



Registration of a Charge

Company name: **BMM Energy Solutions Ltd**

Company number: **SC462201**



X6HOL656

Received for Electronic Filing: **23/10/2017**

Details of Charge

Date of creation: **12/10/2017**

Charge code: **SC46 2201 0001**

Persons entitled: **JOHN RITCHIE AS SECURITY AGENT**

Brief description: **N/A**

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.**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 462201

Charge code: SC46 2201 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 12th October 2017 and created by BMM Energy Solutions Ltd was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd October 2017 .

Given at Companies House, Edinburgh on 24th October 2017

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



Companies House



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

**ADDLESHAW GODDARD ACT ONLY FOR BMM ENERGY SOLUTIONS LTD AND NOT
FOR ANY INDIVIDUAL OR PARTY IN THIS MATTER.**

**SIGNING THIS DOCUMENT WILL HAVE LEGAL CONSEQUENCES AND IT IS
RECOMMENDED THAT YOU TAKE INDEPENDENT LEGAL ADVICE**

FLOATING CHARGE

By

BMM ENERGY SOLUTIONS LTD

in favour of

**JOHN RITCHIE
as Security Agent**

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	COVENANT TO PAY	5
3.	DEFAULT INTEREST	6
4.	SECURITY	6
5.	ENFORCEMENT	7
6.	LIABILITY OF THE SECURITY AGENT	9
7.	PROTECTION OF SECURITY	10
8.	REPRESENTATIONS AND UNDERTAKINGS	14
9.	APPROPRIATION, PAYMENTS AND COSTS AND EXPENSES.....	16
10.	NOTICES	18
11.	RELEASE	19
12.	GENERAL	20
13.	GOVERNING LAW AND JURISDICTION	21
14.	COUNTERPARTS AND DELIVERY.....	22

THIS FLOATING CHARGE is delivered on 12 October 2017 and is granted by

- (1) **BMM ENERGY SOLUTIONS LTD**, a company incorporated and registered in Scotland (registered number SC462201) whose registered address is at 58 Long Lane, Broughty Ferry, Dundee, DD5 1HH (the "Chargor")

IN FAVOUR OF:

- (2) **JOHN RITCHIE**, [REDACTED] (the "Security Agent")

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE as follows:-

1. **DEFINITIONS AND INTERPRETATION**

1.1 Definitions

In this Charge, the following definitions will apply:-

"Administrator"	any person appointed to be an administrator of the Chargor pursuant to paragraph 14 of Schedule B1 to the Insolvency Act;
"Authorisation"	an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;
"Business Day"	any day (other than a Saturday, Sunday or public holiday) during which clearing banks in the City of London are open for normal business;
"Charged Assets"	the whole of the property (including uncalled capital) which is or may from time to time, while this Charge is in force, be comprised in the property and undertaking of the Chargor;
"Companies Act"	the Companies Act 2006;
"Default Rate"	4% per annum above the base rate from time to time of HSBC Bank plc;
"Environment"	means humans, animals, plants and all other living organisms including the ecological systems of which they form, part and the following media: (a) air (including, without limitation, air within natural or man-

	made structures, whether above or below ground);
	(b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
	(c) land (including, without limitation, land under water);
"Environmental Law"	means any applicable law or regulation which relates to: <ul style="list-style-type: none"> (a) the pollution or protection of the Environment; (b) the conditions of the workplace; or (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm, to the Environment, including, without limitation, any waste;
"Event of Default"	has the meaning given to that term in the Loan Agreement;
"Lenders"	has the meaning given to it in the Loan Agreement;
"Loan Agreement"	the loan agreement originally dated 6 September 2016 as first amended and restated on or around April 2017 and as further amended and restated on or about the date of this Charge and entered into between (1) the Chargor (as Borrower) and (2) Graham Brown, Larry Hannam and John Ritchie (as Lenders);
"Finance Documents"	this Charge and the Loan Agreement;
"Financial Collateral"	shall have the meaning given to that expression in the Financial Collateral Regulations;
"Financial Collateral Regulations"	the Financial Collateral Arrangements (No 2) Regulations 2003 (<i>SI 2003/3226</i>);
"Insolvency Act"	the Insolvency Act 1986;
"Intellectual Property"	all intellectual property rights or equivalent, including: <ul style="list-style-type: none"> (a) patents, registered and unregistered trade and servicemarks, business names, domain names,

copyright, rights in designs, rights in inventions, database rights and topography rights (whether or not registered);

- (b) applications for any or all of the rights in (a) above, together with the right to apply for registration of such rights;
- (c) know-how, trade secrets, confidential information, technical information, customer and supplier lists and any other proprietary knowledge and/or information of whatever nature and howsoever arising,

together with any rights or types of protection of the same or of a similar nature to those listed in (a), (b) or (c) which may subsist anywhere in the world and in each case for their full term (including any reversions or extensions) and/or effect;

"Receiver" any receiver or administrative receiver appointed in respect of the Charged Assets under this Charge and includes joint receivers;

"Relevant Jurisdiction" Scotland;

"Secured Liabilities" all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or in any other capacity whatsoever or as the equivalent obligor under the laws of any other jurisdiction) of the Chargor to any Secured Party under any of the Finance Documents and including any obligations and liabilities of the Chargor to third parties assigned, novated or otherwise vested in any Secured Party provided that no obligation or liability shall be included in this definition of "Secured Liabilities" to the extent that, if it were so included, this Charge (or any part of it) would constitute unlawful financial assistance within the meaning of sections 678 and 680 of the Companies Act;

"Secured Party" the Lenders;

"Security" a mortgage, charge, pledge, trust, assignment by way of security, assignation in security, standard security, lien, hypothecation or other encumbrance, arrangement or security interest securing any obligation of any person or any other agreement or

	arrangement having a similar effect or any title retention rights or set-off rights created by agreement;
"Security Financial Collateral Arrangement"	has the meaning given to it in the Financial Collateral Regulations;
"Security Period"	the period beginning on the date of this Charge and ending on the date on which: <ul style="list-style-type: none"> (a) all of the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full; and (b) the Secured Parties has no further commitment, obligation or liability under or pursuant to the Finance Documents;
"Spot Rate of Exchange"	on a particular day, a market rate of exchange selected by the Security Agent;
"Taxes"	any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

1.2 Interpretation

1.2.1 In this Charge, unless the context otherwise requires:-

- (a) references to clauses are to be construed as references to the clauses of this Charge;
- (b) a provision of law includes a reference to that provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this Charge;
- (c) words importing the plural shall include the singular and vice versa;
- (d) a person includes any individual, firm, company, corporation, government, state or agency of state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

- (e) a **"Party"**, the **"Chargor"**, the **"Security Agent"**, a **"Secured Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (f) **"disposal"** includes any sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and **"dispose"** will be construed accordingly;
- (g) a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (h) writing shall, subject to clause 10, include any mode of reproducing words in a legible and non-transitory form;
- (i) this Charge or any provision of this Charge or any other agreement, document or instrument is to this Charge, that provision or that agreement, document or instrument as amended, novated, supplemented, extended, restated or acceded to from time to time;
- (j) a time of day is a reference to Edinburgh time;
- (k) references to a **"fixed security"** mean a fixed security as defined by section 486 of the Companies Act 1985; and
- (l) an Event of Default is **"continuing"** if it has not been remedied to the satisfaction of the Security Agent or waived by the Security Agent.

1.3 The contents table and headings in this Charge are for convenience only and do not affect the interpretation or construction of this Charge.

1.4 Words importing the singular include the plural and vice versa and words importing a gender include every gender.

1.5 The words "other", "include", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.

2. COVENANT TO PAY

The Chargor covenants with the Security Agent that it will pay or discharge on demand the Secured Liabilities when they fall due.

3. DEFAULT INTEREST

- 3.1 Any amount which is not paid under this Charge when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the Default Rate.
- 3.2 Default interest will be calculated at the Default Rate and be payable in accordance with the terms of the Loan Agreement.
- 3.3 Any amount payable under clause 9.4 shall bear interest from the date such costs, fees or other expenses are incurred until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the Default Rate.

4. SECURITY

4.1 Floating Charge

As a continuing security for the payment of the Secured Liabilities, the Chargor hereby grants a floating charge over the Charged Assets in favour of the Security Agent.

4.2 Qualifying floating charge

Paragraph 14 of Schedule B1 to the Insolvency Act applies to the floating charge created by or pursuant to this Charge (and such floating charge is a qualifying floating charge for the purposes of the Insolvency Act).

4.3 Negative pledge

The Chargor covenants with the Security Agent that, unless agreed in writing by the Security Agent and subject to section 464(2) of the Companies Act 1985:

- 4.3.1 the Chargor shall not create any fixed security or other floating charge over any part of the Charged Assets ranking in priority to or equally with this Charge after its execution of this Charge except any fixed security in favour of the Security Agent; and
- 4.3.2 this Charge shall rank in priority to any fixed security or other floating charge created by the Chargor after its execution of this Charge except any fixed security in favour of the Security Agent.

5. ENFORCEMENT

5.1 When Charge is enforceable

The security constituted by this Charge shall become immediately enforceable upon the occurrence of an Event of Default which is continuing.

5.2 Appointment of a Receiver or Administrator

5.2.1 At any time after this Charge has become enforceable the Security Agent shall be entitled:

- (a) to appoint one or more persons as a Receiver or Receivers in respect of the Charged Assets, or apply to the Court for such appointment;
- (b) to appoint one or more persons as an Administrator of the Chargor;
- (c) to make an administration application in respect of the Chargor; or
- (d) to give notice of intention to appoint an Administrator in respect of the Chargor,
- (e) in each case in accordance with and to the extent permitted by laws applicable to the Chargor and to this Charge.

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

5.3 Powers of Receiver

A Receiver appointed under this Charge shall have the following powers in addition to those specified in Schedule 2 of the Insolvency Act:

5.3.1 to promote or procure the incorporation of any new company (whether or not a subsidiary of the Chargor), to transfer any part of the Charged Assets to such company for any form of consideration (including shares, debentures, loan stock or loan capital in such company), and/or to subscribe for or otherwise acquire shares,

debentures, loan stock or loan capital in such company in name of the Chargor, or the Receiver, or its or his/her nominee or trustee;

- 5.3.2 subject to the articles of association, to convene extraordinary general meetings of the Chargor;
- 5.3.3 to make any arrangement or compromise which the Receiver or the Security Agent may think fit;
- 5.3.4 generally, without prejudice to the other provisions of this clause to exercise all the rights, powers and discretions in respect of the Charged Assets it would be entitled to exercise if it were the absolute owner thereof and to do all acts and things the Receiver may consider necessary or expedient for the realisation of the Charged Assets and the application of the proceeds in or towards satisfaction of or their retention as continuing security for the Secured Liabilities; and
- 5.3.5 in respect of any of the Charged Assets situated in England and Wales (or any other jurisdiction) to exercise in addition to the foregoing powers, all the powers conferred by the Insolvency Act or any other enactment or rule of law on receivers or receivers and managers (or analogous officers) in that jurisdiction.

5.4 Agent of the Chargor

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

5.5 Balance

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

5.6 Third parties

- 5.6.1 No purchaser from or other person dealing with the Receiver in relation to the Charged Assets shall be concerned to enquire whether any of the powers exercised or purported to be exercised by him/her hereunder has become exercisable,

whether any of the Secured Liabilities remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.

- 5.6.2 The receipt or discharge of the Receiver shall be an absolute discharge to any purchaser or other person dealing with the Receiver in relation to the Charged Assets and any such purchaser or third party shall not have any obligation to enquire after or see to the application of any payments made by it to the Receiver or at its direction.

5.7 Security Financial Collateral Arrangement

- 5.7.1 At any time after the security constituted by this Charge has become enforceable and to the extent that any of the Charged Assets constitute Financial Collateral and are subject to a Security Financial Collateral Arrangement pursuant to this Charge, the Security Agent shall have the right to appropriate all or any part of those Charged Assets in or towards the payment or discharge of the Secured Liabilities as are then due and payable as the Security Agent may think fit. The value of such Charged Assets appropriated in accordance with this clause 5.7.1 shall be the price of those Charged Assets at the time the right of appropriation is exercised as listed on any recognised market index, or as determined by such other method as the Security Agent may select (including independent valuation). The Chargor agrees that the methods of valuation provided for in this clause 5.7.1 are commercially reasonable.
- 5.7.2 To the extent that the Charged Assets constitute Financial Collateral, the Chargor agrees that such Charged Assets may, at the Security Agent's option, be held or designated so as to be under the control of the Security Agent for all purposes of the Financial Collateral Regulations.

6. LIABILITY OF THE SECURITY AGENT

6.1 Liability

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

6.2 Indemnity

The Security Agent, any Receiver and every attorney, manager, agent, employee or other person appointed by the Security Agent under or in connection with this Charge shall be and is hereby indemnified by the Chargor in respect of all liabilities, costs, losses and expenses 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 to the terms of this Charge (or by any law or regulation) and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way in connection with or relating to all or any of the Charged Assets and the Security Agent, any Receiver or any such other person may retain and pay all sums in respect of the same out of money received under the powers conferred by this Charge. The indemnity under this clause shall not apply to the extent that any such liability, cost, loss and/or expense arises as a result of the gross negligence or wilful misconduct of the Security Agent or the Receiver or his/her or its officers, employees or agents.

7. PROTECTION OF SECURITY

7.1 Continuing security

7.1.1 This Charge shall be in addition to, and without prejudice to and shall not merge with, any other right, remedy, guarantee or Security which the Security Agent or any Secured Party may at any time hold in respect of any of the Secured Liabilities and this Charge may be enforced against the Chargor without the Security Agent or any Secured Party first having recourse to any other right, remedy, guarantee or Security held or available to it.

7.1.2 This Charge shall remain in full force and effect as a continuing security until the Secured Liabilities have been discharged in full.

7.2 Waiver of rights

7.2.1 The obligations of the Chargor under this Charge and the rights, powers and discretions of the Security Agent under this Charge will not be reduced, discharged or otherwise affected by:

- (a) any time, waiver or consent granted to, or composition with the Chargor or any other person;
- (b) the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor of the Chargor;

- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights or remedies against, or Security over assets of the Chargor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument;
- (d) the Security Agent failing to realise the full value of any Security held by it;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person or any defective or excessive exercise of the Chargor's powers or authority;
- (f) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) termination or replacement of the Secured Liabilities or any document, guarantee or Security related to the Secured Liabilities including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility or other document or Security;
- (g) any unenforceability, illegality, invalidity, irregularity or frustration of any obligation (actual or purported) of any person under this Charge or any other document, guarantee or Security held in connection with the Secured Liabilities;
- (h) any claim or enforcement of payment from the Chargor or any other person;
- (i) any insolvency, bankruptcy, liquidation, administration, winding-up, incapacity, dissolution, limitation, disability, the discharge by operation of law or any similar proceedings in respect of the Chargor or any other person;
- (j) any change in the constitution, name or style of the Chargor or any other person, or if such other person is a partnership or other unincorporated organisation, its dissolution or any change in its status or membership; or
- (k) 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 Chargor under this Charge.

7.3 Security Agent's protections

7.3.1 The Security Agent may make one or more demands under this Charge.

7.3.2 This Charge shall be in addition to, and without prejudice to and shall not merge with, any other right, remedy, guarantee or Security which any Secured Party may at any time hold in respect of any of the Secured Liabilities and this Charge may be enforced without any Secured Party first having:

- (a) recourse to any other right, remedy, guarantee or Security held or available to it;
- (b) to take action or obtain judgment in any court against the Chargor or any other person;
- (c) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Chargor or any other person; or
- (d) to make demand, enforce or seek to enforce any claim, right or remedy against the Chargor or any other person.

7.3.3 The Chargor's liability under this Charge shall not be discharged or affected by anything that would not have discharged or affected it if the Chargor had been a principal debtor instead of a chargor under this Charge.

7.4 Further assurance

7.4.1 The Chargor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):

- (a) to perfect the Security created or intended to be created under or evidenced by this Charge (which may include the execution of a pledge, charge, assignment, assignment or assurance or other Security over all or any of the assets which are, or are intended to be, the subject of this Charge) or for the exercise of any rights, powers and remedies of the Security Agent or any Secured Party provided by law and/or pursuant to the Finance Documents;
- (b) to confer on the Security Agent or any Secured Party Security over any property and assets of the Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Charge;
- (c) to facilitate the exercise of any rights, powers and remedies exercisable by the Security Agent or any Receiver in respect of any of the Charged Assets or provided by or pursuant to the Finance Documents or by law; and/or

- (d) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Charge.

7.4.2 The 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 Agent and any Secured Party by this Charge and/or pursuant to the Finance Documents.

7.5 Power of attorney

7.5.1 Upon the Security created by this Charge becoming enforceable by the Security Agent pursuant to clause 5.1, the Chargor by way of security irrevocably appoints the Security Agent to be its agent and attorney in its name and on its behalf to:

- (a) do all things which the Chargor may be required to do under this Charge;
- (b) sign, execute (using the company seal where appropriate), deliver and otherwise perfect any Security required to be signed or executed pursuant to the terms of this Charge; and
- (c) sign, execute (using the company seal where appropriate), deliver and complete any deeds, instruments or other documents and following an Event of Default and for so long as the same is continuing to do all acts and things which may be required by the Security Agent in the exercise of any of its powers under this Charge, or to perfect or vest in the Security Agent, its nominees or any purchaser, title to any Charged Assets or which the Security Agent may deem expedient in connection with the getting in, disposal, or realisation of any Charged Assets.

7.5.2 Each agent and attorney may appoint a substitute or delegate his authority.

7.5.3 The Chargor ratifies and confirms (and agrees to ratify and confirm) anything which an attorney does or may purport to do in the exercise or purported exercise of the power of attorney conferred by clause 7.5.1.

7.5.4 The appointment effected under clause 7.5.1 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 Chargor does not fulfil any of its obligations under clause 7.4 within 3 Business Days of notice from the Security Agent to do so.

8. REPRESENTATIONS AND UNDERTAKINGS

8.1 Representations and warranties

The Chargor represents and warrants to the Security Agent that:

- 8.1.1 it is a limited company duly organised, validly existing and registered under the relevant laws of its jurisdiction of incorporation;
- 8.1.2 it has the power to own its assets and carry on its business as it is being conducted;
- 8.1.3 it is empowered to enter into and perform its obligations contained in this Charge and has taken all necessary action to authorise the execution, delivery and performance of this Charge, to create the security to be constituted by this Charge and to observe and perform its obligations under this Charge;
- 8.1.4 the obligations expressed to be assumed by it in this Charge are legal, valid, binding and enforceable obligations;
- 8.1.5 (without limiting the generality of clause 8.1.4 above), this Charge creates the security interests which it purports to create and those security interests are valid and effective;
- 8.1.6 the entry into and performance by it of, and the transactions contemplated by, this Charge and the granting of this Charge and security constituted by this Charge do not and will not conflict with:
 - (a) any law or regulation applicable to it;
 - (b) its constitutional documents; or
 - (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument;
- 8.1.7 all Authorisations required or desirable:
 - (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Charge; and
 - (b) to make this Charge admissible in evidence in its Relevant Jurisdictions,
 - (c) have been obtained or effected and are in full force and effect;

8.1.8 it has not, save in the ordinary course of its trading activities and for value, entered into any agreement or granted any option to sell or otherwise dispose of the Charged Assets or any interest therein, or agreed, conditionally or unconditionally, to do so; and

8.1.9 it has not granted or created any other Security, charge or encumbrance over the Charged Assets or any interest therein, or agreed, conditionally or unconditionally, to do so.

8.2 Matters represented

Each of the representations and warranties in clause 8.1 will be correct and complied with in all respects at all times during the continuance of the security constituted by this Charge.

8.3 Undertakings

8.3.1 Except with the Security Agent's prior written consent, the Chargor undertakes to the Security Agent that it shall not:-

- (a) dispose of any of its heritable, freehold or leasehold property;
- (b) dispose of any other of the Charged Assets or any interest therein otherwise than in the ordinary course of its trading activities, for market value, on an arms length basis and for consideration payable in cash on normal commercial terms;
- (c) sell, factor, discount, assign or otherwise charge or dispose of its book debts or other accounts or payments receivable;
- (d) agree to postpone or subordinate the Chargor's right to receive or claim payment of any debt or monetary claim due to it; or

8.3.2 The Chargor undertakes that unless otherwise agreed in writing by the Security Agent it shall:

- (a) comply promptly with its obligations under the Finance Documents;
- (b) comply with all laws, statutes, directives and regulations (including, without limitation, Environmental Laws) and all notices, codes of practice and other requirements having the force of law which are applicable to it and obtain, effect, maintain and comply with all registrations, licenses, consents, authorisations and exemptions required (including, without limitation, under Environmental Law) for the efficient conduct of its business;

8.4 Power to Remedy

Without prejudice to the powers granted to the Security Agent under clause 5, if the Chargor defaults at any time in complying with any of its obligations contained in this Charge, the Security Agent shall, without prejudice to any other rights arising as a consequence of such default, be entitled (but not bound) to make good such default and the Chargor hereby irrevocably authorises the Security Agent by way of security to do all such things necessary or desirable in connection therewith. Any monies so expended by the Security Agent shall be repayable by the Chargor to the Security Agent on demand together with Interest thereon.

9. APPROPRIATION, PAYMENTS AND COSTS AND EXPENSES

9.1 Application of proceeds

All monies received by the Security Agent under this Charge shall (subject to the rights and claims of any person having a security ranking in priority to the security constituted by this Charge) be applied in the following order:

- 9.1.1 in payment of the costs, charges and expenses reasonably and properly incurred by the Security Agent, and payments made by the Security Agent, in connection with this Charge or the Charged Assets;
- 9.1.2 in or towards the satisfaction of the Secured Liabilities in accordance with clause 2; and
- 9.1.3 any surplus shall be paid to the Chargor or other person entitled to it.

9.2 Protection of third parties

No purchaser from or other person dealing with the Security Agent in relation to the Charged Assets shall be obliged or concerned to enquire whether the right of the Security Agent to exercise any of the powers conferred by this Charge in relation to the Charged Assets or any part of the Charged Assets have arisen or become exercisable by the Security Agent, nor be concerned with notice to the contrary, nor with the propriety of the exercise or purported exercise of any such powers and the title of such a purchaser and the position of such a person shall not be affected by reference to any of those matters.

9.3 Payments

- 9.3.1 Subject to clause 9.3.2, all payments to be made by the Chargor in respect of this Charge, shall be made in immediately available funds to the credit of such account as the Security Agent may designate.

- 9.3.2 If the Chargor is compelled by law to withhold or deduct any Taxes from any sum payable hereunder to the Security Agent, the sum so payable by the Chargor shall be increased so as to result in the receipt by the Security Agent of a net amount equal to the full amount expressed to be payable hereunder.
- 9.3.3 Any demand, notification or certificate given by the Security Agent or any Secured Party specifying amounts due and payable under or in connection with any of the provisions of this Charge shall, in the absence of manifest error, be conclusive and binding on the Chargor.

9.4 Costs and expenses

- 9.4.1 The Chargor shall reimburse the Security Agent in respect of all reasonable expenses, including reasonable legal, valuation, accountancy and consultancy fees (and any value added or similar tax thereon) properly incurred by the Security Agent in connection with:
- (a) the negotiation, preparation, execution and completion of this Charge, or any of the documents referred to herein; and
 - (b) any actual or proposed amendment, replacement, restatement or extension of, or any waiver or consent under, this Charge.
- 9.4.2 The Chargor shall reimburse the Security Agent and any Receiver for all reasonable costs and expenses, including legal fees (and any value added or similar tax thereon) properly incurred in connection with the enforcement, attempted enforcement or preservation of any of their respective rights under this Charge, or any of the documents referred to herein.
- 9.4.3 The Chargor shall pay all present and future stamp, registration and similar taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this Charge or any judgment given in connection therewith and shall indemnify the Security Agent and any Receiver against any and all liabilities, including penalties with respect to, or resulting from, its delay or omission to pay any such stamp, registration and similar taxes or charges.

9.5 Assignment and transfer

Neither the Security Agent or the Chargor may assign, transfer, charge, make the subject of a trust or deal in any other manner with this Charge or any of its rights under this Charge or purport to do any of the same without the prior written consent of the other party.

9.6 Contingencies

If this Charge is enforced at a time when no amounts are due to the Secured Parties under the Finance Documents (but at a time when amounts may become so due), the Security Agent may pay the proceeds of any recoveries effected by it into a blocked suspense account.

10. NOTICES

10.1 Communications in writing

Any notice given pursuant to this Charge shall be in writing signed by, or on behalf of, the person issuing the notice shall be delivered by hand, by prepaid recorded delivery first class post to:

10.1.1 in the case of the Chargor, its registered office address for the time; and

10.1.2 in the case of the Security Agent:

(a) address: [REDACTED]

(b) marked for the attention of: John Ritchie

or, in relation to any Party, such other address for service in the United Kingdom as that Party may from time to time notify to the other.

10.2 Delivery

10.2.1 In the absence of evidence of earlier receipt and subject to clause 10.2.3 a notice served in accordance with clause 10.1 shall be deemed to have been received:

(a) if delivered by hand, at the time of actual delivery to the address referred to in clause 10.1; and

(b) if delivered by prepaid recorded delivery first class post, two Business Days from the date of posting.

10.2.2 If deemed receipt under clause 10.2.1 occurs on a day which is not a Business Day or after 5.00 p.m. on a Business Day, the relevant notice shall be deemed to have been received at 9.00 a.m. on the next Business Day.

10.2.3 For the avoidance of doubt, notice given under this Charge shall not be validly served if sent by fax or e-mail.

10.3 English language

10.3.1 Any notice given under or in connection with this Charge must be in English.

10.3.2 All other documents provided under or in connection with this Charge must be:

- (a) in English; or
- (b) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

11. RELEASE

11.1 Release

Upon the expiry of the Security Period (but not otherwise) the Security Agent shall, at the request and cost of the Chargor, take whatever action is necessary to discharge, or release (without recourse or warranty) the Charged Assets from the Security created by this Charge.

11.2 Reinstatement

Any release, discharge or settlement between the Chargor and the Security Agent shall be conditional upon no security, disposition or payment to any Secured Party by the Chargor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition is not fulfilled the Chargor's liability under this Charge shall continue and the Security Agent shall be entitled to enforce this Charge as if such release, discharge or settlement had not occurred and any such payment had not been made.

11.3 Retention of Security

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

11.4 Avoidance of payments

The Security Agent's right to recover the Secured Liabilities in full shall not be affected or prejudiced by any payment or realisation which is avoided or otherwise invalidated or adjusted

by law, including any enactment or rule of law relating to insolvency, or by any release or discharge given by the Security Agent on the faith of any such payment or realisation.

12. GENERAL

12.1 Amendments and waivers

No variation to this Charge shall be effective unless made in writing and signed by or on behalf of all the parties to this Charge. A waiver given or consent granted by the Security Agent under this Charge will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

12.2 Severability

Each provision of this Charge is severable and distinct from the others. If at any time any provision of this Charge is or becomes unlawful, invalid or unenforceable to any extent or in any circumstances for any reason, it shall to that extent or in those circumstances be deemed not to form part of this Charge but (except to that extent or in those circumstances in the case of that provision) the legality, validity and enforceability of that and all other provisions of this Charge shall not be affected in any way.

12.3 Illegality

If any provision of this Charge is found to be illegal, invalid or unenforceable in accordance with clause 12.3 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it legal, valid or enforceable.

12.4 Remedies and waivers

The failure or delay in exercising a right or remedy provided by this Charge or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise, or non-exercise or non-enforcement of any right or remedy provided by this Charge or by law prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.

12.5 Exercise of discretion

Any right or power which may be exercised or any determination which may be made under this Charge by the Security Agent may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons therefore.

12.6 Rights cumulative

The Security Agent's rights and remedies contained in this Charge are cumulative and not exclusive of any rights or remedies provided by law.

12.7 Delegation

The Security Agent may delegate, by power of attorney or in any other manner, to any person, any right, power or discretion exercisable by it under this Charge upon any terms (including power to sub-delegate) which it may think fit. The Security Agent shall not be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate.

12.8 Consent to registration

The Chargor consents to the registration of this Charge and of any certificate referred to in clause 9.3.3 above for preservation and execution.

13. GOVERNING LAW AND JURISDICTION

13.1 Governing Law

This Charge together with any non-contractual disputes or claims arising out of or in connection with this Charge shall in all respects be governed by and interpreted in accordance with Scots law.

13.2 Jurisdiction

13.2.1 For the exclusive benefit of the Security Agent, the Chargor irrevocably agrees that the courts of Scotland are to have jurisdiction to settle any disputes which may arise out of or in connection with this Charge and that any proceedings may be brought in those courts.

13.2.2 Nothing contained in this clause shall limit the right of the Security Agent to commence any proceedings against the Chargor in any other court of competent jurisdiction nor shall the commencement of any proceedings against the Chargor in one or more jurisdictions preclude the commencement of any proceedings in any other jurisdiction, whether concurrently or not.

13.2.3 The Chargor irrevocably waives any objection which it may now or in the future have to the laying of the venue of any proceedings in any court referred to in this clause and any claim that those proceedings have been brought in an inconvenient or inappropriate forum, and irrevocably agrees that a judgment in any proceedings

commenced in any such court shall be conclusive and binding on it and may be enforced in the courts of any other jurisdiction.

14. COUNTERPARTS AND DELIVERY

14.1 Counterpart execution

This Charge may be executed in any number of counterparts and by the parties on separate counterparts.

14.2 Delivery where Charge is executed in counterpart

Where executed in counterpart:

14.2.1 this Charge shall not take effect until all of the counterparts have been delivered;

14.2.2 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and

14.2.3 the parties may choose to evidence the date of delivery of this Charge by inserting this on the front page of this Charge.

14.3 Delivery where Charge is not executed in counterpart


If this Charge is not executed in counterparts, this Charge shall be delivered on the date inserted on the front page of this Charge or, if no such date is inserted, the date on which the Chargor signed this Charge.

14.4 Appointment of nominated person


The parties to this Charge, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery)(Scotland) Act 2015 (the "Counterparts Act"), nominate HBJ Gateley to take delivery of all counterparts of this Charge. The parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Charge.

IN WITNESS WHEREOF these presents consisting of this and the preceding 26 pages are executed by the parties hereto as follows:-

Subscribed for and on behalf of **BMM ENERGY SOLUTIONS LTD**
By Terence Mohammed, Director at Kirkintilloch on the 12 day of
October 2017 before this witness:-

Witness 

Full Name Isin Hopkins.

Address 


Director

Subscribed for and on behalf of **JOHN RITCHIE** (as Security Agent on behalf of the Secured Parties) by at _____ on the _____ day of _____ 2017 before this witness:-

Witness

Full Name

Address

.....
John Ritchie

14.4 Appointment of nominated person

The parties to this Charge, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery)(Scotland) Act 2015 (the "**Counterparts Act**"), nominate HBJ Gateley to take delivery of all counterparts of this Charge. The parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Charge.

IN WITNESS WHEREOF these presents consisting of this and the preceding 26 pages are executed by the parties hereto as follows:-

Subscribed for and on behalf of **BMM ENERGY SOLUTIONS LTD**

By _____, Director at _____ on the _____ day of _____
2017 before this witness:-

Witness

Full Name

```

*****
Address .....
Director

```

Subscribed for and on behalf of **JOHN RITCHIE** (as Security Agent on behalf of the Secured Parties) by at Milton Keynes on the 12 day of October 2017 before this witness:-

Witness

Full Name SALLY PRESTON

Address John Ritchie