

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. PUBLICITY

Subject to clause 15.2, the Borrower agrees there shall be no publicising of this Agreement nor a disclosure of the role of the Scottish Ministers in the provision of the Facility without the prior written consent of the Scottish Ministers.

17. ASSIGNATION AND FURTHER ASSURANCE

- 17.1 The Borrower may not assign or transfer its rights and/or obligations under this Agreement.
- 17.2 The Scottish Ministers may assign or transfer its rights and/or obligations, at its own cost, under the Finance Documents at will only following the expiry of the Availability Period and provided that the transfer is to a Permitted Transferee who simultaneously acquires the Scottish Ministers' interest in (i) the Warrants in accordance with the Warrant Instrument (in respect of Warrants issued at that date), and (ii) the Warrant Shares in accordance with the Articles and the Subscription and Shareholders Agreement (in respect of Warrant Shares issued as at that date) and provided that all interests under the Finance Documents are transferred or assigned simultaneously to the same Permitted Transferee.
- 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 Subject to Clauses 18.6.1 and 18.6.2 below, the Scottish Ministers shall be entitled on and from the date of this Agreement to appoint one person to act as an observer (an "**Observer**") at the quarterly meetings of directors of FMEL. FMEL agrees that the Observer shall be entitled to receive notice of, and attend and speak at, all quarterly meetings of directors of FMEL and to receive copies of all board papers as if he were a director, but shall not be entitled to vote on any resolutions proposed.
- 18.6.1 The Scottish Ministers agree that any proposed Observer to be appointed by the Scottish Ministers pursuant to Clause 18.6 shall (a) not be a director or other officer of, or employed by Transport Scotland (being the national agency for transport in Scotland) and Transport Scotland Limited (company number SC350085), CMAL, or Caledonian MacBrayne Limited (company number SC308636) or any subsidiary of any of these entities, and (b) be subject to prior approval by the holder of a majority of the A Shares (as defined in the Articles) (such approval not to be unreasonably withheld).
- 18.6.2 The appointment of any Observer, and the entitlement of the Scottish Ministers to appoint an Observer pursuant to Clause 18.6, shall terminate on the earlier of (a) the exercise by the Scottish Ministers of their entitlement to appoint a B Director (as defined in the Articles) under and in accordance with the Articles, or (b) the Final Repayment Date.

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 GLASGOW

on 25 JUNE 2018

by



Authorised Signatory

E. J. DITCHBURN

Print name

in the presence of:

Witness: 

Full Name: 

Address: MACROBERTS LLP

30 SEMPLE STREET

EDINBURGH, EH3 8BL

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

at GLASGOW

on 22 JUNE 2018

by

[Redacted Signature]

Director / Authorised Signatory

G MARSHALL

Print name

in the presence

Witness:

Full Name:

Address:

BROOKIES LIP
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

[Redacted Signature]

Director / Authorised Signatory

G MARSHALL

Print name

in the presence

Witness:

Full Name:

Address:

BROOKIES LIP
110 QUEEN ST
GLASGOW G1 3BX

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. Resolution of the board of directors of Clyde Blowers Capital GP III Limited, in its capacity as general partner of Clyde Blowers Capital GP III LP, which in turn is the general partner of CBC approving, among other items, its entry into the Subscription and Shareholders Agreement and the adoption of new articles of association of the Borrower;
4. An officer's certificate in Acceptable Form, in respect of each member of the Group;
5. The Business Plan incorporating projected cash flow, profit and loss and balance sheet figures together with any associated financial models/projections, the Completion Financial Model and a Certificate, in Acceptable Form, from PWC as financial advisers to the Scottish Ministers;
6. The most recent management accounts of the Group;
7. Signed equity conversion documentation, in Acceptable Form, comprising:-
 - a. resolutions of the directors and shareholders of the Borrower approving and authorising the allotment and issue of the appropriate number of Warrant Shares in favour of the Scottish Ministers;
 - b. Warrant Instrument;
 - c. New Articles;
 - d. Certified copy register of members of the Borrower;
 - e. Shareholder resolution adopting the new Articles; and
 - f. Subscription and Shareholders Agreement.

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. Satisfaction that the aggregate amount of drawdowns as at the proposed Utilisation Date will be in an amount not exceeding the level set out opposite the relevant month in which the proposed Utilisation will be made in the table set out in Part 3 of the Schedule (*Maximum Cumulative Drawdown Amount*).
4. Signed Security Documents.
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. Signed Intercreditor Deed by all parties thereto.
8. Evidence that CBC has subscribed for, and paid for in full in cash, shares in the issued share capital of the Borrower as required in terms of the Subscription and Shareholders Agreement, in the amount prescribed in the Subscription and Shareholders Agreement (if such obligation has arisen).

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. Satisfaction that the aggregate amount of drawdowns as at the proposed Utilisation Date will be in an amount not exceeding the level set out opposite the relevant month in which the proposed Utilisation will be made in the table set out in Part 3 of the Schedule (*Maximum Cumulative Drawdown Amount*).
4. Satisfactory assurance from the Scottish Ministers' independent operational expert that progress of the build of the vessels known as 801 and 802 is proceeding in accordance with the overall resource program presented by FMEL on 28 and 29 May 2018 at Port Glasgow, taking account of factors that are outside FMEL's control.
5. Evidence that CBC has subscribed for, and paid for in full in cash, shares in the issued share capital of the Borrower as required in terms of the Subscription and Shareholders Agreement, in the amount prescribed in the Subscription and Shareholders Agreement (if such obligation has arisen).

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)
June 2018	(7,043)
July 2018	(11,028)
August 2018	(14,544)
September 2018	(18,986)
October 2018	(22,864)
November 2018	(26,104)
December 2018	(29,048)
January 2019	(30,000)
February 2019	(30,000)
March 2019	(30,000)
April 2019	(30,000)
May 2019	(30,000)
June 2019	(30,000)