

SUBSCRIPTION AND SHAREHOLDERS' AGREEMENT

amongst

FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED

and

THE SCOTTISH MINISTERS

and

CLYDE BLOWERS CAPITAL FUND III LP

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

AGREEMENT

amongst

PARTIES

- (1) **FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED**, incorporated and registered in Scotland with company number SC485103 whose registered office is at Orbital House, 3 Redwood Crescent, Peel Park, East Kilbride G74 5PA (the "**Company**")
- (2) **THE SCOTTISH MINISTERS** in terms of the Scotland Act 1998, Victoria Quay, Leith, Edinburgh EH6 6QQ ("**SM**")

and

- (3) **CLYDE BLOWERS CAPITAL FUND III LP**, a limited partnership registered in Scotland (registered number SL008995) and having its registered office at Orbital House, 3 Redwood Crescent, East Kilbride G74 5PA acting by its general partner, Clyde Blowers Capital GP III L.P., a limited partnership registered in Scotland (registered number SL008841), whose registered office is at Orbital House, 3 Redwood Crescent, East Kilbride, G74 5PA, acting by its general partner, Clyde Blowers Capital GP III Limited (registered number SC392285), whose registered office is at Orbital House, 3 Redwood Crescent, East Kilbride G74 5PA ("**CBC**")

BACKGROUND

- (A) As at the date of this agreement, CBC holds 2,580,001 A ordinary shares of £1.00 each in the capital of the Company, and SM has a right to be issued with Warrants (as defined below), which give SM the right to be issued with Warrant Shares (as defined below), in accordance with the terms of the Loan Agreement and the Warrant Instrument (both as defined below).
- (B) For such time as SM holds any Warrants, the Company shall carry on business, and CBC and SM shall exercise their rights in relation to the Company, in accordance with the terms and conditions of this agreement.

AGREED TERMS

1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

"**A Director**" means any director appointed to the Board by holders of the A Shares.

"A Share" means an A ordinary Share of £1 in the capital of the Company designated as an A Share.

"Act" means the Companies Act 2006.

"Articles" means the new articles of association of the Company in the agreed form to be adopted on or prior to the date of this agreement as amended or superseded from time to time.

"Balance Amount" has the meaning given in clause 4.2.4.

"B Director" means any director appointed to the Board by holders of the B Shares.

"B Share" means a B ordinary Share of £1 in the capital of the Company designated as a B Share.

"Board" means the board of directors of the Company as constituted from time to time.

"Business Day" means a day (other than a Saturday, Sunday or public holiday in the United Kingdom) when clearing banks in the City of Edinburgh are generally open for business.

"Business Plan" has the meaning given in the Loan Agreement.

"CBC's Solicitors" means Brodies LLP of 110 Queen Street, Glasgow, G1 3BX.

"Condition" means CBC having Realised Profits from a disposal or refinance of a subsidiary undertaking of CBC of an aggregate net amount at least equal to:

- (a) in respect of clause 3, the aggregate Tranche Subscription Amounts; plus
- (b) in respect of clause 4, the aggregate principal amount required to subscribe for the relevant number of A Shares pursuant to clause 4 at the relevant time.

"Confidential Information" has the meaning given in clause 16.

"Deed of Adherence" means the deed of adherence in the form set out at Part 2 of the Schedule.

"Director" means a director of the Company.

"Electronic form" has the meaning given in section 1168 of the Act.

"Encumbrance" includes any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect.

“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.

“Exit” has the meaning given in the Articles.

"Expert" means a person appointed in accordance with clause 10 and clause 11 to determine Fair Value.

"Fair Value" means the value of any shares determined in accordance with clause 10.

"Financial Model" has the meaning given in the Loan Agreement.

"Finance Documents" has the meaning given in the Loan Agreement.

"First Tranche Completion(s)" means the completion(s) of the subscriptions by CBC for A Shares in accordance with clause 3.

"FMEL" means Ferguson Marine Engineering Limited (company number SC485060).

“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.

"Group" means in relation to a company (wherever incorporated), that company, any company of which it is a Subsidiary ("**its holding company**") and any other Subsidiaries of any such holding company; and each company in a Group is a member of the Group.

Unless the context otherwise requires, the application of the definition of Group to any company at any time shall apply to the company as it is at that time.

"Loan" means the loan to be made by SM to the Company pursuant to the Loan Agreement.

"Loan Agreement" means the agreement between SM, FMEL and the Company in respect of the Loan dated on or around the date hereof.

"Obligatory Transfer Event" means in relation to a party, any event specified in clause 9.1 or 9.3 (as applicable and as the case may be) that happens to that party.

"Permitted Transferee" has the meaning given in the Articles.

“Proceeds of Sale” has the meaning given in the Articles.

“Project Account” means the bank account of FMEL [REDACTED]
[REDACTED]

"Realised Profits" means the extent to which the proceeds of disposal or refinance of an investment, after deduction of associated disposal or refinance expenses, exceeds the total investment costs of that investment.

"Relevant Proceeds" has the meaning given in clause 3.3.

"Reserved Matters" means the matters listed in Part 1 of the Schedule (which shall apply, where relevant, to each of the Company and FMEL).

"Schedule" means the schedule to this agreement, in two Parts.

"Second Tranche Completion" means the completion of the subscription by CBC for A Shares in accordance with clause 4.

"Second Tranche Longstop Date" means the date falling 24 months after the date of the Loan Agreement.

"Shareholders" means the holders of shares in the Company.

"Subsidiary" means, in relation to a company wherever incorporated (a holding company), a **"subsidiary"** as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.

Unless the context otherwise requires, the application of the definition of Subsidiary to any company at any time shall apply to the company as it is at that time.

"Surplus Amount" has the meaning given in the Loan Agreement.

"Threshold Amount" has the meaning given in the Articles.

"Tranche Payment Trigger Event" has the meaning given in clause 3.3.

"Tranche Subscription Amount" means an amount equal to 10% of the drawdown amount of the Loan received by the Company pursuant to each Utilisation Request.

"Utilisation Request" has the meaning given in the Loan Agreement.

"Warrant" means an equity warrant to subscribe for one Warrant Share, on the terms and subject to the conditions of the Warrant Instrument.

"Warrant Instrument" means the equity instrument to be entered into by the Company in relation to the Warrants and the Warrant Shares pursuant to the terms of the Loan Agreement.

"Warrant Shares" means the B Shares which SM has the right to be issued upon exercise of the Warrants pursuant to the terms of the Warrant Instrument and the Loan Agreement.

- 1.2 Clause, Schedule and paragraph headings do not affect the interpretation of this agreement.
- 1.3 The Schedule forms part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedule.
- 1.4 A reference to a clause or the Schedule, or to Parts of the Schedule, is a reference to a clause of, or the schedule to, or parts of the schedule to, this agreement. A reference to a paragraph is to a paragraph of the relevant Part of the Schedule.
- 1.5 In this agreement, references to any document or this agreement means this agreement or that document as supplemented, amended or varied from time to time.
- 1.6 A **"person"** includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).
- 1.7 Unless the context otherwise requires words in the singular include the plural and in the plural include the singular.
- 1.8 Unless the context otherwise requires a reference to one gender includes a reference to the other gender.
- 1.9 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it, provided that, as between the parties, no such amendment or re-enactment shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.10 Documents in **"agreed form"** are documents in the form agreed by the parties to this agreement and initialled by them or on their behalf for identification.
- 1.11 A reference in this agreement to a document is a reference to the document whether in paper or Electronic form.
- 1.12 Where the words **"include(s)"**, **"including"** or **"in particular"** are used in this agreement, they are deemed to have the words **"without limitation"** following them.
- 1.13 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 Where the context permits, **"other"** and **"otherwise"** are illustrative and shall not limit the sense of the words preceding them.

2 Applications of provisions of agreement

Until such time as there are B Shares in issue, the provisions of clause 5, clause 6 and clause 7 shall be of no force and effect, and such provisions shall only have force and effect while there are B Shares in issue.

3 First Tranche Completion(s)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4 Second Tranche Completion

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 Voting Rights - B Shares

Notwithstanding any other provisions of this agreement or the Articles, the voting rights attached to the B Shares in aggregate shall represent a maximum of forty nine percent (49%) of the total voting rights exercisable in respect of the entire issued share capital of the Company at any time (or such lesser percentage as is equal to the proportion which the voting rights otherwise exercisable in respect of such B Shares bears to the total voting rights exercisable in respect of the entire issued share capital of the Company at any time).

6 Directors and management

6.1 The Board has responsibility for the supervision and management of the Company and its business but shall obtain the prior written approval of the following (such consent not to be unreasonably withheld) before taking any decision in relation to any of the Reserved Matters:

6.1.1 in relation to paragraphs 1 – 6 (inclusive) of Part 1 of the Schedule:

6.1.1.1 the holders of not less than 75% of the A Shares; and

6.1.1.2 the holders of not less than 75% of the B Shares, and

- 6.1.2 in relation to paragraphs 7 – 12 (inclusive) of Part 1 of the Schedule:
 - 6.1.2.1 the holders of not less than 75% of the A Shares; and
 - 6.1.2.2 for so long as the holders of the B Shares hold at least 25% of the entire issued share capital of the Company, the holders of not less than 75% of the B Shares.
- 6.2 The appointment and removal of the A Directors and the B Director, and proceedings of directors, shall be governed by the Articles, and the appointment by SM of any observer shall be governed by the Loan Agreement.
- 6.3 The right of the holder of the majority of the B Shares to appoint a B Director pursuant to article 11.1 of the Articles shall be subject always to the following conditions:-
 - 6.3.1 the B Director shall not be a director or other officer of, or employed by Transport Scotland (being the national agency for transport in Scotland), Transport Scotland Limited (company number SC350085), Caledonian Maritime Assets Limited (company number SC001854) ("**CMAL**"), or Caledonian MacBrayne Limited (company number SC308636) or any subsidiary of any of these entities; and
 - 6.3.2 the identity and appointment of such B Director must be approved in advance by the holder of a majority of the A Shares (such approval not to be unreasonably withheld).
- 6.4 The conditions referred to at clauses 6.3.1 and 6.3.2 above shall also apply:-
 - 6.4.1 so as to restrict the application of article 9.6 of the Articles;
 - 6.4.2 in relation to the appointment of an alternate director by the B Director pursuant to article 12.1 of the Articles;
 - 6.4.3 in relation to an authorised representative appointed for the purposes of article 19.1.2 of the Articles; and
 - 6.4.4 in relation to the appointment of an observer by SM pursuant to clause 18.6 of the Loan Agreement.

7 Information Undertakings

The Company shall (and CBC shall procure that the Company shall) supply SM with such information as SM may reasonably require in relation to the business of the Company and FMEL including the following:

- 7.1 monthly financial reports including profit and loss, balance sheet and actual cashflow against budget (to be submitted within one month of the end of the relevant month and in a format acceptable to SM and CBC);

- 7.2 annual audited accounts to be received no later than nine months after the end of the relevant financial year;
- 7.3 within 30 days after the beginning of each financial year, an updated Business Plan which includes as required an updated Financial Model;
- 7.4 as soon as reasonably practicable after the same become available (but in any event within 30 days of the month end to which the management accounts relate) management accounts, such management accounts to be accompanied by commentary in reasonable detail on the financial performance of the Group.

8 Transfer of shares

- 8.1 No party shall transfer, grant any security interest over, or otherwise dispose of or give any person any rights in or over any share or interest in any share in the Company unless it is permitted or required under this agreement or the Articles and carried out in accordance with the terms of the agreement or the Articles (as the case may be) and in the case of a transfer of shares, the transferee enters into the Deed of Adherence.
- 8.2 A party may do anything prohibited by this clause if the other parties have expressly consented to it in writing.
- 8.3 Notwithstanding the right for a holder of the B Shares to transfer all (but not some only) of its shares in the Company to a Permitted Transferee pursuant to the provisions of article 16.4.1 of the Articles, any holder of B Shares shall not be entitled to transfer any of its B Shares to Transport Scotland (being the national agency for transport in Scotland), Transport Scotland Limited (company number SC350085), CMAL or Caledonian MacBrayne Limited (company number SC308636) or any subsidiary of any of these entities.

9 Obligatory Transfer Event

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED] [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
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[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]

10 Transfer following Obligatory Transfer Event

■ [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]

11 Expert

11.1 An Expert is a person appointed in accordance with clause 10 to determine Fair Value.

- 11.2 The parties shall endeavour to agree on the appointment of an independent Expert and to agree the terms of appointment with the Expert.
- 11.3 If the parties are unable to agree on an Expert or the terms of his appointment within 5 Business Days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the then President of the Institute of Chartered Accountants of Scotland to appoint an Expert who is an accountant of repute with experience in the valuation of private companies limited by shares and agree the Expert's terms of appointment (with a request to the President to make such appointment and agree such terms within 5 Business Days).
- 11.4 The Expert is required to prepare a written decision and give written notice (including a copy) of the decision to the parties as soon as practicable and in any event within 10 Business Days of the matter being referred to the Expert.
- 11.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
- 11.5.1 either party may apply to the then President of the Institute of Chartered Accountants in Scotland to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- 11.5.2 this clause applies in relation to the new Expert as if he were the first Expert appointed.
- 11.6 All matters under this clause shall be conducted, and the Expert's decision shall be written, in the English language.
- 11.7 The parties are entitled to make submissions to the Expert including oral submissions and shall provide (or ensure that others including the Company provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision, subject to the Expert agreeing to give such confidentiality undertakings as the parties may reasonably require.
- 11.8 To the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination.
- 11.9 Each party shall with reasonable promptness supply (and ensure that others including the Company supply) each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this clause.
- 11.10 The Expert shall act as an expert and not as an arbitrator. The Expert's written decision on the Fair Value shall be final and binding on the parties in the absence of manifest error or fraud.

- 11.11 Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Company.

12 Termination

- 12.1 Except for the provisions which this clause states shall continue in full force after termination, this agreement shall terminate:

12.1.1 when, following the exercise or lapse of all Warrants, as a result of transfers of shares made in accordance with this agreement or the Articles, only one party remains as a holder of shares in the Company; or

12.1.2 when a resolution is passed by shareholders or creditors, or an order made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the Company's creditors, shareholders or other contributors.

- 12.2 The following provisions of this agreement remain in full force after termination:

12.2.1 clause 1 (interpretation);

12.2.2 this clause;

12.2.3 clause 16 (confidentiality);

12.2.4 clause 17 (whole agreement);

12.2.5 clause 19 (variation and waiver);

12.2.6 clause 20 (costs);

12.2.7 clause 22 (notice);

12.2.8 clause 24 (severance); and

12.2.9 clause 27 (governing law and jurisdiction).

- 12.3 Termination of this agreement shall not affect any rights or liabilities that the parties have accrued under it.

13 Completion of the sale and purchase of shares in the Company

- 13.1 This clause applies only to transfers between the parties pursuant to clause 10 (transfer following an Obligatory Transfer Event).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 Status of the agreement

- 15.1 Each party shall, to the extent that it is able to do so, exercise all its voting rights and other powers in relation to the Company to ensure that the provisions of this agreement are properly and promptly observed and given full force and effect according to the spirit and intention of the agreement.
- 15.2 If any provision in the Articles conflicts with any provision of this agreement, this agreement shall prevail.
- 15.3 The parties shall, when necessary, exercise their powers of voting and any other rights and powers they have to amend, waive or suspend a conflicting provision in the Articles to the extent necessary to permit the Company and its business to be administered as provided in this agreement.

16 Confidentiality

- 16.1 In this clause Confidential Information means any information:
- 16.1.1 which any party may have or acquire (whether before or after the date of this agreement) in relation to the customers, suppliers, business, assets or affairs of the Company or its Group (including, without limitation, any information provided pursuant to clause 7);
 - 16.1.2 which any party may have or acquire (whether before or after the date of this agreement) in relation to the customers, suppliers, business, assets or affairs of the other parties, as a consequence of the negotiations relating to this agreement or any other agreement or document referred to in this agreement or the performance of the agreement or any other agreement or document referred to in this agreement; or
 - 16.1.3 which relates to the contents of this agreement (or any agreement or arrangement entered into pursuant to this agreement),
- but excludes the information in clause 16.2.
- 16.2 Information is not Confidential Information if:
- 16.2.1 it is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of this agreement;

- 16.2.2 any party can establish to the reasonable satisfaction of the other parties that it found out the information from a source not connected with the other parties and that the source is not under any obligation of confidence in respect of the information;
 - 16.2.3 any party can establish to the reasonable satisfaction of the other parties that the information was known to the first party before the date of this agreement and that it was not under any obligation of confidence in respect of the information; or
 - 16.2.4 the parties agree in writing that it is not confidential.
- 16.3 Each party shall at all times use all reasonable endeavours to keep confidential any Confidential Information and shall not use or disclose any such Confidential Information except:
- 16.3.1 to a party's directors, officers, employees, legal or other professional advisers where such disclosure is for a purpose related to the operation of this agreement;
 - 16.3.2 with the written consent of such of the Company or the parties that the information relates to;
 - 16.3.3 as may be required by law or by the rules of any recognised stock exchange, or governmental or other regulatory body, when the party concerned shall, if practicable, supply a copy of the required disclosure to the others before it is disclosed and incorporate any amendments or additions reasonably required by the other parties and which would not thereby prevent the disclosing party from complying with its legal obligations;
 - 16.3.4 to any tax authority to the extent reasonably required for the purposes of the tax affairs of the party concerned;
 - 16.3.5 if the information comes within the public domain (otherwise than as a result of the breach of this clause 16.3); or
 - 16.3.6 in the case of CBC, to its funds, partners, investors, trustees, shareholders, unit holders, other participants and/or members of the same group as CBC

PROVIDED THAT the parties acknowledge that SM are subject to the requirements of FOISA and EISR and the Company and CBC shall provide reasonable assistance and cooperation to SM to enable them to comply with their information disclosure obligations. SM shall be responsible for determining in their absolute discretion whether Information (as such term is defined in section 73 of FOISA) is exempt from disclosure in accordance with the provisions of the FOISA or the EISR.

- 16.4 Each party shall inform any officer, employee or agent or any professional adviser advising it in relation to the matters referred to in this agreement, or to whom it provides Confidential Information, that such information is confidential and shall require them:
- 16.4.1 to keep it confidential; and

16.4.2 not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this agreement).

16.5 The obligations of each of the parties in this clause 16 shall continue without limit in time and notwithstanding termination of this agreement for any cause.

17 Whole agreement

17.1 This agreement, and any documents referred to in it or executed contemporaneously with it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

17.2 Nothing in this agreement is intended to or will be construed as limiting or excluding any liability for fraud or fraudulent misrepresentation.

18 Assignment

18.1 No person may assign, or grant any Encumbrance over or sub-contract, or deal in any way with, any of its rights under this agreement or any document referred to in it without the prior written consent of all the parties (such consent not to be unreasonably conditioned, withheld or delayed) provided that SM may assign its rights under this agreement to a party to whom it transfers all its Warrant Shares who also agrees to bound by the provisions of this agreement pursuant to a Deed of Adherence and in accordance with the provisions of article 16.5 of the Articles.

18.2 Each person that has rights under this agreement is acting on its own behalf.

19 Variation and waiver

19.1 A variation of this agreement shall be in writing and signed by or on behalf of all parties.

19.2 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.

19.3 A person that waives a right in relation to one person, or takes or fails to take any action against that person, does not affect its rights against any other person.

19.4 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.

19.5 No single or partial exercise of any right or remedy under this agreement shall preclude or restrict the further exercise of any such right or remedy.

19.6 Unless specifically provided otherwise, rights and remedies arising under this agreement are cumulative and do not exclude rights and remedies provided by law.

20 Costs

Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this agreement, shall be borne by the party that incurred the costs.

21 No partnership

The parties to this agreement are not in partnership with each other and there is no relationship of principal and agent between them.

22 Third party rights

Unless it expressly states otherwise, this agreement does not confer on any person other than the parties any right to enforce or otherwise invoke any term of this agreement under the Contract (Third Party Rights) (Scotland) Act 2017 (but this does not affect any right or remedy of any person which exists or is available apart from that Act).

23 Notice

23.1 A notice given under this agreement:

23.1.1 shall be in writing in the English language;

23.1.2 shall be sent for the attention of the person, and to the address given in this clause 23 (or such other address or person as the relevant party may notify to the other parties); and

23.1.3 shall be:

23.1.3.1 delivered by hand; or

23.1.3.2 sent by pre-paid United Kingdom first-class post; or

23.1.3.3 sent by e-mail to an e-mail address notified by the relevant party to the other parties for such purpose.

23.2 The addresses for service of notice are:

23.2.1 Clyde Blowers Capital Fund III LP

Address: Orbital House, 3 Redwood Crescent, East Kilbride G74 5PA

For the attention of: [REDACTED]

[REDACTED]

23.2.2 The Scottish Ministers

Address: St Andrews House, Regent Road, Edinburgh EH1 3DG

For the attention of: [REDACTED]

[REDACTED]

23.2.3 Ferguson Marine Engineering (Holdings) Limited

Address: Orbital House, 3 Redwood Crescent, East Kilbride G74 5PA

For the attention of: [REDACTED]

[REDACTED]

23.3 A notice is deemed to have been received:

23.3.1 if properly addressed and delivered by hand, when it was given or left at the appropriate address; or

23.3.2 if sent or supplied by electronic means, if properly addressed, one hour after the notice was sent or supplied;

23.3.3 if properly addressed and sent by pre-paid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted or five Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five Business Days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider; or

23.3.4 if deemed receipt under the previous paragraphs of this sub-clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of deemed receipt.

23.4 In proving that any notice was properly addressed it is sufficient to show that the notice was delivered to an address provided for such purpose pursuant to this agreement.

24 Severance

24.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

- 24.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

25 Counterparts

This agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

26 Agreement survives completion

This agreement (other than obligations that have already been fully performed) remains in full force after the First Tranche Completion(s) and Second Tranche Completion.

27 Governing law and jurisdiction

- 27.1 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of Scotland.

27.2 The parties irrevocably agree that the courts of Scotland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this agreement typewritten on this and the preceding 22 pages together with the Schedule annexed, is executed as follows:-

For **FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED**

..... signature of witness	..... signature of director
..... full name of above (print)	..... full name of above (print)
..... .....	..... date of signing
..... address of witness	..... place of signing

For **THE SCOTTISH MINISTERS**

..... signature of witness	..... signature of authorised signatory
..... full name of above (print)	..... full name of above (print)
..... .....	..... date of signing
..... address of witness	..... place of signing

For **CLYDE BLOWERS CAPITAL FUND III LP**, acting by its general partner **CLYDE BLOWERS CAPITAL GP III LP**, acting by its general partner **CLYDE BLOWERS CAPITAL GP III LIMITED**

..... signature of witness	..... signature of director
..... full name of above (print)	..... full name of above (print)
..... .....	..... date of signing
..... address of witness	..... place of signing

**This is the Schedule in Two Parts referred to in the foregoing Subscription and Shareholders’
Agreement amongst Ferguson Marine Engineering (Holdings) Limited, The Scottish
Ministers and Clyde Blowers Capital Fund III LP**

PART 1 OF THE SCHEDULE - MATTERS RESERVED FOR SHAREHOLDER APPROVAL

- [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]

PART 2 OF THE SCHEDULE – DEED OF ADHERENCE

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

THIS DEED is MADE BETWEEN

PARTIES

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

BACKGROUND

- (A) This deed is supplemental to an agreement dated [DATE], made between Ferguson Marine Engineering (Holdings) Limited, The Scottish Ministers and Clyde Blowers Capital Fund III LP ("**Existing Parties**") setting out the terms for operating Ferguson Marine Engineering (Holdings) Limited (incorporated and registered in Scotland with company number SC485103 (the "**Company**")) ("**Subscription and Shareholders' Agreement**").
- (B) By a transfer of shares in the capital of the Company dated [DATE], the Transferor transferred to the New Shareholder [NUMBER] [CLASS] Shares of £1.00 each in the capital of the Company.

1 Agreed terms

- 1.1 Words and expressions used in this deed shall, unless the context expressly requires otherwise, have the meaning given to them in the Subscription and Shareholders' Agreement. The Effective Date means the date of this deed.
- 1.2 The New Shareholder confirms that it has been supplied with a copy of the Subscription and Shareholders' Agreement and undertakes with each of the Existing Parties that, from the Effective Date, the New Shareholder shall observe, perform and be bound by the provisions of the Subscription and Shareholders' Agreement that contain obligations on the Transferor as though the New Shareholder was an original party to the Subscription and Shareholders' Agreement.
- 1.3 Nothing in this deed shall release the Transferor from any liability in respect of any obligations under the Subscription and Shareholders' Agreement due to be performed prior to the Effective Date.
- 1.4 This deed may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

- 1.5 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.
- 1.6 The parties irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

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

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

[Signed for and on behalf of

[]

By

.....

.....

At

Director

.....

On

.....

before this witness

..... Witness

..... Full Name

..... Address]

