

**RESTRUCTURING LOAN**

**LOAN AGREEMENT**

**between**

**THE SCOTTISH MINISTERS**

**and**

**BURNTISLAND FABRICATIONS LIMITED**



For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Loan Agreement is delivered on 17 April 2018

between

(ONE) THE SCOTTISH MINISTERS in terms of the Scotland Act 1998 of Victoria Quay, Leith, Edinburgh EH6 6QQ (the **Scottish Ministers**); and

(TWO) BURNTISLAND FABRICATIONS LIMITED (Registered Number SC213282) and having its Registered Office at 1 George Square, Castle Brae, Dunfermline, KY11 8QF (the **Borrower**).

#### WHEREAS

It is intended that the Scottish Ministers will provide certain credit facilities to the Borrower on the terms of this Agreement.

It is intended that such credit facilities will be utilised by the Borrower only where required as a measure of last resort.

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 In this Agreement:

**Acceptable Form** means, in relation to any document, a form which is acceptable to the Scottish Ministers;

**Account** means each bank account held by the Borrower from time to time;

**Accountants Certificate** means, in relation to each Utilisation request, a certificate, in Acceptable Form, from Grant Thornton (or other financial advisers engaged by the Scottish Ministers from time to time in relation to the Facility) confirming their view that (1) drawing under the Facility is required as a measure of last resort by the Borrower in terms of the most recent version of the Business Plan and Financial Model (including not holding more than £3,000,000 cash) and (2) the Borrower is adhering to the Costs Specification;

**Act** means the Companies Act 2006;

**Adjusted EBITDA** means the net cash flow as set out in the statement of cash flows (or its equivalent) in the annual financial statements of the Borrower;;

**Agreement** means this agreement (including the Schedule);

**Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

**Available Facility** means the sum of TEN MILLION POUNDS (£10,000,000) to the extent not cancelled or reduced under this Agreement;

**Availability Period** means the period from and including the date of this Agreement to and including the Business Day immediately preceding the End Availability Date;

**Business Day** means a day (other than a Saturday) on which banks are open for business in Edinburgh and Vancouver;

**Business Plan** means the plan of the Group describing the Group's proposed business activities and objectives setting out the plan to deliver objectives as updated in accordance with this Agreement;

**Change of Control** means: - (1) WREDS Holdings Inc ceasing to be the legal and beneficial owner of not less than 50.01% of the issued share capital of Newco; or (2) Newco ceasing to be the legal and beneficial owner of not less than 50.01% of the issued share capital of the Borrower;

**Completion Financial Model** means the version of the cashflow forecast to be delivered in

terms of Part 1 of the Schedule and updated monthly in accordance with Clause 10.1.4;

**Costs Specification** means the detailed specifications containing the proposed expenditure plan for the Borrower post completion of the Beatrice Offshore Wind Farm Projects, in a form approved by the Scottish Ministers;

**Dangerous Substances** means any substances capable of causing harm to man or any other living organism or damaging the environment;

**Default** means an Event of Default or Potential Event of Default;

**Disposal** means any sale, transfer or other form of disposal of any asset by the Group where the value of the asset exceeds £50,000 per annum;

**End Availability Date** means 31 December 2019;

**Environmental Law** means all laws, regulations, directives, codes of practice, circulars, guidance notices and court decisions (whether in the UK or the European Union) concerning the protection of human health or welfare or the environment or the conditions of the work place or the generation, transportation, storage, treatment or disposal of Dangerous Substances;

**Event of Default** means each of the events listed in Clause 12;

**Facility** means the term loan facility made available to the Borrower under this Agreement as described in Clause 2;

**Final Repayment Date** means, subject to the terms of this Agreement, 31 January 2026;

**Finance Documents** means this Agreement, the Security Document and each other document agreed by Scottish Ministers and the Borrower to be a Finance Document from time to time;

**Financial Indebtedness** means any indebtedness for or in respect of:

- a) monies borrowed other than any borrowed pursuant to this Agreement;
- b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the mark to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

- i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs a) to h) above;

**Financial Information** means the financial projections of the Group as set out in the Financial Model;

**Financial Model** means the Completion Financial Model updated monthly in accordance with Clause 10.1.5 and when the Business Plan is updated;

**GAAP** means generally accepted accounting principles in the UK;

**Group** means (i) Newco (ii) the Borrower and (ii) each Subsidiary of Newco and the Borrower;

**Loan** means each loan made or to be made under the Facility or the principal amount outstanding for the time being together with all interest thereon and all costs, charges and expenses due or to become due by the Borrower to the Scottish Ministers;

**Loan Period** means the period from the date of this Agreement to, and including, the Final Repayment Date;

**Material Adverse Effect** means a material adverse effect on:

- a) any of the business, operations, assets, property, condition (financial or otherwise) or prospects of the Group (taken as a whole); or
- b) the ability of the Borrower to perform its obligations under the Finance Documents; or
- c) the rights or remedies of the Scottish Ministers under any of the Finance Documents.

**Officer's Certificate** means a certificate, in Acceptable Form, granted or to be granted by an authorised officer of the Borrower in favour of the Scottish Ministers;

**Newco** means Bifab Holdings Limited incorporated in England with no 11295348;

**Performance Bond** means the performance bond dated 17 August 2016 (as amended on 22 August 2016) issued by RBS in favour of the SHL Offshore Contractors B.V. in terms of the facility agreement dated 2 August 2016 between the Borrower and RBS;

**Permitted Financial Indebtedness** means any of:

- a) the Shareholder Loans;
- b) the RBS Facilities;
- c) loans made available by the Scottish Ministers;
- d) indebtedness in respect of guarantees and/or bonds entered into in the ordinary course of business; and
- e) other Financial Indebtedness which in aggregate shall not exceed £30,000,000 without the prior written consent of the Scottish Ministers (not to be unreasonably withheld or delayed);

**Permitted Security Rights** means any Security created by the Group, or any member of it, with the prior written approval of the Scottish Ministers

**Potential Event of Default** means an event which, with the giving of notice, the lapse of time or the making of any determination would constitute an Event of Default;

**RBS** means The Royal Bank of Scotland plc;

**RBS Facilities** means the facilities made available by RBS to the Borrower comprising the

issue of the Performance Bond;

**Repeating Representations** means each of the representations set out in Clauses 9.4 to 9.6 inclusive, 9.8 to 9.11 inclusive and Clauses 9.13 to 9.24 inclusive.

**Representations and Warranties** means those representations and warranties made in terms of Clause 9 of this Agreement;

**Sale** means the sale of the whole or a substantial part of the business, assets and undertaking of the Group;

**Shareholders** means (i) Newco and the Scottish Ministers and (ii) any person to whom any such person has transferred any interest in shares in the Borrower;

**Schedule** means the schedule (comprising 2 Parts) annexed to this Agreement;

**Security** means a mortgage, charge, assignation in security, standard security, pledge, lien (other than a lien arising solely by operation of law in the normal course of business, the aggregate amount of which is not material), deposit, undertaking, guarantee, indemnity or any other security agreement or arrangement having a similar effect;

**Security Document** means the floating charge, in Acceptable Form, granted by the Borrower in favour of the Scottish Ministers;

**Shareholder Loans** means any loans made available by Newco (or other companies in the group of companies of which Newco forms part) to the Borrower as approved by the Scottish Ministers and subordinated to the Facility;

**Subsidiary** means a subsidiary within the meaning of section 1159 of the Companies Act 2006;

**Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

**Utilisation** means a utilisation of the Facility;

**Utilisation Date** means the date of a Utilisation, being the date on which the relevant Loan is to be made;

**Utilisation Request** means a notice substantially in the form set out in Part 2 of the Schedule;

**VAT** means:

- a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph a) above, or imposed elsewhere; and

**Working Capital Ratio** means: the ratio of current assets to current liabilities of the Company.

- 1.2 Words denoting the singular number only include the plural and vice versa and words denoting any gender include all genders and words denoting persons include firms and corporations and vice versa.
- 1.3 Headings are used in this Agreement for convenience only and shall not affect its construction or interpretation.
- 1.4 In this Agreement, unless otherwise specified, references to Clauses and to the Schedule (and Parts thereof) are to Clauses of and the Schedule (and Parts thereof) to this Agreement.

- 1.5 In this Agreement, a reference to any document or this Agreement means this Agreement or that document as supplemented, amended or varied from time to time.
- 1.6 A reference in any way to any party hereto shall be construed so as to include its successors in title, permitted assignees and permitted transferees to, or of, its rights and/or obligations under the Finance Documents.
- 1.7 The expression **party** means each or any of the parties from time to time to this Agreement, so long as they remain a party.
- 1.8 Where the words **include(s)** or **including** are used they are illustrative and shall not limit the scope of the words preceding them.
- 1.9 Any notice, instruction, notification, direction, request, consent or approval contemplated herein shall be made or given in writing.
- 1.10 A "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
- 1.11 A "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- 1.12 A provision of law is a reference to that provision as amended or re-enacted.

## **2. AMOUNT, NATURE AND PURPOSE OF THE LOAN**

- 2.1 Subject to the terms of this Agreement, the Scottish Ministers agree to make available to the Borrower a term loan facility in an aggregate amount not exceeding the amount of the Available Facility.
- 2.2 The Borrower shall apply all amounts borrowed by it under the Facility in support of near term operations and restructuring in accordance with the Costs Specification.

## **3. CONDITIONS OF UTILISATION**

- 3.1 The Scottish Ministers will only be obliged to comply with their obligations under this Clause 3 in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Scottish Ministers have received all of the documents and other evidence listed in (i) Part A of Part 1 of the Schedule in respect of the first Utilisation and (ii) Part B of Part 1 of the Schedule in respect of each subsequent Utilisation, in each case, in Acceptable Form. The Scottish Ministers shall notify the Borrower promptly upon being so satisfied.
- 3.2 If the conditions set out in this Agreement have been met, and subject to there being no Potential Event of Default or Event of Default having occurred which is continuing unwaived and to the Utilisation Request being made for a date within the Availability Period, the Scottish Ministers shall advance the Loan on the Utilisation Date specified in a Utilisation Request.
- 3.3 The Borrower may drawdown the Facility in such number of tranches as it may determine not exceeding in aggregate the Available Facility provided that:
- 3.3.1 no drawing of the Facility shall be for an amount less than £1,000,000;
- 3.3.2 no more than one Utilisation Request may be made at any one time with no more than one utilisation in any one calendar month; and
- 3.3.3 each Utilisation Request may only be made in accordance with details contained in the Utilisation Request;

## **4. CANCELLATION OF FACILITY**

Any amount of the Facility which, at that time, is unutilised shall be immediately cancelled at the end of the Availability Period.

**5. INTEREST**

- 5.1 Interest shall be payable on the Loans at a fixed rate of 18 per cent per annum and shall be compounded quarterly;
- 5.2 Interest payable pursuant to this Agreement shall accrue daily but shall not be paid until the Final Repayment Date.

**6. REPAYMENT AND PREPAYMENT**

- 6.1 Subject to the terms of this Agreement all Loans shall be repaid in full on the Final Repayment Date and, in addition, in accordance with a repayment schedule to be agreed between the Borrower and the Scottish Ministers on or before first Utilisation of the Facility (the "Repayment Schedule").
- 6.2 Within 5 Business Days of the delivery to the Scottish Ministers of each set of annual financial statements, the Borrower shall pay to the Scottish Ministers an amount equal to the Adjusted EBITDA for the financial year covered by those financial statements, to be applied towards prepaying the Loans, provided that the Adjusted EBITDA shall not be paid if as a consequence the Working Capital Ratio falls below a ratio of 1.75:1.
- 6.3 The Borrower may without penalty at any time, upon giving not less than 30 days' prior written notice to the Scottish Ministers (which shall be irrevocable and shall oblige the Borrower to prepay the relevant amount on the date specified) prepay the Loans in whole or in part provided that such prepayment is in whole multiples of £100,000 and in a minimum amount of £100,000. The Borrower shall use all reasonable endeavours to prepay the Loans as soon as possible whether from cashflow, other borrowings and/or from its other resources and shall engage positively in dialogue with the Scottish Ministers on request in terms of considering whether or not any such prepayments are possible and, if so, in what amounts and within what timescales.
- 6.4 If it becomes unlawful for the Scottish Ministers to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan then upon the Scottish Ministers notifying the Borrower, the Available Facility will be immediately cancelled and the Borrower shall repay the Loans made to it on the last day of the calendar month occurring after the Scottish Ministers have so notified the Borrower or, if earlier, the date specified by the Scottish Ministers in a notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).
- 6.5 Any notice of cancellation or prepayment given by any Party under this Clause 6 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment. Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid. The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Available Facility except at the times and in the manner expressly provided for in this Agreement. No amount of the Available Facility cancelled under this Agreement may be subsequently reinstated. Amounts repaid or prepaid shall not be available for re-borrowing.
- 6.6 Notwithstanding any other provision of this Agreement, if there is:-
- 6.6.1 a Change of Control;
- 6.6.2 a Sale; or
- 6.6.3 a refinancing of any part of the Permitted Financial Indebtedness;
- then:-
- 6.6.4 the Borrower shall promptly notify the Scottish Ministers upon becoming aware of that

event;

6.6.5 the Scottish Ministers shall not be obliged to fund a Utilisation; and

6.6.6 the Scottish Ministers, in their sole discretion, may by notice in writing to the Borrower cancel the Facility and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility shall be cancelled and all such outstanding amounts shall become automatically due and payable.

## **7. FEES AND EXPENSES**

7.1 The Borrower shall make a contribution of £20,000 plus VAT to the costs, charges and expenses of the Scottish Ministers incurred in relation to the negotiation, preparation, execution and carrying into effect of this Agreement, such sum to be paid on the date of execution of this Agreement (or such later date as the Scottish Ministers shall agree).

7.2 All costs charges and expenses (including legal expenses on a full indemnity basis and any VAT) of the Scottish Ministers incurred directly in connection with the enforcement or preservation of any rights under this Agreement will be paid on demand by the Borrower.

## **8. PAYMENTS AND TAX**

8.1 All payments by the Borrower hereunder shall be made without set-off or counterclaim in same day funds to such account of the Scottish Ministers in such place as the Scottish Ministers shall notify to the Borrower from time to time.

8.2 All payments due to be made by the Borrower hereunder, whether of principal, interest or otherwise, shall be made free and clear of and without deduction for any present or future taxes (including, without limitation, VAT, stamp duty land tax, corporation tax, income tax, capital gains tax and any penalty or interest payable in connection with any failure to pay or any delay in paying the same), levy, duties or other charges or withholdings ("Tax"). If the Borrower is compelled by law to deduct or withhold any Tax it will ensure that such deduction or withholding does not exceed the minimum liability therefor and will promptly pay to the Scottish Ministers such additional amount as is necessary to ensure that the net amount received by the Scottish Ministers is equal to the amount payable by the Borrower had there been no deduction or withholding.

8.3 All amounts expressed to be payable under a Finance Document to the Scottish Ministers which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly if VAT is or becomes chargeable on any supply made by the Scottish Ministers to the Borrower under a Finance Document and the Scottish Ministers are required to account to the relevant tax authority for the VAT, the Borrower shall pay to the Scottish Ministers (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of that VAT (and the Scottish Ministers must promptly provide an appropriate VAT invoice to the Borrower).

## **9. REPRESENTATIONS AND WARRANTIES**

9.1 The Borrower makes each of the representations and warranties set out in this Clause 9.

9.2 The rights and remedies of the Scottish Ministers in respect of any misrepresentation or breach of warranty on the part of the Borrower shall not be prejudiced or affected by any investigation of the Borrower or any other person by or on behalf of the Scottish Ministers or (without limitation) any other matter which but for this provision would or might prejudice or affect any such rights or remedies.

9.3 The representations and warranties set out in this Clause 9 are deemed to be made by reference to the facts and circumstances then existing on each day the representations and warranties are given.



- 9.4 The Borrower is a limited liability body, duly incorporated and validly existing under the laws of Scotland and has the power to own its assets and carry on its business as it is being conducted.
- 9.5 The Borrower has the power (and all necessary corporate authorisations have been obtained) to enter into the Finance Documents to which it is a party and to perform its obligations under the Finance Documents and has complied, or will comply, with all material statutory and other regulatory legal requirements relative to its business.
- 9.6 No limit on the powers of the Borrower will be exceeded as a result of the borrowing contemplated by the Finance Documents.
- 9.7 On execution, each of the Finance Documents:
- 9.7.1 will constitute legal, valid and binding obligations of the Borrower enforceable in accordance with its terms;
  - 9.7.2 does not and will not breach any law or regulation applicable to the Borrower;
  - 9.7.3 does not and will not breach the constitution of the Borrower; and
  - 9.7.4 does not and will not breach any agreement or instrument by which the Borrower is bound, or constitute a default or termination event (however described) under any such agreement or instrument or breach any judgment, decree, judicial order or determination of any court or applicable national or supranational judicial or governmental authority.
- 9.8 All Authorisations required or desirable to enable the Borrower lawfully to enter into, exercise its rights and comply with its obligations under each Finance Document and to make each Finance Document admissible in evidence in Scotland have been obtained or effected and are in full force and effect.
- 9.9 All Authorisations necessary for the conduct of the business of the Borrower have been obtained or effected and are in full force and effect.
- 9.10 The choice of Scots law as the governing law of each of the Finance Documents will be recognised and enforced by the Scottish courts.
- 9.11 The Borrower is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.
- 9.12 Under the laws of Scotland it is not necessary that any of the Finance Documents (other than the Security Document) be registered, filed, recorded or enrolled with any court or other authority in Scotland or that any stamp, registration or similar tax be paid on or in relation to any of the Finance Documents.
- 9.13 No litigation, arbitration or administrative proceedings is/are pending nor, to the Borrower's knowledge after due enquiry, threatened against the Borrower or any of its assets which could or might have a Material Adverse Effect.
- 9.14 The Borrower is not (nor would, with the giving of notice or passing of time or both, be) in default in respect of any Financial Indebtedness and the borrowing and repayment by the Borrower of the Loans will not contravene any existing applicable law or regulation or any contractual or other restriction or limitation binding on it.
- 9.15 No Event of Default is continuing or might reasonably be expected to result from the drawing of any part of the Loans or the entry into, or the performance of, the Finance Documents or any transaction contemplated by the Finance Documents.
- 9.16 No other event or circumstance is outstanding which constitutes, or (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the above) would constitute, a default or a termination event (however described) under any other agreement or instrument which is binding on the Borrower or to which any of the assets of the

Borrower are subject which could or might have a material adverse effect on its condition, financial or otherwise.

- 9.17 The financial projections contained in the Financial Information represent a fair and reasonable assessment of the anticipated future performance of the Group based on the assumptions (if any) stated in the Financial Information.
- 9.18 So far as the Borrower is aware having made due enquiry, the Financial Information did not omit any information which, if disclosed, might reasonably be expected to adversely affect the decision of a person considering whether to provide financial assistance to the Borrower.
- 9.19 The Borrower has not taken any corporate action, nor have any steps been taken, or legal proceedings started or threatened against it for its winding up or dissolution, or for the appointment of a trustee in sequestration or similar officer of it or all or any part of its assets or revenues.
- 9.20 The Borrower holds all types of insurances, and for insured sums, which a prudent operator of the business would hold.
- 9.21 Any financial projections contained in the Financial Information have been prepared as at their date, on the basis of recent historical information and on the basis of reasonable assumptions.
- 9.22 For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "Regulation"), the Borrower's centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in Scotland and it has no "establishment" (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction.
- 9.23 The Borrower owns, or, as appropriate, any of its Subsidiaries, will have rights to use under licence, all of its or their assets, including the intellectual property rights, necessary for the operation of its business and is not in breach of any law, rule or order.
- 9.24 The information contained in the Officers' Certificate is true, complete and accurate in all respects.
- 9.25 The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Utilisation Request.

## **10. UNDERTAKINGS BY THE BORROWER**

The Borrower undertakes to the Scottish Ministers that throughout the Loan Period it shall:

- 10.1 deliver to the Scottish Ministers such information as the Scottish Ministers may reasonably require including the following:
  - 10.1.1 any changes in key personnel or office bearers of the Borrower;
  - 10.1.2 monthly financial reports including a profit and loss, balance sheet and cashflow against budget on a rolling 12 month basis (to be submitted within ten working days of the end of the relevant month and in a format acceptable to the Scottish Ministers);
  - 10.1.3 monthly detailed contract tender pipeline report outlining progress on key opportunities in such form and content as the Scottish Ministers shall reasonably require, to be submitted within ten days of the end of the relevant month;
  - 10.1.4 monthly forecast model (incorporating profit and loss statement, balance sheet and cash flow forecast) prepared on a 12 month rolling basis, to be submitted within ten days of the end of the relevant month;
  - 10.1.5 quarterly update report on the training and apprenticeship plan of the Borrower across all of its business premises;
  - 10.1.6 annual audited accounts to be received no later than nine months after the end of the

relevant financial year;

- 10.1.7 within 30 days after the beginning of each financial year an updated Business Plan which includes an updated Financial Model;
- 10.1.8 an annual operating budget consistent with the Financial Model within 30 days after the beginning of each financial year;
- 10.1.9 pre utilisation information packs with such financial information as the Scottish Ministers and their financial advisers may require at least 10 Business Days prior to each and every Utilisation; and
- 10.1.10 notification as soon as practicable of any and all material changes in the financial condition, business or prospects of the Borrower;
- 10.2 maintain its existence and carry on its activities in accordance with its constitutional documents substantially in the form carried on as at the date of this Agreement and obtain and maintain in force all licences, consents, permits and insurances necessary for its business and assets;
- 10.3 not amend its constitutional documents without the prior written consent of the Scottish Ministers, which consent shall not be unreasonably withheld
- 10.4 take all steps and actions for the purpose of perfecting and giving effect to the terms hereof;
- 10.5 immediately inform the Scottish Ministers of any significant cash flow or management problems which, or which may arise, in connection with its Business Plan activities, and on the request of the Scottish Ministers to meet with the Scottish Ministers to discuss any proposed courses of remedial action;
- 10.6 ensure that adequate internal expenditure controls are in place and that resources are used economically, effectively and efficiently;
- 10.7 not acquire any company or any shares in any company or create any Subsidiary nor enter into any partnership or joint venture with any party without the consent of the Scottish Ministers, except in the ordinary course of business;
- 10.8 advise the Scottish Ministers immediately of any proposed acquisition of land and/or buildings;
- 10.9 supply to the Scottish Ministers promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending, and which might, if adversely determined, have a material adverse effect on the financial condition of the Borrower or on the ability of the Borrower to perform its obligations under this Agreement;
- 10.10 immediately upon becoming aware of it, inform the Scottish Ministers of the occurrence of an Event of Default or Potential Event of Default (and the steps, if any, being taken to remedy it);
- 10.11 not incur any Financial Indebtedness other than Permitted Financial Indebtedness;
- 10.12 operate each Account and any other bank account held by it in accordance with the Financial Transparency (EC) Regulations 2009;
- 10.13 not to pay, make or declare any dividend or other distribution, management fees or equivalent or pay any interest on unpaid dividends or distributions or any other sums intended to act as distributions or payment of fees to any of its shareholders;
- 10.14 not to create or attempt to create or allow to be created or to exist any security, charge (whether fixed or floating) or lien of any kind without the prior written consent of the Scottish Ministers (provided that the consent of the Scottish Ministers shall not be unreasonably withheld or delayed in respect of security to be granted in respect of ordinary course bonds and/or guarantees), other than a Permitted Security Right;

- 10.15 not to make any loans or advance or enter into any guarantee or indemnity other than in the ordinary course of business;
- 10.16 not to change the nature of the business undertaken by it from that undertaken as at the date of this Agreement;
- 10.17 promptly upon a request by the Scottish Ministers, supply to the Scottish Ministers a certificate signed by two of its directors or senior officers on its behalf certifying that no Event of Default is continuing (or if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy it);
- 10.18 notify the Scottish Ministers in writing of any actual or threatened claim against it in respect of an alleged breach of Environmental Law or remedial obligation or liability under such law which could, if well-founded, (1) have a Material Adverse Effect or (2) constitute a material liability of the Borrower (which shall be judged solely by the Scottish Ministers);
- 10.19 indemnify the Scottish Ministers against all costs and expenses suffered or incurred by them which arise as a result of (1) any actual or threatened breach of Environmental Law by the Borrower, (2) any actual or threatened release of or exposure to a Dangerous Substance on, at or from the premises or operations of the Borrower or (3) any actual or threatened claim referred to in paragraph 10.18 above whether such claim has a Material Adverse Effect or not;
- 10.20 not make any Disposal of all or any part of or interest in any asset, or agree to do so, other than in the ordinary course of its business whether absolutely or in security;
- 10.21 permit a representative of the Scottish Ministers to attend all Board Meetings of the Borrower as an observer only;
- 10.22 maintain all of its assets in a good state or repair and maintenance and in good working order;
- 10.23 comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents;
- 10.24 not to repay, pre-pay, redeem, purchase or otherwise satisfy in any way or make any payment of or in respect of any shareholder or directors loans;
- 10.25 not to enter into any new material contracts without Scottish Ministers prior written consent. For the purposes of this Clause, "Material Contract" shall mean contracts with a value in excess of £60,000,000;
- 10.26 comply, in all material respects and to the satisfaction of the Scottish Ministers acting reasonably, with the training and apprenticeship plan as agreed with the Scottish Ministers from time to time; and
- 10.27 not to pay any management fees or equivalent to any company in the group of companies of which the Borrower forms part exceeding an aggregate amount of £400,000 per annum.

## 11. SECURITY

The parties agree that the Facility shall be secured by the Security Document and any other security documents granted in favour of the Scottish Ministers from time to time.

## 12. EVENTS OF DEFAULT

12.1 If any of the following events shall occur:

- 12.1.1 any sum owing under any Finance Document is not paid on the date it falls due save where such default was due to administrative error and is remedied within 3 Business Days; or
- 12.1.2 the Facility is used for a purpose other than that specified in Clause 2.2, without the prior written consent of the Scottish Ministers; or

- 12.1.3 the Borrower defaults under any other provision of this Agreement and, if capable of remedy, the default is not remedied within 10 days after notice to the Borrower requesting action to remedy the same; or
- 12.1.4 any representation or warranty of the Borrower made in or deemed made pursuant to any provision of this Agreement proves to have been incorrect in a material respect; or
- 12.1.5 save for Shareholders Loans: -
- (a) any Financial Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period; or
  - (b) any Financial Indebtedness of the Borrower is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described); or
  - (c) any commitment for any Financial Indebtedness of the Borrower is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described); or
  - (d) any creditor of the Borrower becomes entitled to declare any Financial Indebtedness of the Borrower due and payable prior to its specified maturity as a result of an event of default (however described); or
- 12.1.6 the holder of any Security takes possession or a trustee in sequestration or similar officer is appointed of the whole or any part of the undertaking, property, assets or revenues of the Borrower; or
- 12.1.7 the Borrower enters into any composition or arrangement with its creditors or proceedings are commenced in relation to the Borrower under any law, regulation or procedure relating to reconstruction or re-adjustment of debts; or
- 12.1.8 the Borrower is adjudicated or found bankrupt or insolvent or any order is made by any competent court or any petition is presented for the winding-up or dissolution of, or for the appointment of a trustee in sequestration or similar officer of, the Borrower or of a substantial part of its assets save for the purposes of amalgamation or reorganisation (not involving insolvency) the terms of which shall have been previously approved in writing by the Scottish Ministers; or
- 12.1.9 the Scottish Ministers reasonably determine that:
- (a) in relation to borrowings (including any grant, loan or subsidy received or receivable by the Borrower) of the Borrower raised other than under this Loan Agreement ("Other Borrowings") any Other Borrowings become prematurely due and payable or capable of being declared due and payable, or any Other Borrowings or any sums payable in respect thereof are not paid when due or within any applicable grace period, or any Security securing any such borrowing becomes enforceable or a demand is made upon any guarantee given by the Borrower which is not paid when due (taking into account any applicable grace periods); or
  - (b) any circumstances arise which give grounds for the reasonable belief that the Borrower may not (or may be unable to) perform its obligations under this Loan Agreement; or
- 12.1.10 the Scottish Ministers have good reason to believe that the Borrower cannot meet its liabilities as the same fall due; or
- 12.1.11 the Borrower ceases or threatens to cease to carry on business or a substantial part of the business, properties or assets of the Borrower is seized or appropriated;

12.1.12 any circumstances have arisen which may result in a demand being made upon RBS by SHL Offshore Contractors B.V. under the Performance Bond;

12.1.13 any other circumstances or event occurs or arises which has or will have a Material Adverse Effect;

then on the occurrence of any of those events the Scottish Ministers may, whilst such event is continuing:

- (a) cancel the Facility whereupon it shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand; and/or
- (d) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

### 13. INDEMNITY

The Borrower shall indemnify the Scottish Ministers against any loss (including interest) or expense which the Scottish Ministers shall certify as sustained or incurred by it:

13.1 as a consequence of any default in repayment of the Loans on the due date; or

13.2 as a consequence of the occurrence of any other Event of Default.

### 14. DISCLOSURE OF INFORMATION

14.1 Subject to Clauses 14.2 and 14.3, each party shall treat the other party's Confidential Information as confidential, and shall not disclose it to any other person without the owner's prior written consent.

14.2 Clause 14.1 shall not apply to the extent that such disclosure is a requirement of law placed upon the party making the disclosure and:-

14.2.1 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

14.2.2 such information was obtained from a third party without obligation of confidentiality;

14.2.3 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

14.2.4 such information was independently developed without access to the other party's Confidential Information.

14.3 Nothing in this Agreement shall prevent either party from disclosing the other party's Confidential Information:

14.3.1 to any consultant, contractor or other person engaged by the Borrower or the Scottish Ministers on a confidential basis; or

14.3.2 for the purpose of the examination and certification of the Borrower's accounts on a confidential basis.

14.4 In this Clause 14:

**Confidential Information** means information that is confidential in nature and may include such information whose disclosure would or would be likely to prejudice the commercial

interests of any person, trade secrets, intellectual property rights, or know-how of any party;

**FOISA** means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation;

**EISR** means the Environmental Information (Scotland) Regulations 2004 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation; and

**Information** has the meaning given in section 73 of FOISA.

- 14.5 The Borrower acknowledges that the Scottish Ministers are subject to the requirements of the FOISA and the EISR and the Borrower shall assist and cooperate with the Scottish Ministers to enable them to comply with their information disclosure obligations.
- 14.6 The Scottish Ministers shall be responsible for determining in its absolute discretion whether Information is exempt from disclosure in accordance with the provisions of the FOISA or the EISR.
- 14.7 For the avoidance of doubt, the Borrower shall be entitled to disclose the terms of this Agreement to any commercial lender which is giving consideration to the provision of loan finance to the Borrower.

#### **15. PUBLICITY**

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

#### **16. ASSIGNATION AND FURTHER ASSURANCE**

- 16.1 The Borrower may not assign or transfer its rights and/or obligations under this Agreement.
- 16.2 The Scottish Ministers may assign or transfer its rights and/or obligations, at its own cost, under this Agreement at will.
- 16.3 The Borrower will, at its own cost and whenever required by the Scottish Ministers, do anything and sign and deliver all such deeds, instruments, notices or other documents of any kind, in such form as the Scottish Ministers may reasonably require, in order to exercise any of the powers and rights given herein or by law.

#### **17. MISCELLANEOUS**

- 17.1 Every notice under this Agreement shall be in writing and may be given or made by hand, post or e-mail to the Borrower or the Scottish Ministers at their respective addresses given above (or to such other address as either party may intimate to the other party in writing from time to time as being the appropriate address for service of notices) and, in the case of an e-mail, to any e-mail address published as belonging to them for this purpose. Every notice shall be deemed to have been received, in the case of an e-mail, at the time of despatch (provided that if the date of despatch is not a working day, it shall be deemed received on the next such working day) and in the case of a letter at the time of its delivery if delivered personally or four days after its posting if sent by mail.
- 17.2 No failure or delay by the Scottish Ministers in exercising any right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude any further exercise thereof or the exercise of any other right or remedy. The rights and remedies herein are cumulative and not exclusive of any rights and remedies provided by law.
- 17.3 No variation of this Agreement shall be effective unless it is effected by way of a written agreement, duly executed by the Scottish Ministers and by the Borrower. Between January

and March 2019 and otherwise on request by either party, the parties shall consider amendments to the terms of the Finance Documents in light of changes to the business, operations, assets, property, condition (financial or otherwise) or prospects of the Borrower and which amendments shall include the possibility of a parent company or other third party guarantee being granted in favour of the Scottish Ministers.

17.4 The Borrower consents to the registration of this Agreement for execution.

17.5 For the avoidance of doubt, nothing in this Agreement will infer any obligation on the Scottish Ministers to provide any further assistance to the Borrower.

**18. EVIDENCE AND CALCULATIONS**

18.1 Accounts maintained by the Scottish Ministers in connection with this Agreement are prima facie evidence of the matters to which they relate.

18.2 Any certification or determination by the Scottish Ministers of an amount under this Agreement is, in the absence of manifest error, prima facie evidence of the matters to which it relates.

18.3 Interest payable pursuant to Clause 5 shall accrue from day to day and be calculated on the basis of the actual number of days elapsed and a year of 365 days.

**19. COUNTERPARTS, DELIVERY ETC**

19.1 This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

19.2 Where this Agreement is executed in counterparts:

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

19.2.2 all counterparts shall be held as undelivered for the purposes of The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 until the parties agree the date on which they are to be treated as delivered; and

19.2.3 such date of delivery shall be inserted in the blank provided for the purpose on page 1 of this Agreement.



20. LAW AND JURISDICTION

This Agreement is governed by and shall be construed in accordance with the laws of Scotland and the Borrower irrevocably submits to the exclusive jurisdiction of the Scottish Courts: IN WITNESS WHEREOF this Agreement consisting of this and the preceding fifteen pages, together with the Schedule annexed, is executed as follows and are delivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 on the date specified on page 1 of this Agreement:-


SUBSCRIBED for and on behalf of the said  
SCOTTISH MINISTERS

at St Andrew's House

on 17<sup>th</sup> April 2018

by   
Authorised Signatory

  
Print name

In the presence of  
Witness:   


Address: 1N/01, ST. ANDREW'S HOUSE  
REGENT ROAD,  
EDINBURGH, EH1 3AG.

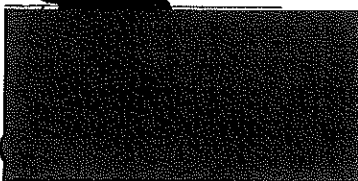
SUBSCRIBED for and on behalf of the said  
BURNTISLAND FABRICATIONS LIMITED

at ... Edinburgh, UK ...

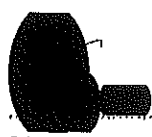

on ... April 17, 2018 ...

by





Print name

Print name

Address: ... 9 ALBANY ST ...  
... ST. JOHN'S NL ...  
... CANADA A1B3C6 ...

**This is the Schedule in 2 parts referred to in the foregoing Agreement between Burntisland Fabrications Limited and the Scottish Ministers.**

**SCHEDULE**

**PART 1**

**Part A**

**Initial Conditions Precedent**

1. This Agreement duly executed by the Borrower.
2. A signed Officers' Certificate with copy constitutional documents of the Borrower and extract board resolution approving the Finance Documents.
3. A signed Utilisation Request.
4. The Business Plan and Completion Financial Model
5. The Costs Specification.
6. The most recent management accounts of the Borrower.
7. An Accountants Certificate.
8. A Repayment Schedule
9. Whatever other information regarding the Borrower and/or the Group that Scottish Ministers may reasonably require.

## **Part B**

### **Subsequent Conditions Precedent**

1. A signed Utilisation Request.
2. No Potential Event of Default or Event of Default remaining outstanding, unwaived or unsatisfied.
3. An Accountants Certificate
4. An updated Repayment Schedule

## PART 2

### UTILISATION REQUEST

To: The Scottish Ministers  
From: Burntisland Fabrications Limited

Burntisland Fabrications Limited  
£10,000,000 Loan Agreement dated [ ] (the "Loan Agreement").

1. We refer to the Loan Agreement.
2. We wish to borrow a Loan as follows:-
  - (a) Amount: [ ]
  - (b) Drawdown Date: [ ]
  - (c) Payment Instructions: [ ]
3. We confirm that each condition specified in Clause 3 (Conditions of Utilisation) of the Loan Agreement and required to be satisfied on the date of this Utilisation Request is so satisfied.

By [ ]

For and on behalf of  
Burntisland Fabrications Limited

