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CHWP000

COMPANIES FORM No. 466(Scot)

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

466

Please do not write in this margin

Pursuant to section 410 and 466 of the Companies Act 1985

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

** insert full name of company*

To the Registrar of Companies
(Address overleaf - Note 5)

For official use

Company number

SC235066

Name of company

* Orbital Marine Power Limited (the "Chargor")

Date of creation of the charge (note 1)

27 March 2024

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

Floating charge ("Floating Charge")

Names of the persons entitled to the charge

Scottish Investments Limited, a company incorporated in Scotland (No. SC681617), wholly owned subsidiary of Scottish National Investment Bank plc and having its registered office at Waverley Gate, 2-4 Waterloo Place, Edinburgh EH1 3EG

Short particulars of all the property charged

The whole of the property (including uncalled capital) which is or may from time to time, while the Floating Charge is in force, be comprised in the property and undertaking of the Chargor.

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

For official use (06/04/2024)
Charges Section



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

See paper apart.

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write in
this margin*

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

Date(s) of execution of the instrument of alteration

27 March 2024

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

See paper apart.

Short particulars of any property released from the floating charge

Not applicable.

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

Not applicable.

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

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

See paper apart.

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

Signed _____ Date 5 April 2024

On behalf of ~~[company]~~ [chargee] ☐

Notes

For and on behalf of Addleshaw Goddard LLP

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc as the case may be, should be given. ☐ delete as appropriate
For the date of creation of a charge see section 410(5) of the Companies Act.
2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
3. A certified copy of the instrument of alteration, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of execution of that instrument.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.
5. The address of the Registrar of Companies is: Companies Registration Office, 139 Fountainbridge, Edinburgh EH3 9FF DX 235 Edinburgh

This is the Paper Apart to the Form M466 in respect of an instrument of alteration dated 27 March 2024 altering the ranking of a floating charge granted by Orbital Marine Power Limited in favour of Scottish Investments Limited dated 27 March 2024

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

- (1) **Orbital Projects (Holdings) Limited** (No. SC716968) whose registered office is at Innovation Centre - Orkney Hatston Pier Road, Crowness Business Park, Kirkwall, United Kingdom, KW15 1ZL (**Company**);
- (2) **Orbital Marine Power (Orkney) Plc** (No. SC609187) whose registered office is at Innovation Centre - Orkney Hatston Pier Road, Crowness Business Park, Kirkwall, Orkney, United Kingdom, KW15 1ZL (**ProjectCo**);
- (3) **Orbital Marine Power Limited** (No. SC235066), whose registered office is at Innovation Centre - Orkney Hatston Pier Road, Crowness Business Park, Kirkwall, Orkney, KW15 1ZL (**Topco**);
- (4) **Scottish Investments Limited** (registered number SC681617), a wholly owned subsidiary of Scottish National Investment Bank plc (**Bank**);
- (5) **Scottish Enterprise**, established under the Enterprise & New Towns (Scotland) Act 1990 and having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ;
- (6) **Technip Holding Benelux B.V.**, of Zoetermeer, the Netherlands, address at Zuidplein 126, 1077 XV Amsterdam, the Netherlands;
- (7) **Matthew J.R. Mcgrath** of 207 West 79th Street, Apt 2B, New York City, NY10024, United States of America; and
- (8) **Highlands and Islands Enterprise**, established under the Enterprise & New Towns (Scotland) Act 1990 and having its principal place of business at An Lòchran, 10 Inverness Campus, Inverness IV2 5NA,

(together, Scottish Enterprise, Technip Holding Benelux B.V., Matthew J.R. Mcgrath and Highlands and Islands Enterprise, the **Original Subordinated Creditors**)

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

3.1 Undertakings of the Obligors

Until the Bank Discharge Date, no Obligor will except with the prior written consent of the Bank:

- (b) create or permit to subsist any Security over any of its assets other than as permitted under the Bank Facility Agreement;
- (c) receive or permit to subsist any Security over any asset of any Obligor for any of the Obligor Debt, other than in the case of Topco only under the Subordinated Creditor Security Documents in place and in the form as at the date of this Agreement and in the case of Topco only any Security granted in favour of the Subordinated Creditors (or any of them) on equivalent terms to the existing Subordinated Security and regulated by a Subordinated Creditor Ranking Agreement and this Agreement;

3.3 Undertakings of the Subordinated Creditors

- (a) Until the Release Date, no Subordinated Creditor will, except with the prior written consent of the Bank:
 - (iii) receive or permit to subsist any Security over any asset of any Obligor for any of the Subordinated Debt other than under the Subordinated Creditor Security Documents in place and in the form as at the date of the Agreement and any Security granted in favour of the Subordinated Creditors (or any of them) on equivalent terms to the existing Subordinated Security and regulated by a Subordinated Creditor Ranking Agreement and the Agreement;

3.4 Undertakings of the Bank

- (a) Prior to the Release Date, the Bank will not, except with the prior written consent of the Subordinated Creditors (such consent not to be unreasonably withheld or delayed):
 - (i) receive or permit to subsist any Security over any assets of Topco for any the Bank Debt, other than:
 - (A) under the Bank Security Documents granted by Topco in place and in the form as at the date of the Agreement;
 - (B) any Security granted by Topco pursuant to clause 7.3(c) of the Agreement, provided such Security is on terms that are materially similar and no more onerous or extensive than those set out in the Original Obligor Security Document;

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

2.2 Ranking of Transaction Security

Unless expressly provided to the contrary in the Agreement, the Transaction Security will for all purposes and at all times rank in right and priority of payment in the following order:

- (b) **first**, Bank Security; and
- (c) **second**, Subordinated Security, in accordance with the terms of the Subordinated Creditor Ranking Agreement.

Defined Terms:

In this Form M466:

Bank Debt means all present and future liabilities and obligations due, owing or incurred by any Obligor to the Bank under or in connection with the Bank Finance Documents in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety

Bank Discharge Date means the date on which the Bank, acting reasonably is satisfied that all the Bank Debt has been irrevocably repaid to it in full

Bank Facility Agreement means the facility agreement originally delivered on 30 June 2022 and amended and restated on or about the date of the Agreement and made between the Company, the Obligors as guarantors and the Bank

Bank Finance Documents means the Finance Documents as defined in the Bank Facility Agreement

Bank Security means the Security created, or expressed to be created, in favour of the Bank pursuant to the Bank Security Documents

Bank Security Documents means the Transaction Security Documents as defined in the Bank Facility Agreement

Intercreditor Accession Deed means an accession deed substantially in the form set out in Schedule 2 (Intercreditor Accession Deed)

Obligor Debt means all present and future liabilities and obligations due, owing or incurred by any Obligor to any other Obligor in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety

Obligors means ProjectCo, Topco and the Company

Original Obligor Debt Security Document means the assignment of debt granted by Topco in favour of the SNIB in or about the date of the Agreement in respect of debt that it has lent to ProjectCo

Prospective Loan Noteholders has the meaning given to it in the Bank Facility Agreement

Release Date means the earlier of (a) the date on which the Bank acting reasonably is satisfied that all the Tranche B Obligations have been irrevocably repaid to it in full or (b) the date on which the Bank acting reasonably is satisfied that the Tranche B Loan and all amounts of interest accrued thereon have been repaid in accordance with Clause **Error! Reference source not found.** (Default Notice Rights: Subordinated Creditors)

Security means a mortgage, charge, assignment in security, standard security, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

Subordinated Creditors means the Original Subordinated Creditors and any person or entity that executes and delivers to the Bank a duly completed Intercreditor Accession Deed.

Subordinated Creditor Ranking Agreement means a ranking agreement dated on or about the date of the Agreement among the Original Subordinated Creditors and Topco, and any required subsequent ranking agreement among the Original Subordinated Creditors, and Prospective Loan Noteholders and Topco entered into on the same or similar terms

Subordinated Creditor Security Documents means

- (a) the HIE Floating Charge; and
- (b) the Topco Shareholder Securities (as defined in the Bank Facility Agreement)

Subordinated Debt means all present and future liabilities and obligations due, owing or incurred by any Obligor to the Subordinated Creditors or any of them in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety

Subordinated Security means any Security created, or expressed to be created, in favour of the Subordinated Creditors or any of them

Topco Floating Charge means the bond and floating charge granted by Topco in favour of the Bank dated on or about the date of the Agreement

Tranche B Facility shall have the meaning given to such term in the Bank Facility Agreement

Tranche B Loan means the loan of up to £1,000,000 made available by the Bank to the Company under the Tranche B Facility

Tranche B Obligations means all principal and interest and all other costs, expenses and other amounts accrued in respect of the Tranche B Loan and all amounts payable under the Topco Floating Charge

Transaction Security means the Subordinated Security and the Bank Security



Delivered 27 March 2024

ORBITAL PROJECTS (HOLDINGS) LIMITED
as Company

ORBITAL PROJECTS (HOLDINGS) LIMITED

ORBITAL MARINE POWER (ORKNEY) PLC
and

ORBITAL MARINE POWER LIMITED
as Obligors

THE PARTIES LISTED IN SCHEDULE 1
as Original Subordinated Creditors

SCOTTISH INVESTMENTS LIMITED
as Bank

**TOPCO INTERCREDITOR
AGREEMENT**

"Certified as a true copy of
the original subject to the
exclusion of personal
information permitted by
Section 859G of the
Companies Act 2006"

Addleshaw Goddard LLP

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This Intercreditor Agreement is delivered on

27 March 2024

Between

- (1) **Orbital Projects (Holdings) Limited** (No. SC716968) whose registered office is at Innovation Centre - Orkney Hatston Pier Road, Crowness Business Park, Kirkwall, United Kingdom, KW15 1ZL (**Company**);
- (2) **Orbital Marine Power (Orkney) Plc** (No. SC609187) whose registered office is at Innovation Centre - Orkney Hatston Pier Road, Crowness Business Park, Kirkwall, Orkney, United Kingdom, KW15 1ZL (**ProjectCo**);
- (3) **Orbital Marine Power Limited** (No. SC235066), whose registered office is at Innovation Centre - Orkney Hatston Pier Road, Crowness Business Park, Kirkwall, Orkney, KW15 1ZL (**Topco**);
- (4) **The persons and entities listed in Schedule 1 of this Agreement (Original Subordinated Creditors); and**
- (5) **Scottish Investments Limited** (registered number SC681617), a wholly owned subsidiary of Scottish National Investment Bank plc (**Bank**).

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Bank Debt means all present and future liabilities and obligations due, owing or incurred by any Obligor to the Bank under or in connection with the Bank Finance Documents in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety

Bank Default means a Default as defined in the Bank Facility Agreement

Bank Discharge Date means the date on which the Bank, acting reasonably is satisfied that all the Bank Debt has been irrevocably repaid to it in full

Bank Event of Default means an Event of Default as defined in the Bank Facility Agreement

Bank Facility Agreement means the facility agreement originally delivered on 30 June 2022 and amended and restated on or about the date of this Agreement and made between the Company, the Obligors as guarantors and the Bank

Bank Finance Documents means the Finance Documents as defined in the Bank Facility Agreement

Bank Security means the Security created, or expressed to be created, in favour of the Bank pursuant to the Bank Security Documents

Bank Security Documents means the Transaction Security Documents as defined in the Bank Facility Agreement

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

Creditors means the Junior Creditors and the Bank

Debt means the Junior Debt and the Bank Debt

Default Notice means a written notice to Scottish Enterprise from the Bank specifying that a Bank Event of Default has occurred and is continuing

Enforcement Action means in relation to any Debt, any action whatsoever to:

- (a) demand payment of, declare prematurely due and payable or otherwise seek to accelerate payment of, or place on demand, all or any part of that Debt
- (b) recover all or any part of that Debt (including by exercising any rights of set-off or combination of accounts)
- (c) exercise or enforce directly or indirectly any rights under or pursuant to the provisions of any guarantee, surety or any security document or other document (including the crystallisation of any floating charge) in relation to or given in support of all or any part of that Debt (including under the Security Documents)
- (d) petition for (or take any other steps which may lead to) an Insolvency Event in relation to any Obligor or
- (e) commence or support legal proceedings against any Obligor

Finance Documents means the Topco Finance Documents, the Subordinated Documents and the Bank Finance Documents

HIE means Highlands and Islands Enterprise, established under the Enterprise & New Towns (Scotland) Act 1990 and having its principal place of business at An Lòchran, 10 Inverness Campus, Inverness IV2 5NA

Insolvency Event means any one or more of:

- (a) the passing of a resolution or the making of an order to wind up, liquidate, enter into administration, reorganise or dissolve an Obligor;
- (b) the appointment of a receiver, administrative receiver, administrator or manager over any of the assets or undertakings of an Obligor;
- (c) the entering into by an Obligor of any arrangement or composition with its creditors or its ceasing or suspending payment of its debts;
- (d) any step is taken by an Obligor or its directors (or any agent of an Obligor) to negotiate or obtain a moratorium in respect of any of its liabilities (including a statutory moratorium under the Insolvency Act 1986);
- (e) any person taking possession of any of the assets of an Obligor pursuant to any charge or other encumbrance;
- (f) any event analogous to those in paragraphs (a) to (e) above occurs in relation to an Obligor in any jurisdiction; or

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- (g) the occurrence of any of the events specified Clause 25.6 (Insolvency) to 25.8 (Creditors' process) (inclusive) of the Bank Facility Agreement

Intercreditor Accession Deed means an accession deed substantially in the form set out in Schedule 2 (Intercreditor Accession Deed)

Junior Creditors means the Subordinated Creditors and the Obligors

Junior Debt means the Subordinated Debt and the Obligor Debt

Junior Finance Documents means the Subordinated Documents and the Topco Finance Documents

Legal Reservations shall have the meaning given to such term in the Bank Facility Agreement

Loan Notes has the meaning given to it in the Bank Facility Agreement

Loan Note Documents has the meaning given to it in the Bank Facility Agreement

New Subordinated Creditor shall have the meaning in each Intercreditor Accession Deed

Obligors means ProjectCo, Topco and the Company

Obligor Debt means all present and future liabilities and obligations due, owing or incurred by any Obligor to any other Obligor in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety

Original Obligor Debt Security Document means the assignment of debt granted by Topco in favour of SNIB in or about the date of this Agreement in respect of debt that it has lent to ProjectCo

Party means a party to this Agreement

Permitted Payment means a Subordinated Permitted Payment or a Topco Permitted Payment

Prospective Loan Noteholders has the meaning given to it in the Bank Facility Agreement

Receiver means a receiver or receiver and manager or administrative receiver of the whole or any assets of the Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security

Release Date means the earlier of (a) the date on which the Bank acting reasonably is satisfied that all the Tranche B Obligations have been irrevocably repaid to it in full or (b) the date on which the Bank acting reasonably is satisfied that the Tranche B Loan and all amounts of interest accrued thereon have been repaid in accordance with Clause 7.3(b)(ii)(A) (Default Notice Rights: Subordinated Creditors)

Scheduled Subordinated Payments means any scheduled payment of interest or coupon under the Subordinated Documents in the form as at the date of this Agreement

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Scottish Enterprise means Scottish Enterprise, established under the Enterprise & New Towns (Scotland) Act 1990 and having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ

Security means a mortgage, charge, assignation in security, standard security, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

Security Documents means the Subordinated Creditor Security Documents and the Bank Security Documents

SE Notification means a written notice from Scottish Enterprise to the Bank advising that it is taking steps (either alone or together with other Subordinated Creditors) towards being able to provide funding to Topco to allow Topco to on lend the same to the Company to enable the Company to repay the Tranche B Loan and all amounts of interest which have accrued in relation to the Tranche B Loan under the Bank Facility Agreement in full

Standstill Period means:

- (a) if a SE Notification has not been received by the Bank 60 days from the date of delivery of the relevant Default Notice; and
- (b) if a SE Notification has been received by the Bank 120 days from the date of delivery of the relevant Default Notice

Subordinated Creditors means the Original Subordinated Creditors and any person or entity that executes and delivers to the Bank a duly completed Intercreditor Accession Deed.

Subordinated Creditor Security Documents means

- (a) the HIE Floating Charge; and
- (b) the Topco Shareholder Securities (as defined in the Bank Facility Agreement)

Subordinated Creditor Ranking Agreement means a ranking agreement dated on or about the date of this Agreement among the Original Subordinated Creditors and Topco, and any required subsequent ranking agreement among the Original Subordinated Creditors, and Prospective Loan Noteholders and Topco entered into on the same or similar terms

Subordinated Debt means all present and future liabilities and obligations due, owing or incurred by any Obligor to the Subordinated Creditors or any of them in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety

Subordinated Documents means the Topco Loan Agreements (as defined in the Bank Facility Agreement), the Loan Note Documents, the Loan Notes and any other document that all Parties agree to designate as a Subordinated Document

Subordinated Security means any Security created, or expressed to be created, in favour of the Subordinated Creditors or any of them

Subordinated Permitted Payment means:

- (a) prior to the Release Date, any payment referred to in Clause 4(a) (Permitted payments); and

- (b) on and from the Release Date, any payment referred to in Clause 4(a) or Clause 4(b) (Permitted payments)

Technip means Technip Holding Benelux B.V., of Zoetermeer, the Netherlands, address at Zuidplein 126, 1077 XV Amsterdam, the Netherlands

Topco Floating Charge means the bond and floating charge granted by Topco in favour of the Bank dated on or about the date of this Agreement

Topco Finance Document means:

- (a) the intra company loan agreement from the Company to ProjectCo dated on or about the date of this Agreement in the form approved by the Bank; and
- (b) the intra company loan agreement entered into in accordance with Clause 7.3(b)

Topco Permitted Payment means any payment referred to in Clause 4(b) (Permitted payments)

Tranche B Facility shall have the meaning given to such term in the Bank Facility Agreement

Tranche A Loan means the loan made available by the Bank to the Company under the Tranche A Facility (as defined in the Bank Facility Agreement)

Tranche B Loan means the loan of up to £1,000,000 made available by the Bank to the Company under the Tranche B Facility

Tranche B Obligations means all principal and interest and all other costs, expenses and other amounts accrued in respect of the Tranche B Loan and all amounts payable under the Topco Floating Charge

Transaction Security means the Subordinated Security and the Bank Security

Turnover Amount has the meaning given to it in Clause 5.1 (Turnover)

1.2 Interpretation

In this Agreement, unless otherwise stated:

- (a) the Bank, the Junior Creditors, any Obligor or any other person shall be construed so as to include its successors in title, permitted assignees and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- (b) **assets** includes present and future properties, revenues and rights of every description;
- (c) unless provided otherwise, a **Bank Finance Document** which has been amended in accordance with Clause 8 (Amendments), any **Subordinated Document** which has been amended in accordance with Clause 8 (Amendments), any **Topco Finance Document** which has been amended in accordance with Clause 8 (Amendments), any **Subordinated Creditor Ranking Agreement** and any other agreement or instrument is a reference to that Bank Finance Document, Subordinated Document, Topco Finance Document, Subordinated Creditor Ranking Agreement or other agreement or instrument as amended, novated, supplemented, extended or restated;

- (d) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (e) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (f) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (g) a reference to "on the date of this Agreement" shall mean the date of delivery of this Agreement;
- (h) a provision of law is a reference to that provision as amended or re-enacted;
- (i) a time of day is a reference to Edinburgh time;
- (j) set-off includes any right of retention, claim for compensation or right to balance accounts on insolvency;
- (k) a reference to a Clause shall mean a clause of this Agreement;
- (l) a reference to a Schedule shall mean a schedule of this Agreement;
- (m) Clause, and Schedule headings are for ease of reference only;
- (n) a Bank Event of Default is continuing if it has not been waived;
- (o) a Bank Default is continuing if it has not been waived or remedied; and
- (p) a **payment** includes a distribution, prepayment or repayment and references to **pay** include distribute, prepay or repay.

1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement.

1.4 Security

No part of this Agreement is intended to, or shall create, registrable Security.

1.5 Conflict

In the event of any conflict between the terms of this Agreement and the terms of any other Bank Finance Document or Junior Finance Document (as applicable), the terms of this Agreement will prevail.

2 Ranking of Debt

2.1 Ranking of Debt

Unless expressly provided to the contrary in this Agreement, the Debt will for all purposes and at all times rank in right and priority of payment in the following order:

- (a) **first**, Bank Debt;
- (b) **second**, Subordinated Debt, in accordance with the terms of the Subordinated Creditor Ranking Agreement; and
- (c) **third**, the Obligor Debt.

2.2 Ranking of Transaction Security

Unless expressly provided to the contrary in this Agreement, the Transaction Security will for all purposes and at all times rank in right and priority of payment in the following order:

- (a) **first**, Bank Security; and
- (b) **second**, Subordinated Security, in accordance with the terms of the Subordinated Creditor Ranking Agreement.

2.3 Continuation

The ranking and priority provided for in this Clause 2 shall apply regardless of:

- (a) the date upon which any Debt arose;
- (b) whether a person is obliged to advance any such Debt;
- (c) the date or order of execution, registration, filing or giving of notice of any document; or
- (d) any fluctuations in the amount of, or any intermediate discharge in whole or in part of, any Debt.

3 Undertakings

3.1 Undertakings of the Obligors

Until the Bank Discharge Date, no Obligor will except with the prior written consent of the Bank:

- (a) make or take any action to make any payment, prepayment or repayment of, or on account of, or purchase, defease, redeem or otherwise acquire any of, the Obligor Debt in cash or in kind other than a Topco Permitted Payment;
- (b) create or permit to subsist any Security over any of its assets other than as permitted under the Bank Facility Agreement;
- (c) receive or permit to subsist any Security over any asset of any Obligor for any of the Obligor Debt, other than in the case of Topco only under the Subordinated Creditor Security Documents in place and in the form as at the date of this Agreement and in

the case of Topco only any Security granted in favour of the Subordinated Creditors (or any of them) on equivalent terms to the existing Subordinated Security and regulated by a Subordinated Creditor Ranking Agreement and this Agreement;

- (d) give any financial support (including, without limitation, the giving of any guarantee, indemnity or other assurance against financial loss, the making of any deposit or the taking of any participation) to any person for or in connection with any of the Obligor Debt or the Subordinated Debt other than as permitted under the Bank Facility Agreement;
- (e) take or omit to take any action which would be likely, directly or indirectly, to result in the ranking and/or subordination of the Junior Debt provided for in this Agreement being prejudiced or impaired in any respect;
- (f) amend, supplement, novate or vary any of the terms applicable to the Obligor Debt other than in accordance with Clause 8 (Amendments);
- (g) incur or lend any financial indebtedness other than Junior Debt or as permitted under the Bank Facility Agreement or in accordance with Clause 7.3 below;
- (h) petition for (or take any other steps which may lead to) an Insolvency Event in respect of any Obligor;
- (i) demand, receive or take any action to receive any payment in respect of, or on account of, any of the Obligor Debt in cash or in kind or apply any money or property in or towards discharge of any of the Obligor Debt except, in each case, a Topco Permitted Payment;
- (j) discharge any of the Obligor Debt by set-off, combination of accounts or otherwise;
- (k) receive or permit to subsist any financial support (including without limitation, any guarantee, indemnity or other assurance against financial loss, any deposit or any participation) from any person for or in connection with any of the Junior Debt;
- (l) allow any of the Obligor Debt to be subordinated to any person other than in accordance with this Agreement or as may arise by operation of law or under a Subordinated Creditor Ranking Agreement;
- (m) amend, supplement, novate or vary any of the terms applicable to the Obligor Debt;
- (n) take any Enforcement Action in relation to the Obligor Debt;
- (o) receive or demand any dividend, share premium reserve, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of any share capital (or any class of its share capital) in any Obligor unless the same is permitted under the terms of the Bank Facility Agreement; or
- (p) receive or demand any fee unless the same is permitted under the terms of the Bank Facility Agreement or is a Topco Permitted Payment.

3.2 Undertakings of Topco

Until the Release Date, Topco will not except with the prior written consent of the Bank:

- (a) make or take any action to make any payment, prepayment or repayment of, or on account of, or purchase, defease, redeem or otherwise acquire any of, the Subordinated Debt in cash or in kind other than a Subordinated Permitted Payment;
- (b) discharge any of the Subordinated Debt by set-off, combination of accounts or otherwise;
- (c) amend, supplement, novate or vary any of the terms applicable to the Subordinated Debt other than to the extent not prohibited by Clause 8 (Amendments);
- (d) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (e) repay or distribute any dividend or share premium reserve;
- (f) pay or allow any Obligor to pay any management, advisory or other fee to or to the order of any of its shareholders other than as permitted in the Bank Finance Documents;
- (g) pay or allow any Obligor to repay any financial indebtedness to any shareholder of Topco other than a Subordinated Permitted Payment; or
- (h) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

3.3 Undertakings of the Subordinated Creditors

- (a) Until the Release Date, no Subordinated Creditor will, except with the prior written consent of the Bank:
 - (i) demand, receive or take any action to receive any payment in respect of, or on account of, any of the Subordinated Debt in cash or in kind or apply any money or property in or towards discharge of any of the Subordinated Debt except, in each case, Subordinated Permitted Payments;
 - (ii) discharge any of the Subordinated Debt by set-off, combination of accounts or otherwise;
 - (iii) receive or permit to subsist any Security over any asset of any Obligor for any of the Subordinated Debt other than under the Subordinated Creditor Security Documents in place and in the form as at the date of this Agreement and any Security granted in favour of the Subordinated Creditors (or any of them) on equivalent terms to the existing Subordinated Security and regulated by a Subordinated Creditor Ranking Agreement and this Agreement;
 - (iv) receive or permit to subsist any financial support (including without limitation, any guarantee, indemnity or other assurance against financial loss, any deposit or any participation) from any person for or in connection with any of the Subordinated Debt other than under the Subordinated Documents in place and in the form as at the date of this Agreement;
 - (v) allow any of the Subordinated Debt to be subordinated to any person other than in accordance with this Agreement or as may arise by operation of law;

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- (vi) take or omit to take any action which would be likely, directly or indirectly, to result in the ranking and/or subordination of the Subordinated Debt provided for in this Agreement being prejudiced or impaired in any respect;
 - (vii) amend, supplement, novate or vary any of the terms applicable to the Subordinated Debt other than to the extent permitted by Clause 8 (Amendments);
 - (viii) take any Enforcement Action except to the extent expressly required or permitted under Clause 7 (Enforcement Action);
 - (ix) receive or demand any dividend, share premium reserve, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of any share capital (or any class of its share capital) in Topco; or
 - (x) receive or demand any fee from Topco.
- (b) Until the Bank Discharge Date, no Subordinated Creditor will, except with the prior written consent of the Bank receive or demand any fee from the Company or ProjectCo.

3.4 Undertakings of the Bank

- (a) Prior to the Release Date, the Bank will not, except with the prior written consent of the Subordinated Creditors (such consent not to be unreasonably withheld or delayed):
- (i) receive or permit to subsist any Security over any assets of Topco for any the Bank Debt, other than:
 - (A) under the Bank Security Documents granted by Topco in place and in the form as at the date of this Agreement;
 - (B) any Security granted by Topco pursuant to clause 7.3(c) of this Agreement, provided such Security is on terms that are materially similar and no more onerous or extensive than those set out in the Original Obligor Security Document;
 - (ii) amend, supplement, novate or vary any of the terms applicable to the Bank Debt other than to the extent permitted by Clause 8 (Amendments); or
 - (iii) take any Enforcement Action other than in accordance with Clause 7 (Enforcement Action).

4 Permitted payments

- (a) Prior to the Release Date, provided no Bank Default Notice has been issued to SE in respect of a Bank Event of Default (but excluding any Bank Default Notice that has been permanently waived by the Bank), Topco may pay and the Subordinated Creditors may receive Scheduled Subordinated Payments.
- (b) For the avoidance of doubt, on and from the Release Date, all of the undertakings in Clauses 3.2 and 3.3(a) shall cease to apply and Topco may pay and the Subordinated

Creditors may receive payments, prepayments and repayments of any of the Subordinated Debt in cash or in kind.

- (c) ProjectCo may pay fees and may make repayments of Obligor Debt to Topco with the prior written consent of the Bank provided such payment or repayment is made with Excess Cash (as defined in the Bank Facility Agreement) which is not required to pay Bank Debt under the terms of the Bank Finance Documents.
- (d) No Obligor shall be released from the liability to make any payment (including of default interest, which shall continue to accrue) under any Finance Document because such payment is not a Permitted Payment.

5 Turnover

5.1 Turnover

If at any time prior to the Bank Discharge Date a Junior Creditor (each a **Receiving Creditor**) receives or recovers a payment or distribution of any kind in respect of or on account from any Obligor which is not a Permitted Payment (the amount of each such payment, distribution, set-off or combination being a **Turnover Amount**) the recipient or beneficiary of that Turnover Amount will promptly pay an amount equal to that Turnover Amount to the Bank for application in accordance with Clause 13 (Application of Recoveries) after deducting, the reasonable costs, liabilities and expenses (if any) incurred in recovering or receiving that Turnover Amount and, pending that payment, will hold all such amounts on trust for the Bank.

5.2 Recovering Creditor's rights

- (a) Any amount paid by a Junior Creditor to the Bank under Clause 5.1 shall be applied by the Bank in accordance with Clause 13 (Application of Recoveries).
- (b) Any amount paid by a Receiving Creditor to the Bank under Clause 5.1 will be treated as not having been paid to Receiving Creditor unless and until applied in repayment of the Debt owed to such Receiving Creditor in accordance with Clause 13 (Application of Recoveries).

5.3 Indemnity

Each Obligor shall indemnify each Receiving Creditor for any costs, liabilities and expenses incurred by that Receiving Creditor in recovering or receiving any amount paid by it to the Bank under Clause 5.1 (Turnover).

5.4 Further assurance

- (a) Each Junior Creditor shall do all things that the Bank requests in order to give effect to this clause 5 (Turnover) and clause 6 (Subordination on insolvency).
- (b) If the Bank is not entitled to take any of the actions contemplated by this clause 5 (Turnover) and clause 6 (Subordination on insolvency) or if the Bank requests that a Junior Creditor take that action, such Junior Creditor shall, if requested to do so by the Bank and if it is legally competent for it to take such action:
 - (i) undertake that action in itself in accordance with the instructions of the Bank;
or

- (ii) grant a power of attorney to the Bank (on such terms as the Bank may reasonably require) to enable the Bank to take such action.

6 Subordination on insolvency

6.1 Subordination

Upon the occurrence of an Insolvency Event in relation to an Obligor, the claims against that Obligor in respect of the Junior Debt will be subordinate in right of payment to the claims against that Obligor in respect of the Bank Debt.

6.2 Distributions

Upon the occurrence of an Insolvency Event in relation to an Obligor, the person responsible for the distribution of the assets of that Obligor or its proceeds shall be directed by the Junior Creditors to pay any distributions or proceeds in respect of any of the Junior Debt owed to them direct to the Bank for application in accordance with Clause 13 (Application of Recoveries) until the Bank Discharge Date.

6.3 Filing of claims and voting

- (a) Upon the occurrence of an Insolvency Event in relation to an Obligor prior to the Bank Discharge Date, the Bank may and is irrevocably authorised by Topco to:

- (i) demand, claim, enforce and prove for;
- (ii) on their behalf, exercise all powers of convening meetings, voting and representation in respect of;
- (i) file claims and proofs, give receipts and take all proceedings and do all other things which the Bank considers reasonably necessary or advisable to recover; and
- (ii) collect and receive all payments and distributions of any kind in respect of or on account of,

the Obligor Debt due from that Obligor.

- (b) Subject to Clause 6.3(d), Topco undertakes not to take any of the actions referred to in Clause 6.3(a).
- (c) Topco will provide all forms of proxy and of representation requested by the Bank for the purpose of Clause 6.3(a) and do all other things that the Bank reasonably requests in order to give effect to this Clause 6.3.
- (d) If, for whatever reason, the Bank is not entitled to take, or does not wish to take, any of the actions listed in Clause 6.3(a), Topco undertakes promptly to take any action and give any notices which the Bank requires from time to time.

7 Enforcement Action

7.1 Bank

- (a) Subject to Clauses 7.1(b) and 7.1(d) below, the Bank may take, or refrain from taking, as it sees fit, any Enforcement Action against any Obligor in respect of the Bank Debt.

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- (b) Prior to the Release Date, the Bank will not take any action specified in Clauses (a) to (e) inclusive of the definition of Enforcement Action against Topco in respect of any of the Bank Debt unless:

- (i) a Bank Event of Default is continuing; and
- (ii) the Bank has delivered a Default Notice to Scottish Enterprise in respect of such Bank Event of Default; and
- (iii) a period of not less than the Standstill Period has elapsed,

provided that during a Standstill Period the Bank may take action to demand payment from Topco of cash pay interest which is due and payable but unpaid in accordance with the terms of the guarantee given by Topco in the Bank Facility Agreement, but may not take any other form of Enforcement Act against Topco in respect of such cash pay interest.

- (c) Following any action specified in clause (d) of the definition of Enforcement Action taken by the Bank against Topco, the Subordinated Creditors may take any action which is necessary to prove for their respective debt in any administration or liquidation of Topco.
- (d) On and from the Release Date, the Bank may not take any steps to crystallise or enforce the Topco Floating Charge or otherwise to appoint an administrator or liquidator to Topco.
- (e) The Bank will send a copy of any Default Notice to Topco.

7.2 Junior Creditors

- (a) On and from the Release Date the Subordinated Creditors may take, or refrain from taking, as they see fit, any Enforcement Action against Topco in respect of the Subordinated Debt.
- (b) Prior to the Release Date the Subordinated Creditors may not take any Enforcement Action against Topco without the express prior written approval of the Bank other than as expressly set out in Clause 7.1(c).
- (c) The Subordinated Creditors may not take any Enforcement Action against the Company or ProjectCo without the express prior written approval of the Bank.
- (d) Nothing in this Clause 7 shall affect the ranking of security and debt set out in Clause 2 of this Agreement nor the obligations of the Junior Creditors under Clause 5 of this Agreement.

7.3 Default Notice Rights: Subordinated Creditors

- (a) The Subordinated Creditors will have the right to provide additional Subordinated Debt to Topco provided:
 - (i) the proceeds of such additional Subordinated Debt are applied by Topco for the purposes set out in Clause 7.3(b) below; and
 - (ii) the provisions of Clauses 7.3(c) and (d) are complied with.

- (b) Topco will have the right to lend additional Obligor Debt to the Company provided:
 - (i) it is using the proceeds of the additional Subordinated Debt referred to in Clause 7.3(a) to lend such additional Obligor Debt;
 - (ii) the proceeds of such additional Obligor Debt are immediately applied by the Company to:
 - (A) repay the Tranche B Loan and all amounts of interest which have accrued in relation to the Tranche B Loan, in each case, in full; or
 - (B) make payments of interest which is due but unpaid under the Bank Facility Agreement prior to the Release Date; and
 - (iii) the provisions of Clauses 7.3(c) and (d) are complied with.
- (c) Topco must immediately grant Security over all of its rights under all additional Obligor Debt referred to in Clause 7.3(b) above on terms which are substantially the same as the terms of the Original Obligor Debt Security Document.
- (d) Topco may:
 - (i) only lend additional Obligor Debt to the Company in order to allow the Company to make payments of interest which is due but unpaid under the Bank Facility Agreement:
 - (A) on two occasions;
 - (B) if such additional Obligor Debt is lent to the Company and applied in repayment of such outstanding interest within 10 days of the relevant interest becoming due under the Bank Facility Agreement; and
 - (ii) not lend additional Obligor Debt to the Company in order to allow the Company to make payments of interest which is due but unpaid under the Bank Facility Agreement in respect of consecutive Interest Periods (as defined in the Bank Facility Agreement).
- (e) The Company undertakes to Topco and the Subordinated Creditors to apply as soon as reasonably practicable the proceeds of all Obligor Debt advanced to it pursuant to this Clause 7.3 in accordance with Clause 7.3(b).

7.4 Distressed Disposals

- (a) If a Distressed Disposal is being effected, the Bank is irrevocably authorised (at the cost of the Obligors and without any consent, sanction, authority or further confirmation from any Obligor), to release each Obligor from all or any part of the Obligor Debt.
- (b) The net proceeds of a Distressed Disposal shall be paid to the Bank for application in accordance with Clause 13 (Application of Recoveries) as if those proceeds were the proceeds of an enforcement of the Transaction Security.
- (c) For the purposes of this Clause 7.4 (Distressed Disposals), a Distressed Disposal shall mean a disposal of the shares in any Obligor other than Topco which are (i) being effected in circumstances where the Transaction Security has become

enforceable, (ii) being effected by enforcement of the Transaction Security or (iii) being effected by the Bank after service by the Bank of a notice under Clause 25.20 (Acceleration) of the Bank Facility Agreement, but not in any case during a Standstill Period.

8 Amendments

8.1 Amendments to Topco Finance Documents

Until the Bank Discharge Date, no Obligor may without the prior written consent of the Bank agree to, or take, any action to amend, vary, waive or supplement or allow to be superseded (or give any waiver, release or consent having the same commercial effect) any Topco Finance Document.

8.2 Amendments to Subordinated Documents

Until the Release Date, no Obligor and no Subordinated Creditor may without the prior written consent of the Bank agree to, or take, any action to amend, vary, waive or supplement or allow to be superseded (or give any waiver, release or consent having the same commercial effect) any Subordinated Document which would:

- (a) increase directly or indirectly any amount payable under that Subordinated Document other than to lend additional Subordinated Debt to Topco in accordance with Clause 7.3;
- (b) shorten or accelerate the dates for payments of any amount due thereunder (for the avoidance of doubt, any deferral by a Subordinated Creditor of any scheduled repayment of the Subordinated Debt is permitted);
- (c) increase the extent of Security granted in favour of a Subordinated Creditor other than as a result of the lending of additional Subordinated Debt to Topco in accordance with Clause 7.3; or
- (d) directly impact the ranking of the Bank Debt or the Bank Security or any restriction set out in this Agreement.

8.3 Amendments to Bank Finance Documents

- (a) Until the Release Date the Bank may not without the written consent of the Subordinated Creditors (not to be unreasonably withheld):
 - (i) receive any Transaction Security other than that which is in place as at the date of this Agreement or which has been granted in accordance with clause 7.3(c) of this Agreement; or
 - (ii) vary the terms of any of:
 - (A) the following provisions of the Bank Facility Agreement:
 - 1) the definition of "Guaranteed Obligations" as applicable to Topco in any way which would increase the amount of those Guaranteed Obligations;

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- 2) Clause 19 (Guarantee and Indemnity) as applicable to Topco in any way which would increase the amount of those Guaranteed Obligations;
 - 3) Clause 7.3 (Voluntary prepayment) and Clause 7.5 (Prepayment Fee) in any way which would impose a prepayment fee on any prepayments of the Tranche B Loan made using the proceeds of Obligor Debt pursuant to clause 7.3 (Default Notice Rights: Subordinated Creditors) of this Agreement;
 - 4) Clause 8.2 (Cash Sweep) in any way which would result in payments being made against principal of the Tranche A Loan in preference to principal of the Tranche B Loan.
- (B) the terms of the Bank Facility Agreement which would increase any restrictions contained therein on the amount of (A) management fees which the Obligors can pay to Topco; or (B) fees which the Obligors can pay to any shareholders of Topco;
- (C) amend any Bank Security Document granted by Topco in a manner which would adversely impact the interests of the Subordinated Creditors;
- (D) any other term of a Bank Finance Document:
- 1) the effect of which is to make Topco liable to make additional or increased payments to the Bank; or
 - 2) which would result in Topco being subject to more onerous obligations under the representations, undertakings, financial covenants or events of default than those existing at the date of this Agreement,

which in each case would adversely impact the interests of the Subordinated Creditors.

- (b) Subject to clause 8.3(a), the Bank may amend or waive the terms of the Bank Finance Documents in accordance with their terms at any time.

9 Non-subrogation

No Junior Creditor and no Obligor will exercise any rights which it may have by reason of the performance by it of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Finance Documents of any Creditor which ranks ahead of it in accordance with the priorities set out in Clause 2 (Ranking of Debt) until such time as all of the Debt owing to each prior ranking Creditor has been irrevocably discharged in full.

10 Consents and waivers

10.1 Transaction Security Consent

Insofar as required under the terms of the Transaction Security or otherwise:

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- (a) each Subordinated Creditor hereby confirms its consent to the creation and continuation of the Transaction Security in favour of the Bank which is in place as at the date of this Agreement together with any Bank Security granted in accordance with clause 7.3(c) of this Agreement; and
- (b) the Bank hereby confirms its consent to the creation and continuation of the Transaction Security in favour of the Subordinated Creditors which is in place as at the date of this Agreement.

10.2 Senior consent override

- (a) Subject to Clause 10.3, if any waiver, consent or release is granted by the Bank under the Bank Finance Documents prior to the Release Date, a corresponding waiver, release or consent will be deemed to have been given by the Subordinated Creditors under the Subordinated Documents on the same terms if the transaction or circumstance to which that waiver, consent or release of the Bank relates is contrary to the terms of any of the Subordinated Documents.
- (b) Subject to Clause 10.3, if any waiver, consent or release is granted by the Bank under the Bank Finance Documents, a corresponding waiver, release or consent will be deemed to have been given by Topco under the Topco Finance Documents on the same terms if the transaction or circumstance to which that waiver, consent or release of the Bank relates is contrary to the terms of any of the Topco Finance Documents.
- (c) The Junior Creditors shall execute all documents and/or deeds necessary to give effect to any such deemed waiver, consent or release.

10.3 Non-application

Clause 10.2 shall not apply to:

- (a) extend the due date for, or reduce the amount of, or change the currency, of any payment due to any Subordinated Creditor or change any terms by reference to which any such payment is to be calculated or made; or
- (b) excluding any security granted in accordance with clause 7.3(c) of this Agreement, any proposal for Topco to grant any additional security to the Bank.

10.4 Effect of Standstill Period

Clause 10.2 shall not apply in respect of any waiver, consent or release is granted by the Bank to Topco under the Bank Finance Documents during a Standstill Period and is otherwise subject to the operation of Clause 7.1(b).

10.5 Non-objection

None of the Junior Creditors shall have any remedy against the Bank by reason of any transaction entered into between the Bank or a trustee acting on their behalf and any Obligor, or any requirement or condition imposed by or on behalf of the Bank on any Obligor which breaches or is, or causes, a default under any of the Finance Documents, unless entered into in breach of the terms of this Agreement.

11 Protection of subordination**11.1 Continuing subordination**

The subordination provisions in this Agreement constitute a continuing subordination and benefit to the ultimate balance of the Bank Debt regardless of any intermediate payment or discharge of the Bank Debt in whole or in part.

11.2 Waiver of defences

The provisions in this Agreement will not be affected by any act, omission, matter or thing which but for this Clause 11 would reduce, release or otherwise prejudice the subordination in this Agreement or the obligations of any of the Junior Creditors under this Agreement including, without limitation:

- (a) any time, waiver or consent granted to, or composition with any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Transaction Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (e) any amendment (however fundamental) or replacement of any document;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any document; or
- (g) any intermediate payment or discharge of any of the Bank Debt.

11.3 Immediate recourse

Each of the Junior Creditors waives any right it may have of first requiring the Bank (or any trustee or agent acting on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming the benefit of the subordination provided for under this Agreement. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

12 Preservation of rights

12.1 Notwithstanding any provision of this Agreement postponing, subordinating or preventing the payment of any of the Junior Debt as between any Obligor and each of the Junior Creditors, the Junior Debt shall remain owing or due and payable in accordance with the terms of the Junior Finance Documents, and interest and default interest (if applicable) will continue to accrue in accordance with the terms of the Junior Finance Documents.

12.2 No delay in exercising rights and remedies under any of the Junior Finance Documents by reason of any term of this Agreement shall operate as a permanent waiver of any of those rights and remedies.

13 Application of Recoveries**13.1 Order of application**

Subject to the rights of any prior or preferential creditor, the Bank or Receiver shall apply all amounts paid to it in accordance with this Agreement, all proceeds of enforcement of the Transaction Security and all amounts received or recovered by it pursuant to the terms of any Finance Document as follows:

- (a) first, in or towards payment of any unpaid fees, costs and expenses of, and all other amounts payable to, the Bank (and any Receiver, agent or delegate appointed by it) under the Bank Finance Documents;
- (b) second, to the Bank in or towards payment of any unpaid and outstanding amounts of Bank Debt;
- (c) third, to the Subordinated Creditors in or towards payment of any unpaid and outstanding amounts of Subordinated Debt in accordance with the Subordinated Creditor Ranking Agreement;
- (d) fourth, to Topco in or towards payment of any unpaid and outstanding amounts of Obligor Debt; and
- (e) fifth, in payment of the surplus (if any) to the relevant Obligors or other persons entitled to it.

13.2 General

- (a) Clause 13.1 will override any appropriation made by an Obligor.
- (b) An acknowledgement of receipt signed by the relevant person to whom payments are made under this Clause 13 shall be a good discharge of the Bank.

13.3 Appropriations

Until the Bank Discharge Date, the Bank may (subject to the terms of this Agreement and any other Finance Documents):

- (a) apply any monies received by it under this Agreement to the Bank Debt owed to it in such order as it may determine; and
- (b) hold any monies received by it under this Agreement in a suspense account (bearing interest at a market rate usual for an account of that type) unless and until all monies received by the Bank are sufficient in aggregate to bring about the Bank Discharge Date.

14 Representations and warranties**14.1 Each of the Junior Creditors represents and warrants to and for the benefit of the Bank that:**

- (a) other than in the case of Scottish Enterprise and HIE, it is a company, duly incorporated and validly existing under the law of its jurisdiction of incorporation and has the power to own its assets and carry on its business as it is being conducted;

- (b) in the case of each of Scottish Enterprise and HIE, it has the power to own its assets and carry on its business as it is being conducted;
- (c) the Finance Documents to which it is a party are within its powers and have been duly authorised and executed by it;
- (d) this Agreement constitutes its legal, valid and binding obligations, enforceable (subject to the Legal Reservations) against it in accordance with its terms and the entry into and performance by it of this Agreement does not and will not conflict with any law or regulation applicable to it, its constitutional documents or, in any material respect, with any agreement or instrument binding upon its or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument;
- (e) the Finance Documents to which it is a party copied to the Bank on or before the date of this Agreement contain (when taken together with any amendments permitted under Clause 8 (Amendments)) all the terms and conditions of the Debt owed to it; and
- (f) it is the sole legal and beneficial owner of the Debt owed to it free from any Security or subordination in favour of any person except any existing under or permitted by this Agreement or the Bank Facility Agreement.

14.2 The representations and warranties in this Clause 14 are deemed to be made by the Bank and each of the Junior Creditors by reference to the facts and circumstances then existing on:

- (a) the date of this Agreement;
- (b) in the case of the Obligors only, the date of each Utilisation Request (as defined in the Bank Facility Agreement);
- (c) in the case of a New Subordinated Creditor, on the date of the Intercreditor Accession Deed executed by that New Subordinated Creditor;
- (d) in the case of the Obligors only, each Utilisation Date (as defined in the Bank Facility Agreement); and
- (e) in the case of the Obligors only, the first day of each Interest Period (as defined in the Bank Facility Agreement).

15 Status of Obligors

None of the Obligors shall have any rights under this Agreement.

16 Release Date

As soon as possible following the Release Date the Bank will at the expense and cost of the Company release and discharge the Topco Floating Charge.

17 Attorney

Each of the Obligors hereby irrevocably and severally appoints each of the Subordinated Creditors as its attorney (with full power of substitution and delegation) in its name and acting on its behalf to do anything which it has authorised the Subordinated Creditors to do under this Agreement or which it is required and legally able to do under this Agreement but has

failed to do unless in the case of an Obligor that Obligor is disputing that requirement in good faith and by appropriate proceedings.

18 Changes to the Parties

18.1 Successors and assigns

This Deed will be binding upon, and enure for the benefit of, the successors and assigns of the Parties.

18.2 Obligors

No Obligor may assign any of its rights or transfer any of its rights (if any) or obligations under this Agreement.

18.3 Subordinated Creditors

No Subordinated Creditor may assign any of its rights or transfer any of its rights and obligations in respect of any of the Subordinated Documents or the Subordinated Debt unless and until the transferee executes and delivers a fully executed Intercreditor Accession Deed to the Bank.

18.4 Bank

The Bank may not assign any of its rights or transfer any of its rights and obligations in respect of any of the Bank Finance Documents or the Bank Debt unless and until the transferee executes and delivers a fully executed accession to this Agreement in substantially similar form as an Intercreditor Accession Deed to the Subordinated Creditors.

19 Notices

19.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by letter.

19.2 Addresses

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is, in the case of each Junior Creditor, each Obligor and the Bank, that identified with its name below or in the case of a New Subordinated Creditor in the Intercreditor Accession Deed executed by that New Subordinated Creditor or, in each case, any substitute address or department or officer as the Party may notify to the other Parties by not less than 5 Business Days' notice.

19.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective if by way of letter, when it has been left at the relevant address or 5 Business Days' after being deposited in the post postage prepaid in an envelope addressed to it at that address and if a particular department or officer is specified as part of its address details provided under Clause 19.2 if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Bank will be effective only when actually received by the Bank and then only if it is expressly marked for the attention of the department or officer identified with the Bank's signature below (or any substitute department or officer as the Bank shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with Clauses 19.3(a) and/or 19.3(b), after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

19.4 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than 5 Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Bank only if it is addressed in such a manner as the Bank shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with Clause 19.4(b), after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

19.5 English language

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Bank, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

20 Waivers

- 20.1 No failure to exercise, nor any delay in exercising, on the part of the Bank, any right or remedy under this Agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of the Bank shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

- 20.2 A waiver given or consent granted by the Bank under this Agreement will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

21 Partial invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

22 Duration of Agreement

- 22.1 On the Release Date, subject to clause 22.2:

- (a) this Agreement and all obligations and rights arising under this Agreement will cease to have any effect; and
- (b) all consents and waivers granted by each Party to this Agreement shall cease to apply and to have effect and for the avoidance of doubt (other than as referred to in Clause 22.2) but without implying the existence or otherwise of any right to consent:
 - (i) no Subordinated Creditor consents to or will be deemed to have consented to the grant of any Transaction Security or other security by Topco in favour of the Bank at any time on or after the Release Date; and
 - (ii) the Bank does not consent to or will be deemed to have consented to the grant of any Transaction Security or other security by Topco in favour of the Subordinated Creditors at any time on or after the Release Date.

- 22.2 Notwithstanding the discontinuance of rights, obligations consents and waivers under clause 22.1, the following clauses of this Agreement and the rights and obligations of the Parties thereunder shall continue in full force and effect on and after the Release Date:

- (a) Clause 7.1(d);
- (b) Clause 10.1; and
- (c) Clause 16.

23 Counterparts and delivery

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

- 23.2 Where executed in counterpart:

- (a) this Agreement shall not take effect until all of the counterparts have been delivered;
- (b) each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and
- (c) the parties may choose to evidence the date of delivery of this Agreement by inserting this on the front page of this Agreement.

23.3 If this Agreement is not executed in counterparts, this Agreement shall be delivered on the date agreed by the parties and inserted on the front page of this Agreement or, if no such date is inserted, the date on which the last party signed this Agreement.

23.4 The parties to this Agreement, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (**Counterparts Act**), nominate Addleshaw Goddard LLP to take delivery of all counterparts of this Agreement. The parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Agreement.

24 Governing law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

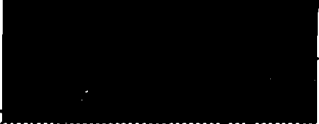
25 Enforcement**25.1 Jurisdiction**

- (a) The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (**Dispute**).
- (b) The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 25.1 is for the benefit of the Bank only. As a result, the Bank shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions

In witness whereof this and the preceding 24 pages together with the two Schedules attached hereto are executed as follows:

Subscribed for and on behalf of
Orbital Projects (Holdings) Limited

at *Edinburgh*
on *25 March 2024*


Director/Secretary/Authorised Signatory

ANDREW SCOTT

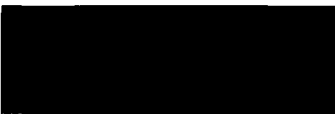
Full Name

in the presence of

Witness signature

Full name

Address


Thomas Horton
c/o Brodies LLP
58 Morrison Street
Edinburgh EH3 8BP

Address: Innovation Centre – Orkney, Hatston Pier Road, Kirkwall, Orkney, Scotland, UK, KW15 1ZL

Email: 

For attention: CEO/CFO

Subscribed for and on behalf of
Orbital Marine Power (Orkney) Plc

at Edinburgh
on 25 March 2024

in the presence of

Witness signature

Full name

Address

Address: Innovation Centre – Orkney, Hatston Pier Road, Kirkwall, Orkney, Scotland, UK, KW15 1ZL

Email: 

For attention: CEO/CFO

Subscribed for and on behalf of
Orbital Marine Power Limited

at Edinburgh
on 25 March 2024

in the presence of

Witness signature

Full name

Address

Address: Innovation Centre – Orkney, Hatston Pier Road, Kirkwall, Orkney, Scotland, UK, KW15 1ZL

Email: 


For attention: CEO/CFO

EXECUTION VERSION


Director/Secretary/Authorised Signatory

ANDREW SCOTT

Full Name


Thomas Horton

c/o Brodie's LLP

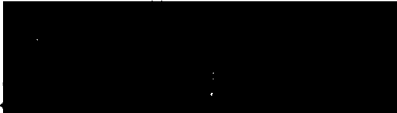
58 Morrison Street

Edinburgh EH3 8BP


Director/Secretary/Authorised Signatory

ANDREW SCOTT

Full Name


Thomas Horton

c/o Brodie's LLP

58 Morrison Street

Edinburgh EH3 8BP

EXECUTION VERSION

Subscribed for and on behalf of
Scottish Enterprise

at Glasgow

on 25 March 2024

[Redacted Signature]

✓ Authorised Signatory/attorney

TRACY LINDA LONGHURST

Full Name

in the presence of

Witness signature

[Redacted Signature]

Full name

MAIREAD SMITH

Address

2 ATLANTIC SQUARE

31 YORK STREET

GLASGOW, G2 8AS

Address: Scottish Enterprise, Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ

Email:

[Redacted Email Address]

For attention: Tracy Longhurst

Subscribed by way of Qualifying Electronic
Signature
Highlands and Islands Enterprise

at

on

Authorised Signatory

Full Name

Address: Highlands and Islands Enterprise, An Lòchran, 10 Inverness Campus, Inverness, IV2 5NA.

Email:

[Redacted Email Address]

For attention: HIE Area Manager – Orkney, c/o Legal Services

EXECUTION VERSION

Subscribed for and on behalf of
Scottish Enterprise

at

Authorised Signatory/attorney

on

Full Name

in the presence of

Witness signature

Full name

Address

Address: Scottish Enterprise, Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ

Email:

For attention: Tracy Longhurst

Subscribed ~~by way of Qualifying Electronic~~
~~Signature~~ *for and on behalf of*
Highlands and Islands Enterprise

at *INVERNESS*

on *26 MARCH 2024*

Address: Highlands and Islands Enterprise, An Lòchran, 10 Inverness Campus, Inverness, IV2 5NA.

Email:

For attention: HIE Area Manager – Orkney, c/o Legal Services

in the presence of:

witness signature:

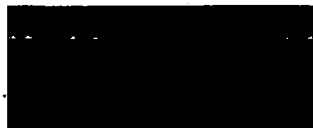
Full name: ALISON PATRICIA LYWER

*Address: AN LOCHRAN
10 INVERNESS CAMPUS
INVERNESS IV2 5NA*

EXECUTION VERSION

Subscribed by way of Qualifying Electronic
Signature
Matthew J.R. McGrath
at New York

.....



on March 26, 2024

Address: [Redacted]

Email: [Redacted]

Subscribed by way of Qualifying Electronic
Signature
Technip Holding Benelux B.V.,
at Amsterdam

.....



~~Director/Secretary~~/Authorised Signatory

Johannes H.M. Duijndam

on 26/03/2024

Full Name

Address: Technip Holding Benelux B.V.

Zuidplein 126, 1077 XV Amsterdam, the Netherlands

Email: [Redacted]

For attention: Edwin Boogaards

Subscribed by way of Qualifying Electronic
Signature
Technip Holding Benelux B.V.,
at Zundert

.....



~~Director/Secretary~~/Authorised Signatory

Edwin Boogaards

on 26-3-2024

Full Name

Address: Technip Holding Benelux B.V.

Zuidplein 126, 1077 XV Amsterdam, the Netherlands

Email: [Redacted]

For attention: Edwin Boogaards

EXECUTION VERSION

Subscribed for and on behalf of
Scottish Investments Limited

at **EDINBURGH**
on **25/3/2024**

in the presence of

Witness signature

Full name

Address

Address: Registered office

Email:

For attention: 'Head of Investment Legal'

[Redacted]

Director/Secretary/Authorised Signatory
JAMES WILLIAMSON

Full Name

EILA CORR

[Redacted]

EILA CORR

Addikhanj Goddard, experience wsr
19 Caning Street, Edinburgh EH1 8EH

This is Schedule 1 to the foregoing Intercreditor Agreement among, inter alia, Orbital Projects (Holdings) Limited, the Original Subordinated Creditors named therein and Scottish Investments Limited dated 27 March 2024

Schedule 1

Subordinated Creditors

Name

Scottish Enterprise Scottish Enterprise, established under the Enterprise & New Towns (Scotland) Act 1990 and having its principal place of business at atrium Court, 50 Waterloo Street, Glasgow G2 6HQ

Technip Holding Benelux B.V., of Zoetermeer, the Netherlands, address at Zuidplein 126, 1077 XV Amsterdam, the Netherlands

Matthew J.R. McGrath of [REDACTED]
[REDACTED]

Highlands and Islands Enterprise Highlands and Islands Enterprise, established under the Enterprise & New Towns (Scotland) Act 1990 and having its principal place of business at An Lòchran, 10 Inverness Campus, Inverness IV2 5NA

This is Schedule 2 to the foregoing Intercreditor Agreement among, inter alia, Orbital Projects (Holdings) Limited, the Original Subordinated Creditors and Scottish Investments Limited dated 27 March 2024

Schedule 2

Intercreditor Accession Deed

This Deed is made on

◆ 20 ◆◆

Between

- (1) ◆ (New Subordinated Creditor); [and]
- (2) **Scottish Investments Limited** (registered number SC681617), wholly owned subsidiary of Scottish National Investment Bank plc (**Bank**).

Whereas

This Deed is supplemental to an Intercreditor Agreement dated ◆ (Intercreditor Agreement) between ◆.

It is agreed

1 Definitions

Terms defined in the Intercreditor Agreement shall have the same meaning when used in this Agreement.

2 Accession

With effect from the date of this Deed the New Subordinated Creditor hereby agrees to be bound by all of the terms of the Intercreditor Agreement as if it had originally been party to the Intercreditor Agreement as a Subordinated Creditor.

3 Notices

The New Subordinated Creditor confirms that its address details for notices in relation to Clause 19 (Notices) of the Intercreditor Agreement is:

Address: ◆
Telephone: ◆
Attention: ◆

4 Acceptance

By its signature below, the Bank confirms the acceptance of the New Subordinated Creditor as a Subordinated Creditor for all purposes under the Intercreditor Agreement.

5 Counterparts and delivery

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

Where executed in counterpart:

- (a) this Agreement shall not take effect until all of the counterparts have been delivered;
- (b) each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and
- (c) the parties may choose to evidence the date of delivery of this Agreement by inserting this on the front page of this Agreement.

If this Agreement is not executed in counterparts, this Agreement shall be delivered on the date inserted on the front page of this Agreement or, if no such date is inserted, the date on which the last party signed this Agreement.

The parties to this Agreement, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (**Counterparts Act**), nominate Addleshaw Goddard LLP to take delivery of all counterparts of this Agreement. The parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Agreement.

6 Governing law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

7 Enforcement

- (a) The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (**Dispute**).
- (b) The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 7 is for the benefit of the Bank only. As a result, the Bank shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

In witness whereof this and the preceding ♦ pages are executed as follows:

The New Subordinated Creditor

[insert appropriate execution Clauses]

The Bank

[insert appropriate deed execution Clause]



FILE COPY

CERTIFICATE OF THE REGISTRATION OF AN ALTERATION TO A FLOATING CHARGE

Company number: 235066

Charge code: SC23 506 6 0015

I hereby certify that particulars of an instrument of alteration dated 27th March 2024 were delivered pursuant to section 466 of the Companies Act 1985 on 6th April 2024 .

The instrument relates to a charge created on 27th March 2024 by ORBITAL MARINE POWER LIMITED in favour of SCOTTISH INVESTMENTS LIMITED.

Given at Companies House, Edinburgh on 8th April 2024



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**