

**GUARANTEE**

by

**The Companies listed in Part 1 of the Schedule (hereinafter referred to as "the Guarantor")**

In favour of

**THE SCOTTISH MINISTERS**

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**This guarantee is subject to an intercreditor deed with HCC  
International Insurance Company plc**

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**MACROBERTS**

**LLP**

## CONTENTS

Clause	Page No.
1. DEFINITIONS AND INTERPRETATION.....	1
2. GUARANTEE .....	2
3. SCOTTISH MINISTERS' OFFICER'S CERTIFICATE .....	3
4. CONTINUING SECURITY.....	3
5. GUARANTEE PROTECTION.....	3
6. VARIATIONS, WAIVERS ETC .....	4
7. NEW ACCOUNT.....	4
8. APPLICATION OF PROCEEDS.....	4
9. CONDITIONAL DISCHARGE AND RETENTION OF SECURITY .....	4
10. SUBROGATION .....	5
11. JOINT AND SEVERAL OBLIGATIONS.....	5
12. SET-OFF.....	5
13. NOTICE .....	5
14. OTHER SECURITIES.....	6
15. APPLICABLE LAW .....	6

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

by

- (1) **THE COMPANIES LISTED IN PART 1 OF THE SCHEDULE** (hereinafter referred to as "the Guarantor");

in favour of

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

**IT IS AGREED as follows:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In these presents the following words and expressions shall except where the context otherwise requires respectively have the following meanings assigned thereto viz:

**Guarantee** means this guarantee;

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

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

**"Holdings Loan Agreement"** means the loan agreement to be entered into between Ferguson Marine Engineering (Holdings) Limited, Ferguson Marine Engineering Limited 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;

**Indebtedness** 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 the Principal to the Scottish Ministers under the Finance Documents, except for any obligation or liability which, if it were so included, would result in this Guarantee contravening any law;

**Intercreditor Deed** means the Intercreditor Deed entered into or to be entered into between (1) the Scottish Ministers (2) Ferguson Marine Engineering Limited (3) Ferguson Marine Engineering (Holdings) Limited and (4) HCC International Insurance Company Plc, and (5) MacKellar Sub-Sea Limited, dated on or around the date hereof;

**the Principal** means the companies listed in Part 2 of the Schedule; and

**Schedule** means the schedule in two parts annexed to this Guarantee.

- 1.2 Where more than one person is comprised in the term 'the Principal', reference to the Principal shall (where the context admits) take effect as reference to all or any of such persons.
- 1.3 Where more than one person is comprised in the term 'the Guarantor', reference to the Guarantor shall (where the context admits) take effect as reference to all or any of such persons.
- 1.4 Each of the provisions in this Guarantee shall be severable and distinct from one another and if at any time any one (an 'offending provision') or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and any offending provision or provisions shall be deemed amended, adjusted or revised to the minimum extent necessary to render it valid, legal and enforceable.

- 1.5 Clause headings herein are for reference only and not to affect the construction hereof.
- 1.6 This Guarantee is subject to the terms of the Intercreditor Deed.
- 1.7 Unless a contrary indication appears, any reference in this Instrument to:
- 1.7.1 any "**Principal**", any "**Guarantor**", "**the Scottish Ministers**" or any other person shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
  - 1.7.2 any "**Finance Document**" or 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;
  - 1.7.3 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;
  - 1.7.4 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;
  - 1.7.5 a provision of law is a reference to that provision as from time to time amended or re-enacted;
  - 1.7.6 "**document**" includes any deed, instrument (including negotiable instrument) or other document of any kind;
  - 1.7.7 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);
  - 1.7.8 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
  - 1.7.9 Clauses are to the clauses to this Guarantee.
  - 1.7.10 Clause headings are for ease of reference only.
  - 1.7.11 Words in the singular shall import the plural and vice versa.

## 2. GUARANTEE

- 2.1 In consideration of the Scottish Ministers making available or continuing to make available facilities or any other accommodation whatever to the Principal, the Guarantor hereby unconditionally and irrevocably guarantees payment to the Scottish Ministers of the Indebtedness when the same becomes due in terms of the Finance Documents whether by acceleration or otherwise.
- 2.2 The Guarantor acknowledges that the true intent and purport of this Guarantee is that so long as Indebtedness remains, and this Guarantee shall not have been expressly discharged or surrendered, the Guarantor shall be liable to the Scottish Ministers on demand for the Indebtedness notwithstanding any claims in mitigation or avoidance thereof arising by operation of law which claims, notwithstanding and without prejudice to any other provisions hereof, the Guarantor hereby expressly waives and discharges.

- 2.3 As a separate and independent stipulation undertaken as a primary obligant and not merely as guarantor the Guarantor agrees to indemnify the Scottish Ministers on written demand from and against any reasonable loss properly incurred by the Scottish Ministers as a result of or in connection with its having now or hereafter advanced any monies to the Principal or having now or hereafter incurred any obligation on behalf of or at the request of the Principal.
- 2.4 In addition to the liabilities of the Guarantor under Clauses 2.1 and 2.3 hereof, the Guarantor agrees further to pay to the Scottish Ministers on written demand:
- (a) interest on the amount from time to time due or owing by the Guarantor to the Scottish Ministers under this Guarantee from the date of receipt of a written demand hereunder until payment, such interest to be at the rate specified in the applicable Finance Documents; and
  - (b) 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.

### 3. SCOTTISH MINISTERS' OFFICER'S CERTIFICATE

Any claim under this Guarantee shall be sufficiently ascertained by a statement made out from the books of the Scottish Ministers and certified by an officer thereof, and the balance appearing due thereon shall be exigible from the Guarantor at any time upon a written demand being made therefor.

4.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### 5. GUARANTEE PROTECTION

This Guarantee shall not be discharged or affected by:

- (a) any failure of, or defect or informality in, any security given by or on behalf of the Principal in respect of any Indebtedness; or
- (b) any legal limitation, disability, incapacity or lack of any borrowing powers of the Principal or lack of authority of any director or other person appearing to be acting for the Principal in any matter in respect of any Indebtedness; or
- (c) any other fact or circumstances (whether known or not to the Guarantor and/or the Scottish Ministers) as a result of which any Indebtedness incurred or purported to be incurred by or on behalf of the Principal is or may be rendered invalid, illegal, void or unenforceable by the Scottish Ministers against the Principal in whole or in part;

and so that:

- (i) all such circumstances shall be disregarded as between the Guarantor and the Scottish Ministers, and any Indebtedness which would otherwise have arisen shall be treated as Indebtedness due and owing to the Scottish Ministers from the Principal for the purposes of this Guarantee, whether the same is recoverable by the Scottish Ministers from the Principal or not; and

- (ii) (if and so far as any indebtedness shall not be so recoverable, the Guarantor shall be liable to the Scottish Ministers as principal debtor and by way of indemnity for the same amount as that for which the Guarantor would have been liable by way of guarantee, if valid and enforceable Indebtedness had been created between the Scottish Ministers and the Principal.

## 6. VARIATIONS, WAIVERS ETC

The Scottish Ministers may without notice to or consent from the Guarantor and without reducing or extinguishing the Guarantor's liability:

- (a) renew, vary, determine or increase any facilities or accommodation made available to the Principal;
- (b) renew, modify, release or abstain from perfecting or enforcing any security or guarantee now or hereafter held from the Principal or any other person, including any signatory to this Guarantee, in respect of the Indebtedness;
- (c) grant time or indulgence to or compound with the Principal or any other person or guarantor; and
- (d) do or omit to do anything which but for this provision might operate to exonerate or discharge the Guarantor from any of its obligations;

and this Guarantee shall not be discharged or affected by anything which would not have discharged or affected the Guarantor's liability if the Guarantor had been a principal debtor to the Scottish Ministers instead of a guarantor.

## 7. NEW ACCOUNT

If this Guarantee is called in by demand made by the Scottish Ministers, the Scottish Ministers may in their discretion open a new account or accounts in the name of the Principal or any other person for whose liabilities this Guarantee is available as security. If the Scottish Ministers does not open a new account, they shall nevertheless be deemed to have done so at the time of determination or calling in. As from that time, all payments made to the Scottish Ministers, other than payments by the Guarantor, which shall be dealt with under the immediately following Clause hereof, shall be credited or be deemed to be credited to the new account(s) opened or deemed to have been opened and shall not operate to reduce the amount for which this Guarantee is available as security at that time.

## 8. APPLICATION OF PROCEEDS

- 8.1 All monies received by the Scottish Ministers under or by virtue of this Guarantee following enforcement of the security hereby created or of any security interest constituted pursuant hereto shall be applied, in accordance with the provisions of the Intercreditor Deed.
- 8.2 Nothing contained in this Guarantee shall limit the right of the Scottish Ministers (and the Chargor acknowledges that the Scottish Ministers are so entitled) if and for so long as the Scottish Ministers, in their discretion, shall consider it appropriate, to place all or any monies arising from the enforcement of the security interest hereby granted or any security created pursuant to this Guarantee into a suspense account, without any obligation to apply the same or any part thereof in or towards the discharge of any of the Indebtedness.

## 9. CONDITIONAL DISCHARGE AND RETENTION OF SECURITY

- 9.1 Any settlement, discharge or release between the Guarantor and the Scottish Ministers shall, whether so expressed or not, be conditional on no security given or payment made to the Scottish Ministers by the Principal or any other person being avoided or reduced by virtue of any enactments relating to insolvency including without limitation Scottish bankruptcy, administration, liquidation or receivership for the time being in force. The Scottish Ministers shall be entitled (subject to any limit in the total amount recoverable under this Guarantee) to recover the value or amount of any such security or payment from the Guarantor subsequently

as if such settlement, discharge or release had not occurred. The Scottish Ministers may exercise the rights expressed in Clause 12 hereof in respect of the Guarantor's liability under this clause (whether actual or contingent).

- 9.2 If the Scottish Ministers has reasonable grounds for believing that any payment made to or security held by the Scottish Ministers may be avoided or invalidated under any enactment relating to insolvency the Scottish Ministers may retain this Guarantee and any security held by it for the Guarantor's liability under this Guarantee for the relevant period after repayment of all Indebtedness. If within the relevant period after such repayment the Principal shall become apparently insolvent or a petition shall be presented for the sequestration or Scottish bankruptcy or for an order for the winding-up or administration of the Principal or the Principal shall commence to be wound up, the Scottish Ministers may continue to retain this Guarantee and such security or any part of it for such further period as the Scottish Ministers shall determine in its discretion. In this clause the 'relevant period' means the relevant statutory period within which any payment made to or security held by the Scottish Ministers may be avoided or invalidated under any enactment relating to insolvency.

#### **10. SUBROGATION**

Until the whole Indebtedness is satisfied the Guarantor shall not be entitled to rank on the estates of the Principal in respect thereof nor to demand an assignation of the Scottish Ministers' claim against the Principal nor to have the benefit of any other securities or remedies held by the Scottish Ministers.

#### **11. JOINT AND SEVERAL OBLIGATIONS**

- 11.1 Where this Guarantee is executed by or on behalf of two or more parties, the Guarantor's obligations shall take effect as joint and several obligations. This Guarantee shall not be revoked or impaired as to any of such parties by the incapacity or insolvency of any other of such parties.
- 11.2 The Scottish Ministers may release or discharge any of such parties from their obligations under this Guarantee or dispense entirely with the inclusion as signatories hereto of a party or parties intended to be bound hereby or accept any composition from or make any other arrangements with any of such parties without releasing or discharging the other(s) of such parties or otherwise prejudicing or affecting the Scottish Ministers' rights and remedies against the other(s) of such parties.

#### **12. SET-OFF**

The Scottish Ministers shall be entitled to set-off against or retain in respect of the Guarantor's liability (whether actual or contingent) under this Guarantee any credit balance in any currency in any account whatever in the name of the Guarantor (whether sole or joint with any other person or persons) with the Scottish Ministers.

#### **13. TRANSFERS**

- 13.1 No Guarantor may assign or transfer its rights and/or obligations under this Guarantee.
- 13.2 The Scottish Ministers may assign or transfer its rights and/or obligations under this Guarantee to a Permitted Transferee (as defined in the Holdings Loan Agreement) in accordance with the terms of clause 17.2 (*Assignation and Further Assurance*) of the Holdings Loan Agreement.

#### **14. NOTICE**

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

**15. OTHER SECURITIES**

This Guarantee is granted in addition and without prejudice to any other securities or remedies which the Scottish Ministers now or may hereafter hold for the Indebtedness.

**16. COUNTERPARTS, DELIVERY, ETC**

16.1 This Guarantee 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 Guarantee.

16.2 Where this Guarantee is executed in counterparts:

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

16.2.2 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

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

**17. APPLICABLE LAW**

These presents shall be governed by and construed in accordance with the Law of Scotland. And in connection with any proceedings arising pursuant hereto the Guarantor for the exclusive benefit of the Scottish Ministers submits to the jurisdiction of the courts of that country, but such submission shall not prejudice the Scottish Ministers' right to take proceedings against the Guarantor or any person comprised in the Guarantor in any other court of competent jurisdiction.

**IN WITNESS WHEREOF:** these presents consisting of this and the preceding five 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 Guarantee:-

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

at GLASGOW

on 22 JUNE 2018

by



Director / Authorised Signatory

GERARD MARSHALL

Print name

in the presence of:

Witness: 

Full Name: RACHEL O'REILLY

Address: BRODIES LRD

110 QUEEN ST

GLASGOW G1 3BX



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

at GLASGOW

on 22 JUNE 2018

by



Director / ~~Authorised Signatory~~

GERARD MARSHALL

Print name

in the presence of

Witness: 

Full Name: RACHEL O'REILLY

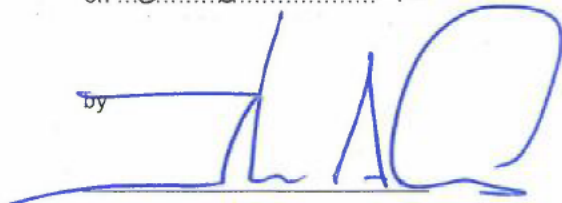
Address: BRODIES LLP  
110 QUEEN ST  
GLASGOW G1 3BX

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

**This is the Schedule in two parts referred to in the foregoing Guarantee by Ferguson Marine Engineering (Holdings) Limited and Others in favour of the Scottish Ministers**

PART 1

The Guarantor

1. 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;
2. Ferguson Marine Engineering Limited, a company incorporated in Scotland (Company No. SC485060) and whose registered office is at Orbital House, 3 Redwood Crescent, Peel Park, East Kilbride, G74 5PA; and
3. MacKellar Sub-Sea Limited, a company incorporated in Scotland (Company No. SC486910) and whose registered office is at Orbital House 3 Redwood Crescent Peel Park, East Kilbride, South Lanarkshire, Scotland, G74 5PA.

PART 2

The Principal

1. 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;
2. Ferguson Marine Engineering Limited, a company incorporated in Scotland (Company No. SC485060) and whose registered office is at Orbital House, 3 Redwood Crescent, Peel Park, East Kilbride, G74 5PA; and
3. MacKellar Sub-Sea Limited, a company incorporated in Scotland (Company No. SC486910) and whose registered office is at Orbital House 3 Redwood Crescent Peel Park, East Kilbride, South Lanarkshire, Scotland, G74 5PA.