contract in any manner and on any terms which he thinks proper. The consideration for any such transaction may consist of cash, debenture or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period

as he thinks fit. Fixtures and any plant and machinery annexed to any part of the Secured Property may be severed and sold separately from the property containing them without the consent of the relevant Chargor.

(m) **Subsidiaries**

A Receiver may form a Subsidiary of the relevant Chargor and transfer to that Subsidiary any Secured Asset.

(n) **Deal with Secured Assets**

A Receiver may, without restriction sell, let or lease, or concur in selling, letting or leasing, or vary the terms of, determine, surrender or accept surrenders of, leases or tenancies of, or grant options and licences over or otherwise dispose of or deal with, all or any part of the Secured Assets without being responsible for loss or damage, and so that any such sale, lease or disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration. The Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase, lease, licence or otherwise acquire interests in all or any of the Secured Assets or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire all or any of the Secured Assets on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit.

(o) **Voting rights**

A Receiver may exercise all voting and other rights attaching to the Investments, Related Rights and stocks, shares and other securities owned by that Chargor and comprised in the Secured Assets in such manner as he may think fit.

(p) **Security**

A Receiver may redeem any prior Security and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on that Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver.

(q) **Acquire land**

The Receiver may purchase or acquire any land and purchase, acquire or grant any interest in or right over land.

(r) **Development**

A Receiver may implement or continue the development of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on, any real property comprised in the Secured Property and do all acts and things incidental to the Secured Property.

(s) **Landlord's obligations**

A Receiver may on behalf of a Chargor and without consent of or notice to that Chargor exercise all the powers conferred on a landlord or a tenant by the Landlord and Tenants Acts, the Rents Acts and Housing Acts or any other legislation from time to time in force



in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Secured Property.

(t) **Uncalled capital**

A Receiver may make calls conditionally or unconditionally on the members of any relevant Chargor in respect of uncalled capital.

(u) **Incidental matters**

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Secured Assets and to use the name of the relevant Chargor for all the purposes set out in this clause 11.

**12.4 Remuneration**

The Security Trustee may from time to time fix the remuneration of any Receiver appointed by it.

**13 Delegation**

13.1 The Security Trustee and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Security Trustee and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Security Trustee and Receiver (as appropriate) may think fit.

13.2 The Security Trustee and any Receiver will not be liable or responsible to any Chargor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate.

**14 Application of monies**

14.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed.

14.2 All monies received by the Security Trustee or any Receiver under this Deed shall be applied in accordance with the terms of clause 30.11 (Application) of the Facility Agreement.

14.3 The Security Trustee and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

**15 Remedies and waivers**

15.1 No failure to exercise, nor any delay in exercising, on the part of the Security Trustee or any Receiver, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of

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

- 15.2 A waiver given or consent granted by the Security Trustee under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

## **16 Protection of third parties**

- 16.1 No person (including a purchaser) dealing with the Security Trustee or a Receiver or its or his agents has an obligation to enquire of the Security Trustee, Receiver or others:

- (a) whether the Secured Obligations have become payable;
- (b) whether any power purported to be exercised has become exercisable;
- (c) whether any Secured Obligations or other monies remain outstanding;
- (d) how any monies paid to the Security Trustee or to the Receiver shall be applied; or
- (e) the status, propriety or validity of the acts of the Receiver or Security Trustee.

- 16.2 The receipt of the Security Trustee or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Security Trustee or any Receiver.

- 16.3 In clauses 15.1 and 15.2 **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Secured Assets or any of them.

## **17 Additional security**

The Security created by or under this Deed is in addition to and is not in any way prejudiced by any guarantee or security now or subsequently held by any Secured Party.

## **18 Settlements conditional**

- 18.1 If the Security Trustee (acting reasonably) believes that any amount paid by a Chargor or any other person in respect of the Secured Obligations is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid.

- 18.2 Any settlement, discharge or release between a Chargor and any Secured Party shall be conditional upon no Security or payment to or for that Secured Party by that Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

## **19 Subsequent Security**

If the Security Trustee or any Secured Party receives notice of any other subsequent Security or other interest affecting all or any of the Secured Assets it may open a new account or accounts for the relevant Chargor in its books. If it does not do so then, unless it gives express written notice to the contrary to that relevant Chargor, as from the time of receipt of such notice by the Security Trustee, all payments made by that Chargor to the Security Trustee or to any other Secured Party shall be treated as having been credited to a new account of that Chargor and not as having been applied in reduction of the Secured Obligations.

**20 Set-off**

A Secured Party may, set off any matured obligation due from a Chargor under the Finance Documents (to the extent beneficially owned by that Secured Party) against any matured obligation owed by that Secured Party to that Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**21 Notices**

Any communication under this Deed or any other Security or Finance Document created by or under this Deed, shall be made and given in accordance with the terms of clause 35 (Notices) of the Facility Agreement.

**22 Invalidity**

Clause 37 (Partial invalidity) of the Facility Agreement shall apply to this Deed as if set out here in full but so that references to the Finance Documents shall be construed as references to this Deed and any Security created by or under it.

**23 Assignment**

The Security Trustee may assign or otherwise transfer all or any part of its rights under this Deed or any Security created by or under it in accordance with the terms of the Finance Documents.

**24 Releases**

Upon the expiry of the Security Period, the Security Trustee shall, at the request and cost of the Chargors, take whatever action is necessary to release and reassign to each relevant Chargor:

- (a) its rights arising under this Deed;
  - (b) the Secured Assets from the Security created by and under this Deed,
- and return all documents or deeds of title delivered to it under this Deed.

**25 Currency clauses**

25.1 Clause 33.9 (Change of currency) of the Facility Agreement shall apply to this Deed as if set out here in full but so that references to the Finance Documents shall be construed as references to this Deed and any Security created by or under it.

25.2 If a payment is made to the Security Trustee under this Deed in a currency (**Payment Currency**) other than the currency in which it is expressed to be payable (**Contractual Currency**), the Security Trustee may convert that payment into the Contractual Currency at the rate at which it (acting reasonably and in good faith) is able to purchase the Contractual Currency with the Payment Currency on or around the date of receipt of the payment and to the extent that the converted amount of the payment falls short of the amount due and payable each Chargor will remain liable for such shortfall.

**26 Certificates and determinations**

Clause 34.2 (Certificates and determinations) of the Facility Agreement shall apply to this Deed as if set out here in full but so that references to the Finance Documents shall be construed as references to this Deed and any Security created by or under it and references to the Secured Parties shall be construed as references to the Security Trustee.

**27 Counterparts**

This Deed or any Finance Document entered into under or in connection with this Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed or any such Finance Document entered into under or in connection with this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

**28 Effect of security**

28.1 The security created under this Deed is created in case the security created by the Original Floating Charge and Assignment does not secure all amounts owing to the Finance Parties under the Finance Documents and is created in addition to and does not affect the security created by the Original Floating Charge and Assignment.

28.2 Where a right or asset has been assigned (subject to a proviso for re-assignment on redemption) under the Original Floating Charge and Assignment and the same asset or right is purported to be assigned (subject to a proviso for re-assignment on redemption) again under this Deed, that second assignment will take effect as a fixed charge over that right or asset and will only take effect as an assignment if the relevant security created by the Original Floating Charge and Assignment ceases to have effect at a time when this Deed still has effect.

**29 Governing law**

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

**30 Enforcement****30.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (**Dispute**).
- (b) 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.
- (c) This clause 28 is for the benefit of the Security Trustee. As a result, the Security Trustee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions.

**This Deed** has been signed on behalf of the Security Trustee and executed as a deed by each Chargor and is delivered on the date given at the beginning of this Deed. It is intended by the parties to this Deed

that this Deed will take effect as a deed notwithstanding that the Security Trustee may only execute it under hand.

**Schedule 1****Chargors**

<b>Name</b>	<b>Jurisdiction of incorporation</b>	<b>Registered number</b>
UKMA (AF) Limited	England	7130739
SMS Energy Services Limited	England	03197379
SMS MAPCO 1 Limited	England	11022594

**Schedule 2****Charged Contracts****Part 1 - Form of notice of assignment**

To: ♦

Dated: ♦

Dear Sirs

**The agreement described in the attached schedule (Agreement)**

We hereby notify you that we have assigned to Barclays Bank PLC (**Security Trustee**) as security trustee for itself and certain financial institutions all our right, title and interest in and to the Agreement.

We hereby irrevocably and unconditionally authorise and instruct you:

- 1 without notice or reference to, or further authority from us and without enquiring as to the justification or the validity of those instructions, to comply only with any instructions from time to time received by you from the Security Trustee relating to the Agreement and any rights under or in connection with the Agreement; and
- 2 to pay all sums payable by you under the Agreement directly to our account at such account as the Security Trustee may specify from time to time.

Please sign and return the acknowledgement attached to one enclosed copy of this notice to the Security Trustee and the other copy to us.

The provisions of this notice (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

Yours faithfully

.....

for and on behalf of

♦ **Limited**

The Schedule

Date	Parties	Description
◆	◆	◆

[Attach form of acknowledgment]



**Part 2 - Form of acknowledgement**

To: Barclays Bank PLC

[address]

To: ♦ Limited (**Chargor**)

[address]

We acknowledge receipt of the notice of assignment (**Notice**) of which the enclosed is a duplicate. Terms defined in the Notice shall have the same meaning when used in this acknowledgement. We confirm that:

- 1 there has been no amendment, waiver or release of any rights or interests in the Agreement since the date of the Agreement;
- 2 we will not agree to any amendment, waiver or release of any provision of the Agreement without the prior written consent of the Security Trustee;
- 3 we shall act in accordance with the Notice;
- 4 as at the date of this acknowledgement we have not received any notice of assignment or charge of each Chargor's interest in the Agreement in favour of any other person;
- 5 as at the date of this acknowledgement, we are not aware of any breach by the Chargor of the terms of the Agreement; and
- 6 we do not have and have not claimed or exercised any right or claim against the Chargor or exercised or attempted to exercise any right of set-off, counterclaim or other right relating to the Agreement.

The provisions of this acknowledgement (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

For and on behalf of

♦

SIGNATORIES TO THE FLOATING CHARGE AND ASSIGNMENT

Chargors

Executed as a deed by  
**UKMA (AF) Limited** acting by two directors  
or by a director and its secretary

) .....  
) Director  
) .....  
) .....  
) Director/Secretary

Executed as a deed by  
**SMS Energy Services Limited** acting by  
two directors or by a director and its  
secretary

) .....  
) Director  
) .....  
) .....  
) Director/Secretary

Executed as a deed by  
**SMS MAPCO 1 Limited** acting by two  
directors or by a director and its secretary

) .....  
) Director  
) .....  
) .....  
) Director/Secretary

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**Security Trustee**

**Barclays Bank PLC**

By:

