

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

LICENCE TO CONSTRUCT, ALTER OR IMPROVE WORKS IN THE SCOTTISH MARINE AREA

Licence Number: **MS-00009621**

The Scottish Ministers (hereinafter referred to as "the Licensing Authority") hereby grant a marine licence authorising:

Flex Marine Power Ltd
91 Clober Road
Glasgow
G62 7LS

to construct, alter or improve works as described in Part 2. The licence is subject to the conditions set out, or referred to, in Part 3.

The licence is valid from **01 September, 2022** until **31 December, 2027**

Signed:
Stef Sweeting

For and on behalf of the Licensing Authority

Date of issue: 24 June, 2022

1. PART 1 - GENERAL

1.1 Interpretation

In the licence, terms are as defined in Section 1, 64 and 157 of the Marine Scotland Act 2010, and

- a) "**the 2010 Act**" means the Marine (Scotland) Act 2010;
- b) "**Licensed Activity**" means any activity or activities listed in section 21 of the 2010 Act which is, or are authorised under the licence;
- c) "**Licensee**" means Flex Marine Power Ltd
- d) "**Mean high water springs**" means any area submerged at mean high water spring tide;
- e) "**Commencement of the Licensed Activity**" means the date on which the first vehicle or vessel arrives on the site to begin carrying on any activities in connection with the Licensed Activity;
- f) "**Completion of the Licensed Activity**" means the date on which the Licensed Activity has been installed in full, or the Licensed Activity has been deemed complete by the Licensing Authority, whichever occurs first;

All geographical co-ordinates contained within the licence are in WGS84 format (latitude and longitude degrees and minutes to three decimal places) unless otherwise stated.

1.2 Contacts

All correspondence or communications relating to the licence should be addressed to:

Marine Scotland
Licensing Operations Team
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB
Email: MS.Marinelicensing@gov.scot

1.3 Other authorisations and consents

The Licensee is deemed to have satisfied itself that there are no barriers or restrictions, legal or otherwise, to the carrying on of the Licensed Activities in connection with the licensed activity. The issuing of the licence does not absolve the Licensee from obtaining such other authorisations and consents, which may be required under statute.

1.4 Variation, suspension, revocation and transfer

Under section 30 (1) of the 2010 Act the Licensing Authority may by notice vary, suspend or revoke the licence granted by them if it appears to the Licensing Authority that there has been a breach of any of its provisions. For any such other reason that appears to be relevant to the Licensing Authority under section 30(2) or (3) of the 2010 Act. Under the 2010 Act variations, suspensions, revocations and transfers of licences are subject to the procedures set out in section 31 of the Act.

Under section 30 (7) of the 2010 Act, on an application made by a licensee, the Licensing Authority may vary a licence if satisfied that the variation being applied for is not material.

Under section 30 (8) of the 2010 Act, on an application made by the licensee, the Licensing Authority may transfer the licence from the Licensee to another person.

1.5 Breach of requirement for, or conditions of, licence

Under section 39 of the 2010 Act it is an offence to carry on a Licensable Marine Activity without a marine licence and it is also an offence to fail to comply with any condition of a marine licence.

1.6 Defences: actions taken in an emergency

Under section 40 of the 2010 Act it is a defence for a person charged with an offence under section 39(1) of the 2010 Act in relation to any activity to prove that –
the activity was carried out for the purpose of saving life, or for the purpose of securing the safety of a vessel, aircraft or marine structure ('force majeure'), and
that the person took steps within a reasonable time to inform the Licensing Authority as set out in section 40(2) of the 2010 Act.

1.7 Offences relating to information

Under section 42 of the 2010 Act it is an offence for a person to make a statement which is false or misleading in a material way, knowing the statement to be false or misleading or being reckless as to whether the statement is false or misleading, or to intentionally fail to disclose any material information for the purpose of procuring the issue, variation or transfer of a marine licence or for the purpose of complying with, or purporting to comply with, any obligation imposed by either Part 4 of the 2010 Act or the provisions of this licence.

1.8 Appeals

Under Regulation 3(1) of the Marine Licensing Appeals (Scotland) Regulations 2011 a person who has applied for a marine licence may by summary application appeal to against a decision taken by the Licensing Authority under section 71(1)(b) or (c) or (5) of the Act.

2. PART 2 – PARTICULARS

2.1 Agent

Aquatera Ltd
Old Academy Business Centre, Stromness
Orkney
KW16 3AW

2.2 Location of the Licensed Activity

Sound of Islay, within the areas bounded by joining the following points:

Deployment Area

55° 49.314' N 06° 05.940' W
55° 49.337' N 06° 05.679' W
55° 49.137' N 06° 05.618' W
55° 49.116' N 06° 05.882' W
55° 49.535' N 06° 06.179' W
55° 49.538' N 06° 06.170' W
55° 49.540' N 06° 06.155' W
55° 49.538' N 06° 06.147' W
55° 49.533' N 06° 06.141' W
55° 49.534' N 06° 06.136' W
55° 49.506' N 06° 06.081' W

Cable Corridor

55° 49.248' N 06° 05.921' W
55° 49.314' N 06° 05.940' W
55° 49.332' N 06° 05.727' W
55° 49.620' N 06° 05.944' W
55° 49.614' N 06° 06.126' W
55° 49.548' N 06° 06.224' W
55° 49.546' N 06° 06.221' W
55° 49.543' N 06° 06.215' W
55° 49.540' N 06° 06.208' W
55° 49.537' N 06° 06.200' W

2.3 Description of the Licensed Activity

Construction of a 50kW tidal turbine and associated infrastructure

As described in the application dated 30 November, 2021 and correspondence submitted in support of the application.

2.4 Descriptions of the materials to be used during the Licensed Activity

The licence authorises the use of the undernoted construction materials required in connection with the licensed activity, subject to the indicative amounts as specified below:

1 No. rotor nacelle and body comprised of 440kg of plastic/synthetic and 7 tonnes of steel/iron

1 No. mooring system comprised of 40kg of plastic/synthetic and 1.8 tonnes of steel/iron

1 No. anchor system comprised of 60 tonnes of steel/iron

1 No. umbilical cable and associated protection comprised of 700kg of plastic/synthetic, 1,100kg of steel/iron and 20 tonnes of concrete protection

1 No. surface marker buoy comprised of 150kg of plastic synthetic

2.5 Contractor and Vessel Details

To be confirmed

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 The Licensee must only construct the works in accordance with the licence, the application and any plans or programmes approved by the Licensing Authority unless otherwise authorised by the Licensing Authority.

3.1.2 The Licensee must maintain the works in accordance with the licence, the application and any plans or programmes approved by the Licensing Authority unless otherwise authorised by the Licensing Authority.

3.1.3 All conditions attached to the licence bind any person who for the time being owns, occupies or enjoys any use of the works, whether or not the licence has been transferred to that person.

3.1.4 Only the materials listed in Part 2 of the licence may be used during the execution of the Licensed Activity.

3.1.5 All materials used during the execution of the Licensed Activity must be inert and must not contain toxic elements which may be harmful to the marine environment, the living resources which it supports or human health.

3.1.6 The Licensee must ensure that the Licensed Activity does not encroach on any recognised anchorage, either charted or noted in nautical publications, within the licensed area as described in Part 2 of the Licence.

3.1.7 In the event of any breach of health and safety or environmental obligations relating to the Licensed Activity during the period of the licence, the Licensee must provide written notification of the nature and timing of the incident to the Licensing Authority within 24 hours of the incident occurring. Confirmation of remedial measures taken and/or to be taken to rectify the breach must be provided, in writing, to the Licensing Authority within a period of time to be agreed by the Licensing Authority.

3.1.8 Details of any marks or lights not required by the Licence must be submitted to the Northern Lighthouse Board and its ruling complied with. The display of unauthorised marks or lights is prohibited.

3.1.9 The Licensee must remove the materials from below the level of Mean High Water Springs, or make such alterations as advised by the Licensing Authority, within one month of notice being given by the Licensing Authority at any time it is considered necessary or advisable for the safety of navigation, and not replaced without further approval by the Licensing Authority. The Licensee shall be liable for any expense incurred.

3.1.10 There must be no Commencement of the Licensed Activity unless a Decommissioning Programme ("DP") has been submitted to and approved in writing by the the Licensing Authority. The DP must outline measures for the decommissioning of the works, restoration of the sea bed and will include without limitation, proposals for the removal of the works, the management and timing of the removal and environmental management provisions. The works must be decommissioned in accordance with the approved DP unless otherwise agreed by the Licensing Authority.

3.1.11 The Licensee must ensure that three months prior to the expiry of the licence, the works are altered by taking all materials listed in Part 2 of the licence to a place above Mean High Water Springs.

3.1.12 Where any damage, destruction or decay is caused to the works, the Licensee must notify the Licensing Authority, Maritime and Coastguard Agency, Northern Lighthouse Board, Kingfisher Information Services of Seafish and the UKHO, in writing, of such damage, destruction or decay as soon as reasonably practicable but no later than 24 hour after becoming aware of any such damage, destruction or decay.

3.1.13 The Licensee must ensure that the condition of the Licensed Activity is monitored during the operation and maintenance phase.

3.1.14 The Licensee must ensure that a contingency plan is in place to respond to any reported catastrophic failure events which could see the Licensed Activity, or parts of the Licensed Activity breaking loose and becoming a buoyant hazard. The contingency plan must include the prompt transmission of local Radio Navigation Warnings.

3.1.15 If governmental assistance is required (including UK governmental assistance or the assistance of any UK devolved government) to deal with any emergency arising from:

a) the failure to mark and light the works as required by the licence;

b) the maintenance of the works; or
c) the drifting or wreck of the works, to include the broadcast of navigational warnings;
then the Licensee is liable for any expenses incurred in securing such assistance.

3.1.16 In the event of the Licensed Activity being discontinued the materials used under the authority of the licence must be removed to the satisfaction of the Licensing Authority.

3.1.17 The Licensee must ensure that the works are maintained at all times in good repair.

3.1.18 The Licensee must ensure that the Licensed Activity is only carried out at the location of the Licensed Activity specified in Part 2 of the licence.

3.1.19 The Licensee must ensure that the moorings and the tidal turbine are within the Deployment Area bounded by the coordinates in Part 2.2 of the licence at all times.

3.1.20 The Licensee must ensure that the works are marked by the means of:

- (a) The buoy structure used to support the turbine must be predominantly yellow in colour, with a single lit yellow pole with a St Andrew's Cross topmark, mounted so as to be visible through 360°.
- (b) The lights must display a character of flash yellow every three seconds (Fl. Y. 3s) with a nominal range of three miles.
- (c) The buoy must be fitted with a radar reflector of such design as to increase the conspicuity of the device to marine radar.
- (d) The lettering on the buoy must read 'KEEP CLEAR' so that this message is clearly visible to all users of the channel.

3.1.21 The Licensee must ensure that the Licensed Activity does not exceed a maximum 5% reduction in surrounding depth referenced to chart datum, unless otherwise agreed in writing with the Licensing Authority.

3.1.22 The Licensee must ensure that during the construction and decommissioning phases on the foreshore, a reasonable means of passing by the excavation is provided to allow the public to exercise their right of access along the shore.

3.1.23 The Licensee must ensure that a Global Positioning System ("GPS") is fitted to the tidal turbine to monitor the movement of the device. The Licensee must provide the Licensing Authority with the GPS location of the tidal turbine if requested and within one week of the request.

3.1.24 The Licensee must ensure that on the foreshore the umbilical cable is installed within the shingle layer in line with the *Onshore Cable Lay: Outline Method Statement (Rev-0)* (submitted to the Licensing Authority on 1 June 2022). In the event that the Licensee wishes to update or amend the *Onshore Cable Lay: Outline Method Statement (Rev-0)*, the Licensee must submit, in writing, details of proposed updates or amendments to the Licensing Authority for its written approval, no later than one month or at such a time as agreed with the Licensing Authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any Licensed Activity associated with the proposed updates or amendments to proceed prior to the granting of such approval.

3.1.25 The Licensee must ensure that the Licensed Activity is carried out in accordance with the Environmental Management Plan ("EMP") including all appendices (dated 24 June 2022). In the event that the Licensee wishes to update or amend the EMP, the Licensee must submit, in writing, details of proposed updates or amendments to the Licensing Authority for its written approval, no later than one month or at such a time as agreed with the Licensing Authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any Licensed Activity associated with the proposed updates or amendments to proceed prior to the granting of such approval.

3.2 Prior to the commencement of the Licensed Activity

3.2.1 The Licensee must notify the Licensing Authority in writing of the name and address of any agent, contractor or sub-contractor not already listed in Part 2 of the licence being used to carry out any Licensed Activity listed in Part 2 of the licence. Such notification must be received by the Licensing Authority no less than 24 hours before the Commencement of the Licensed Activity

3.2.2 The Licensee must issue local notification to marine users – including fisherman’s organisations, neighbouring port authorities and other local stakeholders – to ensure that they are made fully aware of the Licensed Activity at least five days prior to the Commencement of the Licensed Activity.

3.2.3 The Licensee must ensure that HM Coastguard National Maritime Operations Centre, in this case nmoccontroller@hmcg.gov.uk, is made aware of the Licensed Activity prior to commencement.

3.2.4 The Licensee must notify the Source Data Receipt team, UK Hydrographic Office (email: sdr@ukho.gov.uk) on Commencement of the Licensed Activity, no later than 10 working days before commencement. The information supplied must include the start date and end date, a description of the works, positions of the work area (WGS84), and details of any marking arrangements.

3.2.5 The Licensee must, no later than two calendar months prior to the Commencement of the Licensed Activity, provide the Licensing Authority with Third Party Certification or Verification (“TPC” or “TPV”). The TPV or TPC must either cover the entirety of the works for the lifespan of the works or, where the licensee can demonstrate to the Licensing Authority that this is not possible, set out the initial TPC or TPV as far as reasonably practicable and clearly document the timeframe for submission of all further TPC or TPV to cover the entirety of the works for the lifespan of the works. In this condition, the term “lifespan” means the entire period that this licence remains in force or until the works have been decommissioned in accordance with an approved DP prior to this date. The TPC or TPV should follow the guidance provided in the *Offshore wind, wave and tidal energy applications: consenting and licensing manual* (<https://www.gov.scot/publications/marine-scotland-consenting-licensing-manual-offshore-wind-wave-tidal-energy-app>) by Marine Scotland or any other relevant document which may supersede this. There must be no Commencement of the Licensed Activity unless the TPC or TPV is provided as described above unless otherwise agreed with the Licensing Authority.

3.2.6 The Licensee must ensure that impacts on Priority Marine Features including maerl and kelp/seaweed communities are minimised through micro-siting of all works constructed on the seabed in a way which avoids damage to maerl or kelp/seaweed communities.

3.2.7 Local mariners and fishermen’s organisations must be made fully aware of the activity through a local notification. This must be issued at least 5 days before the commencement of the works.

3.2.8 The Licensee must notify Zone34@hmcg.gov.uk and renewables@hmcg.gov.uk prior to Commencement of the Licensed Activity.

3.2.9 The Licensee must complete the Marine Emergency Action Card and send it to oelo@mcga.gov.uk at least 10 days prior to Commencement of the Licensed Activity.

3.2.10 The Licensee must provide the location of the Licensed Activity to the Royal Yachting Association Scotland’s *Clyde Cruising Club’s Sailing Directions and Anchorages* publication at least two weeks prior to Commencement of the Licensed Activity.

3.2.11 The confirmed individual vessel details must be notified to the Licensing Authority in writing no later than 14 days prior to the commencement of the works, and thereafter, any changes to the details supplied must be notified to the Licensing Authority, as soon as practicable, prior to any such change being implemented in the construction, operation, maintenance or decommissioning of the works.

3.2.12 The Licensee must, no later than two months prior to the Commencement of the Licensed Activity, submit an Emergency Response Plan for the construction, operation, maintenance and decommissioning phases of the Licensed Activity in writing, to the Licensing Authority for its written approval. The Emergency Response Plan should follow the Maritime and Coastguard Agency template and guidance and be developed in discussion with the Maritime and Coastguard Agency and with Northern Lighthouse Board. Such approval may only be granted following consultation by the Licensing Authority with the Maritime and Coastguard Agency and the Northern Lighthouse Board and any other navigational advisors or organisations as may be required at the discretion of the Licensing Authority. Commencement of the Licensed Activity cannot take place until such approval is granted.

3.2.13 The Licensee must notify Scottish and Southern Electricity Networks at least 28 days prior to the Commencement of the Licensed Activity.

3.2.14 The Licensee must ensure that the EMP is updated to include consideration of impacts from the Licensed Activities on marine mammals and fish. The Licensee must ensure that the EMP is updated in line with condition

3.1.25 of the licence and submitted to the Licensing Authority for its written approval, no later than one month or at such a time as agreed with the Licensing Authority, prior to the Commencement of the Licensed Activity.

3.3 During the Licensed Activity

3.3.1 Only those persons acting on behalf of, and authorised by, the agent or the Licensee shall undertake the Licensed Activity.

3.3.2 The Licensee must ensure that any debris or waste materials arising during the course of the Licensed Activity are removed for disposal at an approved location above the tidal level of Mean High Water Springs.

3.3.3 The Licensee must ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:

- (a) the premises of the Licensee
- (b) the premises of any agent acting on behalf of the Licensee; and
- (c) the site of the Licensed Activity

3.3.4 The Licensee must ensure that a copy of the licence is given to each contractor and sub-contractor employed to undertake the Licensed Activity.

3.3.5 The Licensee must ensure the best method of practice is used to minimise re-suspension of sediment during the Licensed Activity.

3.3.6 The Licensee must ensure appropriate steps are taken to minimise damage to the foreshore and the seabed by the Licensed Activity.

3.3.7 Any person authorised by the Licensing Authority must be permitted to inspect the site at any reasonable time.

3.3.8 The Licensee must keep a record of any collisions logged by the shock sensor fitted to the device. The Licensee must provide the Licensing Authority with the records if requested, and within one month of the request.

3.4 Upon Completion of the Licensed Activity

3.4.1 The Licensee must submit a written report regarding the materials used during the works to the Licensing Authority. The written report must be submitted no later than one month after the completion of the construction of the works and on the forms provided by the Licensing Authority.

3.4.2 The Licensee must ensure the foreshore and seabed are returned to the original profile, or as close as reasonably practicable, following the completion of the Licensed Activity.

3.4.3 The Licensee must ensure that during the decommissioning phase on the foreshore, a reasonable means of passing by the excavation should be provided to allow the public to exercise their right of access along the shore.

3.4.4 The Licensee must notify the Source Data Receipt team, UK Hydrographic Office (email: sdr@ukho.gov.uk) on completion of the construction of the works, no later than 10 working days after completion. The information supplied must include latitude and longitude coordinates (WGS84) datum of the constructed works on and above the seabed, any changes to engineering drawings and details of new or changed aids to navigation where applicable.

NOTES

1. You are deemed to have satisfied yourself that there are no barriers, legal or otherwise, to the carrying out of the licensed activity. The issue of the licence does not absolve the licensee from obtaining such authorisations, consents etc which may be required under any other legislation.
2. In the event that the licensee wishes any of the particulars set down in the Schedule to be altered, the licensing authority must be immediately notified of the alterations. It should be noted that changes can invalidate a licence, and that an application for a new licence may be necessary.