

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 25 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;

Availability Period means the period from and including the date of this Agreement to and including 30 June 2019;

B Ordinary Shares means the B ordinary shares of £1 in the capital of the Borrower from time to time (and, if there is a sub-division, consolidation or reclassification of such shares, the shares resulting from that event) having the rights and being subject to the restrictions set out in the Articles;

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;

Business Plan means the plan of the Group for the 5 year period to December 2022 describing the Group's proposed business activities and objectives as presented to the Scottish Ministers and PWC on 7 February 2018, and setting out the plan to deliver objectives, as updated in accordance with this Agreement;

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;

CBC Subscription means the subscription by CBC of shares in the capital of the Borrower in the amount of up to £3,000,000 pursuant to, and in accordance with the terms of, clause 3 of the Subscription and Shareholders Agreement;

CMAL means Caledonian Maritime Assets Limited (company number SC001854);

Completion Financial Model means the version of the Financial Model to be delivered in terms of Part 1 of the Schedule, being the monthly cash flow forecast model to December 2019 provided to PWC on 11 May 2018;

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 £100,000 per annum;

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;

Finance Documents means this Agreement, the Security Documents, the Warrant Instrument, the Intercreditor Deed, the First Facility Agreement, any "Finance Document" under and as defined in the First Facility Agreement and each other document agreed by Scottish Ministers and the Borrower to be a Finance Document from time to time;

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;

Financial Model means the Completion Financial Model updated annually from time to time and satisfactory to the Scottish Ministers (acting reasonably) in accordance with Clause 11.1.4;

First Facility Agreement means the loan agreement entered into between FMEL and the Scottish Ministers dated 6 September 2017 as amended and/or amended and restated on or around the date hereof;

GAAP means generally accepted accounting principals in the UK;

Group means each Obligor;

HCC means HCC International Insurance Company Plc (no 01575839);

Intercreditor Deed means the intercreditor deed, in Acceptable Form, to be entered into among the Borrower, FMEL, MacKellar, the Scottish Ministers and HCC;

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;

Permitted Fees means fees payable by the Group in terms of (1) service level agreements up to a maximum of £200,000 per annum and (2) secondment fees of up to £500,000 per annum, details of which are to be included in the monthly financial reports provided pursuant to and in accordance with Clause 11.1.2;

Permitted Financial Indebtedness means (1) finance leases entered into with third parties up to a value of £100,000 per annum, (2) foreign exchange contracts in respect of current or anticipated exposures for cost or income identified in the Business Plan, (3) any other financing arrangements existing at the date of this Agreement including the HCCI guarantee arrangements disclosed to the Scottish Ministers, and (4) loans made available by the Scottish Ministers, (5) facilities for the provision of contract guarantees and related indemnities arising in the ordinary course of business, (6) any intra-group indebtedness as between, or on-lending from, the Borrower to FMEL as contemplated under Clause 2 (*Amount, Nature and Purpose of the Loan*) of this Agreement, (7) any third party bond or guarantee facility required to support the award of a material new order for the Group (provided that the Scottish Ministers have consented to such further indebtedness, such consent not to be unreasonably withheld or delayed) and (8) any third party debt finance which supports the delivery of the Business Plan (provided that the Scottish Ministers have consented to such further indebtedness, such consent not to be unreasonably withheld or delayed);

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 (iv) security arrangements to be entered into by the Group pursuant to any third party debt finance which supports the delivery of the Business Plan (provided that the Scottish Ministers have consented to such further security, such consent not to be unreasonably withheld or delayed), with the Scottish Ministers' Security ranking and enforcement provisions to reflect so far as appropriate those agreed with HCC (and, for the avoidance of doubt, ranking behind any Security granted by any member of the Group in favour of the third party debt finance, bond or guarantee facility provider) provided that, in each case, the Scottish Ministers have consented to such ranking arrangements, such consent not to be unreasonably withheld or delayed;

Permitted Transferee means any Non-Departmental Public Body or Public Corporation (both as defined or set out in the Scottish Public Finance Manual from time to time) which, for the avoidance of doubt, shall include the Scottish National Investment Bank once established (howsoever named) or such other entity established by the Scottish Government for the purpose of financing growth, or any other entity, provided that such other entity is controlled by the Scottish Ministers, subject to restrictions contained at clause 8.3 (*Transfer of shares*) of the Subscription and Shareholders Agreement;

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);

Relevant Exit Date means the later of (i) 1st June 2021 and (ii) in the event that the members of CBC have resolved pursuant to the terms of its constitutional documents to extend the duration of CBC, 90 days prior to the expiry of such extension;

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;

Security Documents means the following documents, in Acceptable Form:-

- a) cross guarantee by each member of the Group in favour of the Scottish Ministers;
- b) floating charges by each member of the Group in favour of the Scottish Ministers;
- c) standard security by FMEL in favour of the Scottish Ministers over the Property;

Share Sale means the sale of any of the shares in the capital of the Borrower and/or FMEL (in one transaction or as a series of transactions) which will result in the purchaser of those shares and persons Acting in Concert with him together acquiring a Controlling Interest in the Borrower, and/or FMEL, except where this arises as a result of (i) in the case of the Borrower, the issuance of shares in the capital of the Borrower to the Warranholder(s) or their Permitted Transferees (as such term is defined in the Articles) in accordance with the terms of the Warrant Instrument, or (ii) the transfer of shares in the capital of the Borrower and/or FMEL to CBC Permitted Transferees;

Subscription and Shareholders Agreement means the subscription and shareholders agreement, in Acceptable Form, to be entered into among CBC, the Scottish Ministers, and the Borrower on or around the date hereof;

Subscription Price shall have the meaning given to it in the Warrant Instrument.

Subscription Rights means the rights of the Warranholder(s) to subscribe for Warrant Shares pursuant to the Warrant Instrument;

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;

Warrant means any warrant of the Borrower constituted pursuant to the Warrant Instrument;

Warrantholder means, in relation to a Warrant, the person whose name appears in the register of Warrantholders maintained by the Borrower as the holder of the Warrant;

Warrant Instrument means the equity warrant instrument, in Acceptable Form, to be entered into by the Borrower on or around the date hereof in respect of the issue of Warrants;

Warrant Shares means B ordinary shares to be issued in accordance with, and subject to the conditions of, the Warrant Instrument;

- 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 £100,000;
 - 3.3.2 no more than one Utilisation Request may be made at any one time with no more than two utilisations in any month;
 - 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, £6,000,000.

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 Prior to the expiry of the Availability Period, any amount of the Facility which, at that time, is unutilised shall be immediately cancelled to the extent of any realisations received by FMEL (less all independent third party fees, costs and/or expenses reasonably and properly incurred by FMEL) in respect of a final resolution of the dispute between FMEL and CMAL in relation to a contract price increase for the vessels known as 801 and 802.

5. INTEREST

- 5.1 For so long as no Event of Default has occurred which is continuing unwaived, interest is payable on the Loans (but subject to clauses 5.2, 5.3 and 5.4) at a fixed rate of ■■■ per annum quarterly in arrears and on the date of any early repayment, cancellation or prepayment and on the Final Repayment Date.
- 5.2 Subject to clause 5.4, following the occurrence of any Event of Default, interest is payable on any overdue sum at the rate of ■■■ per annum.
- 5.3 Subject to clause 5.4, accrued interest shall not be paid until the Final Repayment Date. For the avoidance of doubt, the amount of interest accrued on Loans shall not be the subject of a Warrant.
- 5.4 Subject to clause 5.5, no interest shall accrue on the principal amount of any Loan in respect of which a Warrant has been issued.

5.5 Notwithstanding Clauses 5.1 to 5.4 (inclusive) of this Agreement, the Borrower and the Scottish Ministers hereby undertake to enter into negotiations a reasonable period of time prior to the third anniversary of this Agreement (being a period of not less than 30 Business Days) in good faith and for a reasonable duration in order to agree and implement such amendments to this Agreement (including the rate of interest under this Clause 5, the Security granted by the Obligors, and/or the Warrants issued by the Borrower pursuant to and in accordance with this Agreement and the Warrant Instrument) as may be required by the Borrower at that time, provided that such amendments shall not, in the reasonable opinion of the Borrower, place the Borrower in a less favourable position than it would otherwise be in the absence of such amendments. In the absence of an agreed position on any proposed amendments to this Agreement being reached by the parties on or prior to the third anniversary of this Agreement, this Agreement shall continue in accordance with the existing terms applicable to this Agreement as at the third anniversary of this Agreement, but provided that clause 5.4 shall no longer apply and interest will accrue on the principal of any outstanding Loan in respect of which a Warrant has been issued (but in respect of which the Scottish Ministers have not exercised their Subscription Rights) commencing on and from the third anniversary of this Agreement.

6. ISSUE OF WARRANTS

6.1 On each Relevant Date, in the event that there is a principal amount of Loan (excluding all accrued interest thereon) outstanding in respect of which Warrants have not been issued, the Borrower shall issue Warrants to the Scottish Ministers pursuant to and in accordance with the Warrant Instrument on the basis that in respect of every whole £10 of principal amount of Loan not previously included in calculating the issue of Warrants one Warrant shall be issued to the Scottish Ministers.

6.2 The principal amount of all Loans shall remain outstanding until such time as such amounts are repaid in accordance with the terms of this Agreement, except that the principal amount of all Loans outstanding shall be reduced by an amount equal to the Subscription Price paid by way of set-off against the Loans pursuant to the Warrant Instrument on the date the Warrant holder is entered into the register of members of the Borrower as the holder of the Warrant Shares in respect of which the Subscription Price is paid.

6.3 On the date of repayment of a principal amount of Loans in respect of which Warrants have been issued to the Scottish Ministers, but in respect of which the Subscription Rights have not been exercised, such Warrants shall automatically lapse and cease to be exercisable to the extent of one Warrant for every £10 of Loan repaid.

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 Without prejudice to Clause 7.3 below, the Borrower may without penalty at any time, upon giving not less than 30 days' prior written notice to the Scottish Ministers (which shall be irrevocable and shall oblige the Borrower to prepay the relevant amount on the date specified) prepay the Loans in whole or in part provided that such prepayment is in whole multiples of £100,000 and in a minimum amount of £100,000.

7.3 In the event that proceeds are received by FMEL in respect of a final resolution of the dispute between FMEL and CMAL in relation to a contract price increase for the vessels known as 801 and 802 and such proceeds or any part thereof results, on their receipt by FMEL, in the creation of a Surplus Amount, the Borrower shall, provided the CBC Subscription has been made, pay an amount equal to the Surplus Amount to the Scottish Ministers in prepayment of the Loans and FMEL will make the Surplus Amount available to the Borrower for the purpose of such payment.