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CHWP000

COMPANIES FORM No. 466(Scot)

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

466

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

Please do not
write in
this margin

Pursuant to section 410 and 466 of the Companies Act 1985

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

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

For official use

Company number

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SC485060

Name of company

* Ferguson Marine Engineering Limited

* insert full name
of company

Date of creation of the charge (note 1)

25 June 2018

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

Bond and Floating Charge

Names of the persons entitled to the charge

The Scottish Ministers

Short particulars of all the property charged

By Floating Charge, the chargor charges the whole of its property, assets and undertaking (including uncalled capital) from time to time.

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

Megan Lukins (MacRoberts LLP)
Excel House, 30 Sempie Street
Edinburgh, EH3 8BL
DX ED 207

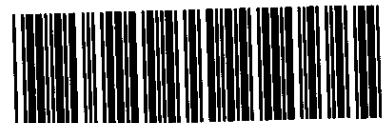
For official use (02/06)
Charges Section

COMPANIES HOUSE

02 JUL 2018

EDINBURGH FRONT DESK

MONDAY



SCT

S79BVB1
02/07/2018
COMPANIES HOUSE

#62

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

Please see paper apart attached.

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write in
this margin*

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

Date(s) of execution of the instrument of alteration

Please see paper apart attached.

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

Please see paper apart attached.

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

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

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this margin*

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

Please see paper apart attached.

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

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

Signed David M. Courtney Date 02/07/2018
On behalf of [company] [chargee] ☐

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. ☐ delete as appropriate
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 Registration Office, 139 Fountainbridge, Edinburgh EH3 9FF
DX 235 Edinburgh or LP - 4 Edinburgh 2

This is the Paper Apart referred to in the foregoing Form 466 in respect of the bond and floating charge created by Ferguson Marine Engineering Limited in favour of The Scottish Ministers dated 25 June 2018 and altered by an Intercreditor Deed dated 25 June 2018 ("the Instrument of Alteration")

Names, addresses of the persons who have executed the instrument of alteration:

- (1) **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 ("**HCCI**");
- (2) **THE SCOTTISH MINISTERS** in terms of the Scotland Act 1998 Victoria Quay, Leith, Edinburgh EH6 6QQ (the "**Scottish Ministers**");
- (3) **FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED** incorporated and registered in Scotland with company number SC485103 whose registered office is at Orbital House, 3 Redwood Crescent, East Kilbride, South Lanarkshire, Scotland, G74 5PA ("**Holdings**");
- (4) **FERGUSON MARINE ENGINEERING LIMITED** incorporated and registered in Scotland and with company number SC485060 whose registered office is at Orbital House, 3 Redwood Crescent, East Kilbride, South Lanarkshire, Scotland, G74 5PA ("**FMEL**"); and
- (5) **MACKELLAR SUB-SEA LIMITED** incorporated and registered in Scotland with company number SC486910 whose registered office is at 3 Redwood Crescent, Peel Park, East Kilbride, South Lanarkshire, Scotland, G74 5PA ("**MacKellar**").

Date(s) of execution of the instrument of alteration:

HCCI – 22 June 2018

Scottish Ministers – 25 June 2018

Holdings – 22 June 2018

FMEL - 22 June 2018

MacKellar - 22 June 2018

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

In terms of clause 3.1 of the Instrument of Alteration, at any time prior to the Bond Discharge Date, FMEL shall not, and shall procure that none of their subsidiaries shall:

(f) other than the HCCI Security Documents, and a Permitted Deed of Subordination create, or allow to exist, any Security over any of their assets for, or any guarantee for or in respect of, any of the HCCI Debt;

(g) other than the SG Security Documents create, or allow to exist, any Security over any of their assets for, or any guarantee for or in respect of, any of the SG Debt or in respect of a loan or credit provided to the Scottish Ministers by another person;

(h) create, or allow to exist, any Security over any of their assets for, or any guarantee for or in respect of, any of the Intra-Group Debt.

In terms of clause 4.1 of the Instrument of Alteration, subject to Clauses 1.3 (Holdings Loan Agreement), the Scottish Ministers covenant with HCCI that, at any time prior to the Bond Discharge Date and notwithstanding the provisions of the SG Loan Agreements and/or whether an Event of Default (as defined in the SG Loan Agreements) has occurred under and pursuant to either of the SG

Loan Agreements and/or whether the Scottish Ministers would but for this terms of the Instrument of Alteration be entitled to exercise its rights under the SG Loan Agreements, it shall not:

(d) other than the SG Security Documents, allow to exist or receive the benefit of any Security, or receive the benefit of any guarantee, from any person in respect of the SG Debt.

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:

In terms of clause 2.1 of the Instrument of Alteration the parties agree that:

- (a) the HCCI Debt ranks and shall rank in priority to the SG Debt and the Intra-Group Debt in all respects;
- (b) the SG Debt is subordinated and shall rank second to the HCCI Debt;
- (c) the SG Debt ranks and shall rank in priority to the Intra-Group Debt and in all respects; and
- (d) the Intra-Group Debt is and shall be subordinated to the HCCI Debt and the SG Debt.

Definitions:

"Bond" means any surety bond, undertaking, guarantee, indemnity or other obligatory instrument (including unconditional obligations in the nature of letters of credit in whatever form) and shall include any reinsurance accepted by HCCI and any indemnity or guarantee given to HCCI in respect of any Bond executed, procured, provided or reinsured on behalf of any Principal, provided always that: (i) such Bonds are subject to the limitations contained in Clause 4.2 and Clause 4.4 of this Deed and (ii) the expiry date of all Bonds shall fall on or before and no later than the SG Final Repayment Date. For the avoidance of doubt, "Bond" includes any Bond already issued by HCCI which is outstanding as at the date hereof including without limitation the Refund Guarantees;

"Bond Discharge Date" means (i) where no enforcement action has been taken by HCCI prior to the expiry date of the Bonds, the date on which the Bonds expire or (ii) where any enforcement action has been taken by HCCI prior to the date on which the Bonds expire, the date upon which all present and future Liabilities and obligations at any time of Holdings and/or FMEL and any other indemnitor (as the case may be) to HCCI and/or any procured surety (as the case may be) under the last Bond outstanding and/or any related deed of indemnity, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity have been fully and finally discharged to the satisfaction of HCCI, whether or not as the result of an enforcement;

"FMEL" means FERGUSON MARINE ENGINEERING LIMITED incorporated and registered in Scotland and with company number SC485060 whose registered office is at Orbital House, 3 Redwood Crescent, East Kilbride, South Lanarkshire, Scotland, G74 5PA

"FMEL Loan Agreement" means the unsecured loan agreement entered into between the Scottish Ministers and FMEL on the 6 September 2017 as amended and/or amended and restated from time to time

"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

"HCCI Debt" means all liabilities which are or may become payable or owing by Holdings and/or FMEL and/or any other member of the Ferguson Group to HCCI pursuant to and/or as a result of the issue of any and all Bonds

"HCCI Security Documents" means:

- (a) The standard security by FMEL in favour of HCCI in respect of the subjects at Newark Works, Castle Road, Port Glasgow, Scotland PA14 5NG dated 14 February 2018 registered in the Land Register of Scotland under Title Numbers REN35224, REN 35386, REN 78832, REN 114396, and REN 135798;
- (b) The debenture dated 14 February 2018 between FMEL and HCCI;
- (c) The floating charge dated 14 February 2018 granted by FMEL in favour of HCCI;
- (d) The standard security by FMEL in favour of HCCI in respect of the subjects at Newark Works, Castle Road, Port Glasgow, Scotland PA14 5NG dated 2 November 2016 registered in the Land Register of Scotland under Title Numbers REN35224, REN 35386, REN 78832, REN 114396, and REN 135798;
- (e) The debenture dated 2 November 2016 between FMEL and HCCI;
- (f) The floating charge dated 2 November 2016 granted by FMEL in favour of HCCI;
- (g) The cash collateral deposit deed dated 2 November 2016 between FMEL in favour of HCCI;

"Holdings" means FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED incorporated and registered in Scotland with company number SC485103 whose registered office is at Orbital House, 3 Redwood Crescent, East Kilbride, South Lanarkshire, Scotland, G74 5PA

"Holdings Loan Agreement" means the secured loan agreement entered into between the Scottish Ministers Holdings and FMEL on or around the date of the Instrument of Alteration as amended and/or amended and restated from time to time

"Intra-Group Debt" means all Liabilities which are or may become payable or owing from time to time by FMEL and/or MacKellar and/or any Subsidiary of FMEL and/or any Subsidiary of MacKellar to any member of the Ferguson Group and including, for the avoidance of doubt, all monies that are or may become payable or owing from time to time in respect of the FMEL Intra-Group Loan;

"MacKellar" means MACKELLAR SUB-SEA LIMITED incorporated and registered in Scotland with company number SC486910 whose registered office is at 3 Redwood Crescent, Peel Park, East Kilbride, South Lanarkshire, Scotland, G74 5PA

"Obligor" means MacKellar, Holdings and FMEL

"Permitted Deed of Subordination" means any deed of subordination which HCCI may require any party to enter into in respect of any further financial indebtedness incurred by any member of the Ferguson Group (the "Further Indebtedness"), provided always that (i) the Further Indebtedness is permitted under the terms of each SG Loan Agreement; (ii) such deed of subordination is on terms satisfactory to the Scottish Ministers (it being agreed that in determining whether or not such a deed of subordination is satisfactory, the Scottish Ministers will not withhold agreeing to terms which place HCCI themselves in the same position with respect to the Obligors, as constituted by this deed) and (iii) such deed of subordination shall include an equivalent provision to Clause 3 of this Deed such that the HCCI Debt shall continue to rank in priority to the SG Debt, the Intra-Group Debt and the Further Indebtedness

"Principal" means FMEL on whose behalf or at whose request, directly or indirectly, HCCI provides a Bond

"Scottish Ministers" means THE SCOTTISH MINISTERS in terms of the Scotland Act 1998 Victoria Quay, Leith, Edinburgh EH6 6QQ

"Security" means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect

"SG Debt" means all Liabilities which are or may become payable or owing from time to time by an Obligor to the Scottish Ministers in respect of each of the SG Loan Agreements and the SG Security Documents

"SG Loan Agreements" means:

- (a) the FMEL Loan Agreement; and
- (b) the Holdings Loan Agreement.

"SG Security Documents" means the following Security in relation to the Holdings Loan Agreement:

- (a) the second ranking standard security to be granted by FMEL in favour of the Scottish Ministers in respect of the subjects at Newark Works, Castle Road, Port Glasgow, Scotland PA14 5NG on or around the date of the Instrument of Alteration to be registered in the Land Register of Scotland under Title Numbers REN35224, REN 35386, REN 114396, and REN 135798;
- (b) the second ranking floating charge granted by Holdings in favour of the Scottish Ministers dated 25 June 2018 ;
- (c) the second ranking floating charge granted by FMEL in favour of the Scottish Ministers dated 25 June 2018;
- (d) the second ranking floating charge granted by MacKellar in favour of the Scottish Ministers dated 25 June 2018; and
- (e) the cross guarantee granted by the Obligors in favour of the Scottish Ministers dated 25 June 2018;

"Subsidiary" has the meaning given in section 1159 of the Companies Act 2006

"Subsidiaries" means each and every subsidiary of each Obligor from time to time and "Subsidiary" shall be construed accordingly



FILE COPY

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

COMPANY NO. 485060
CHARGE CODE SC48 5060 0011

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 25 JUNE 2018 WERE DELIVERED
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985
ON 2 JULY 2018

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 25
JUNE 2018

BY FERGUSON MARINE ENGINEERING LIMITED

IN FAVOUR OF
THE SCOTTISH MINISTERS

GIVEN AT COMPANIES HOUSE, EDINBURGH 4 JULY 2018

EXECUTION VERSION

EDINBURGH
CERTIFIED A TRUE COPY


MACROBERTS

*Mark Henderson Qinn
Solicitor 24/06/2018*

DATED 25 JUNE 2018

- (1) HCC International Insurance Company plc
- (2) The Scottish Ministers
- (3) Ferguson Marine Engineering (Holdings) Limited
- (4) Ferguson Marine Engineering Limited
- (5) MacKellar Sub-Sea Limited

INTERCREDITOR DEED

THIS DEED is delivered for the purposes of Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 on 25 JUNE 2018

PARTIES

- (1) **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 ("**HCCI**");
- (2) **THE SCOTTISH MINISTERS** in terms of the Scotland Act 1998 Victoria Quay, Leith, Edinburgh EH6 6QQ (the "**Scottish Ministers**");
- (3) **FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED** incorporated and registered in Scotland with company number SC485103 whose registered office is at Orbital House, 3 Redwood Crescent, East Kilbride, South Lanarkshire, Scotland, G74 5PA ("**Holdings**");
- (4) **FERGUSON MARINE ENGINEERING LIMITED** incorporated and registered in Scotland with company number SC485060 whose registered office is at Orbital House, 3 Redwood Crescent, Peel Park, East Kilbride, South Lanarkshire, Scotland, G74 5PA ("**FMEL**"); and
- (5) **MACKELLAR SUB-SEA LIMITED** incorporated and registered in Scotland with company number SC486910 whose registered office is at 3 Redwood Crescent, Peel Park, East Kilbride, South Lanarkshire, Scotland, G74 5PA ("**MacKellar**" and MacKellar together with Holdings and FMEL being the "**Obligors**" and each being an "**Obligor**").

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this Deed.

Acting in Concert: has the meaning given to it in The City Code of Takeovers and Mergers published by the Panel of Takeovers and Mergers (as amended from time to time);

Bond: means any surety bond, undertaking, guarantee, indemnity or other obligatory instrument (including unconditional obligations in the nature of letters of credit in whatever form) and shall include any reinsurance accepted by HCCI and any indemnity or guarantee given to HCCI in respect of any Bond executed, procured, provided or reinsured on behalf of any Principal, provided always that: (i) such Bonds are subject to the limitations contained in Clause 4.2 and Clause 4.4 of this Deed and (ii) the expiry date of all Bonds shall fall on or before and no later than the FMEL Loan Agreement Final Repayment Date. For the avoidance of doubt, "**Bond**" includes any Bond already issued by HCCI which is outstanding as at the date hereof including without limitation the Refund Guarantees;

Bond Discharge Date: means (i) where no enforcement action has been taken by HCCI prior to the expiry date of the Bonds, the date on which the Bonds expire or (ii) where any enforcement action has been taken by HCCI prior to the date on which the Bonds expire, the date upon which all present and future Liabilities and obligations at any time of Holdings and/or FMEL and any other indemnitor (as the case may be) to HCCI and/or any procured surety (as the case may be) under the last Bond outstanding and/or any related deed of indemnity, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity

have been fully and finally discharged to the satisfaction of HCCI, whether or not as the result of an enforcement;

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks are open for business in London and Edinburgh;

CBC means Clyde Blowers Capital Fund III LP (no SL008995) and its successors in title;

CBC Subscription: means the subscription by CBC of shares in the capital of Holdings in the amount of up to £3,000,000 pursuant to the terms of the Subscription and Shareholders Agreement;

Controlling Interest: an interest in shares giving to the holder or holders control of the company within the meaning of section 1124 of the Corporation Tax Act 2010;

Conversion has the meaning given to that term in Clause 1.3;

Ferguson Group: means each Obligor and their Subsidiaries;

Floating Charges: means:

- (a) the HCCI Floating Charges; and
- (b) the SG Floating Charges;

FMEL Intra-Group Loan Agreement: means an unsecured loan agreement to be entered into between Holdings and FMEL in respect of the FMEL Intra-Group Loan in the form to be agreed between Holdings, FMEL and HCCI on or around the date hereof;

FMEL Intra-Group Loan means the unsecured loan in the amount of up to £30,000,000 made pursuant to the FMEL Intra-Group Loan Agreement;

FMEL Loan Agreement: means the loan agreement entered into between the Scottish Ministers and FMEL on the 6 September 2017 as amended and/or amended and restated from time to time;

FMEL Loan Agreement Final Repayment Date subject to the terms of the FMEL Loan Agreement, the first to occur of (i) 1 June 2021 or (ii) provided such date is not prior to the 6 September 2019, the Bond Discharge Date. Where the Bond Discharge Date is prior to the 6 September 2019, the "FMEL Loan Agreement Final Repayment Date" shall be 6 September 2019;

HCCI Debt: all Liabilities which are or may become payable or owing by Holdings and/or FMEL and/or any other member of the Ferguson Group to HCCI pursuant to and/or as a result of the issue of any and all Bonds;

HCCI Floating Charges: means (i) the floating charges detailed at paragraphs (c) and (f), and (ii) the floating charges contained within the debentures detailed at paragraphs (b) and (e), in each case of the definition of 'HCCI Security Documents' set out in this Clause 1.1;

HCCI Security Documents: means:

- (a) the standard security by FMEL in favour of HCCI in respect of the subjects at Newark Works, Castle Road, Port Glasgow, Scotland PA14 5NG dated 14 February 2018 registered in the Land Register of Scotland under Title Numbers REN35224, REN 35386, REN 78832, REN 114396, and REN 135798;

- (b) the debenture dated 14 February 2018 between FMEL and HCCI;
- (c) the floating charge dated 14 February 2018 granted by FMEL in favour of HCCI;
- (d) the standard security by FMEL in favour of HCCI in respect of the subjects at Newark Works, Castle Road, Port Glasgow, Scotland PA14 5NG dated 2 November 2016 registered in the Land Register of Scotland under Title Numbers REN35224, REN 35386, REN 78832, REN 114396, and REN 135798;
- (e) the debenture dated 2 November 2016 between FMEL and HCCI;
- (f) the floating charge dated 2 November 2016 granted by FMEL in favour of HCCI;
- (g) the cash collateral deposit deed dated 2 November 2016 between FMEL and HCCI;

each as amended and/or amended and restated from time to time;

HCCI Standard Securities: means the standard securities detailed at paragraphs (a) and (d) of the definition of 'HCCI Security Documents' set out in this Clause 1.1;

Holdings Loan: means the loan in the amount of up to £30,000,000 made pursuant to the Holdings Loan Agreement;

Holdings Loan Agreement: means the secured loan agreement entered into between the Scottish Ministers Holdings and FMEL on or around the date of this Deed as amended and/or amended and restated from time to time;

Intra-Group Debt: means all Liabilities which are or may become payable or owing from time to time by FMEL and/ or MacKellar and/ or any Subsidiary of FMEL and/ or any Subsidiary of MacKellar to any member of the Ferguson Group and including, for the avoidance of doubt, all monies that are or may become payable or owing from time to time in respect of the FMEL Intra-Group Loan;

Liabilities: all present or future monies, obligations or liabilities, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity;

Permitted Deed of Subordination: means any deed of subordination which HCCI may require any party to enter into in respect of any further financial indebtedness incurred by any member of the Ferguson Group (the "**Further Indebtedness**"), provided always that (i) the Further Indebtedness is permitted under the terms of each SG Loan Agreement; (ii) such deed of subordination is on terms satisfactory to the Scottish Ministers (it being agreed that in determining whether or not such a deed of subordination is satisfactory, the Scottish Ministers will not withhold agreeing to terms which place HCCI themselves in the same position with respect to the Obligors, as constituted by this deed) and (iii) such deed of subordination shall include an equivalent provision to Clause 3 of this Deed such that the HCCI Debt shall continue to rank in priority to the SG Debt, the Intra-Group Debt and the Further Indebtedness;

Permitted Payment: means at any time after the CBC has made a CBC Subscription in an aggregate amount equal to £3,000,000:

- (a) any payment by Holdings to the Scottish Ministers of the Surplus Amount under and in accordance with Clause 7.3 of the Holdings Loan Agreement; and
- (b) any payment made between the Obligors to facilitate the payment or payments by Holdings of the Surplus Amount under and in accordance with Clause 7.3 of the Holdings Loan Agreement;

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;

Principal: means FMEL on whose behalf or at whose request, directly or indirectly, HCCI provides a Bond;

Project Account: means the bank account of FMEL with Clydesdale Bank plc, bank account number 00071735, sort code 82-20-00;

Refund Guarantees: (i) Refund Guarantee number BS/LO/00830 in respect of Hull 801 issued by HCCI and dated 2 November 2016; and (ii) Refund Guarantee number BS/LO/00829 in respect of Hull 802 issued by HCCI and dated 2 November 2016;

Right: any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise;

Security: any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect;

SG Debt: means all Liabilities which are or may become payable or owing from time to time by an Obligor to the Scottish Ministers in respect of each of the SG Loan Agreements and the SG Security Documents;

SG Discharge Date means the first date on which the SG Debt has been fully and irrevocably and unconditionally paid to the satisfaction of the Scottish Ministers and the Scottish Ministers are under no further obligation to lend any further amounts under the SG Loan Agreements;

SG Loan Agreements: means:

- (a) the FMEL Loan Agreement; and
- (b) the Holdings Loan Agreement.

SG Floating Charges: means the floating charges detailed at paragraphs (b) and (c) of the definition of 'SG Security Documents' set out in this Clause 1.1;

SG Security Documents: means the following Security in relation to the Holdings Loan Agreement:

- (a) the second ranking standard security to be granted by FMEL in favour of the Scottish Ministers in respect of the subjects at Newark Works, Castle Road, Port Glasgow, Scotland PA14 5NG on or around the date hereof to be registered in the Land Register of Scotland under Title Numbers REN35224, REN 35386, REN 78832, REN 114396, and REN 135798;
- (b) the second ranking floating charge to be granted by Holdings in favour of the Scottish Ministers on or around the date hereof;
- (c) the second ranking floating charge to be granted by FMEL in favour of the Scottish Ministers on or around the date hereof;
- (d) the second ranking floating charge to be granted by MacKellar in favour of the Scottish Ministers on or around the date hereof; and

- (e) the cross guarantee to be granted by the Obligors in favour of the Scottish Ministers on or around the date hereof;

SG Standard Security: means the standard security detailed at paragraph (a) of the definition of 'SG Security Documents' set out in this Clause 1.1;

Standard Securities: means:

- (a) the HCCI Standard Securities; and
- (b) the SG Standard Security;

Subscription and Shareholders Agreement: has the meaning given to that term in the Holdings Loan Agreement;

Subscription Rights has the meaning given to it in the Holdings Loan Agreement;

Subsidiaries: means each and every subsidiary of each Obligor from time to time and "Subsidiary" shall be construed accordingly;

subsidiary: has the meaning given in section 1159 of the Companies Act 2006;

Surplus Amount has the meaning given to that term in the Holdings Loan Agreement;

Utilisation Date: has the meaning given to that term in the Holdings Loan Agreement;

Warrant: has the meaning given to that term in the Holdings Loan Agreement; and

Warrant Instrument has the meaning given to that term in the Holdings Loan Agreement.

1.2 Interpretation

In this Deed:

- (a) Clause and Schedule headings shall not affect the interpretation of this Deed;
- (b) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (c) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Deed shall be binding on, and enure to the benefit of, the parties to this Deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- (d) a reference to **writing** or **written** includes email;
- (e) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (f) a reference to **this** Deed (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time;
- (g) unless the context otherwise requires, a reference to a Clause or Schedule is to a Clause of, or Schedule to, this Deed;
- (h) a reference to an **amendment** includes a novation, re-enactment,

supplement or variation (and **amended** shall be construed accordingly); and

- (i) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description.

1.3 Holdings Loan Agreement

Notwithstanding any other term of this Deed:

- (a) Holdings is expressly permitted by the parties hereto to convert part or all of the SG Debt constituted in terms of the Holdings Loan Agreement into shares in the capital of Holdings all in accordance with the terms of the Holdings Loan Agreement, the Warrant Instrument and the Subscription and Shareholders Agreement (being a "**Conversion**");
- (b) in the event that the Scottish Ministers exercise their Subscription Rights in respect of all Warrants capable of being issued pursuant to the Holdings Loan Agreement, Subscription and Shareholders Agreement, and the Warrant Instrument, the Obligors are expressly permitted to and shall capitalise a corresponding amount of any Intra-Group Debt due from FMEL to Holdings under and pursuant to the terms of the FMEL Intra-Group Loan Agreement.

1.4 Consent to security

HCCI and the Scottish Ministers hereby acknowledge and consent to the grant and/or continuation of the HCCI Security and the SG Security (as applicable) and the Scottish Ministers confirm that the Security constituted thereby is "Permitted Financial Indebtedness" and/or "Permitted Security Rights" for the purposes of and as defined in the SG Loan Agreements.

2. PRIORITIES

2.1 Ranking of the SG Debt

The parties agree that:

- (a) the HCCI Debt ranks and shall rank in priority to the SG Debt and the Intra-Group Debt in all respects;
- (b) the SG Debt is subordinated and shall rank second to the HCCI Debt;
- (c) the SG Debt ranks and shall rank in priority to the Intra-Group Debt and in all respects
- (d) the Intra-Group Debt is and shall be subordinated to the HCCI Debt and the SG Debt; and
- (e) subject to Clause 1.3 (*Holdings Loan Agreement*), no payments shall (except a Permitted Payment) be made by any Obligor or any of its Subsidiaries in respect of any SG Debt or any Intra-Group Debt while the HCCI Debt is outstanding.

2.2 Subordination of SG Security

- (a) Notwithstanding the provisions of Section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970 or any rule of law which might operate to the contrary effect, the Scottish Ministers and each Obligor agrees that the HCCI Security Documents shall, for all purposes and at all times, rank in priority to the SG Security Documents, regardless of the date or order of registration or execution of the HCCI Security Documents or the SG Security

Documents.

- (b) The Scottish Ministers acknowledge and agree that each of the SG Security Documents is subject to the terms of this Deed and shall not take any action in respect of any SG Security Documents which is inconsistent with the terms of this Deed.

2.3 Variation of security

- (a) Insofar as necessary to give effect to the provisions of this Deed, the Floating Charges are hereby varied and this Deed shall constitute an instrument of alteration for the purposes of Section 466 of the Companies Act 1985.
- (b) The Standard Securities are varied to the extent specified in this Deed and this Deed so far as affecting the Standard Securities shall be construed and receive effect as variations of each of the said Standard Securities within the meaning of Section 16 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

2.4 Monies received by the Parties

(a) Scottish Ministers

If the Scottish Ministers receive any monies in contravention of this Deed, the Scottish Ministers shall hold those monies in trust for, and pay or transfer them to, HCCI for application towards the HCCI Debt until the Bond Discharge Date.

(b) Obligors

If any of the Obligors shall receive any monies in contravention of this Deed, that Obligor shall (i) before the occurrence of the Bond Discharge Date, hold those monies in trust for, and pay or transfer them to, HCCI for application towards the HCCI Debt and (ii) after the Bond Discharge date but before the SG Discharge Date, hold those monies in trust for, and pay or transfer them to, the Scottish Ministers for application towards the SG Debt.

2.5 Failure of trust

If for any reason, a trust in favour of, or a holding of property for, HCCI and/or the Scottish Ministers under this Deed is invalid or unenforceable, (i) before the Bond Discharge Date, the Scottish Ministers or any of the Obligors (as the case may be) shall pay and deliver to HCCI in cash or in kind an amount (or, if in kind, a value) equal to the payment, receipt or recovery which it would otherwise have been bound to hold in trust for, or as property of, HCCI and (ii) after the Bond Discharge Date but before the SG Discharge Date, any of the Obligors shall pay and deliver to the Scottish Ministers in cash or in kind an amount (or, if in kind, a value) equal to the payment, receipt or recovery which it would otherwise have been bound to hold in trust for, or as property of, the Scottish Ministers.

2.6 Continuing status of security

Nothing in this Deed shall affect the status of any Security which (i) HCCI holds in respect of the HCCI Debt and (ii) the Scottish Ministers hold in respect of the SG Debt, as continuing security.

2.7 No challenge to security

No party to this Deed shall challenge or question:

- (a) the validity or enforceability of (i) the HCCI Security Documents (ii) any further

Security which HCCI may in the future hold in respect of the HCCI Debt, provided that the Scottish Ministers have consented in writing to such further security (iii) the SG Security Documents or (iv) a Permitted Deed of Subordination; or

- (b) the nature of (i) the HCCI Security Documents (ii) any further Security which HCCI may in future hold in respect of the HCCI Debt provided that the Scottish Ministers have consented in writing to such further security (iii) the SG Security Documents or (iv) a Permitted Deed of Subordination.

And provided further that nothing in this Clause 3.7 shall limit or otherwise affect the intent or effect of Clause 3.1 (Ranking of the SG Debt).

2A ACKNOWLEDGEMENT

HCCI acknowledges that CBC may sell to the Scottish Ministers and the Scottish Ministers may purchase from CBC, the shares which CBC holds in the capital of Holdings, all in accordance with the provisions of the Subscription and Shareholders Agreement.

3. COVENANTS

3.1 Covenants before the Bond Discharge Date

At any time prior to the Bond Discharge Date, the Obligors shall not, and shall procure that none of their Subsidiaries shall:

- (a) subject to Clause 1.3 (*Holdings Loan Agreement*) and excluding any Permitted Payment, pay, repay or make any distribution in respect of any of the SG Debt or the Intra-Group Debt in cash or in kind (other than a capitalisation of the SG Debt and capitalisation in the corresponding amount of the Intra-Group Debt due from FMEL to Holdings under the FMEL Intra-Group Loan Agreement ()) without the prior consent of HCCI in its absolute discretion;
- (b) subject to Clause 1.3 (*Holdings Loan Agreement*) and excluding any Permitted Payment, make any payment or repayment pursuant to a SG Loan Agreement or in respect of any Intra-Group Debt including without limitation any pre-payment pursuant to Clause 7.2 of the *Holdings Loan Agreement* without the prior consent of HCCI in its absolute discretion;
- (c) buy or acquire any of the SG Debt or the Intra-Group Debt;
- (d) exercise any right of set-off against the SG Debt or the Intra-Group Debt, except in respect of a Conversion;
- (e) make a loan or provide credit to the Scottish Ministers;
- (f) other than the HCCI Security Documents, and a Permitted Deed of Subordination create, or allow to exist, any Security over any of their assets for, or any guarantee for or in respect of, any of the HCCI Debt;
- (g) other than the SG Security Documents create, or allow to exist, any Security over any of their assets for, or any guarantee for or in respect of, any of the SG Debt or in respect of a loan or credit provided to the Scottish Ministers by another person;
- (h) create, or allow to exist, any Security over any of their assets for, or any guarantee for or in respect of, any of the Intra-Group Debt;

- (i) take, or omit to take, any action which may impair the ranking set out in this Deed.
- 3.2 At any time prior to the Bond Discharge Date, the Obligors shall not, and shall procure that none of their Subsidiaries shall, request HCCI to issue further Bonds after the date of this Deed, for a total aggregate amount greater than £1,000,000. For the avoidance of doubt, this restriction shall not apply to any extension of the Refund Guarantees provided that their expiry date does not fall after the FMEL Loan Agreement Final Repayment Date.
- 3.3 The relevant Obligor shall, as soon as is reasonably practicable, following the issue by HCCI of further Bonds after the date of this Deed, notify the Scottish Ministers of the terms of such Bonds.
- 3.4 At any time while the SG Debt remains outstanding, HCCI shall not issue to any Obligor or any of their Subsidiaries, further Bonds after the date of this Deed, for a total aggregate amount greater than £1,000,000. For the avoidance of doubt, this restriction shall not apply to any extension of the Refund Guarantees provided that their expiry date does not fall after the FMEL Loan Agreement Final Repayment Date.
- 3.4A If at any time, there is a capitalisation of the SG Debt the Obligors shall immediately capitalise an equivalent and corresponding amount of the Intra-Group Debt due from FMEL to Holdings under and pursuant to the terms of the FMEL Intra-Group Loan Agreement.
- 3.5 **Covenants after the Bond Discharge Date but before the SG Discharge Date**

At any time after the Bond Discharge Date but before the SG Discharge Date, the Obligors shall not, and shall procure that none of their Subsidiaries shall:

- (a) pay, repay or make any distribution in respect of any of the Intra-Group Debt in cash or in kind (other than a capitalisation of the SG Debt or the Intra-Group Debt due from FMEL to Holdings under the FMEL Intra-Group Loan Agreement (as the case may be)) without the prior consent of the Scottish Ministers in their absolute discretion;
 - (b) make any payment or repayment pursuant to any Intra-Group Debt without the prior consent of the Scottish Ministers in their absolute discretion;
 - (c) buy or acquire any of the Intra-Group Debt;
 - (d) exercise any right of set-off against the Intra-Group Debt;
 - (e) create, or allow to exist, any Security over any of their assets for, or any guarantee for or in respect of, any of the Intra-Group Debt;
 - (f) take, or omit to take, any action which may impair the ranking set out in this Deed.
- 3.5 **No dividends or distributions**

Prior to the Bond Discharge Date, no Obligor shall:

- (a) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) whether of an income or capital nature and whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
 - (b) repay or distribute any dividend or share premium reserve; or

- (c) pay any management, advisory or other fee to or to the order of any its shareholders (except salaries to directors and other employees which do not exceed market rates); or
- (d) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

3.6 FMEL Intra-Group Loan

- (a) Holdings hereby undertakes to promptly and in any event within 3 Business Days of each Utilisation Date advance a loan to FMEL under the FMEL Intra-Group Loan Agreement for the total amount drawn down by Holdings under the Holdings Loan at such Utilisation Date; and
- (b) Holdings and FMEL hereby undertake to pay all proceeds drawn down by FMEL under the FMEL Intra-Group Loan Agreement into the Project Account.

3.7 HCCI Consent to Amendments

- (a) Subject to Clause 3.7(b), prior to the Bond Discharge Date, the Obligors shall not agree to any amendment, variation, relaxation or waiver of or to the terms of the Articles of Association, the Subscription and Shareholders Agreement, the SG Loan Agreements or the SG Security Documents without the prior written consent of HCCI.
- (b) The Obligors are permitted to agree to any amendment, variation, relaxation or waiver of or to the terms of the Articles of Association, the Subscription and Shareholders Agreement, the SG Loan Agreements or the SG Security Documents provided that such amendment, variation, relaxation or waiver is not prejudicial to HCCI or the HCCI Security Documents.

4. THE SCOTTISH MINISTERS' COVENANTS

4.1 No payment, Security or guarantee – SG Loan Agreements

Subject to Clauses 1.3 (*Holdings Loan Agreement*), the Scottish Ministers covenant with HCCI that, at any time prior to the Bond Discharge Date and notwithstanding the provisions of the SG Loan Agreements and/or whether an Event of Default (as defined in the SG Loan Agreements) has occurred under and pursuant to either of the SG Loan Agreements and/or whether the Scottish Ministers would but for the terms of this Deed be entitled to exercise its rights under the SG Loan Agreements, it shall not:

- (a) make any demand for payment under the SG Loan Agreements (other than in respect of a Permitted Payment), issue any notice of cancellation pursuant to the terms of the SG Loan Agreements (other than pursuant to (i) Clause 4, Clause 7.4 and/or Clause 7.6 of the Holdings Loan Agreement and/or (ii) Clause 4 and/or Clause 6.4 of the FMEL Loan Agreement) or declare that all or part of the SG Debt is due and payable (other than pursuant to (i) Clause 7.3 of the Holdings Loan Agreement in respect of the Surplus Amount and/or (ii) pursuant to Clause 7.6 of the Holdings Loan Agreement and Clause 6.5 of the FMEL Loan Agreement), provided that any notification thereunder acknowledges the terms and restrictions of this Deed and such notification is issued in order to preserve the position of the Scottish Ministers), until HCCI has commenced enforcement action, whereupon the Scottish Ministers shall be entitled to preserve their position in relation to the SG Debt by issuing a repayment demand under declaration of this Deed; or

- (b) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents (as defined in the relevant SG Loan Agreement) and/or the Articles of Association, save for the right to call upon Holdings to comply with its obligations under the Warrant Instrument;
- (c) other than in respect of a Permitted Payment or pursuant to a Conversion, demand, take, accept or receive any payment or distribution in respect, or on account of, the SG Debt in cash or in kind, or apply any money or property in discharge of the SG Debt; or
- (d) other than the SG Security Documents, allow to exist or receive the benefit of any Security, or receive the benefit of any guarantee, from any person in respect of the SG Debt; or
- (e) take, or omit to take, any action which may impair the ranking set out in this Deed; or
- (f) without the prior written consent of HCCI, cancel, supplement, amend, novate, terminate or permit termination of either of the SG Loan Agreements in such a way as would be inconsistent with the covenants and undertakings given under this Deed or would impair the ranking set out in this Deed;
- (g) without the prior written consent of HCCI, transfer or assign its rights and/or obligations under the Finance Documents provided that HCCI shall not withhold consent where such transfer or assignation is (a) in accordance with the terms of clause 17.2 (*Assignment and Further Assurance*) of the Holdings Loan Agreement, and (b) to a Permitted Transferee and such transferee has entered into a Deed of Adherence in the form of the Schedule to this Deed; or
- (h) at any time after the sale of the shares that CBC holds in the capital of Holdings to the Scottish Ministers in accordance with the provisions of the Subscription and Shareholders Agreement, sell or transfer any of its shares in the capital of Holdings (in one transaction or as a series of transactions) without the prior written consent of HCCI which will result in the purchaser or transferee of those shares (or grantee of that right) and persons Acting in Concert with him together acquiring a Controlling Interest in Holdings.

4.2 **No payment, Security or guarantee – Intra-Group Debt before the Bond Discharge Date**

Subject to Clauses 1.3 (*Holdings Loan Agreement*) Holdings covenants with HCCI and the Scottish Ministers that, at any time prior to the Bond Discharge Date and the SG Discharge Date and notwithstanding the provisions of any agreement (whether written or oral) made in relation to the Intra-Group Debt ("**Intra-Group Debt Agreements**") and each an "**Intra-Group Debt Agreement**" and, for the avoidance of doubt, including the FMEL Intra-Group Loan Agreement) and/or whether a default or an event of default or similar has occurred under and pursuant to any such Intra-Group Debt Agreement/s and/or whether Holdings would but for this terms of this Deed be entitled to exercise its rights under any such Intra-Group Debt Agreement/s, it shall not, and shall procure that none of the entities within the Ferguson Group shall:

- (a) make any demand for payment under any Intra-Group Debt Agreement (other than in respect of a payment by FMEL to Holdings pursuant to Clause 3.2 of the FMEL Intra-Group Loan Agreement) issue notice of cancellation pursuant to the terms of any Intra-Group Debt Agreement or declare that all or part of the Intra-Group Debt is due and payable (other than in respect of a payment due to be made by FMEL to Holdings pursuant to Clause 3.2 of the FMEL Intra-Group Loan Agreement), until HCCI and/or the Scottish Ministers (as the case may be) have commenced enforcement action, whereupon

Holdings shall be entitled to preserve their position in relation to the relevant portion of Intra-Group Debt by issuing a repayment demand under declaration of this Deed; or

- (b) other than in respect of a payment by FMEL to Holdings pursuant to Clause 3.2 of the FMEL Intra-Group Loan Agreement, demand, take, accept or receive any payment or distribution in respect, or on account of, the Intra-Group Debt in cash or in kind, or apply any money or property in discharge of the Intra-Group Debt; or
- (c) allow to exist or receive the benefit of any Security, or receive the benefit of any guarantee, from any person in respect of the Intra-Group Debt; or
- (d) take, or omit to take, any action which may impair the ranking set out in this Deed; or
- (e) without the prior written consent of HCCI and the Scottish Ministers, cancel, supplement, amend, novate, terminate or permit termination of any Intra-Group Debt Agreements in such a way as would be inconsistent with the covenants and undertakings given under this Deed or would impair the ranking set out in this Deed.

4.3 The Scottish Ministers' rights

The Scottish Ministers may at any time preserve their position in relation to the SG Debt by issuing a reservation of rights letter to any Obligor under declaration of the terms of this Deed.

4.4 No Security

Nothing in clause 3 or this Clause 5 shall create, or be deemed to create, Security.

4.5 Undertaking to the Scottish Ministers

- (a) Each Obligor undertakes to the Scottish Ministers that at no time shall any Bond have an expiry date falling after the FMEL Loan Agreement Final Repayment Date and in the event that any Bond does have an expiry date falling after the FMEL Loan Agreement Final Repayment Date, such Bond shall not fall within the ranking provisions of this Deed; and
- (b) HCCI shall, as soon as reasonably practicable, notify the Scottish Ministers after taking any action similar or analogous to the actions set out in Clause 5.1. No such action shall be invalid due to the failure of the HCCI to so notify the Scottish Ministers.

4.6 HCCI Consent to Amendments

- (a) Subject to Clause 4.6(b), prior to the Bond Discharge Date, the Scottish Ministers shall not agree to any amendment, variation, relaxation or waiver of or to the terms of the Subscription and Shareholders Agreement, the SG Loan Agreements or the SG Security Documents without the prior written consent of HCCI.
- (b) The Scottish Ministers are permitted to agree to any amendment, variation, relaxation or waiver of or to the terms of the Subscription and Shareholders Agreement, the SG Loan Agreements or the SG Security Documents provided that such amendment, variation, relaxation or waiver is not prejudicial to HCCI or the HCCI Security Documents.

5. PRESERVATION OF RIGHTS

5.1 No waiver of rights

No delay in exercising rights and remedies in respect of the HCCI Debt or the SG Debt, or any Security which (i) HCCI holds in respect of the HCCI Debt, or (ii) the Scottish Ministers hold in respect of the SG Debt because of any term of this Deed postponing, restricting or preventing such exercise shall operate as a waiver of any of those rights and remedies.

5.2 SG Debt remains due and payable

The SG Debt shall remain owing or due and payable from the Obligors, and, if applicable, interest and default interest will accrue on missed payments in accordance with the terms of either of the SG Loan Agreements, despite any term of this Deed that might postpone or prevent payment of the SG Debt (as the case may be).

6. CO-OPERATION BY THE OBLIGORS AND THE SCOTTISH MINISTERS

6.1 HCCI may require the Obligors and the Scottish Ministers, to sign any document and take any steps to protect, or give effect to, HCCI's rights under this Deed, or any similar or related purpose and each Obligor and the Scottish Ministers shall as soon as reasonably practicable comply with any such requirement.

6.2 The Scottish Ministers may require the Obligors, to sign any document and take any steps to protect, or give effect to, the Scottish Ministers' rights under this Deed, or any similar or related purpose and each Obligor shall as soon as reasonably practicable comply with any such requirement.

7. PRESERVATION OF RIGHTS OF HCCI

7.1 Continuing position

The provisions in this Deed shall benefit the ultimate balance of all the HCCI Debt, regardless of any intermediate payment or discharge in whole or in part.

7.2 Waiver of defences

The obligations of the Scottish Ministers and the Obligors under this Deed will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of those obligations, including (without limitation and whether or not known to any party):

- (a) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which HCCI may now, or after the date of this Deed, have from or against any Obligor and/or the Scottish Ministers or any other person;
- (b) any act or omission by HCCI or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against any Obligor or any other person;
- (c) any termination, amendment, variation, novation or supplement of or to an SG Loan Agreement;
- (d) any termination, amendment, variation, novation or supplement of or to any Intra-Group Debt Agreement;

- (e) any grant of time, indulgence, waiver or concession to any Obligor or any other person;
- (f) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, discharge by operation of law, or any change in the constitution, name or style of any Obligor or any other person;
- (g) any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from any Obligor or any other person under any document or security; or
- (h) any claim or enforcement of payment from any Obligor or any other person.

7.3 Immediate recourse (HCCI)

HCCI shall not be obliged, before claiming the benefit of this Deed, to:

- (a) take any action or obtain judgment in any court against any Obligor, the Scottish Ministers or any other person;
- (b) make or file any claim in a bankruptcy, liquidation, administration or insolvency of any Obligor or any other person; or
- (c) make, demand, enforce or seek to enforce any claim, right or remedy against any Obligor or any other person.

7.4 Immediate recourse (The Scottish Ministers)

The Scottish Ministers shall not be obliged, before claiming the benefit of this Deed, to:

- (a) take any action or obtain judgment in any court against any Obligor, or any other person;
- (b) make or file any claim in a bankruptcy, liquidation, administration or insolvency of any Obligor or any other person; or
- (c) make, demand, enforce or seek to enforce any claim, right or remedy against any Obligor or any other person.

7.5 Non-competition

The Scottish Ministers warrant and represent to HCCI that it has not taken or received, and shall not take, exercise or receive the benefit of any Right from or against any Obligor, its liquidator, an administrator or any other person in connection with any liability of, or payment by, an Obligor under this Deed but:

- (a) if any such Right is taken, exercised or received by the Scottish Ministers that Right shall be held by the Scottish Ministers on trust for HCCI for application in or towards the discharge of the HCCI Debt; and
- (b) on demand by HCCI, the Scottish Ministers shall promptly transfer, assign or pay to HCCI all Rights and all monies from time to time held on trust by the Scottish Ministers under this Clause 7.4.

8. DEBT ENFORCEMENT

8.1 HCCI Security Documents

HCCI shall not take any enforcement action under the HCCI Security Documents unless prior to that action:

- (a) HCCI has given notice (an "**Enforcement Notice**") to the Scottish Ministers specifying that HCCI intends to take such enforcement action; and
- (b) a period (the "**Standstill Period**") of not less than 10 Business Days has elapsed from the date on which that Enforcement Notice is received by the Scottish Ministers.

8.2 No service of demand or notice – SG Debt

Subject to Clauses 1.3 (*Holdings Loan Agreement*), except with the prior written consent of HCCI, the Scottish Ministers shall not prior to the Bond Discharge Date:

- (a) serve a demand for the payment of any of the SG Debt on any Obligor (other than in respect of a Permitted Payment) or serve a notice on any Obligor to the effect that any of the SG Debt is immediately due and payable (other than a notice in respect of payment of the Surplus Amount (as defined in the Holdings Loan Agreement)) pursuant to Clause 7.3 of the Holdings Loan Agreement until HCCI has commenced enforcement action, whereupon the Scottish Ministers shall be entitled to preserve their position in relation to the SG Debt by issuing a repayment demand under declaration of this Deed; or
- (b) present, or join in, an application for an administration order or a petition for a winding-up order to be made in relation to an Obligor or initiate, or support or take, any step with a view to any voluntary arrangement or assignment for the benefit of creditors or similar proceeding involving an Obligor or issue a notice of intention to appoint an administrator or appoint an administrator of an Obligor; or
- (c) take or omit to take any action or exercise or refrain from exercising any of its rights as a shareholder in an Obligor which would give effect to any of the foregoing.

8.3 No service of demand or notice – Intra-Group Debt

Subject to Clauses 1.3 (*Holdings Loan Agreement*), except with the prior written consent of HCCI and the Scottish Ministers, Holdings shall not, and shall procure that none of the entities within the Ferguson Group shall, prior to the Bond Discharge Date and the SG Discharge Date having both occurred:

- (a) serve a demand for the payment of any of the Intra-Group Debt on FMEL and/ or MacKellar and/ or any Subsidiary of FMEL and/ or any Subsidiary of MacKellar (other than in respect of a payment by FMEL to Holdings pursuant to Clause 3.2 of the FMEL Intra-Group Loan Agreement) or serve a notice on them to the effect that any of the Intra-Group Debt is immediately due and payable (other than in respect of a payment due by FMEL to Holdings pursuant to Clause 3.2 of the FMEL Intra-Group Loan Agreement) until HCCI has commenced enforcement action, or at any a time after the occurrence of the Bond Discharge Date, until the Scottish Ministers have commenced enforcement action, whereupon Holdings shall be entitled to preserve their position in relation to the Intra-Group Debt by issuing a repayment demand under declaration of this Deed; or
- (b) present, or join in, an application for an administration order or a petition for a winding-up order to be made in relation to FMEL and/ or MacKellar and/ or any Subsidiary of FMEL and/ or any Subsidiary of MacKellar or initiate, or support or take, any step with a view to any voluntary arrangement or

assignment for the benefit of creditors or similar proceeding involving FMEL and/ or MacKellar and/ or any Subsidiary of FMEL and/ or any Subsidiary of MacKellar or issue a notice of intention to appoint an administrator or appoint an administrator of FMEL and/ or MacKellar and/ or any Subsidiary of FMEL and/ or any Subsidiary of MacKellar; or

- (c) take or omit to take any action or exercise or refrain from exercising any of its rights as a shareholder in FMEL and/ or MacKellar and/ or any Subsidiary of FMEL and/ or any Subsidiary of MacKellar which would give effect to any of the foregoing.

8.4 HCCI directions

The Scottish Ministers may (but shall not be obliged to), accede to any request given to it by HCCI relating to taking any of the following actions:

- (a) presenting an application for an administration order or a petition for a winding-up order to be made in relation to an Obligor;
- (b) joining in, or opposing, such an application or petition; or
- (c) voting (whether as a shareholder and/or as a creditor of an Obligor) for or against, or accepting or rejecting:
 - (i) any proposal in a voluntary arrangement or administration in relation to any Obligor or in its winding up;
 - (ii) any scheme of arrangement proposed in relation to any Obligor; or
 - (iii) any rescheduling, refinancing or reorganisation agreement or moratorium in respect of any debts of any Obligor.

9. APPLICATION OF PROCEEDS

Priorities

- 9.1 The priority of HCCI and the Scottish Ministers, as between HCCI and the Scottish Ministers, shall stand (regardless of the order of execution, registration or notice or otherwise), so that all amounts from time to time received or recovered by HCCI or the Scottish Ministers from any Obligor, after providing for all reasonable outgoings, costs, charges, expenses and liabilities of enforcement, exercising rights on winding up and payments ranking in priority as a matter of law, shall be applied in the following order of priority:
 - (a) first, in or towards discharge of the HCCI Debt;
 - (b) second, and only once the HCCI Debt has been fully discharged, in or towards discharge of the SG Debt; and
 - (c) third, and only once the HCCI Debt and the SG Debt has been fully discharged, in or towards the Intra-Group Debt.
- 9.2 Holdings hereby agrees that the priority of HCCI and any and all entities within the Ferguson Group, as between HCCI and any and all entities within the Ferguson Group, shall stand (regardless of the order of execution, registration or notice or otherwise), so that all amounts from time to time received or recovered by HCCI or any entity within the Ferguson Group from Holdings and/or FMEL and/ or MacKellar and/ or any Subsidiary of Holdings and/or any Subsidiary of FMEL and/ or any Subsidiary of MacKellar after providing for all reasonable outgoings, costs, charges, expenses and liabilities of enforcement, exercising rights on winding up and

payments ranking in priority as a matter of law, shall be applied in the following order of priority:

- (a) first, in or towards discharge of the HCCI Debt;
- (b) second, and only once the HCCI Debt has been fully discharged, in or towards discharge of the SG Debt; and
- (c) third, and only once the HCCI Debt and the SG Debt has been fully discharged, in or towards the Intra-Group Debt.

10. COMPANY INSOLVENCY

10.1 The Scottish Ministers

If an administration or winding-up order is made in relation to any Obligor, the Scottish Ministers may (but shall not be obliged to) take all steps (whether as shareholder and/or as a creditor of any Obligor) it reasonably can to:

- (a) recover all amounts which may be due to it from the relevant Obligor (or any third party) in respect of the SG Debt;
- (b) exercise its rights (however arising) against any property in respect of any such amounts; and
- (c) prove in that administration or winding-up.

10.2 Holdings

If an administration or winding-up order is made in relation to FMEL and/ or MacKellar and/ or any Subsidiary of FMEL and/ or any Subsidiary of MacKellar, Holdings may (but shall not be obliged to) take all steps (whether as shareholder and/or as a creditor of FMEL and/ or MacKellar and/ or any Subsidiary of FMEL and/ or any Subsidiary of MacKellar) it reasonably can to:

- (a) recover all amounts which may be due to it from FMEL and/ or MacKellar and/ or any Subsidiary of FMEL and/ or any Subsidiary of MacKellar (or any third party) in respect of the Intra-Group Debt;
- (b) exercise its rights (however arising) against any property in respect of any such amounts; and
- (c) prove in that administration or winding-up.

10.3 Payment to HCCI

- (a) Before the Bond Discharge Date, the Scottish Ministers or Holdings (as the case may be) shall pay all monies received by them under Clause 10.1 or 10.2 to HCCI, after deducting all reasonable costs and expenses (including legal fees and expenses) incurred in recovering those monies.
- (b) After the Bond Discharge Date but before the SG Discharge Date, Holdings shall pay all monies received by them under Clause 10.1 or 10.2 to the Scottish Ministers, after deducting all reasonable costs and expenses (including legal fees and expenses) incurred in recovering those monies.

10.4 Suspense account

- (a) Before the Bond Discharge Date, HCCI shall hold all monies received by it under Clause 10.3 in a suspense account and shall, as soon as it is

reasonably apparent to it that the HCCI Debt will not be fully discharged, apply them in reduction of the HCCI Debt or otherwise in accordance with Clause 10.

- (b) After the Bond Discharge Date but before the SG Discharge Date, the Scottish Ministers shall hold all monies received by them under Clause 10.3 in a suspense account and shall, as soon as it is reasonably apparent to it that the SG Debt will not be fully discharged, apply them in reduction of the SG Debt or otherwise in accordance with Clause 10.

10.5 No payment by the Obligors

Between the Obligors and their creditors, no payments or receipts under Clause 10.3 shall be deemed to constitute payment by an Obligor (i) to HCCI in respect of the HCCI Debt or (ii) to the Scottish Ministers in respect of the SG Debt.

11. EXPENSES

Each Obligor shall pay on demand, all costs and expenses (together with any value added tax on them) that HCCI incurs in connection with the negotiation and preparation, execution, amendment, extension, alteration, preservation and enforcement of this Deed.

12. DURATION

This Deed shall cease to have effect after the occurrence of the Bond Discharge Date and the SG Discharge Date.

13. RESTRICTIONS ON ASSIGNATIONS

- (a) The Scottish Ministers shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Deed unless such transfer is (a) in accordance with the terms of clause 17.2 (*Assignment and Further Assurance*) of the Holdings Loan Agreement, and (b) to Permitted Transferee and provided that such transferee has entered into a Deed of Adherence in the form of the Schedule to this Deed.
- (b) Any Permitted Transferee that accedes to this Deed shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Deed.

14. ACKNOWLEDGEMENTS OF THE OBLIGORS

14.1 Acknowledgement and consent

Each Obligor acknowledges the terms of this Deed and consents to HCCI and the Scottish Ministers communicating with each other about their affairs for the purposes of this Deed.

14.2 No reliance by the Obligors

Each Obligor further acknowledges that none of the provisions entered into by HCCI and the Scottish Ministers are for their benefit, nor may they be enforced or relied on by any Obligor.

15. REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS

15.1 Waivers and consents

- (a) A waiver of any right or remedy under this Deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure to exercise, or a delay by a party in exercising, any right or remedy provided under this Deed or by law shall not constitute a waiver of that or any other right or remedy, *prevent or restrict any further exercise of that or any other right or remedy* or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Deed by HCCI or the Scottish Ministers shall be effective unless it is in writing.
- (c) Where under this Deed any matter, act or thing requires the consent of HCCI such consent shall (unless otherwise specifically stated) be in the absolute discretion of HCCI.

15.2 Rights and remedies

The rights and remedies provided under this Deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

16. SEVERANCE

If any provision (or part of a provision) of this Deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this Clause shall not affect the legality, validity and enforceability of the rest of this Deed.

17. COUNTERPARTS

17.1 This Deed may be executed in any number of counterparts and by each of the parties on separate counterparts in accordance with the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015.

17.2 Where this Deed is executed in counterparts:

- (a) this Deed shall not take effect until all of the counterparts have been delivered; and
- (b) each counterpart will be held as undelivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 until the parties agree a date ("the agreed date") on which the counterparts are to be treated as delivered. The agreed date will be inserted on page 1 of this Deed.

18. THIRD PARTY RIGHTS

18.1 Except as expressly provided in this Deed, a person who is not a party to this Deed shall not have any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce, or enjoy the benefit of, any term of this Deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

18.2 The rights of the parties to rescind or agree any amendment or waiver under this Deed are not subject to the consent of any other person.

19. NOTICES

19.1 Delivery

Any notice or other communication given to a party under, or in connection with this Deed shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by email; and
- (c) sent to:
 - (i) HCCI International Insurance Company plc at:
 The Grange
 Rearsby
 Leicester LE7 4FY
 Email: londonbonds@tmhcc.com
 Attention: Roy Brafield
 - (ii) The Scottish Ministers at:
 St Andrews House,
 Regent Road,
 Edinburgh
 EH1 3DG
 Email: dgeconomy@gov.scot
 Attention: Liz Ditchburn, Director General Economy
 - (iii) Ferguson Marine Engineering (Holdings) Limited
 3 Redwood Crescent
 East Kilbride
 G74 5PA
 Email: Gerry.Marshall@fergusonmarine.com
 Attention: Gerry Marshall
 - (iv) Ferguson Marine Engineering Limited at:
 3 Redwood Crescent
 East Kilbride
 G74 5PA
 Email: Gerry.Marshall@fergusonmarine.com
 Attention: Gerry Marshall

(v) MacKellar Sub-Sea Limited
 3 Redwood Crescent
 East Kilbride
 G74 5PA
 Email: Gerry.Marshall@fergusonmarine.com
 Attention: Gerry Marshall

or to any other address or email address as is notified in writing by one party to the others from time to time.

19.2 Receipt

Any notice or other communication given under or in connection with this Deed shall be deemed to be received:

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by email, at the time of the transmission,;

A notice or other communication given as described in Clause 19.2(a) or Clause 19.2(c) on a day which is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

19.3 Service of proceedings

This Clause 19 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20. SUPERSESION

The parties to this Deed agree that, with effect from the date of this Deed, this Deed supersedes the provisions of the intercreditor deed dated 14 February 2018 and entered into among FMEL, Holdings, HCCI, and the Scottish Ministers.

21. GOVERNING LAW AND JURISDICTION

21.1 Governing law

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of Scotland.

21.2 Jurisdiction

Each party irrevocably agrees that, subject as provided below, the courts of Scotland shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation. Nothing in this Clause shall limit the right of HCCI to take proceedings against any party hereto in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of

proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

21.3 Other service

Each Obligor and the Scottish Ministers irrevocably consent to any process in any legal action or proceedings under Clause 21.2 being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in this Deed shall affect the right to serve process in any other manner permitted by law.

IN WITNESS WHEREOF these presents consisting of this and the preceding 21 pages are executed as follows:

Subscribed by

Name ROYSTON JAMES BRAFIELD

as attorney for and on behalf of

HCC INTERNATIONAL INSURANCE PLC

At: LONDON, EC3R 8AJ (Place)

On: 22 JUNE 2018 (Date)

R. Brafield

in the presence of:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

Peter Domaniewski

PETER DOMANIEWSKI

MILUS & PERVE LLP, MONUMENT PLACE, LONDON

SOLICITOR

Subscribed by

Name

Authorised Signatory for and on behalf of

THE SCOTTISH MINISTERS

At: (Place)

On: (Date)

in the presence of:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

21.3 Other service

Each Obligor and the Scottish Ministers irrevocably consent to any process in any legal action or proceedings under Clause 21.2 being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in this Deed shall affect the right to serve process in any other manner permitted by law.

IN WITNESS WHEREOF these presents consisting of this and the preceding 21 pages are executed as follows:

Subscribed by)
)
 Name)
 as attorney for and on behalf of)
HCC INTERNATIONAL INSURANCE PLC)
 At: (Place)
 On: (Date)

in the presence of:

Signature of Witness:
 Name of Witness:
 Address of Witness:
 Occupation of Witness:

Subscribed by)
)
 Name E.J. DITCHBURN)
 Authorised Signatory for and on behalf of) E.J. Ditchburn
THE SCOTTISH MINISTERS)
 At: GLASGOW (Place)
 On: 25 JUNE 2018 (Date)

in the presence of:

Signature of Witness: M. Lukins
 Name of Witness: MEGAN LUKINS
 Address of Witness: 30 SEMPLE STREET, EDINBURGH, EH3 8BL
 Occupation of Witness: TRAINER SOLICITOR

Subscribed by

Name

GERARD MARSHALL

A director for and on behalf of

FERGUSON MARINE ENGINEERING (HOLDINGS)
LIMITED

At: GLASGOW (Place)

On: 22 JUNE 2018 (Date)

in the presence of:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

Subscribed by

Name

GERARD MARSHALL

A director for and on behalf of

FERGUSON MARINE ENGINEERING LIMITED

At: GLASGOW (Place)

On: 22 JUNE 2018 (Date)

in the presence of:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

Subscribed by

Name Thomas Casinis

A director for and on behalf of

MACKELLAR SUB-SEA LIMITED

At: Glasgow (Place)

On: 22 Jan 2018 (Date)

in the presence of:

Signature of Witness: P. Brady

Name of Witness: PETER BRADY

Address of Witness: 15 Atholl Crescent, Edinburgh

Occupation of Witness: Solicitor

)
)
)
)

This is the Schedule referred to in the foregoing intercreditor deed entered into between HCC International Insurance Company plc, the Scottish Ministers, Ferguson Marine Engineering (Holdings) Limited, Ferguson Marine Engineering Limited, and MacKellar Sub-Sea Limited

THE SCHEDULE

DEED OF ADHERENCE

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

THIS DEED is MADE BETWEEN

PARTY

- (1) [[FULL COMPANY/ENTITY NAME] [incorporated and registered in [*England and Wales*][*Scotland*] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS]] ("**Transferor**").
- (2) [[FULL COMPANY/ENTITY NAME] [incorporated and registered in [*England and Wales*][*Scotland*] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS]] ("**Acceding Party**").

BACKGROUND

- (A) This deed is supplemental to an intercreditor deed dated [DATE], made between [The Scottish Ministers] [the Transferor], Ferguson Marine Engineering (Holdings) Limited, Ferguson Marine Engineering Limited ("**FMEL**"), MacKellar Sub-Sea Limited ("**MacKellar**") and HCC International Insurance Company PLC ("**HCCI**") ("**Existing Parties**") setting out the intercreditor arrangements between the creditors of FMEL and MacKellar (and their Subsidiaries) [as acceded to by [the Transferor] [INSERT NAMES OF PRIOR ACCEDING PARTIES] on [DATE]] ("**Intercreditor Deed**").
- (B) The Transferor will simultaneously transfer or assign all of their rights and obligations under the Finance Documents (as defined in the relevant SG Loan Agreement) on or about the date of this deed (the "**Transfer**").
- (C) It is a condition precedent to the Transfer that the Acceding Party accede to the Intercreditor Deed on the terms of this deed.

1 Agreed terms

- 1.1.1.1 Words and expressions used in this deed shall, unless the context expressly requires otherwise, have the meaning given to them in the Intercreditor Deed. The Effective Date means the date of the Transfer.
- 1.1.1.2 The Acceding Party confirms that it has been supplied with a copy of the Intercreditor Deed and undertakes with each of the Existing Parties that, from the Effective Date, the Acceding Party shall observe, perform and be bound by the provisions of the Intercreditor Deed that contain obligations on the Transferor as though the Acceding Party was an original party to the Intercreditor Deed.
- 1.1.1.3 Nothing in this deed shall release the Transferor from any liability in respect of any obligations under the Intercreditor Deed due to be performed prior to the Effective Date.
- 1.1.1.4 This deed may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.
- 1.1.1.5 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.
- 1.1.1.6 The parties irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF these presents consisting of this and the preceding [] pages are executed as follows:

[Note:- appropriate signing blocks to be inserted.]

[Signed for and on behalf of

[]

By

.....

.....

At

Director

.....

On

.....

before this witness

..... Witness

..... Full Name

..... Address]

... Witness

..... Full Name

..... Address]

.....

Director