

BOND AND FLOATING CHARGE

by

MACKELLAR SUB-SEA LIMITED

in favour of

THE SCOTTISH MINISTERS

This bond and floating charge is subject to an intercreditor deed with HCC International Insurance Company plc

MACROBERTS

LLP

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For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Bond and Floating Charge is delivered on 25 June 2018.

by

- (1) **MACKELLAR SUB-SEA LIMITED**, incorporated in Scotland under the Companies Acts (Company Number SC486910) and having its registered office at Orbital House, 3 Redwood Crescent, Peel Park, East Kilbride, G74 5PA ("the **Chargor**");

in favour of

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

Whereas:

- (A) The Scottish Ministers have provided and will provide certain credit facilities to the Chargor's parent, Holdings and/or another subsidiary of Holdings, FMEL, pursuant to the Loan Agreements (each term as defined below).
- (B) one of the conditions precedent to the provision of facilities to Holdings and the provision of continuing facilities to FMEL is that the Chargor grants to the Scottish Ministers this Floating Charge.

Now this floating charge witnesses as follows:

1 Definitions and Interpretation

1.1 Incorporation of definitions

Terms defined in the Holdings Loan Agreement, unless otherwise defined in this Floating Charge or unless a contrary intention appears, bear the same meaning when used in this Floating Charge.

1.2 Additional definitions

In this Floating Charge:

"Administrator" means any person appointed as an administrator pursuant to paragraph 14 of Schedule B1 to the Insolvency Act;

"Charged Assets" means the whole of the property, assets and undertaking (including uncalled capital) from time to time of the Chargor;

"Enforcement Event" means an Event of Default has occurred in terms of any Loan Agreement;

"Event of Default" means an "Event of Default" in terms of and as defined in the Loan Agreements;

"Finance Document" means a "Finance Document" under and in terms of the FMEL Loan Agreement and/or the Holdings Loan Agreement;

"Fixed Security" shall have the meaning given to it in section 486 of the Companies Act 1985;

"Floating Charge" means this bond and floating charge;

"FMEL" means Ferguson Marine Engineering Limited, a company incorporated in Scotland with Company No. SC485060 and whose registered office is at Orbital House, 3 Redwood Crescent, Peel Park, East Kilbride, G74 5PA;

"FMEL Loan Agreement" means the term loan agreement dated 6 September 2017 between the Scottish Ministers and FMEL as amended, varied, novated or supplemented from time to time and most recently amended on or around the date hereof;

"HCCI" means HCC International Insurance Company Plc, a company registered under the laws of England (registered number 01575839) and whose registered office is at 1 Aldgate, London, England, EC3N 1RE;

"Holdings" means Ferguson Marine Engineering (Holdings) Limited, a company incorporated in Scotland (Company No. SC485103) and whose registered office is at Orbital House, 3 Redwood Crescent, Peel Park, East Kilbride, G74 5PA;

"Holdings Loan Agreement" means the loan agreement to be entered into between the Holdings, FMEL and the Scottish Ministers dated on or around the date hereof and as the same may be amended, varied, novated or supplemented from time to time;

"Insolvency Act" means the Insolvency Act 1986;

"Intercreditor Deed" means the Intercreditor Deed entered into or to be entered into between (1) the Scottish Ministers (2) the Chargor (3) FMEL (4) HCCI and (5) Holdings dated on or around the date hereof;

"Loan Agreements" means the FMEL Loan Agreement and the Holdings Loan Agreement and "Loan Agreement" shall be construed accordingly;

"Obligor" means the Chargor, FMEL, and Holdings;

"Receiver" includes any person or persons appointed (and any additional person or persons appointed or substituted) as receiver by the Scottish Ministers under this Floating Charge and shall include joint Receivers;

"Secured Obligations" means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly or severally, as principal or surety or in any other capacity whatsoever) of each Obligor to the Scottish Ministers under the Finance Documents, except for any obligation or liability which, if it were so included, would result in this Floating Charge contravening any law; and

"Security" means a mortgage, charge, assignment in security, assignation in security, floating charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

1.3 Construction

1.3.1 Unless a contrary indication appears, any reference in this Floating Charge to:

- (a) any **"Chargor"**, **"the Scottish Ministers"** or any other person shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
- (b) **"assets"** includes present and future properties, revenues and rights of every description;
- (c) any **"Loan Agreement"** or **"Finance Document"** any other agreement or instrument is a reference to that Loan Agreement and/or Finance Document or other agreement or instrument as from time to time amended, novated, supplemented, replaced, extended or restated in whole or in part;

- (d) a "**person**" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (e) 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 regulatory, self-regulatory or other authority or organisation;
- (f) a provision of law is a reference to that provision as from time to time amended or re-enacted;
- (g) "**disposal**" includes a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary (and "dispose" shall be construed accordingly);
- (h) "**document**" includes any deed, instrument (including negotiable instrument) or other document of any kind;
- (i) any matter "**including**" specific instances or examples of such matter shall be construed without limitation to the generality of that matter (and references to "**include**" shall be construed accordingly);
- (j) the "**winding-up**", "**dissolution**" or "**administration**" of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or established, or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors; and
- (k) Clauses are to the clauses to this Floating Charge.

1.3.2 Clause headings are for ease of reference only.

1.3.3 Words in the singular shall import the plural and vice versa.

1.3.4 Words defined in the Companies Act 2006 have the same meanings in this Floating Charge.

1.3.5 This Floating Charge is subject to the terms of the Intercreditor Deed.

2 Undertaking to Pay

2.1 Covenant to pay

The Chargor undertakes to the Scottish Ministers to pay, discharge and satisfy the Secured Obligations when the same become due in terms of the Finance Documents whether by acceleration or otherwise.

2.2 Interest

The Chargor shall pay interest on any amount demanded from it in accordance with this Floating Charge from the date of such demand until such amount is irrevocably discharged and paid in full (such interest to accrue on a daily basis after as well as before judgment or the liquidation or administration of the Chargor and to be payable on demand) at the rate from time to time applicable to unpaid sums specified in the Finance Documents, save to the extent that such interest is charged on such amount pursuant to the relevant Finance Document and itself constitutes a Secured Obligation.

3 Floating Charge

3.1 General

All the security created under this Floating Charge:

- 3.1.1 is created over present and future assets of the Chargor;
- 3.1.2 is security for the payment of all the Secured Obligations; and
- 3.1.3 is granted with absolute warrandice.

3.2 Floating charge

The Chargor grants a floating charge in favour of the Scottish Ministers over the Charged Assets.

3.3 Priority

- 3.3.1 The floating charge created by Clause 3.2 (Floating charge) shall, subject to section 464(2) of the Companies Act 1985, rank in priority to any Fixed Security (other than any Fixed Security granted by the Chargor in favour of the Scottish Ministers which shall rank in priority to the floating charge created by Clause 3.2 (Floating charge)) and to any other floating charge.
- 3.3.2 The Chargor shall not, without the prior written consent of the Scottish Ministers or as may be permitted in terms of the Holdings Loan Agreement, create or permit to exist any Fixed Security or floating charge over all or any part of the Charged Assets which ranks in priority to or equally with the floating charge created by Clause 3.2 (Floating charge) except for any Fixed Security granted by the Chargor in favour of the Scottish Ministers.

3.4 Qualifying Floating Charge

Paragraph 14 of Schedule B1 to the Insolvency Act applies to the floating charge created by Clause 3.2 (Floating charge) so that the floating charge created by Clause 3.2 (Floating charge) shall be a "qualifying floating charge" for the purposes of that paragraph.

3.5 Restrictions on the creation of security

If security cannot be created in respect of any asset of the Chargor without the consent of any third party:

- 3.5.1 the Chargor must notify the Scottish Ministers promptly upon becoming aware of the same;
- 3.5.2 this Floating Charge shall not create any security in respect of that asset except to the extent permitted without the consent of any third party but will secure all amounts which the Chargor may receive in respect of that asset;
- 3.5.3 unless the Scottish Ministers otherwise agrees, the Chargor must use reasonable endeavours to obtain the consent of the third party to the creation of security over that asset pursuant to this Floating Charge; and
- 3.5.4 on and from the date on which such consent is obtained, the security created by this Floating Charge shall extend to and include that asset.

4 Provisions as to Security

4.1 Continuing security

4.1.1 The security from time to time created by this Floating Charge is a continuing security and will remain in full force and effect as a continuing security until released or discharged by the Scottish Ministers.

4.1.2 No part of the security from time to time created by this Floating Charge will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

4.2 Additional security

This Floating Charge shall be without prejudice and in addition to any other security which may at any time be held by the Scottish Ministers from the Chargor or any other person in respect of the whole or any part of the Secured Obligations and may be enforced independently of any such other security.

4.3 No obligation to take other enforcement proceedings

The Scottish Ministers shall not be obliged before exercising any of the rights conferred on it by this Floating Charge or by law:

4.3.1 to make any demand of the Chargor or any other person other than that required by the terms of the Holdings Loan Agreement;

4.3.2 to take any action, enforce any security, exercise any right of compensation or set-off or to obtain or enforce any judgement, decree or order in any court against the Chargor or any other person;

4.3.3 to make or file any claim or proof in a winding up, liquidation, administration or other insolvency proceedings of the Chargor or any other person; or

4.3.4 to enforce or seek to enforce any other security taken in respect of any of the obligations of the Chargor or any other person under the Finance Documents.

4.4 Waiver of defences

The obligations of the Chargor under this Floating Charge will not be affected by any act, omission or circumstances which, but for this Clause 4.4 (Waiver of defences), might operate to release, discharge, impair or otherwise affect any of the obligations of the Chargor under this Floating Charge or any of the rights, powers or remedies conferred upon the Scottish Ministers by the Finance Documents or by law including (but without limitation) and whether or not known to the Chargor or the Scottish Ministers:

4.4.1 any time, waiver or consent granted to, or composition with, the Chargor or other person;

4.4.2 the release of the Chargor or any other person from its obligations under any Finance Document or any security or guarantee granted in connection therewith, other than an express release in writing of this Floating Charge;

4.4.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Chargor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security, other than an express release in writing of this Floating Charge;

4.4.4 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;

- 4.4.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- 4.4.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- 4.4.7 any insolvency or similar proceedings.

4.5 Non-competition

Until the security created by this Floating Charge has been discharged, the Chargor will not, after a claim has been made or by virtue of any payment or performance by it of the Secured Obligations:

- 4.5.1 be subrogated to any rights, security or monies held, received or receivable by the Scottish Ministers or the Chargor nor be entitled to any right of contribution or indemnity in respect of any payment made or monies received on account of the Secured Obligations;
- 4.5.2 claim, rank, prove or vote as a creditor of the Chargor; or
- 4.5.3 receive, claim or have the benefit of any payment, distribution or security from or on account of the Chargor, or exercise any right of set-off as against the Chargor,

and the Chargor shall forthwith pay or transfer to the Scottish Ministers an amount equal to the amount of any dividend, distribution, contribution or benefit (including without limitation any amount set-off) actually received by it and in the meantime shall hold the same in trust for the Scottish Ministers to the extent required to pay or discharge the Secured Obligations.

4.6 Further assurance

The Chargor will promptly do all such acts or execute all such documents as the Scottish Ministers may reasonably specify (and in such form as the Scottish Ministers may reasonably require) to:

- 4.6.1 perfect the security created or intended to be created by this Floating Charge or for the exercise of the rights, powers and remedies of the Scottish Ministers or any Receiver provided by or pursuant to this Floating Charge or by law;
- 4.6.2 confer on the Scottish Ministers security over any property or assets of the Chargor located in any jurisdiction outside the United Kingdom equivalent or similar to the security intended to be conferred by or pursuant to this Floating Charge;
- 4.6.3 to confer on the Scottish Ministers any further security over all or any part of its property, assets and undertaking as the Scottish Ministers may require; and/or
- 4.6.4 after the security created by this Floating Charge has become enforceable pursuant to Clause 6 (When security becomes enforceable) facilitate the realisation of the Charged Assets.

5 Restriction on Dealings

The Chargor will not create or permit to subsist any Security on any part of the Charged Assets or dispose of or otherwise deal with any part of the Charged Assets.

6 When security becomes enforceable

The security created by this Floating Charge will become immediately enforceable upon the occurrence of an Enforcement Event which is continuing.

7 Receivers and Administrators

7.1 Appointment and Removal

Without prejudice to the provisions of the Insolvency Act, at any time after having been requested to do so by the Chargor or at any time after the security created by this Floating Charge has become enforceable in accordance with Clause 6 (When security becomes enforceable), the Scottish Ministers may by instrument in writing (under seal, by deed or otherwise under hand), without prior notice to any Chargor:

- 7.1.1 (subject to section 72A of the Insolvency Act) appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets;
- 7.1.2 remove (so far as it is lawfully able) any Receiver so appointed;
- 7.1.3 appoint another person(s) as an additional or replacement Receiver(s); and
- 7.1.4 appoint one or more persons to be an Administrator in accordance with paragraph 14 of Schedule B1 to the Insolvency Act 1986.

7.2 Receiver as agent of the Chargor

A Receiver shall be the agent of the Chargor and, except as otherwise required by the Insolvency Act, the Chargor shall be solely responsible for his acts and defaults and liable on any contract or engagements made or entered into or adopted by him.

7.3 Powers of Receiver

A Receiver shall have (and be entitled to exercise in such manner and on such terms as he may in his absolute discretion think fit) in relation to the Charged Assets over which he is appointed the following powers (as the same may be varied or extended by the provisions of this Floating Charge):

- 7.3.1 all of the powers of a receiver set out in Schedule 2 to the Insolvency Act;
- 7.3.2 power to sell (whether by public auction or private contract or otherwise) all or any of the Charged Assets on any terms and for any consideration (including without limitation for deferred consideration or a consideration payable wholly or partly in instalments or consisting in whole or in part of shares or securities of any other company or of any other non-cash asset);
- 7.3.3 power to grant any lease or tenancy or right of or affecting the Charged Assets for any term or terms of years at any or no rent and with or without any premium and accept the surrender of any lease or tenancy or right and give a valid receipt for any premium payable on any such grant or surrender and to amend or vary any lease, licence agreement or other arrangement in any way relating to or affecting the Charged Assets;
- 7.3.4 power to grant options to sell, lease, licence or dispose of the Charged Assets;
- 7.3.5 power to enter on or otherwise take possession of the Charged Assets to repair, convert, manufacture, process, decorate, alter, renew, improve, add to or develop or to complete any development or building which may be unfinished and to settle, compound, compromise or submit to arbitration any accounts or claims arising out of the commencement, carrying on or completion of any such development or building;

- 7.3.6 power to redeem any mortgage, charge or other encumbrance on, over or affecting the Charged Assets or any part of it;
- 7.3.7 power to repair, renew or improve plant, machinery, implements, furniture, equipment and other effects of the Chargor in or on the Charged Assets;
- 7.3.8 power to settle or compromise or submit to arbitration any claim or claims on or against the Charged Assets or claim or dispute arising out of the Charged Assets;
- 7.3.9 power to disclaim, abandon or disregard all or any of the outstanding contracts of the Chargor and to allow time for payment by or to the Chargor of any debts either with or without security;
- 7.3.10 power to manage and carry on or concur in managing or carrying on upon the Charged Assets any type of trade or business and to enter and perform such contracts and arrangements and incur any obligations in relation thereto;
- 7.3.11 power to make or exercise an election pursuant to paragraphs 2 and 3 of Schedule 10 to the Value Added Tax Act 1994 in relation to the Charged Assets or exercise any option or right of election available to the Chargor or the Scottish Ministers or the Receiver that the supplies made in respect of any lease or tenancy of any part of the Charged Assets shall be supplies chargeable or taxable for value added tax purposes at the standard or other applicable rate provided always that neither the Scottish Ministers nor the Receiver shall be liable for any loss suffered by the Chargor as a result and to execute all documents, and perform such acts or things as a result and to execute all documents, and perform such acts or things as maybe necessary to permit any disposal of the Charged Assets to be zero-rated for the purposes of value added tax;
- 7.3.12 power to exercise all voting and other rights attaching to stocks, shares and other securities comprising or comprised within the Charged Assets;
- 7.3.13 power to exercise in relation to any Charged Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Charged Asset; and
- 7.3.14 power to do all things which, in the opinion of the Receiver, are incidental to any of the powers, functions, authorities or discretions conferred or vested in the Receiver pursuant to this Floating Charge or upon receivers by statute or law generally (including the bringing or defending of proceedings in the name of, or on behalf of, the Chargor; the preservation, improvement, collection and/or realisation of Charged Assets; and the execution of documents in the name of the Chargor (whether under hand, or by way of deed or by utilisation of the company seal of the Chargor).

7.4 Discretions

Any liberty or power which may be exercised or any determination which may be made under this Floating Charge by the Scottish Ministers or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

7.5 Powers may be restricted

The powers granted to a Receiver pursuant to this Floating Charge may be restricted by the instrument (signed by the Scottish Ministers) appointing him but they shall not be restricted by any winding-up or dissolution of the Chargor.

8 Provisions applicable on enforcement

8.1 Protection of third parties

8.1.1 No purchaser from, or other person dealing with, a Receiver shall be concerned to enquire whether any of the powers exercised or purported to be exercised has arisen or become exercisable, whether any of the Secured Obligations remains outstanding, whether a Receiver is authorised to act or as to the propriety or validity of the exercise or purported exercise of any power and a certificate in writing by an officer or agent of the Scottish Ministers that the power of sale or other disposal has arisen and is exercisable shall be conclusive evidence of that fact in favour of a purchaser of all or any of the Charged Assets.

8.1.2 The receipt of a Receiver shall be an absolute discharge to a purchaser from, or other person dealing with, a Receiver and shall relieve that purchaser of any obligation to see to the application of any monies paid to or at the discretion of a Receiver and in making any sale or disposal a Receiver may do so for such consideration, in such manner and on such terms (including payment by instalments) as it thinks fit.

8.2 Protection of the Scottish Ministers and Receiver

Neither the Scottish Ministers nor any Receiver shall be liable to the Chargor in respect of any loss or damage which arises out of the exercise, the attempted exercise or the failure to exercise any of their respective powers or for any other loss of any nature whatsoever, except in the case of gross negligence or wilful default.

8.3 Delegation

8.3.1 The Scottish Ministers and any Receiver may from time to time delegate by power of attorney or otherwise to any person or corporation any of the powers and discretions of the Scottish Ministers or the Receiver under this Floating Charge whether arising by statute, the provisions hereof or otherwise upon such terms and for such periods of time as it may think fit and may determine any such delegation.

8.3.2 Neither the Scottish Ministers nor any Receiver will be liable to the Chargor for any loss or damage arising from any act, default, omission or misconduct of any such delegate, and references in this Floating Charge to the Scottish Ministers or to any Receiver will where the context so admits include references to any delegates so appointed.

9 Release of security

9.1 Release of security

Subject to the provisions of Clause 10 (Avoidance of Payments), at the request and cost of the Chargor, the Scottish Ministers shall execute such documents as may be required to release this Floating Charge and any other security created over the Charged Assets or any of them by this Floating Charge in accordance with clause 12 (*Security*) of the Holdings Loan Agreement.

9.2 Entitlement to retain security

If any payment or discharge of the Secured Obligations is, in the reasonable opinion of the Scottish Ministers, liable to be avoided or invalidated under any enactment relating to bankruptcy or insolvency, the Scottish Ministers may refuse to grant any release of the security created by this Floating Charge for such further period as the risk of such avoidance or invalidity continues.

10 **Avoidance of payments**

No assurance, security or payment which may be avoided or adjusted under the law, including under any statute relating to bankruptcy or insolvency and no release, settlement or discharge given or made by the Scottish Ministers on the faith of any such assurance, security or payment, shall prejudice or affect the right of the Scottish Ministers to recover the Secured Obligations from the Chargor (including any monies which the Scottish Ministers may be compelled to pay or refund under the provisions of the Insolvency Act and any costs payable by it pursuant to or otherwise incurred in connection therewith) or to appoint a Receiver and enforce the charges contained in this Floating Charge to the full extent of the Secured Obligations.

11 **Cumulative remedies and waivers**

The rights of the Scottish Ministers and the Receiver may be exercised as often as necessary, are cumulative and are in addition to its respective rights under general law and may be waived only in writing and specifically. Delay in the exercise or non-exercise of any right shall not be a waiver of that right.

12 **Severability**

If any of the provisions of this Floating Charge is or becomes invalid, illegal or unenforceable that shall not affect the validity, legality and enforceability of any other provision in this Floating Charge.

13 **Application of proceeds**

Application of proceeds

13.1 Any moneys received by the Scottish Ministers or any Receiver after the security created by this Floating Charge has become enforceable in accordance with Clause 6 (When security becomes enforceable) shall be applied in accordance with the provisions of the Intercreditor Deed.

13.2 Other claims

The provisions of Clause 13.1 (Application of Proceeds) are subject to the payment of any claims having priority over the security created by this Floating Charge. This Clause does not prejudice the right of the Scottish Ministers to recover any shortfall from the Chargor.

14 **New Accounts**

14.1 New Accounts

If the Scottish Ministers at any time become aware of any subsequent security or other like interest, matter, event or transaction affecting any Charged Asset, the Scottish Ministers may open a new account or accounts for the Chargor in its books.

14.2 Ruling off

If the Scottish Ministers do not open any such new account then, unless it gives express written notice to the Chargor to the contrary, the Scottish Ministers will be treated as if it had in fact opened such account or accounts at the time when it became so aware and as from that time all payments by or on behalf of the Chargor to the Scottish Ministers will be credited or treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations then outstanding until such time as any relevant clawback period has expired.

15 **Suspense Accounts**

All monies received, recovered or realised by the Scottish Ministers under this Floating Charge (including the proceeds of any conversion of currency) may in the discretion of the Scottish Ministers be credited to any interest bearing suspense or impersonal account maintained with any bank, building society or financial institution as it considers appropriate and may be held in such account during any relevant clawback period pending their application from time to time at the end of the relevant clawback period in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

16 **Power of Attorney**

16.1 Appointment and powers

By way of security for the obligations of the Chargor under this Floating Charge, the Chargor irrevocably appoints the Scottish Ministers and every Receiver to be its attorney on its behalf or in its name or otherwise to execute and do all such assurances, acts and things which the Chargor is required to do under this Floating Charge but has failed to do and generally in its name and on its behalf to exercise all or any of the powers, conferred by or pursuant to this Floating Charge or by statute on the Scottish Ministers or any Receiver and to sign, execute, seal and deliver and otherwise perfect any deed, assurance, agreement, instrument or act which it or he may reasonably deem proper in or for the purpose of exercising any such powers, authorities and discretions. Provided that the Scottish Ministers shall not be entitled to exercise its powers under this Clause 16.1 prior to the date on which the security created by this Floating Charge has become enforceable in accordance with Clause 6 (When security becomes enforceable).

16.2 Ratification

The Chargor ratifies and confirms whatever any such attorney mentioned in Clause 16.1 (Appointment and powers) shall do in the exercise of all or any of the powers, authorities and discretions referred to in such Clause.

17 **Transfers**

17.1 The Chargor may not assign or transfer its rights and/or obligations under this Floating Charge.

17.2 The Scottish Ministers may assign or transfer its rights and/or obligations to a Permitted Transferee (as defined in the Holdings Loan Agreement) in accordance with the terms of clause 17.2 (*Assignment and Further Assurance*) of the Holdings Loan Agreement.

18 **Notices**

Any communication to be made under or in connection with this Floating Charge shall be made in accordance with clause 21 (Notices) of the Intercreditor Deed.

19 **Financial Collateral**

19.1 Right to appropriate

To the extent that the Charged Assets constitute "financial collateral" and this Floating Charge and the obligations of the Chargor constitute a "security financial collateral arrangement" (in each case for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "**Regulations**")) the Scottish Ministers shall have the right after the security created by this Floating Charge has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Obligations.

19.2 Value of financial collateral

For the purpose of Clause 19.1 (Right to appropriate), the value of the financial collateral appropriated shall be such amount as the Scottish Ministers reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it. In each case, the parties agree that the method of valuation provided for in this Floating Charge shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

20 **Registration**

The Chargor consents to the registration of this Floating Charge for preservation.

21 **Counterparts, Delivery, Etc**

21.1 This Floating Charge 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 Floating Charge.

21.2 Where this Floating Charge is executed in counterparts:

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

21.2.2 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

21.2.3 such date of delivery shall be inserted in the blank provided for that purpose on page 1 of this Floating Charge.

22 **Governing Law and Jurisdiction**

22.1 Governing law

This Floating Charge and any non-contractual obligations arising out of it or in connection with it shall be governed by, and construed in accordance with, the laws of Scotland.

22.2 Jurisdiction

22.2.1 The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Floating Charge (including a dispute regarding the existence, validity or termination of this Floating Charge) (a "**Dispute**").

22.2.2 The parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

22.2.3 This Clause 22.2 (Jurisdiction) is for the benefit of the Scottish Ministers only. As a result, the Scottish Ministers shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Scottish Ministers may take concurrent proceedings in any number of jurisdictions.

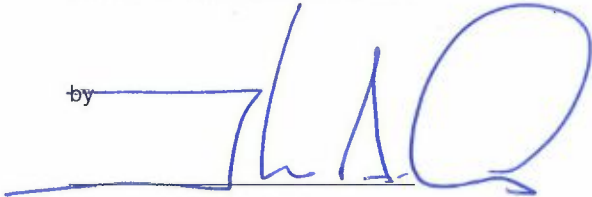
IN WITNESS WHEREOF: these presents consisting of this and the preceding twelve pages are executed as follows and are delivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 on the date specified on page 1 of this Floating Charge:-

SUBSCRIBED for and on behalf of the said
MACKELLAR SUB-SEA LIMITED

at GLASGOW

on 22 JUNE 2018

by



Director / Authorised Signatory

Thomas Cousins

Print name

in the presence of:

Witness: 

Full Name: RACHEL O'REILLY

Address: BRODIES LLP

110 QUEEN ST
GLASGOW G1 3BX

SUBSCRIBED for and on behalf of the said
SCOTTISH MINISTERS

at GLASGOW

on 25 JUNE 2018

by

E.J. DILLON

Authorised Signatory

E.J. DILLON

Print name

in the presence of:

Witness: M. U

Full Name: MEGAN LUKINS

Address: 30 SEMPNE STREET

EDINBURGH

EH3 8BL