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COMPANIES FORM No. 466(Scot)

466

Particulars of an instrument of alteration to a floating charge created by a company registered in Scotland

CHFP025

Please do not write in this margin

A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge.

Pursuant to section 410 and 466 of the Companies Act 1985

To the Registrar of Companies
(Address overleaf - Note 6)

For official use

Company number

Please complete legibly, preferably in black type, or bold block lettering

1116

SC235066

Name of company

* Orbital Marine Power Limited (the "Issuer")

* insert full name of Company

Date of creation of the charge (note 1)

14 October 2019

Description of the instrument creating or evidencing the charge or of any ancillary document which has been altered (note 1)

Bond and Floating Charge (the "Charge")

Names of the persons entitled to charge

Matthew J.R. McGrath ("McGrath")

Short particulars of all the property charged

The whole of the property (including uncalled capital) which is or may be from time to time while the Charge is in force comprised in the property and undertaking of the Issuer with the exception of all Existing Shares, Further Shares and Related Rights (each as defined in the Charge).

Presenter's name address and reference (if any):

Shepherd and Wedderburn LLP
1 Exchange Crescent
Conference Square
Edinburgh
EH3 8UL

For official use (06/2005)
Charges Section

COMPANIES HOUSE
EDINBURGH

25 OCT 2019

FRONT DESK

FRIDAY



SCT *S8GSY73M* 25/10/2019
COMPANIES HOUSE

#23

M7421.10-01/CRV/AMK

Names, and addresses of the persons who have executed the instrument of alteration (note 2)

*Please do not
write in
this margin*

(1) Orbital Marine Power Limited, having its registered office at Innovation Centre - Orkney, Hatston Pier Road, Crowness Business Park, Kirkwall, Orkney, KW15 1ZL (the "**Issuer**");

(2) Scottish Enterprise, having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow, G2 6HQ ("**SE**"); and

(3) Matthew J.R. McGrath residing at 207 West 79th Street, Apt 2B, New York City, NY10024, United States of America ("**McGrath**").

*Please complete
legibly, preferably
in black type, or
bold block lettering*

Date(s) of execution of the instrument of alteration

10 October 2019 (with an effective date of 14 October 2019).

A statement of the provisions, if any, imposed by the instrument of alteration prohibiting or restricting the creation by the company of any fixed security or any other floating charge having, priority over, or ranking pari passu with the floating charge

The Issuer undertakes to each of the Creditors that it shall not grant any security, charge or other encumbrance other than the Securities without the prior written consent of each of the Creditors.

Short particulars of any property released from the floating charge

N/A

The amount, if any, by which the amount secured by the floating charge has been increased

N/A

Please do not
write in
this margin

A statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

Please complete
legibly, preferably
in black type or
bold block lettering

With effect from the last date of execution of the Agreement, the Securities shall, notwithstanding (a) the terms thereof; (b) the respective dates of creation, recording or registration thereof; and (c) the date or dates on which SE or McGrath made or makes advances to the Issuer, rank inter se in point of security pari passu to the extent of any sums secured thereby.

Definitions

In this Form M466:

"Agreement" means the Ranking Agreement among the Issuer, SE and McGrath created 14 October 2019;

"Creditors" means SE and McGrath;

"McGrath Floating Charge" means the floating charge granted by the Issuer in favour of McGrath dated 14 October 2019;

"Pari Passu" shall be construed as meaning that the repayment of any amounts due to either of the Creditors in respect of which the Creditors are stated to rank pari passu shall be made pro rata according to the respective proportions which the amount due to each of the Creditors bears to the aggregate of all amount to with the Creditors are stated to rank pari passu;

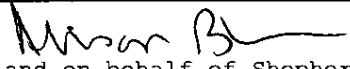
"SE Floating Charge" means the floating charge granted by the Issuer in favour of SE created 14 October 2019; and

"Securities" means the McGrath Floating Charge and the SE Floating Charge.

Continuation of the statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

*Please do not
write in
this margin*

*Please complete
legibly, preferably
in black type, or
bold block lettering*

Signed  For and on behalf of Shepherd and Wedderburn LLP

Date 25 OCTOBER 2014

On behalf of ~~XXXXXX~~ [chargee] †

*A fee is payable to
Companies House
in respect of each
register entry for a
mortgage or
charge.
(See Note 5)*

Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc, as the case may be, should be given. For the date of creation of a charge see section 410(5) of the Companies Act.
2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
3. A certified copy of the instrument of alteration, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of execution of that instrument.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.
5. A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders are to be made payable to **Companies House**.
6. The address of the Registrar of Companies is: Companies House, 139 Fountainbridge, Edinburgh, EH3 9FF DX 235 Edinburgh or LP - 4 Edinburgh 2

† delete as
appropriate



FILE COPY

**CERTIFICATE OF THE REGISTRATION
OF AN ALTERATION TO A FLOATING CHARGE**

COMPANY NO. 235066
CHARGE CODE SC23 5066 0006

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 14 OCTOBER 2019 WERE DELIVERED
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985
ON 25 OCTOBER 2019

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 14
OCTOBER 2019

BY ORBITAL MARINE POWER LIMITED

IN FAVOUR OF
MATTHEW J.R. MCGRATH

GIVEN AT COMPANIES HOUSE, EDINBURGH 28 OCTOBER 2019



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES



DELIVERED ON: 14 October 2019

ORBITAL MARINE POWER LIMITED
as the Issuer

SCOTTISH ENTERPRISE
SE

and

MATTHEW J.R. MCGRATH
as McGrath

RANKING AGREEMENT

We hereby certify that, save for material redacted
pursuant to s.859G of the Companies Act 2006,
this is a true copy of the original

Signed: _____

Date: _____

For and on behalf of Shepherd and Wedderburn LLP

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among

- (1) **ORBITAL MARINE POWER LIMITED**, a company incorporated under the Companies Acts with registered number SC235066 and having its registered office at Innovation Centre – Orkney Hatston Pier Road, Crowness Business Park, Kirkwall, Orkney KW15 1ZL (the “Issuer”);
- (2) **SCOTTISH ENTERPRISE**, established under the Enterprise & New Towns (Scotland) Act 1990 and having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ (“SE”); and
- (3) **MATTHEW J.R. MCGRATH** residing at [REDACTED] (“McGrath”).

CONSIDERING THAT:

- (A) SE and McGrath have each agreed to subscribe to the Notes (as defined in the Loan Note Instrument, defined below) and the Issuer has granted or will grant certain securities to each of SE and McGrath; and
- (B) SE, McGrath and the Issuer have agreed to enter into this Agreement for the purpose of regulating the priority of the securities referred to above.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London and Edinburgh;

“**Creditors**” means the SE and McGrath;

“**Finance Documents**” means the Subscription Agreement, the Loan Note Instrument and the Notes and the Securities;

“**Loan Note Instrument**” means the loan note instrument by the Issuer dated on or around the date of delivery of this Agreement whereby the Issuer issues the Notes to SE and McGrath;

“**Notes**” means the £3,500,000 secured convertible loan notes 2021 constituted by the Loan Note Instrument or, as the case may be, the principal amount from time to time issued and paid up and outstanding, and principal amount shall be construed accordingly;

"pari passu" shall be construed as meaning that the repayment of any amounts due to either of the Creditors in respect of which the Creditors are stated to rank pari passu shall be made pro rata according to the respective proportions which the amount due to each of the Creditors bears to the aggregate of all amounts to which the Creditors are stated to rank pari passu;

"McGrath Debt" means all present and future obligations and liabilities of the Issuer to McGrath under the Finance Documents whether actual, contingent, sole, joint and/or several or otherwise including, without prejudice to the foregoing generality, all obligations to indemnify McGrath;

"McGrath Floating Charge" means the floating charge granted by the Issuer in favour of McGrath dated on or around the date of delivery of this Agreement;

"Securities" means McGrath Floating Charge and the SE Floating Charge;

"SE Debt" all present and future obligations and liabilities of the Issuer to SE under the Finance Documents whether actual, contingent, sole, joint and/or several or otherwise including, without prejudice to the foregoing generality, all obligations to indemnify SE;

"SE Floating Charge" means the floating charge granted by the Issuer in favour of SE dated on or around the date of delivery of this Agreement; and

"Subscription Agreement" means the subscription agreement between the Issuer, SE and McGrath dated on or around the date of delivery of this Agreement whereby SE and McGrath agree to subscribe for the Notes in accordance with the terms set forth therein.

1.2 Unless a contrary indication appears, any reference in this Agreement to:

1.2.1 **"SE"** and **"McGrath"** shall be construed so as to include their respective successors in title, permitted assignees and permitted transferees provided such assignee or transferee first agrees in writing with SE and/or McGrath, as the case may be, to be bound by the provisions of this Agreement; and

1.2.2 a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality).

1.3 Unless any provision of this Agreement or the context otherwise requires, any reference in this Agreement to a provision of law is a reference to that provision as amended or re-enacted.

1.4 In this Agreement the singular includes the plural and vice versa. Clause headings are for ease of reference only and a reference to a Clause is to be construed as a reference to a clause of this Agreement.

- 1.5 Any reference in this Agreement to a document of any kind whatsoever (including this Agreement) is to that document as amended, varied, novated, supplemented, extended, restated or substituted from time to time.

2 CONSENT TO CREATION OF SECURITIES

Notwithstanding the date of execution, recording or registration thereof or any provisions contained therein, SE and McGrath each hereby consent to the creation of the Securities by the Issuer.

3 RANKING OF SECURITIES

With effect from the last date of execution of this Agreement, the Securities shall, notwithstanding (a) the terms thereof; (b) the respective dates of creation, recording or registration thereof; and (c) the date or dates on which SE or McGrath made or makes advances to the Issuer, rank inter se in point of security *pari passu* to the extent of any sums secured thereby.

4 SECURITY TO BE CONTINUING

The Securities shall rank as provided in this Agreement as continuing securities for repayment of the amounts owing to each of SE and McGrath from time to time by the Issuer or by any person or company whose obligations to SE or McGrath are guaranteed by the Issuer.

5 FLUCTUATING ADVANCES

Notwithstanding the provisions of Sections 464 and 466 of the Companies Act 1985 Act or any other rule of law which might operate to the contrary effect, the foregoing provisions of this Agreement as to ranking shall be valid and effective irrespective of the date or dates on which sums advanced or to be advanced by either Creditor to the Issuer have been or shall be drawn out by or debited to the Issuer, neither Creditor having any concern over the composition of or fluctuations in the sum or sums due by the Issuer to the other (including any reduction of those sums to nil).

6 VARIATIONS OF SECURITIES

Insofar as necessary to give effect to the provisions of this Agreement, the Securities are hereby varied and this Agreement shall constitute an instrument of alteration for the purposes of Section 466 of the Companies Act 1985.

7 EXERCISE OF RIGHTS

Whilst any sums remain outstanding to either SE or McGrath which are subject to the Securities, no Creditor shall, in respect of the Issuer:

- 7.1 appoint a receiver, an administrator or similar officer;

7.2 apply to any court to appoint a receiver in terms of the Insolvency Act 1986 or otherwise and not apply to any court to appoint a liquidator, administrator, judicial factor or similar officer; or

7.3 exercise its rights on default pursuant to any standard security held by it.

without the prior consent in writing of the other Creditor (such consent not to be unreasonably withheld or delayed).

8 COMPENSATION

8.1 Each of the Creditors hereby undertakes to the other that in the event of a liquidator, administrator or similar officer of the Issuer or a receiver of all or any part of its assets distributing the proceeds of sale of those assets otherwise than in accordance with the terms of this Agreement and the other being prejudiced thereby, it will compensate the party so prejudiced to the extent to which it is lucratus by such prejudice, but no further.

8.2 No purchaser dealing with either of the Creditors or with a receiver appointed by either of them shall be concerned in any way with the provisions of this Agreement but shall assume that such Creditor or receiver as the case may be is acting in accordance with the provisions of this Agreement and the Securities.

9 AUTHORITY TO RELEASE INFORMATION

During the continuance of the Securities, SE and McGrath may disclose to each other information concerning the Issuer and its affairs in such manner and to such extent as SE and McGrath may wish and the Issuer consents to such disclosure.

10 TIME OR INDULGENCE

Each of the Creditors shall be entitled to grant time or indulgence, release or compound or otherwise deal with modify or abstain from perfecting or enforcing any of the rights which it may now or hereafter have against the Issuer without reference to the other Creditor and without in any way affecting or prejudicing the validity or effect of this Agreement.

11 OTHER SECURITIES

11.1 For the avoidance of doubt, the parties acknowledge and agree that the ranking of the Securities shall not be prejudiced or affected in any way by any right competent to any of the parties to this Agreement to recover all or any part of the sums secured by the Securities from any third party, cautioner or guarantor.

11.2 The Issuer warrants to each of the Creditors that its assets are not subject to any securities, charges or encumbrances other than the Securities and that it has not agreed to grant, or to acquire any assets subject to, any such securities, charges or encumbrances other than the Securities.

11.3 The Issuer undertakes to each of the Creditors that it shall not grant any security, charge or other encumbrance other than the Securities without the prior written consent of each of the Creditors.

11.4 Each of the Creditors undertakes that it will not transfer the benefit of any of the Securities unless the proposed transferee agrees to be bound by the provisions of this Agreement.

12 NOTICES

All notices, requests, demands and other communications to be given under this Agreement shall be given and/or be deemed to be given in the same manner as notices to be given under the Subscription Agreement and the terms of clause 5 of the Subscription Agreement shall apply *mutatis mutandis* to this Agreement as though that clause were set out in full in this Agreement.

13 COUNTERPARTS AND DELIVERY

13.1 This Agreement may be executed in any number of counterparts and by each of the parties on separate counterparts.

13.2 Where executed in counterparts:

13.2.1 this Agreement will not take effect until each of the counterparts has been delivered;

13.2.2 where any counterpart is being held as undelivered, delivery will take place on the date of delivery agreed among the parties (the “Agreed Date”). The Agreed Date will be inserted in the testing clause, on the front cover and on page 1 of this Agreement; and

13.2.3 section 2(3) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 is hereby excluded and shall not apply to the execution arrangements in respect of this Agreement.

14 GOVERNING LAW

This Agreement shall be governed by, and construed in all respects in accordance with, the law of Scotland.

15 **CONSENT TO REGISTRATION**

The parties to this Agreement consent to its registration for preservation:

IN WITNESS WHEREOF these presents consisting of this and the preceding five pages are executed in counterpart as follows and DELIVERED on 14 October 2019:

THE ISSUER

SUBSCRIBED for and on behalf of the said ORBITAL MARINE POWER LIMITED

at Edinburgh

on 10/10/19

by

Andrew Scott

Print Full name

Director

before this witness:

Charm Jonsson

Print Full Name

Witness

Address:

Brodies LLP
15 Atholl Crescent
Edinburgh
EH3 8HA

SE

SEALED with the common seal of the said SCOTTISH ENTERPRISE and subscribed for and on behalf of SCOTTISH ENTERPRISE

at GLASGOW
on 10 OCTOBER 2019
by

SUSANNAH CAROLINE PENCOVICH
Print Full name


Authorised Signatory

McGRATH

SUBSCRIBED by the said MATTHEW J.R. MCGRATH

at
on

Signatory

before this witness:

Print Full Name

Witness

Address:

SE

SEALED with the common seal of the said SCOTTISH ENTERPRISE and subscribed for and on behalf of SCOTTISH ENTERPRISE

at

on

by

Print Full name

Authorised Signatory

McGRATH

SUBSCRIBED by the said MATTHEW J.R. MCGRATH

at NEW YORK CITY

on OCT 10, 2019

Signatory

before this witness:

FRANTISEK KUNERT

Print Full Name

Witness

Address: _____

