

**EQUITY WARRANT INSTRUMENT**

**by**

**FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED**

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**Dated**

**June 2018**

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**MACROBERTS**

**LLP**

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## EQUITY WARRANT INSTRUMENT BY

**FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED**, incorporated and registered in Scotland with company number SC485103 whose registered office is at Orbital House, 3 Redwood Crescent, East Kilbride, G74 5PA (the **Company**).

## BACKGROUND

By resolution of the Board, the Company has determined to create and issue Warrants to subscribe for [Redacted] in the capital of the Company on the terms and subject to the conditions of this Instrument.

## AGREED TERMS

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Instrument.

**Act** means the Companies Act 2006.

**Acting in Concert** has the meaning given to it in The City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time).

**Adjustment** has the meaning given in clause 6.1.

**Aggregate Subscription Price** means the aggregate Subscription Price falling due pursuant to clause 5.1 or clause 5.2 in respect of an Exercise Notice.

**Articles** means the articles of association of the Company as amended or superseded from time to time.

**Auditors** means the auditors of the Company from time to time.

**B Ordinary Shares** means the [Redacted] in the capital of the Company from time to time (and, if there is a sub-division, consolidation or reclassification of such shares, the shares resulting from that event), having the rights and being subject to the restrictions set out in the Articles.

**Board** means the board of directors of the Company from time to time.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are generally open for business.

**CBC Permitted Transferees** means any of the entities which are transferees described in article 17.2 of the Articles adopted on or around the date hereof.

**Certificate** has the meaning given in clause 3.2.

**Conditions** means the terms and conditions set out in Part 4 of the Schedule (subject to any alterations made in accordance with this Instrument).

**Controlling Interest** means an interest in shares giving to the holder or holders control of the Company within the meaning of section 1124 of the CTA 2010.

**CTA 2010** means the Corporation Tax Act 2010.

**Disposal** means the disposal by FMEL of the whole or a substantial part of the business, assets and undertaking of FMEL operated from the Property.

**Equity Shares** means shares in the equity share capital of the Company from time to time (as defined in section 548 of the Act).

**Exercise Notice** means a notice in writing in the form, or substantially in the form, set out in Part 3 of the Schedule.

**Exercise Period** means, subject always to clause 4.2, the period from (but excluding) the date of issue of a Certificate in respect of the relevant Warrants to (and including) the date of repayment in full of all monies owing to the Initial Warrantholder under the Loan Agreement.

**Exit** means a Share Sale, Disposal or Listing.

**FMEL** means Ferguson Marine Engineering Limited (SC485060).

**Finance Documents** has the meaning given in the Loan Agreement.

**Fully Diluted Share Capital** means the aggregate of, from time to time:

- (a) the issued Equity Shares;
- (b) all Equity Shares capable of being issued by the Company pursuant to all outstanding rights to subscribe for, or convert any security into, Equity Shares (including the Warrants), as if all those outstanding rights had been exercised in full.

**holding company** has the meaning given in clause 1.12.

**Initial Warrantholder** means the person whose name and address is set out in Part 1 of the Schedule.

**Investor** means Clyde Blowers Capital Fund III LP (registered number SL008995).

**Listing** means the admission of all or any of the shares in the capital of the Company and/or FMEL or securities representing those shares (including without limitation depository interests, American depository receipts, American depository shares and/or other instruments) on NASDAQ or the Official List of the United Kingdom Listing Authority or the AIM Market operated by the London Stock Exchange Plc or any other recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000).

**Loan Agreement** means the loan agreement between the Initial Warrantholder (or its successor), FMEL and the Company dated on or around the date hereof.

**Outstanding Loan Amount** means any monies other than interest owing to the Initial Warrantholder pursuant to the Loan Agreement from time to time.

**Property** means the subjects at Newark Works, Castle Road, Port Glasgow, PA14 5NG.

**Register** means a register of Warrantholders referred to in clause 3.1, and kept and maintained in accordance with Part 4 of the Schedule.

**Registered Office** means the registered office of the Company from time to time.

**Relevant Date** means the later of [Redacted].

**Share Sale** means the sale of any of the shares in the capital of the Company and/or FMEL (in one transaction or as a series of transactions) which will result in the purchaser of those shares and persons Acting in Concert with him together acquiring a Controlling Interest in the Company and/or FMEL except where this arises as a result of (i) the issuance of shares in the capital of the Company to the Warrantholder(s) or their Permitted Transferees (as such term is defined in the Articles adopted or to be adopted on or around the date hereof) in accordance with the terms of this Instrument, or (ii) the transfer of shares in the capital of the Company and/or FMEL to CBC Permitted Transferees.

**Shareholders' Agreement** means the subscription and shareholders' agreement among the Company, the Initial Warrantholder and the Investor dated on or around the date hereof.

**Subscription Price** means, subject to clause 6, [Redacted] Warrant Share.

**Subscription Rights** has the meaning given in clause 2.4.

**subsidiary** has the meaning given in clause 1.12.

**Warrant** means a warrant to subscribe for one Warrant Share, on the terms and subject to the conditions of this Instrument.

**Warrantholder** means the person or persons in whose name(s) a Warrant is registered from time to time as evidenced by the Register.

**Warrantholder Consent** means prior consent in writing from Warrantholders for the time being holding outstanding Warrants representing [Redacted] in nominal value of the Warrant Shares subject to outstanding Subscription Rights.

**Warrant Shares** has the meaning given in clause 2.1 and **Warrant Share** means any of them.

- 1.2 Words denoting the singular number only include the plural and vice versa and words denoting any gender include all genders.
- 1.3 Headings are used in this Instrument for convenience only and shall not affect its construction or interpretation.
- 1.4 In this Instrument, unless otherwise specified, references to Clauses and to the Schedule (and Parts thereof) are to Clauses of and the Schedule (and Parts thereof) to this Instrument.
- 1.5 In this Instrument, a reference to any document or this Instrument means this Instrument or that document as supplemented, amended or varied from time to time.
- 1.6 A reference in any way to any party hereto shall be construed so as to include its successors in title, permitted assignees and permitted transferees to, or of, its rights and/or obligations under this Instrument.
- 1.7 Where the words **include(s)** or **including** are used they are illustrative and shall not limit the scope of the words preceding them.
- 1.8 Any notice, instruction, notification, direction, request, consent or approval contemplated herein shall be made or given in writing.

- 1.9 A "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality).
- 1.10 A "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation.
- 1.11 A provision of law is a reference to that provision as amended or re-enacted.
- 1.12 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Act and for the purposes only of the membership requirement contained in section 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of:
- 1.12.1 another person (or its nominee), by way of security or in connection with the taking of security; or
- 1.12.2 its nominee.

In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Act shall be amended so that: (i) references in section 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (ii) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

## **2. CONSTITUTION, GRANT AND FORM OF WARRANTS**

- 2.1 The Company hereby constitutes the Warrants to subscribe [Redacted] (**Warrant Shares**) on the terms and subject to the conditions of this Instrument.
- 2.2 The Warrants shall be issued to the Initial Warrantholder in accordance with the terms and conditions of the Loan Agreement.
- 2.3 The Warrants shall be issued subject to the Articles and otherwise on the terms and subject to the conditions of this Instrument (including the Conditions) which are binding on the Company and each Warrantholder, and all persons claiming through or under them respectively.
- 2.4 The Warrants shall confer the right (but, subject to clause 4.2, not the obligation) on the Warrantholders to subscribe in cash at the Subscription Price for the Warrant Shares on the terms and subject to the conditions of the Loan Agreement and this Instrument (**Subscription Rights**).
- 2.5 Except with Warrantholder Consent, no instrument creating any right to subscribe for B Ordinary Shares may be issued by the Company.

## **3. REGISTER AND CERTIFICATES**

- 3.1 The Company shall maintain the Register in accordance with the Conditions.

- 3.2 The Company shall, within two Business Days of entering the name of a Warrantholder (or joint Warrantholders) in the Register, issue to that Warrantholder, without charge, one certificate for all of the Warrants registered in its name in the form, or substantially in the form, set out in Part 2 of the Schedule and executed by the Company in accordance with the Act (a **Certificate**), together with a copy of this Instrument.
- 3.3 The Company shall not be bound to issue more than one Certificate in respect of Warrants held by two or more persons. Delivery of a certificate to the person first named in the Register shall be sufficient delivery to all joint holders.
- 3.4 Where a Warrantholder has transferred or exercised its Subscription Rights in respect of, some only of the Warrants comprised in a Certificate, it shall be entitled to receive, without charge, one Certificate for the balance of such Warrants.
- 3.5 If any Certificate issued in accordance with clause 3.2, clause 3.3 or clause 3.4 is defaced, worn out or said to be stolen, lost or destroyed, it may be replaced, without charge, on such terms as to evidence and indemnity as the Board may reasonably decide and, where it is defaced or worn out, after delivery of the old Certificate to the Company.

#### **4. EXERCISE AND LAPSE OF SUBSCRIPTION RIGHTS**

- 4.1 Subject always to clause 4.2 below, a Warrantholder may exercise its Subscription Rights in accordance with this clause 4 at any time during the Exercise Period.
- 4.2 Unless otherwise agreed between the Warrantholders and the Company,[Redacted].
- 4.3 Upon exercise, each Warrant entitles the Warrantholder to subscribe in cash for one Warrant Share at the Subscription Price, subject to clause 5.6 and to adjustment in accordance with clause 6. The Subscription Rights are not exercisable in respect of a fraction of a Warrant Share.
- 4.4 A Warrantholder shall be deemed to have [Redacted].
- 4.5 Subject to clause 4.4 above, a Warrantholder may exercise its Subscription Rights in whole or in part [Redacted] by lodging a duly completed Exercise Notice, together with the relevant Certificate (or an indemnity in place thereof in a form acceptable to the Board acting reasonably), with the Company in accordance with paragraph 4 of Part 4 of the Schedule.
- 4.6 Once lodged with the Company, an Exercise Notice shall be irrevocable save with the consent of the Board.
- 4.7 [Redacted].
- 4.8 [Redacted].
- 4.9 The Company shall promptly supply a Warrantholder with a blank Exercise Notice on request, without charge.

#### **5. ISSUE OF WARRANT SHARES**

- 5.1 Except where clause 5.2 applies, subject to any applicable legal and regulatory requirements, completion of the allotment and issue of Warrant Shares following an exercise of Subscription Rights in accordance with clause 4 shall take place at the Registered Office on the date five Business Days after receipt by the Company of the last of:

- 5.1.1 the documents referred to in clause 4.4; and
  - 5.1.2 subject to clause 5.6, payment by banker's draft or cheque made payable to the Company or by telegraphic transfer to the Company's account of the Aggregate Subscription Price for the number of Warrant Shares specified in the relevant Exercise Notice.
- 5.2 Where an exercise of Subscription Rights is made [Redacted].
- 5.3 Upon completion of an allotment and issue of Warrant Shares, the Company shall, subject to the Act and to the Articles:
- 5.3.1 allot and issue to the Warrantholder (or its nominee) the number of Warrant Shares for which it is exercising its Subscription Rights;
  - 5.3.2 enter the Warrantholder (or its nominee, as appropriate) in the Company's register of members as the holder of the number of Warrant Shares issued to it; and
  - 5.3.3 deliver to the Warrantholder a duly executed share certificate for the number of Warrant Shares issued to it.
- 5.4 The Warrant Shares issued under clause 5.3.1 shall:
- 5.4.1 be issued fully paid;
  - 5.4.2 [Redacted]
  - 5.4.3 [Redacted].
- 5.5 No fractions of a Warrant Share shall be allotted or issued on the exercise of any Subscription Rights and no refund will be made to the Warrantholder exercising such Subscription Rights. If the exercise of any Subscription Rights would require a fraction of a Warrant Share to be allotted, the aggregate number of Warrant Shares so allotted to a Warrantholder will be rounded down to the nearest whole Warrant Share.
- 5.6 Notwithstanding any other provision of this Instrument, [Redacted].

## **6. ADJUSTMENT OF SUBSCRIPTION RIGHTS**

- 6.1 If, while any Subscription Rights remain exercisable, there is:
- 6.1.1 a subdivision, consolidation or reclassification of the Equity Shares;
  - 6.1.2 a reduction of capital (of whatever nature, but excluding a cancellation of capital that is lost or not represented by available assets), or any other reduction in the number of Equity Shares in issue from time to time;
  - 6.1.3 an issue of Equity Shares other than pursuant to clause 3 or clause 4 of the Shareholders Agreement;
  - 6.1.4 an issue of Equity Shares by way of capitalisation of profits or reserves (including share premium account and any capital redemption reserve); or
  - 6.1.5 a consolidation, amalgamation or merger of the Company with or into another entity (other than a consolidation, amalgamation or merger following which the Company



is the surviving entity and which does not result in any reclassification of, or change in, the Equity Shares),

then the Company shall adjust the Subscription Rights conditional on any such event occurring, but with effect from the date of the relevant event or, if earlier, the record date for the event (an **Adjustment**) so that, after such Adjustment:

- (a) the total number of Warrant Shares for which the outstanding Subscription Rights would then be capable of being exercised carry as nearly as possible (and in any event not less than) the same proportion of the voting rights attached to the Fully Diluted Share Capital (ignoring any cap on voting rights under the Shareholders' Agreement or Articles and the same entitlement to participate in the profits and assets of the Company (including on liquidation) as if there had been no such event giving rise to the Adjustment and the Company shall update the Register accordingly; and
- (b) the aggregate price payable for all Warrant Shares subject to outstanding Subscription Rights shall equal the same aggregate price as would be payable for the number of Warrant Shares subject to outstanding Subscription Rights immediately before the occurrence of the event giving rise to the Adjustment.

6.2 Following an Adjustment the Company shall, subject only to receipt from the Warranholder of its Certificate (or an indemnity in place thereof in a form acceptable to the Board), cancel the Certificate so received and issue a replacement Certificate for all the Warrants then registered in its name.

6.3 The Company shall give each Warranholder written notice of any event described in clause 6.1, together with details of the relevant Adjustment, at the time of, or as soon as reasonably possible after the occurrence of such event.

6.4 If a Warranholder for the time being holding not less than 10% of all outstanding Warrants notifies the Company in writing within twenty Business Days of receipt of a notice given under clause 6.3 that it disagrees with any Adjustment, the Company shall refer the matter to the Auditors for determination.

6.5 In respect of any disagreement referred to the Auditors for determination:

6.5.1 the Company and the Warranholders will each co-operate with the Auditors in resolving the disagreement as soon as reasonably possible and within 20 Business Days of their appointment, if possible and for that purpose will, subject to any restrictions imposed by law or any regulatory authority, provide to them all such information and documents as they may reasonably require;

6.5.2 the Auditors shall have the right to seek such professional assistance and advice as they may require;

6.5.3 the Auditors' fees and any professional costs incurred by them shall be borne as the Auditor shall determine; and

6.5.4 the Auditors shall act as experts and not as arbitrators and their decision shall (in the absence of manifest error) be final and binding on the Company and all Warranholders.

## **7. UNDERTAKINGS AND INFORMATION**

7.1 For so long as any Subscription Rights remain exercisable, the Company shall:

7.1.1 procure that the Board shall at all times during the Exercise Period have authority, whether pursuant to the Articles or otherwise, and including authority pursuant to any applicable legal and regulatory requirements, to grant Warrants and to issue Warrant Shares on exercise of any Subscription Rights in accordance with the terms of this Instrument and free of any pre-emption rights; and

7.1.2 not permit any of the events described in clause 6.1.1 to clause 6.1.5 to the extent that its effect would be that, following any relevant Adjustment, on the exercise of any Subscription Rights the Company would be required to allot Warrant Shares at a discount.

## **8. WINDING UP**

8.1 This clause 8 applies if:

8.1.1 the Exercise Period has not expired;

8.1.2 any Subscription Rights remain unexercised; and

8.1.3 an effective resolution for the winding up of the Company is passed, which is preceded by the making of a statutory declaration of solvency under section 89 of the Insolvency Act 1986.

8.2 In the circumstances set out in clause 8.1, each Warrantheader with unexercised Subscription Rights shall, for the purposes of ascertaining its rights in the winding up, [Redacted].

## **9. TRANSFER OF WARRANTS**

The provisions of paragraph 2 of Part 4 of the Schedule shall govern the transfer of Warrants.

## **10. MEETINGS OF WARRANTHOLDERS**

10.1 All resolutions and consents of the Warrantheaders shall be adopted by way of Warrantheader Consent. Nevertheless, if a meeting of the Warrantheaders is to be held, all the provisions of the Articles and any applicable statutory requirements relating to general meetings shall apply to that meeting as if:

10.1.1 the Warrants constituted shares in the capital of the Company; and

10.1.2 each Warrantheader was a member of the Company

provided that the quorum for such a meeting shall be such number of Warrantheaders present in person, by proxy or by authorised representative holding more than 50% in nominal amount of the Warrant Shares subject to outstanding Warrants on the date of the meeting.

## **11. VARIATION**

No variation or abrogation of the terms of this Instrument or of all or any of the rights for the time being attached to the Warrants shall be effective (whether or not the Company is being wound up) without Warrantheader Consent.

## **12. SEVERANCE**

If any provision or part-provision of this Instrument is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 12 shall not affect the validity and enforceability of the rest of this Instrument.

## **13. THIRD PARTY RIGHTS**

13.1 Except as expressly provided in clause 13.2, a person who is not a party to this Instrument shall not have any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of this Instrument.

13.2 The provisions of this Instrument are intended to confer rights and benefits on the Warranholders and such rights and benefits shall be enforceable by each of them to the fullest extent permitted by law.

## **14. NOTICES**

Any notice to be given to or by any Warranholders for the purposes of this Instrument shall be given in accordance with the provisions of paragraph 4 of Part 4 of the Schedule.

**15. GOVERNING LAW AND JURISDICTION**

15.1 This Instrument and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Scotland.

15.2 Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Instrument or its subject matter or formation (including non-contractual disputes or claims).

**IN WITNESS WHEREOF** this Instrument consisting of this and the preceding ten pages, together with the Schedule annexed, is executed as follows and delivered on \_\_\_\_\_ 2018.

**SUBSCRIBED** for and on behalf of  
**FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED**

at .....

on .....

by

\_\_\_\_\_  
Director / Authorised Signatory

.....  
Print name

in the presence of:

Witness: .....

Full Name: .....

Address: .....

.....

.....

This is The Schedule in four parts referred to in the foregoing Warrant Instrument

**SCHEDULE**

**PART 1**

**Initial Warrantholder**

| <b>Name</b>            | <b>Address</b>                             | <b>Percentage of Warrant Shares</b> |
|------------------------|--|-------------------------------------|
| The Scottish Ministers | Victoria Quay, Leith,<br>Edinburgh EH6 6QQ | 100%                                |

**PART 2**

**Form of Warrant Certificate**

Ferguson Marine Engineering (Holdings) Limited

(Company number SC485103)

**WARRANT CERTIFICATE**

Certificate number: [NUMBER]

Date of issue: [DATE]

Number of Warrants: [NUMBER]

Name and address of Warrantholder: [NAME] [of **OR** whose registered office is at **OR** whose principal place of business is at] [ADDRESS]

**THIS IS TO CERTIFY** that the Warrantholder named above is the registered holder of the number of Warrants specified above, which entitle the Warrantholder to subscribe for Warrant Shares at the Subscription Price, as calculated in accordance with the terms and subject to the conditions set out in the instrument created by the Company relating to Warrants to subscribe for Warrant Shares dated [DATE] (the **Instrument**), subject to the Articles.

Terms defined in the Instrument have the same meanings when used in this Certificate.

Executed by FERGUSON MARINE  
ENGINEERING (HOLDINGS) LIMITED  
acting by

(Director) and

(Director)

.....

Director

.....

Director

**PART 3**

**Form of Exercise Notice**

**NOTICE OF EXERCISE**

To:

The Directors

FERGUSON MARINE  
ENGINEERING (HOLDINGS)  
LIMITED

[REGISTERED OFFICE  
ADDRESS]

[DATE]

We hereby exercise Subscription Rights in respect of [*INSERT NUMBER*] Warrant Shares, as evidenced by the enclosed Certificate and confirm payment in the sum of £[*AMOUNT*], being the Aggregate Subscription Price payable for those Warrant Shares. [*NOTE: if right of set-off under clause 5.6 is the method of payment refer to that fact here*]

We direct the Company to:

1. procure the allotment of the Warrant Shares to us in accordance with the terms of the Instrument, to be held subject to the Articles; and
2. enter our name in the register of members of the Company and to issue a share certificate for the relevant number of Warrant Shares in that name.

We request that a Certificate for any balance of our Warrants be sent at our own risk to [ADDRESS], marked for the attention of [NAME].

Terms defined in the Instrument have the same meanings when used in this Notice of Exercise.

Signed by [NAME] .....

**OR**

Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF COMPANY] .....  
[SIGNATURE OF DIRECTOR]

Director

## **PART 4 OF THE SCHEDULE**

### **The Conditions**

#### **1. THE REGISTER**

- 1.1 The Company shall keep and maintain the Register at the Registered Office and there shall be entered in the Register:
- 1.1.1 the names and addresses of the Warranholders, supplied in accordance with paragraph 3.2 of Part 4 of the Schedule;
  - 1.1.2 the number of Warrants held by each Warranholder;
  - 1.1.3 the date on which each person was registered as a Warranholder, in respect of each tranche of his Warrants;
  - 1.1.4 the date on which each Warranholder exercises any Subscription Rights and the number of Warrants for which such Subscription Rights are exercised;
  - 1.1.5 the date at which any person ceased to be a Warranholder; and
  - 1.1.6 any serial number given to each Certificate and the date of issue of any Certificate.
- 1.2 The Company shall promptly amend the Register after receiving notice of a change in a Warranholder's details for service pursuant to paragraph 4.2.
- 1.3 The Warranholders or any of them, or any person authorised by a Warranholder, shall be at liberty at all reasonable times during office hours to inspect the Register and to take copies of or extracts from it or any part of it.
- 1.4 The Company shall be entitled to treat each person named in the Register as a Warranholder as the absolute owner of a Warrant and, accordingly, shall not, except as ordered by a court of competent jurisdiction or as required by law, be bound to recognise any equitable or other claim to or interest in a Warrant on the part of any other person, whether or not it shall have express or other notice of such a claim.
- 1.5 Every Warranholder shall be recognised by the Company as entitled to its Warrants free from any equity, set-off or cross-claim against the original or an intermediate holder of such Warrants.

#### **2. TRANSFER OF WARRANTS**

- 2.1 Subject to paragraph 2.2 no Warranholder shall assign, transfer, mortgage, charge, declare a trust over, or deal in any other manner with its Warrants or any of its rights under this Warrant Instrument.
- 2.2 A Warranholder shall be entitled to assign or transfer its interest in this Warrant Instrument, in whole (but not in part), to any Permitted Transferee (as such term is defined in the Articles adopted or to be adopted on or around the date hereof, and subject to the restrictions contained at clause 8.3 of the Shareholders' Agreement) provided always that, as a condition of such assignation or transfer, the Warranholder has assigned or transferred its relevant rights and/or obligations under the other Finance Documents (in whole (but not in part)) to the same Permitted Transferee, pursuant to clause 17.2 of the Loan Agreement.



- 2.3 An instrument of transfer shall be executed by or on behalf of the transferor but need not be signed by the transferee. The transferor shall be deemed to remain the holder of the Warrants until the name of the transferee is entered in the Register for the Warrants being transferred.
- 2.4 The Board may refuse to register a transfer unless such instrument is deposited at the Registered Office together with the Certificate to which it relates and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer. The Board may waive production of any Certificate on production to it of satisfactory evidence of the loss or destruction of the Certificate, together with such indemnity as it may reasonably require.
- 2.5 Upon registration, the Company shall issue a Certificate to the transferee in respect of the Warrants transferred and, subject to clause 3.4 of this Instrument, the transferor's Certificate shall be cancelled. The Company may retain any instrument of transfer which is registered.
- 2.6 The registration of a transfer shall be conclusive evidence of approval by the Board of the transfer.
- 2.7 No fee shall be charged for the registration of a transfer of a Warrant, or for the registration of any other documents which, in the opinion of the Board, require registration.
- 2.8 Any transfer of a Warrant made otherwise than in accordance with this paragraph 2 shall be void and have no effect.

### **3. NOTICES**

- 3.1 A notice given to a party under or in connection with this Instrument:
- 3.1.1 shall be in writing and in English;
- 3.1.2 shall be sent, in the case of the Company, to the Registered Office and, in the case of a Warrantholder, to the address supplied in accordance with paragraph 3.2, or such other address or person as that person may notify to the Company in accordance with the provisions of this paragraph 3;
- 3.1.3 shall be:
- (a) delivered by hand;
  - (b) sent by pre-paid first class post, recorded delivery or special delivery; or
  - (c) sent by airmail or by reputable international overnight courier (if the notice is to be served by post to an address outside the country from which it is sent);  
and
- 3.1.4 is deemed received as set out in paragraph 3.4.
- 3.2 Each Warrantholder shall register with the Company an address in the UK to which notices can be sent and, if a Warrantholder fails to do so, notice may be given to that Warrantholder by sending the same by any of the methods referred to in paragraph 3.1 to the last known address of such Warrantholder.

- 3.3 A Warrantholder may change its details for service of notices by giving notice to the Company, if the address for service is an address in the UK following any change. Any change notified under this paragraph 3.3 shall take effect at 9.00 am on the later of:
- 3.3.1 the date (if any) specified in the notice as the effective date for the change; or
  - 3.3.2 five Business Days after deemed receipt of the notice.
- 3.4 Delivery of a notice is deemed to have taken place (if all other requirements in this paragraph 3 have been satisfied):
- 3.4.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address;
  - 3.4.2 if sent by pre-paid first class post, recorded delivery or special delivery to an address in the UK, at 9.00 am on the second Business Day after posting; or
  - 3.4.3 if sent by pre-paid airmail to an address outside the country from which it is sent, at 9.00 am on the fifth Business Day after posting; or
  - 3.4.4 if sent by reputable international overnight courier to an address outside the country from which it is sent, on signature of a delivery receipt or at the time the notice is left at the address; or
  - 3.4.5 if deemed receipt under the previous sub-paragraphs of this paragraph 3.4 would occur outside business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), at 9.00 am on the day when business next starts in the place of deemed receipt.
- For the purposes of this paragraph 3.4, all references to time are to local time in the place of deemed receipt.
- 3.5 To prove service, it is sufficient to prove that:
- 3.5.1 if delivered by hand or by reputable international overnight courier, the notice was delivered to the correct address;
  - 3.5.2 if sent by post or by airmail, the envelope containing the notice was properly addressed, paid for and posted.
- 3.6 This paragraph 3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 3.7 All notices with respect to Warrants registered in the names of joint holders shall be given to whichever of such persons is named first in the Register and any notice so given shall be sufficient notice to all the joint registered holders of such Warrants.
- 3.8 Any person who, whether by operation of law, transfer or other means whatsoever, becomes entitled to any Warrant, shall be bound by every notice properly given to the person from whom he derives his title to such Warrant.
- 3.9 A notice given under or in connection with this Instrument is not valid if sent by email.

- 3.10 When a given number of days' notice must be given, the day of service shall be included but the day on which such notice shall expire shall not be included in calculating the number of days. The signature to any notice to be given by the Company may be written or printed.