

EXECUTION

LOAN AGREEMENT

between

THE SCOTTISH MINISTERS

FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED

and

FERGUSON MARINE ENGINEERING LIMITED

MACROBERTS

LLP

For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Loan Agreement is delivered on June 2018.

between

(ONE) THE SCOTTISH MINISTERS in terms of the Scotland Act 1998, Victoria Quay, Leith, Edinburgh EH6 6QQ (the **Scottish Ministers**);

(TWO) FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED (Registered Number SC485103) and having its Registered Office at 3 Redwood Crescent, East Kilbride, Glasgow, G2 5PA (the **Borrower**); and

(THREE) FERGUSON MARINE ENGINEERING LIMITED (Registered Number SC485060) and having its Registered Office at 3 Redwood Crescent, East Kilbride, Glasgow, G2 5PA ("**FMEL**").

WHEREAS

It is intended that the Scottish Ministers will provide certain credit facilities to the Borrower on the terms of this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

Acceptable Form means, in relation to any document, a form which is acceptable to the Scottish Ministers;

Account means each bank account held by an Obligor from time to time;

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);

Agreement means this agreement (including the Schedule);

Articles means the articles of association of the Borrower from time to time;

Authorisation means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

Available Facility means the sum of THIRTY MILLION POUNDS (£30,000,000) to the extent not cancelled or reduced under this Agreement;

[REDACTED]

[REDACTED]

Business Day means a day (other than a Saturday) on which banks are open for business in Edinburgh;

Business 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;

[REDACTED]

CBC means Clyde Blowers Capital Fund III LP (no SL008995);

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;

[REDACTED]

[REDACTED]

[REDACTED]

Controlling Interest means an interest in shares giving to the holder or holders control of the Borrower within the meaning of section 1124 of the Corporation Tax Act 2010;

Dangerous Substances means any substances capable of causing harm to man or any other living organism or damaging the environment;

Disposal means any sale, transfer or other form of disposal of any asset by the Group where the value of the asset exceeds [REDACTED];

Environmental Law means all laws, regulations, directives, codes of practice, circulars, guidance notices and court decisions (whether in the UK or the European Union) concerning the protection of human health or welfare or the environment or the conditions of the work place or the generation, transportation, storage, treatment or disposal of Dangerous Substances;

Event of Default means each of the events listed in Clause 13;

Exit means a Share Sale, Business Disposal or Listing;

Facility means the term loan facility made available to the Borrower under this Agreement as described in Clause 2;

Final Repayment Date means, subject to the terms of this Agreement, the date occurring 10 years after the first Utilisation Date;

[REDACTED]

Financial Indebtedness means any indebtedness for or in respect of:

- a) monies borrowed other than any borrowed pursuant to this Agreement or the First Facility Agreement;
- b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the mark to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);

- h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs a) to h) above;

Financial Information means the information to be delivered to the Scottish Ministers pursuant to Clauses 11.1.2 to 11.1.7 (inclusive) of this Agreement;

[REDACTED]

[REDACTED]

GAAP means generally accepted accounting principals in the UK;

Group means each Obligor;

[REDACTED]

[REDACTED]

Intra-Group Loan means the intragroup loan entered into between the Borrower and FMEL on or around the date hereof;

Listing means the admission of all or any of the shares in the capital of the Borrower and/or FMEL or securities representing those shares (including without limitation depositary interests, American depositary receipts, American depositary 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 means each loan made or to be made under the Facility or the principal amount outstanding for the time being together with all interest thereon and all costs, charges and expenses due or to become due by the Borrower to the Scottish Ministers;

Loan Period means the period from the date of this Agreement to, and including, the Final Repayment Date;

MacKellar means MacKellar Sub-Sea Limited (no SC486910);

Material Adverse Effect means a material adverse effect on:

- a) the financial condition of the Group; or
- b) the ability of an Obligor to perform its obligations under the Finance Documents; or
- c) the rights or remedies of the Scottish Ministers under any of the Finance Documents.

Obligor means the Borrower, FMEL, and MacKellar;

[REDACTED]

[REDACTED]

[REDACTED]

Permitted Security Rights means (i) any Security created by the Group, or any member of it, with the prior written approval of the Scottish Ministers (ii) all existing security arrangements entered into by the Group at the date of this Agreement (iii) security arrangements to be entered into by the Group pursuant to a third party bond or guarantee facility required to support the award of a material new order (provided that the Scottish Ministers have consented to such further security, such consent not to be unreasonably withheld or delayed) and [REDACTED]

[REDACTED]

Potential Event of Default means an event which, with the giving of notice, the lapse of time or the making of any determination would constitute an Event of Default provided such event is incapable of being remedied prior to the expiry of such notice, lapse of time or determination;

Property means subjects at Newark Works, Castle Road, Port Glasgow, PA14 5NG;

Relevant Date means the last Business Day of each of March, June, September and December during the Availability Period (commencing on 28 September 2018);

[REDACTED]

Repeating Representations means each of the representations set out in Clauses 10.1 to 10.9 inclusive and Clauses 10.11 to 10.18 inclusive.

Representations and Warranties means those representations and warranties made in terms of Clause 10 of this Agreement;

Schedule means the schedule (comprising 3 Parts) annexed to this Agreement;

Security means a mortgage, charge, assignation in security, standard security, pledge, lien (other than a lien arising solely by operation of law in the normal course of business, the aggregate amount of which is not material), deposit, undertaking, guarantee, indemnity or any other security agreement or arrangement having a similar effect;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Subsidiary means a subsidiary within the meaning of section 1159 of the Companies Act 2006;

Surplus Amount has the meaning given to it in Clause 7.3;

Tax means 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);

Utilisation means a utilisation of the Facility;

Utilisation Date means the date of a Utilisation, being the date on which the relevant Loan is to be made;

Utilisation Request means a notice substantially in the form set out in Part 2 of the Schedule;

VAT means:

- a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph a) above, or imposed elsewhere

in each case as applicable in Scotland;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 1.2 Words denoting the singular number only include the plural and vice versa and words denoting any gender include all genders and words denoting persons include firms and corporations and vice versa.
- 1.3 Headings are used in this Agreement for convenience only and shall not affect its construction or interpretation.
- 1.4 In this Agreement, 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 Agreement.
- 1.5 In this Agreement, a reference to any document or this Agreement means this Agreement 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 the Finance Documents.
- 1.7 The expression **party** means each or any of the parties from time to time to this Agreement, so long as they remain a party.
- 1.8 Where the words **include(s)** or **including** are used they are illustrative and shall not limit the scope of the words preceding them.
- 1.9 Any notice, instruction, notification, direction, request, consent or approval contemplated herein shall be made or given in writing.
- 1.10 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);
- 1.11 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; and
- 1.12 A provision of law is a reference to that provision as amended or re-enacted.

2. AMOUNT, NATURE AND PURPOSE OF THE LOAN

- 2.1 Subject to the terms of this Agreement, the Scottish Ministers agree to make available to the Borrower a term loan facility in an aggregate amount not exceeding the amount of the Available Facility.
- 2.2 The Borrower shall apply all amounts borrowed by it under the Facility to fund FMEL to assist with the long term viability and enhanced capabilities of the businesses carried on at the Property, and for other general working capital purposes of FMEL, all as identified in the Business Plan and/or Financial Model.

3. CONDITIONS OF UTILISATION

- 3.1 The Scottish Ministers will only be obliged to comply with their obligations under this Clause 3 in relation to any Utilisation if:-
 - 3.1.1 on the date of this Agreement the Scottish Ministers have received and are satisfied with all of the documents and other evidence listed in Part A of Part 1 of the Schedule;
 - 3.1.2 by the date which is no later than 5 Business Days before the first Utilisation, the Scottish Ministers have received all of the documents and other evidence listed in Part B of Part 1 of the Schedule;
 - 3.1.3 by the date which is no later than 5 Business Days before each subsequent Utilisation, the Scottish Ministers have received all of the documents and other evidence listed in Part C of Part 1 of the Schedule.
- 3.2 If the conditions set out in this Agreement have been met, and subject to there being no Potential Event of Default or Event of Default having occurred which is continuing unwaived and to the Utilisation Request being made for a date within the Availability Period, the Scottish Ministers shall advance a Loan on the Utilisation Date specified in a Utilisation Request.
- 3.3 The Borrower may drawdown the Facility in such number of tranches as it may determine not exceeding in aggregate the Available Facility provided that:
 - 3.3.1 no drawing of the Facility shall be for an amount less than **[REDACTED]**;
[REDACTED]
 - 3.3.3 each Utilisation Request may only be made in accordance with details contained in the Utilisation Request; and
 - 3.3.4 the first Utilisation Request shall be for the amount of, or less than, **[REDACTED]**.

4. CANCELLATION OF FACILITY

- 4.1 Any amount of the Facility which, at that time, is unutilised shall be immediately cancelled at the end of the Availability Period.
- 4.2 **[REDACTED]**

5. INTEREST

- 5.1 **[REDACTED]**
- 5.2 **[REDACTED]**
- 5.3 **[REDACTED]**
- 5.4 **[REDACTED]**
- 5.5 **[REDACTED]**

6. [REDACTED]

- 6.1 **[REDACTED]**
- 6.2 **[REDACTED]**
- 6.3 **[REDACTED]**

7. REPAYMENT AND PREPAYMENT

7.1 Subject to the terms of this Agreement the Loans shall be repaid in full on the Final Repayment Date.

7.2 **[REDACTED]**

7.3 **[REDACTED]**

7.4 If it becomes unlawful for the Scottish Ministers to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan then upon the Scottish Ministers notifying the Borrower, the Available Facility will be immediately cancelled and the Borrower shall repay the Loans made to it on the last day of the calendar month occurring after the Scottish Ministers have so notified the Borrower or, if earlier, the date specified by the Scottish Ministers in a notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

7.5 Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment. Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid. The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Available Facility except at the times and in the manner expressly provided for in this Agreement. No amount of the Available Facility cancelled under this Agreement may be subsequently reinstated. Amounts repaid or prepaid shall not be available for re-borrowing.

7.6 Notwithstanding any other provision of this Agreement, if an Exit occurs at any time prior to the exercise by the Scottish Ministers of all of their Subscription Rights and prior to the Relevant Exit Date, then:-

7.6.1 the Borrower shall promptly notify the Scottish Ministers upon becoming aware of that event;

7.6.2 the Scottish Ministers shall not be obliged to fund a Utilisation; and

7.6.3 the Scottish Ministers, in their sole discretion, may by notice in writing to the Borrower cancel the Facility and the First Facility Agreement and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility and the First Facility Agreement shall be cancelled and all such outstanding amounts shall become automatically due and payable.

8. FEES AND EXPENSES

8.1 All costs charges and expenses incurred by a party to this Agreement in connection with the negotiation, preparation, execution and carrying into effect of the Finance Documents shall be borne by the party so incurring the same.

8.2 All reasonable costs, charges and expenses in each case properly incurred (including legal expenses on a full indemnity basis and VAT) of the Scottish Ministers incurred directly in connection with the enforcement or preservation of rights under the Finance Documents will be paid on demand by the Borrower.

9. PAYMENTS AND TAX

9.1 All payments by the Borrower hereunder shall be made without set-off or counterclaim in same day funds to such account of the Scottish Ministers in such place as the Scottish Ministers shall notify to the Borrower from time to time.

9.2 All payments due to be made by the Borrower hereunder, whether of principal, interest or

otherwise, shall be made free and clear of and without deduction for any present or future taxes (including, without limitation, VAT, stamp duty land tax, corporation tax, income tax, capital gains tax and any penalty or interest payable in connection with any failure to pay or any delay in paying the same), levy, duties or other charges or withholdings (“Tax”). If the Borrower is compelled by law to deduct or withhold any Tax it will ensure that such deduction or withholding does not exceed the minimum liability therefor and will promptly pay to the Scottish Ministers such additional amount as is necessary to ensure that the net amount received by the Scottish Ministers is equal to the amount payable by the Borrower had there been no deduction or withholding.

9.3 The Borrower shall within 10 Business Days of demand pay to the Scottish Ministers an amount equal to the loss, liability or cost which the Scottish Ministers determine will be or has been (directly or indirectly) suffered for or on account of Tax by the Scottish Ministers in respect of a Finance Document.

9.4 All amounts expressed to be payable under a Finance Document to the Scottish Ministers which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly if VAT is or becomes chargeable on any supply made by the Scottish Ministers to the Borrower under a Finance Document and the Scottish Ministers are required to account to the relevant tax authority for the VAT, the Borrower shall pay to the Scottish Ministers (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of that VAT (and the Scottish Ministers must promptly provide an appropriate VAT invoice to the Borrower).

10. REPRESENTATIONS AND WARRANTIES

10.1 The Borrower and/or FMEL (as the context so requires) makes each of the representations and warranties set out in this Clause 10 (for itself and each other Obligor);

10.2 The rights and remedies of the Scottish Ministers in respect of any misrepresentation or breach of warranty on the part of the Borrower shall not be prejudiced or affected by any investigation of the Borrower or any other person by or on behalf of the Scottish Ministers or (without limitation) any other matter which but for this provision would or might prejudice or affect any such rights or remedies.

10.3 The representations and warranties set out in this Clause 10 are deemed to be made by reference to the facts and circumstances then existing on each day the representations and warranties are given.

10.4 It is a limited liability body, duly incorporated and validly existing under the laws of Scotland and has the power to own its assets and carry on its business as it is being conducted.

10.5 It has the power (and all necessary corporate authorisations have been obtained) to enter into the Finance Documents to which it is a party and to perform its obligations under the Finance Documents and has complied, or will comply, with all material statutory and other legal requirements relative to its business.

10.6 No limit on the powers of the Borrower will be exceeded as a result of the borrowing contemplated by the Finance Documents.

10.7 On execution each of the Finance Documents:

10.7.1 will constitute legal, valid and binding obligations of the Obligors enforceable in accordance with its terms;

10.7.2 does not and will not breach any law or regulation applicable to the Obligors;

10.7.3 does not and will not breach the constitution of the Obligors; and

10.7.4 does not and will not breach any agreement or instrument by which an Obligor is bound, or constitute a default or termination event (however described) under any such agreement or instrument or breach any judgment, decree, judicial order or determination

of any court or applicable national or supranational judicial or governmental authority.

- 10.8 All Authorisations required or desirable to enable the each Obligor lawfully to enter into, exercise its rights and comply with its obligations under each Finance Document and to make each Finance Document admissible in evidence in Scotland have been obtained or effected and are in full force and effect.
- 10.9 All Authorisations necessary for the conduct of the business of each Obligor have been obtained or effected and are in full force and effect.
- 10.10 The choice of Scots law or the laws of England as the governing law of each of the Finance Documents will be recognised and enforced by the Scottish courts.
- 10.11 It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.
- 10.12 other than the Security Documents, it is not necessary that any of the Finance Documents be registered, filed, recorded or enrolled with any court or other authority or that any stamp, registration or similar tax be paid on or in relation to any of the Finance Documents.
- 10.13 In each case:
- (1) in respect of any matters occurring on or before the date of this agreement or save as disclosed to the Scottish Ministers or their advisers or matters of which the Scottish Ministers or any of their wholly owned companies are aware; and
 - (2) in respect of any matters occurring after the date of this agreement, save as disclosed to the Scottish Ministers or their advisers:
 - (a) no litigation, arbitration or administrative proceedings is/are pending nor, to the Borrower's knowledge after due enquiry, threatened against an Obligor or any of its assets which could or might have a Material Adverse Effect;
 - (b) no Obligor (nor would, with the giving of notice or passing of time or both, be) in default in respect of any Financial Indebtedness and the borrowing and repayment by the Borrower of the Loans will not contravene any existing applicable law or regulation or any contractual or other restriction or limitation binding on it;
 - (c) no Event of Default is continuing or might reasonably be expected to result from the drawing of any part of the Loans or the entry into, or the performance of, the Finance Documents or any transaction contemplated by the Finance Documents;
 - (d) no other event or circumstance is outstanding which constitutes, or (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the above) would constitute, a default or a termination event (however described) under any other agreement or instrument which is binding on the Obligor or to which any of their assets are subject which could or might have a material adverse effect on its financial condition;
 - (e) the financial projections contained in the Financial Information represent a fair and reasonable assessment of the anticipated future performance of the Group based on the assumptions (if any) stated in the Financial Information;
 - (f) so far as the Borrower is aware having made due enquiry, the Financial Information did not omit any information which, if disclosed, might reasonably be expected to adversely affect the decision of a person considering whether to provide financial assistance to the Borrower.
- 10.14 It has not taken any corporate action, nor have any steps been taken, or legal proceedings started or threatened against it for its winding up or dissolution, or for the appointment of a trustee in sequestration or similar officer of it or all or any part of its assets or revenues.
- 10.15 It holds all types of insurances, and for insured sums, which a prudent operator of the business would hold.
- 10.16 Any financial projections contained in the Financial Information have been prepared as at their date, on the basis of recent historical information and on the basis of reasonable assumptions.
- 10.17 For the purposes of the Regulation (EU) 2015/848 of the European Parliament and of the

Council of 20 May 2015 on insolvency proceedings (recast) (the "Regulation"), its centre of main interest is situated in Scotland and it has no "establishment" in any other jurisdiction.

- 10.18 It owns, or, as appropriate, any of its Subsidiaries, will have rights to use under licence, all of its or their assets, including the intellectual property rights, necessary for the operation of its business and is not in breach of any law, rule or order.
- 10.19 Nothing has occurred since the date of any information referred to in this Clause 10 which, if disclosed, would make that information untrue or misleading in any material respect.
- 10.20 The information contained in the officers certificate to be delivered to the Scottish Ministers under this Agreement is true, complete and accurate in all respects.
- 10.21 The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Utilisation Request.

11. UNDERTAKINGS BY THE BORROWER

The Borrower and/or FMEL (as the context so requires) undertake (for themselves and each other Obligor) to the Scottish Ministers that throughout the Loan Period it shall:

- 11.1 deliver to the Scottish Ministers such information as the Scottish Ministers may reasonably require including the following:
 - 11.1.1 any changes in key personnel or office bearers of FMEL, with FMEL undertaking to maintain adequate senior management commensurate with the senior management in place as at the date of this Agreement at all times;
 - 11.1.2 **[REDACTED]**
 - 11.1.3 **[REDACTED]**
 - 11.1.4 **[REDACTED]**
 - 11.1.5 **[REDACTED]**
 - 11.1.6 **[REDACTED]**
 - 11.1.7 **[REDACTED]**
- 11.2 on reasonable request, following the expiry of a reasonable period of notice and no more than:
 - 11.2.1 once in any rolling period of 20 Business Days during the period from the date of this Agreement until the date that the Available Facility has been fully drawn by the Borrower; or
 - 11.2.2 once in any quarter of each financial year of the Borrower at any time during the period from the date that the Available Facility has been fully drawn by the Borrower until the Final Repayment Date,

[REDACTED]
- 11.3 maintain its existence and carry on its activities in accordance with its constitutional documents substantially in the form carried on as at the date of this Agreement and obtain and maintain in force all licences, consents, permits and insurances necessary for its business and assets;
- 11.4 not amend its constitutional documents without the prior written consent of the Scottish Ministers, which consent shall not be unreasonably withheld;
- 11.5 take all steps and actions for the purpose of perfecting and giving effect to the terms hereof;

- 11.6 **[REDACTED]**
- 11.7 **[REDACTED]**
- 11.8 immediately upon becoming aware of it, inform the Scottish Ministers of the occurrence of an Event of Default or Potential Event of Default (and the steps, if any, being taken to remedy it);
- 11.9 not incur any Financial Indebtedness other than Permitted Financial Indebtedness;
- 11.10 operate each Account and any other bank account held by it in accordance with the Financial Transparency (EC) Regulations 2009;
- 11.11 **[REDACTED]**
- 11.12 not to create or attempt to create or allow to be created or to exist any security, charge (whether fixed or floating) or lien of any kind without the prior written consent of the Scottish Ministers, other than a Permitted Security Right;
- 11.13 not to make any loans or advance or enter into any guarantee or indemnity other than in the ordinary course of business unless with the prior consent of the Scottish Ministers;
- 11.14 **[REDACTED]** this Agreement;
- 11.15 promptly upon a request by the Scottish Ministers, supply to the Scottish Ministers a certificate signed by two of its directors or senior officers on its behalf certifying that no Event of Default is continuing (or if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy it);
- 11.16 notify the Scottish Ministers in writing of any actual or threatened claim against it in respect of an alleged breach of Environmental Law or remedial obligation or liability under such law which could, if well-founded, (1) have a Material Adverse Effect or (2) constitute a material liability of the Group (which shall be judged solely by the Scottish Ministers acting reasonably);
- 11.17 indemnify the Scottish Ministers against all costs and expenses suffered or properly incurred by them which arise as a result of (1) any actual or threatened breach of Environmental Law, (2) any actual or threatened release of or exposure to a Dangerous Substance on, at or from the premises or operations of FMEL or (3) any actual or threatened claim referred to in paragraph 11.15 above whether such claim has a Material Adverse Effect or not;
- 11.18 not make any Disposal, or agree to do so, other than in the ordinary course of its business whether absolutely or in security;
- 11.19 maintain all of its assets in a good state or repair and maintenance and in good working order;
- 11.20 comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents;
- 11.21 **[REDACTED]**
- 11.22 **[REDACTED]**

12. SECURITY

[REDACTED]

13. EVENTS OF DEFAULT

- 13.1 If any of the following events shall occur:

- 13.1.1 any sum owing under any Finance Document is not paid on the date it falls due save where such default was due to administrative error and is remedied within 3 Business Days; or
- 13.1.2 the Facility is used for a purpose other than that specified in Clause 2.2, without the prior written consent of the Scottish Ministers; or
- 13.1.3 an Obligor defaults under any other provision of this Agreement or any other Finance Document and, if capable of remedy, the default is not remedied within 15 Business Days after notice to the Borrower requesting action to remedy the same; or
- 13.1.4 any representation or warranty of the Borrower made in or deemed made pursuant to any provision of this Agreement proves to have been incorrect in a material respect;
- 13.1.5 the holder of any Security takes possession or a trustee in sequestration or similar officer is appointed of the whole or any part of the undertaking, property, assets or revenues of an Obligor; or
- 13.1.6 an Obligor enters into any composition or arrangement with its creditors or proceedings are commenced in relation to an Obligor under any law, regulation or procedure relating to reconstruction or re-adjustment of debts; or
- 13.1.7 an Obligor is adjudicated or found bankrupt or insolvent or any order is made by any competent court or any petition is presented for the winding-up or dissolution of, or for the appointment of a trustee in sequestration or similar officer of, an Obligor or of a substantial part of its assets save for the purposes of amalgamation or reorganisation (not involving insolvency) the terms of which shall have been previously approved in writing by the Scottish Ministers; or
- 13.1.8 in relation to borrowings (including any grant, loan or subsidy received or receivable by an Obligor) of an Obligor raised other than under this Loan Agreement ("**Other Borrowings**") any Other Borrowings become prematurely due and payable or capable of being declared due and payable, or any Other Borrowings or any sums payable in respect thereof are not paid when due or within any applicable grace period, or any Security securing any such borrowing becomes enforceable or a demand is made upon any guarantee given by the an Obligor which is not paid when due (taking into account any applicable grace periods); or
- 13.1.9 an Obligor ceases or threatens to cease to carry on business or a substantial part of the business, properties or assets of the Group is seized or appropriated;

then on the occurrence of any of those events the Scottish Ministers may, whilst such event is continuing:

- (a) cancel the Facility whereupon it shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand; and/or
- (d) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

14. INDEMNITY

The Borrower shall indemnify the Scottish Ministers against any loss (including interest) or expense which the Scottish Ministers shall certify as sustained or incurred by it as a consequence of the occurrence of any Event of Default.

15. DISCLOSURE OF INFORMATION

- 15.1 Subject to Clauses 15.2 and 15.3, each party shall treat the other party's Confidential Information as confidential, and shall not disclose it to any other person without the owner's prior written consent.
- 15.2 Clause 15.1 and 16 shall not apply to the extent that such disclosure is a requirement of law placed upon the party making the disclosure;
- 15.2.1 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 15.2.2 such information was obtained from a third party without obligation of confidentiality;
- 15.2.3 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- 15.2.4 such information was independently developed without access to the other party's Confidential Information.
- 15.3 Nothing in this Agreement shall prevent either party from disclosing the other party's Confidential Information:
- 15.3.1 to any consultant, contractor or other person engaged by the Borrower or the Scottish Ministers; or
- 15.3.2 for the purpose of the examination and certification of the Group's accounts.
- 15.4 In this Clause 15:
- Confidential Information** means information that ought to be considered as confidential and may include information whose disclosure would or would be likely to prejudice the commercial interests of any person, trade secrets, intellectual property rights, or know-how of any party;
- FOISA** means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation;
- EISR** means the Environmental Information (Scotland) Regulations 2004 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation; and
- Information** has the meaning given in section 73 of FOISA.
- 15.5 The Borrower acknowledges that the Scottish Ministers are subject to the requirements of the FOISA and the EISR and the Borrower shall assist and cooperate with the Scottish Ministers to enable them to comply with their information disclosure obligations.
- 15.6 The Scottish Ministers shall be responsible for determining in its absolute discretion whether Information is exempt from disclosure in accordance with the provisions of the FOISA or the EISR.
- 15.7 For the avoidance of doubt, the Borrower shall be entitled to disclose the terms of this Agreement to any commercial lender which is giving consideration to the provision of loan finance to the Group.

16. [REDACTED]

17. ASSIGNATION AND FURTHER ASSURANCE

17.1 The Borrower may not assign or transfer its rights and/or obligations under this Agreement.

17.2 [REDACTED]

17.3 The Borrower will, at its own cost and whenever required by the Scottish Ministers, do anything and sign and deliver all such deeds, instruments, notices or other documents of any kind, in such form as the Scottish Ministers may reasonably require, in order to exercise any of the powers and rights given herein or by law.

18. MISCELLANEOUS

18.1 Every notice under this Agreement shall be in writing and may be given or made by hand, post or e-mail to the Borrower or the Scottish Ministers at their respective addresses given above (or to such other address as either party may intimate to the other party in writing from time to time as being the appropriate address for service of notices) and, in the case of an e-mail, to any e-mail address published as belonging to them for this purpose. Every notice shall be deemed to have been received, in the case of an e-mail, at the time of despatch (provided that if the date of despatch is not a working day, it shall be deemed received on the next such working day) and in the case of a letter at the time of its delivery if delivered personally or four days after its posting if sent by mail.

18.2 No failure or delay by the Scottish Ministers in exercising any right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude any further exercise thereof or the exercise of any other right or remedy. The rights and remedies herein are cumulative and not exclusive of any rights and remedies provided by law.

18.3 No variation of this Agreement shall be effective unless it is effected by way of a written agreement, duly executed by the Scottish Ministers and by the Borrower.

18.4 The Borrower consents to the registration of this Agreement for execution.

18.5 For the avoidance of doubt, nothing in this Agreement will infer any obligation on the Scottish Ministers to provide any further assistance to the Group

18.6 **[REDACTED]**

18.6.1 **[REDACTED]**

18.6.2 **[REDACTED]**

19. COUNTERPARTS, DELIVERY ETC

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

19.2 Where this Agreement is executed in counterparts:

19.2.1 it shall not take effect until all counterparts have been delivered;

19.2.2 all counterparts shall be held as undelivered for the purposes of The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 until the parties agree the date on which they are to be treated as delivered; and

19.2.3 such date of delivery shall be inserted in the blank provided for that purpose on page 1 of this Agreement.

20. LAW AND JURISDICTION

This Agreement is governed by and shall be construed in accordance with the laws of Scotland and the Borrower irrevocably submits to the exclusive jurisdiction of the Scottish Courts: **IN WITNESS WHEREOF** this Agreement consisting of this and the preceding eighteen pages, together with the Schedule annexed, is executed as follows and are delivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 on the date specified on page 1 of this Agreement:-

SUBSCRIBED for and on behalf of the said **SCOTTISH MINISTERS**

at ...[REDACTED]

.....

on ...[REDACTED]

.....

by

[REDACTED]

[REDACTED]

Authorised Signatory

.....
Print name

in the presence of:

Witness: ...[REDACTED]

.....

Full Name: ...[REDACTED]

.....

Address:[REDACTED]

.....

.....

.....

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

at[REDACTED]

.....

on[REDACTED]

.....

By [REDACTED]

[REDACTED]

Director / Authorised Signatory

.....
Print name

in the presence of:

Witness: [REDACTED]

Full Name:[REDACTED]

.....

Address: ...[REDACTED]

.....

.....

.....

SUBSCRIBED for and on behalf of the said
FERGUSON MARINE ENGINEERING LIMITED

at[REDACTED]

.....

on[REDACTED]

.....

By [REDACTED]

[REDACTED]

Director / Authorised Signatory

.....
Print name

in the presence of:

Witness:[REDACTED]

.....

Full Name:[REDACTED]

.....

Address:[REDACTED]

.....

.....

.....

This is the Schedule in 3 parts referred to in the foregoing Agreement between Ferguson Marine Engineering (Holdings) Limited, Ferguson Marine Engineering Limited and the Scottish Ministers.

SCHEDULE

PART 1

Part A

Date of signing Conditions Precedent

1. This Agreement duly executed by the Borrower;
2. Resolution of the board of directors and shareholders of each of the Borrower, FMEL and MacKellar approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]

Part B

First Utilisation Conditions Precedent

1. A signed Utilisation Request.
2. No Potential Event of Default or Event of Default remaining outstanding, unwaived or unsatisfied.
3. **[REDACTED]**
4. **[REDACTED]**
5. A legal report instructed by counsel for the Scottish Ministers over each title number making up the Property or part thereof, containing a clear search in the Personal Registers for the relevant prescriptive periods together with clear searches in the Register of Inhibitions against Fergusson Marine Engineering Limited, (CRN: SC485060) showing, (i) no adverse entries, (ii) an advance notice as defined in the Land Registration etc. (Scotland) Act 2012 for the standard security in respect of the Property giving not less than 20 protected Business Days beyond the date of the Standard Security; and (iii) no other advance notices as defined in the Land Registration etc. (Scotland) Act 2012.
6. Completed Land Register Application forms in respect of the standard security over the Property prepared by counsel for the Scottish Ministers.
7. **[REDACTED]**
8. **[REDACTED]**

Part C

Subsequent Utilisation Conditions Precedent

1. A signed Utilisation Request.
2. No Potential Event of Default or Event of Default remaining outstanding, unwaived or unsatisfied.
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

PART 2

Utilisation Request

To: The Scottish Ministers
From: Ferguson Marine Engineering (Holdings) Limited

Ferguson Marine Engineering (Holdings) Limited
£30,000,000 Loan Agreement dated [] 2018 (the "Loan Agreement").

1. We refer to the Loan Agreement.
2. We wish to borrow a Loan as follows:-
 - a. Amount: []
 - b. Drawdown Date: []
 - c. Payment Instructions: []
3. We confirm that each condition specified in Clause 3 (Conditions of Utilisation) of the Loan Agreement which requires to be satisfied on the date of this Utilisation Request is so satisfied.

By []

For and on behalf of
Ferguson Marine Engineering (Holdings) Limited

PART 3

Maximum Cumulative Drawdown Amount

Date	Maximum Cumulative drawdown Amount £ (in thousands)
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]