

From: Frances Pacitti  
Energy and Climate Change  
Directorate  
10 April 2018

First Minister  
Deputy First Minister  
Cabinet Secretary for Economy, Jobs and Fair Work  
Cabinet Secretary for Finance and Constitution

**IMMEDIATE - COMMERCIALY CONFIDENTIAL – BURNTISLAND  
FABRICATIONS LIMITED AND DF BARNES SERVICES LIMITED**

**Purpose**

1. To provide an update to the submission dated 18 March 2018, on the proposed acquisition of Burntisland Fabrications Limited (BiFab or the Company) by DF Barnes Services Limited, a subsidiary of the JV Drivers Group (DF Barnes), including proposed support by the Scottish Government (SG).
2. To seek your approval to revise the terms of support to be provided by SG to DF Barnes, in response to escalating costs of completion of the contracts associated with the Beatrice offshore wind farm (BOWL), with a view to concluding contracts in the coming days.

**Timing**

3. Urgent.

**Background**

4. A full background to the transaction is provided in the briefing of 18 March 2018, a copy of which is provided and Annex A and which should be read alongside this submission.
5. Heads of terms were concluded between Scottish Ministers and DF Barnes on 22 March 2018, setting out the terms of support by SG to DF Barnes for the acquisition of the entire share capital and subsequent implementation of proposed growth strategy for BiFab. In brief, the support comprised the extension of the £15 million commercial loan facility provided to BiFab in January 2018 by a further £15 million to £30 million. This was to cover anticipated costs to completion of contracts between BiFab and Siemens and SHL in connection with the BOWL project. The heads of terms also made provision for a separate £10 million restructuring loan post acquisition.

**Recent Developments**

6. On forecast for costs to complete the BOWL contracts. This projected an increase in costs to completion 4 April 2018, BiFab prepared revised from £15 million reflected in the concluded heads of terms, to £20.4 million (an

increase of £5.4 million). This was to cover previously unanticipated cost increases attributed to adverse weather conditions in March, and contingency for future cost increases.

7. On 5 April 2018, DF Barnes prepared its own forecasts in light of pre-acquisition diligence and the BiFab forecasts of 4 April 2018. This assessed a top up debt requirement of up to [REDACTED] (an increase of £11.3 million from the position outlined in the concluded heads of terms). DF Barnes has asked SG for support in meeting this cost overrun, in line with its position to date that its acquisition of BiFab is subject to its exposure to the BOWL contract being mitigated.
8. In subsequent discussion with officials and our commercial advisers, it became clear that this figure comprised a £5 million cash requirement, broadly in line with the revised BiFab forecasts, and c.£6.3 million contested items, where the extent of cash need may be within DF Barnes' own influence. This is reflected in the proposed pricing structure outlined below.
9. At a board meeting on Saturday 7 April, JV Drivers (the parent company of DF Barnes) concluded that, while it remains committed to the acquisition of BiFab, its view of the risk associated with escalating costs to complete the BOWL contract and underlying BiFab performance is such that it no longer wishes to provide a parent company guarantee in respect of the £10 million restructuring loan.

## **Revised Heads of Terms**

10. Officials have taken advice from our financial advisers on appropriate terms upon which Ministers might extend support to the Company to reflect these recent developments.
11. Proposed changes to the previously agreed heads of terms comprise:
  - Increase in total quantum of the commercial loan facility to [REDACTED].
  - The first tranche in the sum of £15 million has been drawn down, with interest accruing at [REDACTED] per annum.
  - The second tranche in the sum of £4 million has been drawn down, with interest accruing at [REDACTED] per annum. The total £19 million debt associated with tranches 1 and 2 is convertible to 19.9% shareholding in the Company.
  - A third tranche in the sum of £16 million, will be available post acquisition by DF Barnes of the entire share capital of BiFab, with interest accruing at [REDACTED] per annum. The total £35 million debt associated with tranches 1, 2 and 3 is convertible to [REDACTED] shareholding in the Company.
  - A fourth tranche in the sum of [REDACTED], will be available post acquisition by DF Barnes of the entire share capital of BiFab. These funds relate to certain contested items including treatment of warranty bond liabilities, treatment of variations, and contingency items, and so the pricing structure differs from earlier tranches. These are matters which DF Barnes/ BiFab should be able to influence and pricing is intended to incentive proactive mitigation of these costs. Draw down would be contingent upon demonstration of the

requirement for the funds to complete the contracts. Interest would accrue at [REDACTED] per annum. The principal debt would be capable of conversion to equity only following completion of the BOWL contracts. Conversion of all four tranches would be up to 38%, dependent upon the uptake of tranches 4. The interest on tranche 4 would accrue until conversion to equity.

- No parent company guarantee will be provided on the £10 million restructuring facility, with security being provided by floating charge in favour of Scottish Ministers. The pricing associated with this lending would increase to 18% to reflect the increased risk to Ministers. Flexibility would be retained to allow parties to revisit should conditions materially change in future.
- DF Barnes has asked for some comfort that Ministers will consider a future request for a [REDACTED] project finance facility. It is proposed that this be provided by non-binding letter of comfort only, providing a commitment that the discussion may be revisited in future, but agreement on none of the essential terms, which would be considered at the date of any such discussion.

12. A table showing proposed revised heads of terms is included as Annex B to this submission for ease of reference.

### **Strategic Case for Government Intervention**

13. The strategic case for Scottish Government intervention remains as set out in previous submissions. If SG does not facilitate further support, the BOWL contract will not be completed and prospects for BiFab to continue as a going concern and secure future contracts would be lost.

14. There may be a call for SG to step in to rescue and operate the company, both for the completion of the BOWL contract and as a going concern. The financial exposure and risk associated with such an undertaking would be significant. The locus and competence of the SG to commercially and credibly operate in this sector would also be challenged.

15. If the company went into administration, SG would lose its existing £15m loan facility. There would be considerable losses for all creditors. This would be challenging for all businesses affected, though those worst affected would be a number of small businesses who would likely cease trading in this event.

16. Within this context, the proposed acquisition of the company, SG equity share, and additional loan facility has wider strategic importance. The commercial rationale for this approach is that, by committing further funds now, we improve our ability to recover our investment over the longer period.

17. Our intervention will maintain confidence within this industry, while simultaneously supporting the local economy, and the Scottish economy more widely. The Programme for Government sets out a forward-looking economic vision for Scotland. Central to that is the opportunity to seize the economic opportunities of tackling climate change, helping existing

industries adapt to future challenges, and to make our economy more competitive, productive, innovative, fair and profitable.

## **Risk**

18. Risks and proposed mitigation measures remain as described in the submission of 18 March 2018. The debt equity conversion ratio and interest rates have been calculated on base assumptions about future performance provided by DF Barnes. There is an inherent risk that performance does not match the projected forecasts.
19. This risk has been mitigated by stress testing the forecasts, with base case, low case and high case projections having been considered by our commercial advisers when considering appropriate pricing.
20. There is a risk that the Company will be not be successful in securing either the Moray or Kincardine contracts, being the short term contract opportunities which inform the business model.

## **State Aid**

21. State aid considerations remain as set out in previous submissions. We have received independent legal and commercial advice that the revised heads of terms set out in this submission are based on MEIP compliant principles. The approach to securing this deal has been conducted on a fully commercial basis. The agreed terms represent the best option presently available for Ministers to support a long-term future for BiFab as a going concern. The commercial terms provide the best available route for government to mitigate its existing exposure, maximise its ability to recover its initial investment and any further commitments. It has been advised that this is consistent with an Market Economy Investment Principle (MEIP) approach.

## Recommendation

22. That you note the content of this submission, and provide approval for officials to amend the heads of terms agreed on 22 March and to conclude legal contracts.

23. This advice has been agreed with DG Economy and DG Organisational Development and Operations.

### Frances Pacitti

Energy & Climate Change Directorate

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10 April 2018

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Rural Economy & Connectivity Minister for Business, Innovation & Energy					X X

Permanent Secretary  
Lord Advocate  
DG Economy  
DG Scottish Exchequer  
DG Organisational Development & Operations  
Chief Financial Officer  
David Ritchie  
David Stevenson  
Gary Gillespie  
Kerry Twyman  
Derek Glover  
Mark Richards  
Caroline Beattie  
Murray Sinclair  
Elizabeth Lloyd  
Stewart Maxwell

## **Annex A – Submission dated 18 March 2018**

From: David Ritchie  
Deputy Director Energy Industries  
Division  
18 March 2018

First Minister  
Cabinet Secretary for Economy, Jobs and Fair Work

### **IMMEDIATE - COMMERCIALY CONFIDENTIAL – BURNTISLAND FABRICATIONS LIMITED AND DF BARNES SERVICES LIMITED**

#### **Purpose**

24. To provide an update on the proposed acquisition of Burntisland Fabrications Limited (BiFab or the Company) by DF Barnes Services Limited, a subsidiary of the JV Drivers Group (DF Barnes), including proposed support by Scottish Government.
25. To seek your approval to progress Heads of Terms on the terms of support to be provided by SG to DF Barnes, with a view to concluding contracts in the coming weeks. This will incorporate terms for SG equity and debt pre- and post-acquisition, enabling a commercial deal between BiFab and DF Barnes.

#### **Timing**

26. Urgent.

#### **Background to the transaction**

27. BiFab is a fabricator of oil and gas and offshore wind structures. It operates from three sites: Burntisland and Methil on the east coast of central Scotland; and Arnish on the Isle of Lewis. At maximum capacity, it has the potential to utilise a workforce in excess of 1,000 individuals across the three sites.
28. The previous majority shareholding of JCE Offshore AB (a Swedish owned investment vehicle) has now been transferred to management, and the shareholding of SSE Venture Capital Limited is also in the process of being transferred to management. The balance of equity is owned by 5 individuals including a director, a non-executive director and 3 investors not directly involved in the running of the business.
29. The Company has a contract with SHL Offshore Contractors BV to provide 26 offshore wind jackets. The Company also has a contract with Siemens to provide two transformer platform jackets. Both contracts are for the Beatrice Offshore Wind development (BOWL). It has no other confirmed contracts at present.

30. Both contacts were in dispute and the Company was facing severe cash flow difficulties, partly driven by significant cost overruns. Within this context, a Notice of Intention was filed to appoint administrators on 10 November 2017. In the period from the Notice of Intention being filed to 18 November 2017, Scottish Ministers, in meetings chaired by First Minister, brokered a negotiated position between all interested parties.

31. The two main shareholders agreed to provide convertible loans to the Company:

- SSE Venture Capital Limited – £6,000,000; and
- JCE Offshore AB – £2,000,000.

32. The financial commitments by SSE and JCE were secured on the basis of a reciprocal commitment by Scottish Ministers to provide the Company with support in the form of a £15,000,000 commercial loan facility. The solution brokered by the First Minister also included the waiving of liabilities and release of funds by other interested parties, including BOWL, SHL and Siemens.

## **Public Sector Involvement**

33. Scottish Government's initial intervention in November prevented an insolvency situation materialising.

34. The rationale for our support was to secure the completion of the BOWL contracts, and to deliver a long-term future for fabrication across all three yards operated by BiFab. Both these points had wider strategic importance across Scotland.

35. Our steps have maintained confidence in and the reputation of the Scottish supply chain, an important sector central to Ministers' ambitions for a prosperous transition to a low carbon economy. SG's support has extended some employment that would, without intervention, have been terminated.

36. Prior to the Notice of Intention being lodged, DF Barnes had expressed interest in the acquisition of BiFab, but that acquisition was put at risk by the prospect of an insolvency situation. Ministers' approach has kept DF Barnes engaged, and has now led to them committing to investment in BiFab over the longer term. As a result, the prospects of BiFab securing future contracts has improved. This will realise longer term employment opportunities, and a platform for further diversification into other sectors. The management, knowledge and skill that DF Barnes brings can lead to demonstrable improvement in execution of project delivery.

37. Within this context, there is now a tangible path to expand the scope and remit of BiFab, post-acquisition by DF Barnes. The ambition is not only to service the domestic market but to export this expertise internationally.

### *Recent Developments*

38. BiFab experienced significant cash flow difficulties in advance of our initial loan. There was a known risk to repayment of that loan given the lack of assets in BiFab, and the forward cash projections being precarious. This was outlined in previous submissions and ongoing updates to Ministers. The lending risk reflected in the commercial terms upon which the loan was provided.
39. The performance of BiFab deteriorated further post-SG loan. Draw down of our £15m loan facility was quicker than forecast. The cost overruns of the BOWL contract continue, and the estimated position from Grant Thornton (SG Commercial Advisers) is that BiFab will need another c£15m to conclude the BOWL contracts, double that had been projected back in November. SHL are clear that they have honoured their commitments for the deal struck in November, and that the additional cost overruns are not their responsibility.
40. Without further support BiFab will again be faced with an insolvency situation. It is our understanding that BiFab's directors have expressed concern in relation to their duties around over-trading, and will consider whether to lodge a further notice of intention to appoint administrators at a specially convened board meeting on Monday 19 March 2018. If another notice to appoint administrators were to be triggered, our understanding is that creditors would not be supportive.
41. We expect SHL would call upon a £21 million performance bond by RBS in its favour at the first opportunity. This would trigger a series of events, including RBS demand on BiFab in terms of the underlying counter indemnity provisions. BiFab's obligations to RBS in terms of the performance bond are secured by first ranking security, which would exhaust BiFab's remaining cash and assets. Although the £15 million SG has been secured by way of second ranking floating charge (the best form of security available at the time of provision of the loan), the £15m loan facility SG provided would most likely prove to be irrecoverable and would need to be written down and declared in some detail in the SG's accounts. We understand that DF Barnes would not acquire the company out of administration.
42. It is possible that SHL and other interested parties would acquire the company out of administration for a nominal value, and complete the outstanding work on the remaining BOWL contract.
43. However, it is not assured that completion would be delivered at the BiFab yards, and the prospect of any further employment would be minimal. In the event there was some further employment at BiFab to facilitate completion of BOWL contracts, once complete, the company would most likely be wound up. Our understanding is that SHL nor any of the other interested parties, has any appetite to maintain BiFab as a going concern.
44. The two contracts for which BiFab are currently bidding would not be pursued further. These have a valuation of c£200m (2019 Q1) + c£20m-£30m (2018 Q2) for Moray East, and c£45m-£95m (2018 Q2) for Kincardine. Within this context, the yards would not be utilised for fabrication, and fall into further disrepair. It



would be challenging to credibly and/or commercially foresee any further fabrication of scale and strategic value across all three yards going forward.

45. Following discussions with developers, officials and ministers it is understood that the BiFab bids for the Moray East and Kincardine projects are competitive. It is also our belief that BiFab tenders and prospects of securing contracts would be enhanced if there was an improved balance sheet, particularly with a strong parent company, and that DF Barnes' expertise and project delivery competence would be viewed positively.

#### *Current Position*

46. DF Barnes has asked for SG support for its acquisition of BiFab, to reflect the changing risk profile associated with acquisition post financial difficulties which came to light in November 2017.
47. Two principles have underpinned its request for support. The first is that its commitment to BiFab is conditional upon the liabilities of the BOWL contract being ring-fenced. DF Barnes' consistent and clear view is that the execution, pricing and management of that contract was not their responsibility. For DF Barnes to deliver a prosperous future for the company the liabilities cannot remain on the balance sheet. The second is that the pricing of any debt must not restrict its ability to invest in the business going forward, nor impose unduly onerous securitisation requirements which might undermine other parts of its business. These principles have been reflected in the negotiated commercial terms outlined below.
48. The other equity partners (SSE and JCE) recognise this, and in order to facilitate DF Barnes' acquisition they have agreed to convert all their debt (e.g. SSE held around c£19m debt) to equity, and resell this equity back to BiFab management for a nominal value (£1). Our understanding is that all equity holders in BiFab have reached an agreement in principal with DF Barnes to transfer their shares for £1.

#### *Principles to Inform Heads of Terms*

49. In summary, the main components of the support by SG to DF Barnes to secure its acquisition of BiFab would be:
- An extension of our existing £15 million loan facility to BiFab to £30 million. The first tranche of funds (c£4m) to be released next week on the strength of heads of terms between SG and DF Barnes.
  - Draw down of any of the remaining balance of the extended loan facility (£11m) would be considered upon the acquisition of BiFab by DF Barnes.
  - DF Barnes (as owners of BiFab) will assume liability for any cost overruns on the the BOWL contract in excess of the £30 million, and all warranty liabilities associated with the contract. This provides a commercial incentive to complete the contracts in as efficient a manner as possible, to minimise further delays and overruns which have been a characteristic of performance to date.

- The £30 million debt associated with completion of the BOWL contracts will convert to 25% shareholding on acquisition by Barnes of the entire share capital in BiFab. Barnes had originally offered a 10% share in the business for this commitment, but the higher conversion rate represents a better commercial proposition for Scottish Government having regard to forecast future value of the Company. After discussion with Grant Thornton, they indicate that based on a prudent assessment of DF Barnes forecasts the company could be worth between £60m-£65m at the end of year five. However, if management delivers on its high case forecasts, the company value would be well in-excess of £100m.
- SG will provide BiFab with a £10 million restructuring loan post acquisition by Barnes. Interest will be payable at an initial rate of [REDACTED] gradually reducing to [REDACTED] over the period of the loan to reflect the decreasing risk profile. This will be delivered on commercial terms. Barnes had originally sought finance at senior lending rates of [REDACTED] but the higher rates represent an appropriate commercial proposition for Scottish Government having regard to the forecast cash position of the Company over the period of the loan, and the level of securitisation which is being provided.
- In recognition of the longer term supply chain opportunities presented by Barnes' investment in Scotland, a commitment in principle to explore opportunities for capital upgrades across the three sites. Any funding commitment provided will be contingent upon consideration of the project and site specific circumstances, with the costs of any upgrades reflected in the level of rent charged to BiFab at these sites.
- Rent arrears for Methil and Arnish, owned by SE and HIE respectively, will be waived. A commitment has been made to consider an initial rent free period when the business is still loss making. This would be covered during any commercial negotiation of any new long term lease with SE and HIE, and is a standard commercial approach.

50. Following lengthy commercial negotiation, the principles of SG support were agreed late Friday, 16<sup>th</sup> March, subject to necessary internal and Ministerial approvals being obtained. Our independent commercial advisers Grant Thornton LLP and legal advisers MacRoberts LLP were closely involved in those negotiations.

51. Given the pace at which matters are progressing, this submission has been drafted in advance of receipt of written confirmation of the advice provided verbally during the course of the negotiation. However, they have clearly advised that the approach to securing this deal has been conducted on a fully commercial basis. The agreed terms represent the best option presently available for ministers to support a long-term future for BiFab as a going concern. The commercial terms provide the best available route for government to mitigate its existing exposure, maximise its ability to recover its initial investment and any further commitments. It has been advised that this is consistent with a Market Economy Investment Principle (MEIP) approach.

### *Short-Term Sequencing*

52. As outlined, our proposal is to agree Heads of Terms in advance of releasing £4m. We believe this can be done early next week. In preparation, we have instructed MacRoberts to draft an amendment to the existing loan agreement.
53. Once Heads of Terms are concluded, we would action MacRoberts to formalise the amended loan agreement with BiFab. This would be the mechanism which enables the £4m to be delivered.
54. The Directors of BiFab are due to meet at 3pm on Monday, 19<sup>th</sup> March. In order to carry out their fiduciary duties with competence, the Directors will need to be satisfied that they are content to continue to trade and accept more credit. We have agreed with PWC and the Finance Director at BiFab that an update will be provided in advance of the 3pm Board of Directors meeting at BiFab on Monday, 19<sup>th</sup> March.

## **Risk**

55. To keep the Company solvent and preserve the possibility of acquisition as a going concern, cash is required immediately. As noted, it is proposed that SG release £4m upon conclusion of Heads of Terms, alleviating the immediate cash flow problems.
56. Heads of Terms are not legally binding. There is a risk that the existing loan facility is extended by £4 million next week, funds drawn down, but the acquisition of BiFab by Barnes is not secured. In these circumstances the company would most likely move into an insolvency situation, SG would lose its £19m investment (our existing £15m loan + new £4m).
57. We propose that any further funding beyond the £4m being advanced post Heads of Terms, is contingent on a final deal being concluded. Only when DF Barnes acquires the company would SG consider any further release of funds. This will be communicated to all interested parties and will be explicit in the Heads of Terms between SG and DF Barnes. This mitigates the risk to an extent.
58. It is also our view that once Heads of Terms are agreed and that all interested parties are aware, BiFab will be in a stronger position to manage their debtors and creditors more effectively. This should mitigate the risk of any creditor placing a cessation of assets and demanding payment in the fear that an insolvency situation is pending.

## *Recovery of Equity*

59. The debt equity conversion ratio and interest rates have been calculated on base assumptions about future performance provided by DF Barnes. There is an inherent risk that performance does not match the projected forecasts.

60. DF Barnes have proposed at the end of year 5 they would buy out SG. We will formalise the timing during the period of Heads of Terms being agreed to contracts being concluded.

- A key challenge around the presentation is that an equity stake will be based on a book value of the company, which initially will be low. The rationale for our support is our commitment is based on a potential future value. However, there is a risk that this value may not be realised, and our investment may not be recovered. After discussion with Grant Thornton, they indicate that based on a prudent assessment of DF Barnes forecasts the company could be worth between [REDACTED] at the end of year five. However, if management delivers on its high case forecasts, the company value would be well in excess of [REDACTED].

61. This risk has been mitigated by stress testing the forecasts, with base case, low case and high case projections having been considered by our commercial advisers when considering appropriate pricing.

#### *Future Contracts*

62. There is a risk that the Company will be not be successful in securing either the Moray or Kincardine contracts, being the short term contract opportunities which inform the business model.

63. This risk can be mitigated by making draw down of funds under the £10 million restructuring loan facility contingent upon need to progress new contract opportunities.

#### **State Aid Considerations**

64. We considered two methods of public sector support for BiFab:

- Rescue and Restructure (R+R); and
- Market Economy Investment Principle (MEIP).

#### *R+R*

65. R+R can be provided where a company is in distress and the state wishes to provide short term funding to improve liquidity. R+R requires advance referral by the member state (in this case BEIS on behalf of the UK Government) to the EC for approval.

66. Cashflow challenges for BiFab have always been known, though the scale of these challenges have been further exacerbated by cost overruns and delays in conclusion of the BOWL contracts. Without an immediate cash injection, it is understood that the company will go into administration in week beginning 19<sup>th</sup> March.

67. Within this context, the timescales associated with such a referral would exceed the time available to secure funding to alleviate BiFab's current cash flow issues.

After discussion with State Aid colleagues, we also concluded that given the sector which BiFab operates within, it is unlikely that the EC would support any R+R intervention.

### *MEIP*

68. Our preferred option is to provide support which is MEIP compliant. To demonstrate compliance, the facility must be delivered on a commercial basis. This can be assessed by benchmarking against comparable loan arrangements, the terms offered by alternative finance providers, the commerciality of the specific terms of the investment, project profitability, general market conditions, and terms being progressed through commercial negotiations.
69. The EC has the ability to consider MEIP compatibility and review the use of state resources at a later date. If the EC were to conclude that the principles of MEIP had not been demonstrated, the Company would need to repay funds received, even if that led to its future insolvency.
70. Audit Scotland will also comment on any assessment in the context of regularity, propriety and value for money and has set out its intention to consider the original transaction in November in its audit plan for the 2017-18 annual accounts. This would focus on the use of public funds, and given that the original loan facility and wider deal was discussed in parliament it is clear that they will look at the range of actions the SG took both then and now.
71. Within this context, we have received independent professional advice that the terms outlined in this submission are based on MEIP principles. We still await written reports from our independent commercial advisers Grant Thornton LLP and our legal advice from MacRoberts LLP. However, they have clearly advised that the approach to securing this deal has been conducted on a fully commercial basis. The agreed terms represent the best option presently available for ministers to support a long-term future for BiFab as a going concern. The commercial terms provide the best available route for government to mitigate its existing exposure, maximise its ability to recover its initial investment and any further commitments. It has been advised that this is consistent with an Market Economy Investment Principle (MEIP) approach.

### **Strategic Case for Government Intervention**

72. If SG do not facilitate further support, the BOWL contract will not be completed and prospects for BiFab to continue as a going concern and secure future contracts would be lost.
73. There would be a call for SG to step in to rescue and operate the company, both for the completion of the BOWL contract and as a going concern. The financial exposure and risk associated with such an undertaking would be significant. The

locus and competence of the SG to commercially and credibly operate in this sector would also be challenged.

74. If the company went into administration the SG would lose its £15m loan facility. There would be considerable losses for all creditors. This would be challenging for all businesses affected, though those worst affected would be a number of small businesses who would likely cease trading in this event.

75. Within this context, the proposed restructuring of the company, equity share SG, and additional loan facility has wider strategic importance. The commercial rationale for this approach is that, by committing further funds now, we improve our ability to recover our investment over the longer period. The commercial rationale for this approach is that, by committing further funds now, we improve our ability to recover our investment over the longer period.

76. Our intervention will maintain confidence within this industry, while simultaneously supporting the local economies, and the Scottish economy more widely. The Programme for Government sets out a forward-looking economic vision for Scotland. Central to that is the opportunity to seize the economic opportunities of tackling climate change, helping existing industries adapt to future challenges, and to make our economy more competitive, productive, innovative, fair and profitable.

### *Employment*

77. The Scottish Input-Output Model estimates the impact of a plant closure across the wider Scottish economy. This includes the direct (output of the plant), indirect (wider supply chain impacts including suppliers, utilities and services) and induced (consumption effects of the expenditure by workers) in the economy.

78. Focussing on the aggregate results for Scotland, based on the maximum potential total combined employment estimates from BIfab of c1,400 being treated as direct, it is estimated that BiFab operations could support between 2,000 and 3,000 full time equivalent employees in the wider Scottish economy.

79. The provision of a loan facility will deliver short term security for employment that would, without intervention, be terminated. It significantly enhances the possibility of securing future contracts to provide longer term employment opportunities.

### *Strategic Location*

80. The yards from which BiFab operate have characteristics which make them strategic in both their location and infrastructure.

81. The east coast yards are in close proximity to potential offshore wind developments in Scotland, as well as future north sea investment. They

have deep water access, and are able to accommodate heavier structures. The quayside configuration also allow for easy barge transfer.

82. The west coast facility is in close proximity to potential offshore wind developments, and can serve future oil and gas investments west of Shetland. The proximity to these markets allow developers to reduce costs and risks from transportation.
83. The location of the yards from which BiFab operate also mean that is an advantageous position to bid for work on decommissioning. Decommissioning is a £300 million opportunity over the next decade. Scottish Ministers are committed to Scotland capturing as much of this business as possible. The loss of BiFab would compromise Scotland's capacity and capability to take full advantage of these opportunities.

### *Offshore Wind*

84. Offshore wind is a key part of the UK's current energy mix. It generates 5% of UK electricity, and is expected to generate 10% by 2020. By 2030, it has the potential to supply over a third of the UK's power needs.
85. The cost of offshore wind continues to fall. The result of the recent Contracts for Difference (CfD) auction was £57.50 per megawatt hour for capacity delivered in 2023, nearly 50% lower than prices at the last auction in 2015. This will see 10GW constructed by the end of this decade and up to a further 20GW by 2030.
86. It is estimated that Scotland has a future potential of over 7.6GW of offshore wind capacity, with the opportunity to power over 6.3 million homes.

### *Supply chain*

87. The UK has the largest offshore wind market globally, closely followed by Germany and Denmark. Scotland's close proximity to these markets enables our domestic supply chain to also target these markets. The BOWL, Neart na Gaoithe and MORL projects are due to deliver 2GW of power by 2023. This will be followed by the next CfD auction in Spring 2018, for projects due to be built out in 2024/25.
88. In addition to Moary and Kincardine projects which are currently being bid for, NNG, and Hornsea 2 will also be finalising their tier 1 contractors and subcontractors. Other offshore wind projects in France, and oil & gas projects in Scotland will also be contracting over the course of 2018 and 2019. Combined, these provide an opportunity for BiFab/DF Barnes to bid for high value contracts. DF Barnes have also indicated that they would look to place work from their North American base.

### *DF Barnes*

89. DF Barnes proposed a three stage approach to delivering long terms growth for BiFab.
90. The first stage is to re-establish BiFab in its existing markets. This will be delivered by securing capital to operate more effectively and secure new work, by investing in client relationships to mitigate impact of recent performance issues on BiFab's reputation, by supplementing the existing management team with DF Barnes staff, by securing near term Moray and Kincardine contract opportunities in the first instance, and implementing established project management and execution practices from across the JV Drivers group. This is anticipated to take around 2 years.
91. The second stage will be to diversify BiFab's services to include maintenance, fabrication for export, exhaust gas cleaning systems and oil and gas decommissioning. This forms years 3 – 5 of the plan.
92. The third stage is for European expansion by year 10, with specific entry points to be determined closer to implementation.

### **Affordability**

93. Finance Directorate have indicated that the combined additional £25 million facility (£15m for BOWL completion to be converted to equity, and £10m loan for restructuring) can be accommodated. Ministers should be aware that there is clearly an opportunity cost as this funding could be used for other investment purposes.

### **Financial Accounts**

94. The loans will be recorded as financial assets and our preference is they charged against Financial Transactions. Once loans are converted to equity they remain as financial assets on the balance sheet.
95. SG would need to formally consider the value of equity stake a minimum of once a year as part of the annual accounts process. If there were events in the intervening period that caused us to reflect on their recoverability then we would write down as we would any other loan.
96. The equity stake will be priced via an agreed formula of company book value. GT have identified a range of ways this could be done. This will be agreed with all parties following Heads of Terms being concluded.

### **Timescales to completion**

97. Subject to agreeing more formal heads of terms (w/b 19<sup>th</sup> March), we should be in a position to release £4m into BiFab. This will alleviate the immediate cashflow pressure and remove the immediate threat of administration.
98. Our focus would then switch to finalising a set of commercial terms acceptable for all parties. DF Barnes have indicated that they would like to



conclude as soon as possible, and our aim would be to conclude **legal agreements by Friday, 30 March would be prudent.**

99. However, there will be some diligence required by SG and DF Barnes, and within this context we will seek views from MacRoberts on an achievable point to conclude legal agreements.

100. As we approach conclusion we will seek your approval to execute the agreements, outlining the full terms in which ministers are investing.

### **Parliamentary Handling**

101. In November 2017, Mr Brown notified parliament of SG's commitment to support BiFab. This outlined the process to stabilise the company and the commitment of all interested parties to deliver the Beatrice contract and provide BiFab with an opportunity to continue as a going concern.

102. We recommend that a further statement to parliament is delivered. We will liaise with MPO on timing, and that formal planning for this should only commence once Heads of Terms are agreed between SG and DF Barnes,

### **Communications**

103. We are in constant dialogue with DF Barnes. We have agreed there will be no communications with any other interested parties over the weekend.

104. We have discussed with Cabinet Secretary EJFW and Chief of Staff, and agreed to now develop a comms plan which will establish our narrative and sequence of engagement. This will include engagement with BiFab and parties who will need reassurance that Scottish Ministers' are extending their commitments to secure delivery of the BOWL contract and enable a long term future for BiFab/DF Barnes.

105. We will also liaise with Private Office and SpAds on opportunities to announce the formal conclusion of the deal with DF Barnes. We recommend that the detailed terms of our agreement between DF Barnes, and the deal between DF Barnes and BiFab are treated as commercially confidential.

### **Recommendation**

106. That you note:

- i. the content of this submission, and provide approval for officials to proceed to formal Heads of Terms and conclusion of legal contracts;
- ii. the proposal for SG to release a further £4m to BiFab on the strength of Heads of Terms between SG and DF Barnes being agreed; and

- iii. our position is no further funds (post £4m) are released until a final agreement has been concluded by SG and DF Barnes, and that the acquisition of BiFab by DF Barnes is completed.

107. This advice has been agreed with DG Economy and the Chief Financial Officer.

**David Ritchie**

Energy & Climate Change Directorate

☎41077

18 March 2017

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Deputy First Minister Cabinet Secretary for Finance & Constitution Cabinet Secretary for Rural Economy & Connectivity Minister for Business, Innovation & Energy					

Permanent Secretary  
Lord Advocate  
DG Economy  
DG Scottish Exchequer  
DG Organisational Development & Operations  
Chief Financial Officer  
Chris Stark  
Frances Pacitti  
David Stevenson  
Gary Gillespie  
Kerry Twyman  
Derek Glover  
Mark Richards  
Caroline Beattie  
Murray Sinclair  
Elizabeth Lloyd  
Stewart Maxwell

Restricted - Commercial in Confidence

**Annex B – Proposed Revised Heads of Terms**

Project Harris – Phase 2

Heads of Terms

9 April 2018

**1. Finance**

	BOWL Facility – Tranche 1	BOWL Facility – Tranche 2	BOWL Facility – Tranche 3	BOWL Facility – Tranche 4	Restructuring Loan
<b>Comment</b>	Loan facility concluded 11 January 2018	Loan facility concluded 11 January 2018 to be revised to reflect increased value of loan at £19,000,000, with consequential amendments being made.	Loan facility concluded 11 January 2018 to be revised to reflect increased value of loan at [REDACTED] with consequential amendments being made.	Loan facility concluded 11 January 2018 to be revised to reflect increased value of loan at [REDACTED] with consequential amendments being made.	New loan agreement, reflecting distinct purpose of the loan.
<b>Loan Amount</b>	Term loan facility of up to £15,000,000	Term loan facility of up to £4,000,000	Term loan facility of up to £16,000,000	Term loan facility of up to £6,000,000	Term loan facility of up to £10,000,000
<b>Parties</b>	The Scottish Ministers Burntisland Fabrications Limited (SC213282)	The Scottish Ministers Burntisland Fabrications Limited (SC213282)	The Scottish Ministers Burntisland Fabrications Limited (SC213282)	The Scottish Ministers Burntisland Fabrications Limited (SC213282)	The Scottish Ministers Burntisland Fabrications Limited (SC213282)
<b>Availability Period</b>	Draw down available from the date of the loan agreement until the earlier of (a) conclusion of SHL and Siemens contracts and (b) 31 December 2018.	Draw down available from the date of the loan agreement until the earlier of (a) conclusion of SHL and Siemens contracts and (b) 31 December 2018.	Draw down available from the date of the loan agreement until the earlier of (a) conclusion of SHL and Siemens contracts and (b) 31 December 2018.	Draw down available from the date of the loan agreement until the earlier of (a) conclusion of SHL and Siemens contracts and (b) 31 December 2018.	Draw down available from the date of the loan agreement until 31 December 2019.
[REDACTED]	Final repayment due within [REDACTED] years of date of first draw down.	Final repayment due within [REDACTED] years of date of first draw down.	Final repayment due within [REDACTED] years of date of first draw down.	Final repayment due within [REDACTED] years of date of first draw down.	Final repayment due by [REDACTED]
<b>Nature of Proposed Loan</b>	To facilitate completion of the SHL and Siemens contracts and associated overheads.	To facilitate completion of the SHL and Siemens contracts and associated overheads.	To facilitate completion of the SHL and Siemens contracts and associated overheads.	To facilitate completion of the SHL and Siemens contracts and associated overheads.	To support near term operations and restructuring following completion of the SHL and Siemens contracts, with specification of proposed expenditure plan to be provided prior to draw down.
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]

	BOWL Facility – Tranche 1	BOWL Facility – Tranche 2	BOWL Facility – Tranche 3	BOWL Facility – Tranche 4	Restructuring Loan
	<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>
<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>	
Conditions Precedent	<div>Standard conditions precedent for a transaction of this nature, in a form and substance satisfactory to the Scottish Ministers, including but not limited to:<ul style="list-style-type: none"><li>execution of the Loan Agreement;</li><li>execution of the Security;</li><li>execution of the required Ranking Agreement;</li><li>certified copies of constitutional documents of BiFab;</li><li>certified copies of board resolutions of BiFab;</li></ul></div>	<div>Standard conditions precedent for a transaction of this nature, in a form and substance satisfactory to the Scottish Ministers, including but not limited to:<ul style="list-style-type: none"><li>completion of heads of terms for SG support to DF Barnes to support its acquisition of share capital of BiFab;</li><li>execution of the revised Loan Agreement on terms <i>mutatis mutandis</i> Tranche 1;</li><li>certified copies of constitutional documents of BiFab;</li><li>certified copies of board resolutions of</li></ul></div>	<div>Standard conditions precedent for a transaction of this nature, in a form and substance satisfactory to the Scottish Ministers, including but not limited to:<ul style="list-style-type: none"><li>acquisition of the entire share capital of BiFab by DF Barnes Services Limited</li><li>changes to the management structure to reflect the change of control of the Company, to the reasonable satisfaction of Scottish Minsiters;</li><li>execution of the revised Loan Agreement on terms <i>mutatis mutandis</i></li></ul></div>	<div>Standard conditions precedent for a transaction of this nature, in a form and substance satisfactory to the Scottish Ministers, including but not limited to:<ul style="list-style-type: none"><li>acquisition of the entire share capital of BiFab by DF Barnes Services Limited</li><li>changes to the management structure to reflect the change of control of the Company, to the reasonable satisfaction of</li></ul></div>	<div>Standard conditions precedent for a transaction of this nature, in a form and substance satisfactory to the Scottish Ministers, including but not limited to:<ul style="list-style-type: none"><li>acquisition of the entire share capital of BiFab by DF Barnes Services Limited</li><li>Need for funds to be determined against specified purpose, which will include work towards securing and/</li></ul></div>

	BOWL Facility – Tranche 1	BOWL Facility – Tranche 2	BOWL Facility – Tranche 3	BOWL Facility – Tranche 4	Restructuring Loan
	<ul style="list-style-type: none"> <li>business plan, financial model including cashflow forecasts and other financial information as required by the Scottish Ministers;</li> <li>drawdown certificate from the Scottish Ministers' financial advisers confirming drawings under the Loan are required as a measure of last resort and BiFab has sufficient means to complete the SHL and Siemens contracts;</li> <li>due diligence on other indebtedness of BiFab including in respect of RBS performance bond and shareholder loans;</li> <li>agreed Repayment Schedule;</li> <li>certificate in relation to borrowing and/or granting security (as appropriate) for the Borrower;</li> <li>such other due diligence as the Lender shall require; and</li> <li>a copy of any other document, authorisation, opinion or assurance specified by the Lender.</li> </ul>	<ul style="list-style-type: none"> <li>BiFab;</li> <li>financial model including cashflow forecasts and other financial information as required by the Scottish Ministers;</li> <li>drawdown certificate from the Scottish Ministers' financial advisers confirming drawings under the Loan are required as a measure of last resort;</li> <li>due diligence on other indebtedness of BiFab including in respect of RBS performance bond and shareholder loans;</li> <li>agreed Repayment Schedule;</li> <li>certificate in relation to borrowing and/or granting security (as appropriate) for the Borrower;</li> <li>such other due diligence as the Lender shall require; and</li> <li>a copy of any other document, authorisation, opinion or assurance specified by the Lender.</li> </ul>	<ul style="list-style-type: none"> <li>Tranche 1;</li> <li>execution of the revised Security;</li> <li>execution of the revised Ranking Agreement;</li> <li>certified copies of constitutional documents of BiFab;</li> <li>certified copies of board resolutions of BiFab;</li> <li>financial model including cashflow forecasts and other financial information as required by the Scottish Ministers;</li> <li>drawdown certificate from the Scottish Ministers' financial advisers confirming drawings under the Loan are required as a measure of last resort and BiFab has sufficient means to complete the SHL and Siemens contracts;</li> <li>due diligence on other indebtedness of BiFab including in respect of RBS performance bond and shareholder loans;</li> <li>agreed Repayment Schedule;</li> <li>certificate in relation to borrowing and/or granting security (as appropriate) for the Borrower;</li> <li>such other due diligence as the Lender shall require; and</li> <li>a copy of any other document, authorisation, opinion or assurance specified by the Lender.</li> </ul>	<ul style="list-style-type: none"> <li>Scottish Minsiters;</li> <li>execution of the revised Loan Agreement on terms <i>mutatis mutandis</i> Tranche 1;</li> <li>execution of the revised Security;</li> <li>execution of the revised Ranking Agreement;</li> <li>certified copies of constitutional documents of BiFab;</li> <li>certified copies of board resolutions of BiFab;</li> <li>financial model including cashflow forecasts and other financial information as required by the Scottish Ministers;</li> <li>drawdown certificate from the Scottish Ministers' financial advisers confirming drawings under the Loan are required as a measure of last resort and BiFab has sufficient means to complete the SHL and Siemens contracts;</li> <li>due diligence on other indebtedness of BiFab including in respect of RBS performance bond and shareholder loans;</li> <li>agreed Repayment Schedule;</li> <li>certificate in relation to borrowing and/or granting security (as appropriate) for the Borrower;</li> <li>such other due diligence as the Lender shall require; and</li> <li>a copy of any other document, authorisation, opinion or assurance specified by the Lender.</li> </ul>	<ul style="list-style-type: none"> <li>or implementation of future contract awards</li> <li>Up-to-date MI pack plus rolling financial forecasts</li> <li>Agreed repayment schedule</li> </ul>
<b>Representations and warranties</b>	Standard representations and warranties for a transaction of this nature.	Standard representations and warranties for a transaction of this nature.	Standard representations and warranties for a transaction of this nature.	Standard representations and warranties for a transaction of this nature.	Standard representations and warranties for a transaction of this nature.
<b>Undertakings</b>	Standard undertakings for a transaction of this nature, including but not limited to: <ul style="list-style-type: none"> <li>negative pledge;</li> <li>restrictions on other borrowings and guarantees;</li> <li>restrictions on loans and credit;</li> </ul>	Standard undertakings for a transaction of this nature, including but not limited to: <ul style="list-style-type: none"> <li>negative pledge;</li> <li>restrictions on other borrowings and guarantees;</li> <li>restrictions on loans and credit;</li> </ul>	Standard undertakings for a transaction of this nature, including but not limited to: <ul style="list-style-type: none"> <li>negative pledge;</li> <li>restrictions on other borrowings and guarantees;</li> <li>restrictions on loans and credit;</li> </ul>	Standard undertakings for a transaction of this nature, including but not limited to: <ul style="list-style-type: none"> <li>negative pledge;</li> <li>restrictions on other borrowings and guarantees;</li> </ul>	Standard undertakings for a transaction of this nature, including but not limited to: <ul style="list-style-type: none"> <li>negative pledge;</li> <li>restrictions on other borrowings and guarantees;</li> </ul>

	BOWL Facility – Tranche 1	BOWL Facility – Tranche 2	BOWL Facility – Tranche 3	BOWL Facility – Tranche 4	Restructuring Loan
	<ul style="list-style-type: none"> <li>compliance with laws;</li> <li>no amendments to key contracts or other key documents;</li> <li>litigation notification; and</li> <li>Scottish Ministers option (but not obligation) to attend BiFab board meetings.</li> </ul>	<ul style="list-style-type: none"> <li>compliance with laws;</li> <li>no amendments to key contracts or other key documents;</li> <li>litigation notification; and</li> <li>Scottish Ministers option (but not obligation) to attend BiFab board meetings.</li> </ul>	<ul style="list-style-type: none"> <li>compliance with laws;</li> <li>no amendments to key contracts or other key documents;</li> <li>litigation notification; and</li> <li>Scottish Ministers option (but not obligation) to attend BiFab board meetings;</li> <li>BiFab to deliver training and apprenticeship plan across all three sites</li> </ul>	<ul style="list-style-type: none"> <li>restrictions on loans and credit;</li> <li>compliance with laws;</li> <li>no amendments to key contracts or other key documents;</li> <li>litigation notification; and</li> <li>Scottish Ministers option (but not obligation) to attend BiFab board meetings;</li> <li>BiFab to deliver training and apprenticeship plan across all three sites</li> </ul>	<ul style="list-style-type: none"> <li>restrictions on loans and credit;</li> <li>compliance with laws;</li> <li>no amendments to key contracts or other key documents;</li> <li>litigation notification; and</li> <li>Scottish Ministers option (but not obligation) to attend BiFab board meetings;</li> <li>BiFab to deliver training and apprenticeship plan across all three sites</li> <li>Cap on cash payments to JVD Group to be set at an appropriate level.</li> </ul>
<b>Information undertakings</b>	<p>Standard information undertakings for a transaction of this nature including but not limited to:</p> <ul style="list-style-type: none"> <li>Weekly reports to be provided on progress of SHL and Seimens contracts, including production milestones, receipts from customers, payments to suppliers, creditor balances (or such other period as Ministers might agree);</li> <li>Monthly management accounts to be made available to Ministers within 10 days of month end;</li> <li>Integrated forecast model (incorporating P&amp;L, balance sheet and cash flow forecast) on rolling 12 month basis to be made available to Ministers within 10 days of month end;</li> <li>Detailed contract tender pipeline outlining progress on key opportunities to be made available to Ministers within 10 days of month end;</li> <li>Monthly updates on progress towards new orders including evidence of pipeline, conversion and ability to meet pre-qualification requirements;</li> <li>Notification as soon as practicable of any material changes in the financial condition, business or prospects of BiFab;</li> </ul>	<p>Standard information undertakings for a transaction of this nature including but not limited to:</p> <ul style="list-style-type: none"> <li>Weekly reports to be provided on progress of SHL and Seimens contracts, including production milestones, receipts from customers, payments to suppliers, creditor balances (or such other period as Ministers might agree);</li> <li>Monthly management accounts to be made available to Ministers within 10 days of month end;</li> <li>Integrated forecast model (incorporating P&amp;L, balance sheet and cash flow forecast) on rolling 12 month basis to be made available to Ministers within 10 days of month end;</li> <li>Detailed contract tender pipeline outlining progress on key opportunities to be made available to Ministers within 10 days of month end;</li> <li>Monthly updates on progress towards new orders including evidence of pipeline, conversion and ability to meet pre-qualification requirements;</li> <li>Notification as soon as practicable of any material changes in the financial condition, business or prospects of BiFab;</li> <li>Updated business plans and/or financial models or other financial information as and when required by Scottish Ministers; and</li> <li>Such other financial and other</li> </ul>	<p>Standard information undertakings for a transaction of this nature including but not limited to:</p> <ul style="list-style-type: none"> <li>Weekly reports to be provided on progress of SHL and Seimens contracts, including production milestones, receipts from customers, payments to suppliers, creditor balances (or such other period as Ministers might agree);</li> <li>Monthly management accounts to be made available to Ministers within 10 days of month end;</li> <li>Integrated forecast model (incorporating P&amp;L, balance sheet and cash flow forecast) on rolling 12 month basis to be made available to Ministers within 10 days of month end;</li> <li>Detailed contract tender pipeline outlining progress on key opportunities to be made available to Ministers within 10 days of month end;</li> <li>Monthly updates on progress towards new orders including evidence of pipeline, conversion and ability to meet pre-qualification requirements;</li> <li>Notification as soon as practicable of any material changes in the financial condition, business or prospects of BiFab;</li> </ul>	<p>Standard information undertakings for a transaction of this nature including but not limited to:</p> <ul style="list-style-type: none"> <li>Weekly reports to be provided on progress of SHL and Seimens contracts, including production milestones, receipts from customers, payments to suppliers, creditor balances (or such other period as Ministers might agree);</li> <li>Monthly management accounts to be made available to Ministers within 10 days of month end;</li> <li>Integrated forecast model (incorporating P&amp;L, balance sheet and cash flow forecast) on rolling 12 month basis to be made available to Ministers within 10 days of month end;</li> <li>Detailed contract tender pipeline outlining progress on key opportunities to be made available to Ministers within 10 days of month end;</li> <li>Monthly updates on progress towards new orders including evidence of pipeline, conversion and ability to meet pre-qualification requirements;</li> <li>Notification as soon as practicable of any material</li> </ul>	<p>Standard information undertakings for a transaction of this nature including but not limited to:</p> <ul style="list-style-type: none"> <li>Maintain accounting books and records in accordance with generally accepted accounting policies;</li> <li>Monthly management accounts (BiFab) to be made available to Ministers within 15 days of month end;</li> <li>Monthly management accounts of PCG provider to be made available to Ministers within 50 days of month end</li> <li>Audited financial statements (BiFab and JVD) to be provided within four months of each financial year end;</li> <li>Integrated forecast model (incorporating P&amp;L, balance sheet and cash flow forecast) on rolling 12 month basis to be made available to Ministers within 15 days of month end;</li> <li>Detailed contract tender pipeline outlining progress on key opportunities to be made available to Ministers within 15 days of month end;</li> </ul>

	BOWL Facility – Tranche 1	BOWL Facility – Tranche 2	BOWL Facility – Tranche 3	BOWL Facility – Tranche 4	Restructuring Loan
	<ul style="list-style-type: none"> <li>Updated business plans and/or financial models or other financial information as and when required by Scottish Ministers; and</li> <li>Such other financial and other information as Scottish Ministers may reasonably request.</li> </ul>	information as Scottish Ministers may reasonably request.	<ul style="list-style-type: none"> <li>Updated business plans and/or financial models or other financial information as and when required by Scottish Ministers; and</li> <li>Such other financial and other information as Scottish Ministers may reasonably request.</li> </ul>	<p>changes in the financial condition, business or prospects of BiFab;</p> <ul style="list-style-type: none"> <li>Updated business plans and/or financial models or other financial information as and when required by Scottish Ministers; and</li> </ul> <p>Such other financial and other information as Scottish Ministers may reasonably request.</p>	<ul style="list-style-type: none"> <li>Monthly updates on progress towards new orders including evidence of pipeline, conversion and ability to meet pre-qualification requirements;</li> <li>Notification as soon as practicable of any material changes in the financial condition, business or prospects of BiFab;</li> <li>Updated business plans and/or financial models or other financial information as and when required by Scottish Ministers;</li> <li>Payment of all taxes within required timescales; and</li> <li>Such other financial and other information as Scottish Ministers may reasonably request.</li> </ul>
<b>Events of default</b>	<p>Standard events of default for a transaction of this nature, including but not limited to:</p> <ul style="list-style-type: none"> <li>non-payment;</li> <li>breach of covenant;</li> <li>breach of other obligations;</li> <li>misrepresentation;</li> <li>cross-default (including, in particular, in relation to the RBS performance bond);</li> <li>insolvency, insolvency proceedings and creditors' process;</li> <li>unlawfulness and invalidity; or</li> <li>material adverse change.</li> </ul>	<p>Standard events of default for a transaction of this nature, including but not limited to:</p> <ul style="list-style-type: none"> <li>non-payment;</li> <li>breach of covenant;</li> <li>breach of other obligations;</li> <li>misrepresentation;</li> <li>cross-default (including, in particular, in relation to the RBS performance bond);</li> <li>insolvency, insolvency proceedings and creditors' process;</li> <li>unlawfulness and invalidity; or</li> <li>material adverse change.</li> </ul>	<p>Standard events of default for a transaction of this nature, including but not limited to:</p> <ul style="list-style-type: none"> <li>non-payment;</li> <li>breach of covenant;</li> <li>breach of other obligations;</li> <li>misrepresentation;</li> <li>cross-default (including, in particular, in relation to the RBS performance bond);</li> <li>insolvency, insolvency proceedings and creditors' process;</li> <li>unlawfulness and invalidity; or</li> <li>material adverse change.</li> </ul>	<p>Standard events of default for a transaction of this nature, including but not limited to:</p> <ul style="list-style-type: none"> <li>non-payment;</li> <li>breach of covenant;</li> <li>breach of other obligations;</li> <li>misrepresentation;</li> <li>cross-default (including, in particular, in relation to the RBS performance bond);</li> <li>insolvency, insolvency proceedings and creditors' process;</li> <li>unlawfulness and invalidity; or</li> <li>material adverse change.</li> </ul>	<p>Standard events of default for a transaction of this nature, including but not limited to:</p> <ul style="list-style-type: none"> <li>non-payment;</li> <li>breach of covenant;</li> <li>breach of other obligations;</li> <li>misrepresentation;</li> <li>cross default;insolvency, insolvency proceedings and creditors' process;</li> <li>unlawfulness and invalidity; or</li> <li>material adverse change.</li> </ul>
<b>Costs</b>	Parties to bear their own costs and expenses.	Parties to bear their own costs and expenses.	Parties to bear their own costs and expenses.	Parties to bear their own costs and expenses.	Borrower to pay the lender's legal and other fees, costs and expenses (plus VAT) incurred in connection with the negotiation, preparation, execution and printing of the finance documents (whether or not the Loan Agreement is signed or any amount is borrowed) and ongoing monitoring and diligence. These can be added to the principal debt. For greater clarity, these costs will be capped in the contract.
<b>Assignment and transfer</b>	SM may transfer or assign all or any part of its rights and obligations under the Loan	SM may transfer or assign all or any part of its rights and obligations under the Loan Agreement.	SM may transfer or assign all or any part of its rights and obligations under the Loan	SM may transfer or assign all or any part of its rights and obligations under	SM may transfer or assign all or any part of its rights and obligations



	BOWL Facility – Tranche 1	BOWL Facility – Tranche 2	BOWL Facility – Tranche 3	BOWL Facility – Tranche 4	Restructuring Loan
	Agreement. BiFab may not transfer or assign all or any part of its rights and obligations under the Loan Agreement.	BiFab may not transfer or assign all or any part of its rights and obligations under the Loan Agreement.	Agreement. BiFab may not transfer or assign all or any part of its rights and obligations under the Loan Agreement.	the Loan Agreement. BiFab may not transfer or assign all or any part of its rights and obligations under the Loan Agreement.	under the Loan Agreement. BiFab may not transfer or assign all or any part of its rights and obligations under the Loan Agreement.
Fees	No arrangement or exit fee.	No arrangement or exit fee.	No arrangement or exit fee.	No arrangement or exit fee.	No arrangement or exit fee.
Security	Second ranking floating charge.	Second ranking floating charge.	Second ranking floating charge.	Second ranking floating charge.	Second ranking floating charge.
Variation	Scottish Ministers may review these terms in light of prevailing conditions, including but not exclusive to third party investment and increased order book, both during and on completion of the SHL and Siemens contracts.	Scottish Ministers may review these terms in light of prevailing conditions, including but not exclusive to third party investment and increased order book, both during and on completion of the SHL and Siemens contracts.	Scottish Ministers may review these terms in light of prevailing conditions, including but not exclusive to third party investment and increased order book, both during and on completion of the SHL and Siemens contracts.	Scottish Ministers may review these terms in light of prevailing conditions, including but not exclusive to third party investment and increased order book, both during and on completion of the SHL and Siemens contracts.	<div>Either party may review these terms in light of prevailing conditions, including but not exclusive to provision of a parent company guarantee or other financial guarantee in acceptable form, third party investment, increased order book, cash flow projections once future order book and project plan becomes clearer.</div> <div>Review to be undertaken at Q1 2019 and at other intervals to be agreed.</div>

2. Rent Arrears – Methil

Outstanding monies due by the Company to Scottish Enterprise in respect of its occupation of the Methil site [REDACTED] to be waived as part of a new lease arrangement which compensates Scottish Enterprise accordingly against market conditions. The new lease arrangement will include a rent abatement period commensurate with the term of the lease.

3. Rent Arrears – Arnish

Outstanding monies due by the Company to Highland and Islands Enterprise in respect of occupation of the Arnish site [REDACTED] to be waived as part of a new lease arrangement which compensates Highland and Islands Enterprise accordingly against market conditions. The new lease arrangement will include a rent abatement period commensurate with the term of the lease.

4. Other Support

Grant funding compliant with State Aid and Programme rules and may be available upon application in the form of:

- Training aid [REDACTED]
- R+D Process and product innovation grants (SE/HIE could contribute maximum grant support of [REDACTED] against potential project costs of [REDACTED] at an intensity level of [REDACTED] ;
- Under current programmes the above two support areas would potentially provide up to [REDACTED] contribution against £4.6 million incurred costs [REDACTED]
- Regional Selective Assistance (maximum grant level of [REDACTED] contribution to eligible costs at an aid intensity level of [REDACTED]
- Non-contractual commitment to consider [REDACTED] project finance facility in future, in light of then prevailing conditions.