

**MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING**

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

Licence Number: **MS-00010628**

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

**Orbtial Projects 9 Limited**  
**Innovation Centre**  
**Hatston Pier Road**  
**Kirkwall**  
**Orkney**  
**KW15 1ZL**

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 April, 2028** until **31 December, 2055**

Signed: .....  
Emma Lees

For and on behalf of the Licensing Authority

Date of issue: 18 April, 2024

## **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 Orbital Projects 9 Limited
- 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 Directorate - Licensing Operations Team  
375 Victoria Road  
Aberdeen  
AB11 9DB  
Email: MS.Marinelicencing@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**

As per Licensee

### **2.2 Location of the Licensed Activity**

Within the following boundary below Mean High Water Springs

Fall of Warness Tidal Test Site, European Marine Energy Centre ("EMEC")

59° 09.740' N 02° 48.840' W  
 59° 10.010' N 02° 48.550' W  
 59° 09.780' N 02° 47.890' W  
 59° 09.250' N 02° 48.400' W  
 59° 08.360' N 02° 47.760' W  
 59° 08.370' N 02° 47.440' W  
 59° 08.370' N 02° 47.010' W  
 59° 07.600' N 02° 47.570' W  
 59° 07.860' N 02° 49.110' W  
 59° 07.820' N 02° 49.500' W  
 59° 07.910' N 02° 49.830' W  
 59° 09.590' N 02° 50.800' W

As shown in Annex One.

### **2.3 Description of the Licensed Activity**

Construction, operation and maintenance (including decommissioning) of two Orbital O2-X floating tidal energy generators at the Fall of Warness tidal test site, EMEC.

As described in the application dated 15 November, 2023 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:

Steel/Iron - 9736 Tonnes  
 Timber - 1.2 Tonnes  
 Plastic/Synthetic - 58 Tonnes  
 Stone/Rock/Gravel (30-63 Millimetres) - 960 Tonnes  
 Marine Laboratory, 375 Victoria Road,  
 Aberdeen AB11 9DB  
[www.scotland.gov.uk/marinescotland](http://www.scotland.gov.uk/marinescotland)

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Cable - 3000 Metres

Aluminium/Zinc Anchor Anodes - 2.4 Tonnes

Anchor Paint - 0.6 Tonnes

Resin - 0.6 Tonnes

Grout - 12 Cubic metres

Temporary materials for use in construction:

Steel/Iron - 384 Tonnes

Submersible Rig - 40 Tonnes

## **2.5 Contractor and Vessel Details**

### **3. PART 3 – CONDITIONS**

#### **3.1 General Conditions**

3.1.1 The Licensee must only construct the works in accordance with this 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 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 UK Hydrographic Office, 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.

3.1.11 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.

3.1.12 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.

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

3.1.14 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.

3.1.15 All submersible / immiscible equipment must be subject to pre-use and post-use checks including checks for the presence of marine growth following check-clean-dry principles. All equipment must be free of marine growth prior to mobilisation.

3.1.16 The Licensed Activity must, at all times, be constructed in accordance with the Project Information Marine Laboratory, 375 Victoria Road, Aberdeen AB11 9DB  
[www.scotland.gov.uk/marinescotland](http://www.scotland.gov.uk/marinescotland)



Document ("PID"), Navigational Risk Assessment ("NRA") Revision 05, dated 10 November 2023 and Project Environmental Monitoring Programme ("PEMP") Revision 03, dated 10 November 2023 as submitted to the Licensing Authority. Any updates or amendments made to the approved PID, NRA and PEMP must be submitted, in writing, to the Licensing Authority for its prior written approval.

3.1.17 There must be no Commencement of the Licensed Activity unless a valid consent, issued by the Scottish Ministers under section 36 of the Electricity Act 1989 ("Section 36 Consent") to allow the construction and operation of the works, is in place. The Licensee must ensure that the Licensed Activity is undertaken in full compliance with the Section 36 Consent at all times throughout the duration of the Licensed Activity.

3.1.18 There must be no Commencement of the Licensed Activity unless the Licensee notifies the Licensing Authority, in writing, no later than 6 months before Commencement of the Licensed Activity, of the berths (with coordinates) in which the Licensed Activity will take place within the EMEC Fall of Warness tidal test site and approval is given by the Licensing Authority. The Licensee must ensure that the Licensed Activity does not take place in a berth within the EMEC Fall of Warness tidal test site in which any other activity licensed under the Marine (Scotland) Act 2010 is taking place.

3.1.19 The Licensing Authority may require updates or amendments to the PID, PEMP and NRA as submitted at Application prior to Commencement of the Licensed Activity. There must be no Commencement of the Licensed Activity unless any required updates or amendments have been submitted, in writing, to the Licensing Authority and approved.

## 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 and Local Radio Navigation Warnings in conjunction with Orkney Marine Services – including fisherman's organisations, neighbouring port authorities and other local stakeholders – to ensure that they are made fully aware of the Licensed Activity prior to both installation and decommissioning. The Licensing Authority must be sent a copy of the notification within 24 hours of issue

3.2.3 The Licensee must ensure that HM Coastguard National Maritime Operations Centre, in this case zone2@hmcg.gov.uk and renewables@hmcg.gov.uk, is made aware of the Licensed Activity prior to commencement. The Licensing Authority must be sent a copy within 5 days of the issue of this notification.

3.2.4 The Licensee must complete a Marine Emergency Action Card which should be sent to oelo@mcga.gov.uk at least 10 working days before Commencement of the Licensed Activity.

3.2.5 The Licensee must notify Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (e-mail: sdr@ukho.gov.uk; tel.: 01823 484444) at least 10 days prior to the Commencement of the Licensed Activity. Such notification must include a copy of the licence, the start date and end date, a description of the works, positions of the work area (WGS84), and details of any marking arrangements. A copy of the notification must be sent to the Licensing Authority within 5 working days of the notification being sent.

3.2.6 There must be no commencement of the works unless a Decommissioning Programme ("DP") has been submitted to and approved in writing by the Licensing Authority. The DP must outline measures for the decommissioning of the works, restoration of the seabed 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.

3.2.7 The Licensee must, no later than 3 calendar months prior to the commencement of the works, provide the Licensing Authority with Third Party Certification or Verification ("TPC" or "TPV") (or a suitable alternative as agreed in writing with the Licensing Authority) that covers the entirety of the works for the lifespan of the works. The TPC or TPV should follow the guidance provided in the Offshore wind, wave and tidal energy applications: consenting and licensing manual (include footnote or weblink) or any other relevant document which may supersede this. There must be no commencement of the works unless the TPC or TPV is provided as described above unless otherwise agreed with the Licensing Authority.

3.2.8 The Licensee must, no later than one calendar month prior to Commencement of the Licensed Activity, or at an alternative date as agreed with the Licensing Authority, submit an Emergency Response Co-operation Plan ("ERCoP") to the Licensing Authority for its written approval. The ERCoP must be in line with the EMEC overarching ERCoP and be agreed with the Offshore Energy Liaison Officer, HM Coastguard, MCA (oelo@mcga.gov.uk) prior to submission.

3.2.9 The Licensee must, no later than one calendar month prior to Commencement of the Licensed Activity, update the PEMP to include a detailed plan of navigation routes for both ancillary support vessels during operations and maintenance, as well as information on the deployment of the turbines, including transit from port and any temporary mooring. This update to the PEMP must be approved by the Licensing Authority, in consultation with NatureScot, Orkney Islands Council Harbour Authority and the Maritime and Coastguard Agency.

3.2.10 The Licensee must, no later than one calendar month prior to Commencement of the Licensed Activity, update the PEMP to include a detailed operational noise monitoring plan. The plan should consider cumulative noise impacts from other devices within the Fall of Warness site. This update to the PEMP must be approved by the Licensing Authority, in consultation with NatureScot.

3.2.11 The Licensee must, no later than one calendar month prior to Commencement of the Licensed Activity, update the PEMP to include details of collision risk monitoring of the operational devices to validate the existing pre-appraisal of impacts. This monitoring may include subsea cameras, multibeam sonar and/or Passive Acoustic Monitoring (PAM) of marine mammals. The methodology must be approved by the Licensing Authority in consultation with NatureScot.

3.2.12 The Licensee must complete and submit a proposed activity form in the online Marine Noise Registry for all Licensed Activity that will produce loud, low to medium frequency (10Hz-10kHz) impulsive noise no later than seven days prior to Commencement of the Licensed Activity. If any aspects of the Licensed Activity differs from the proposed activity form in the online marine noise registry, the Licensee must complete and submit a new proposed activity form no later than seven days prior to 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 shall ensure that, at least three months prior to the expiry of the licence, the works must be altered by taking all temporary and permanent materials and structures to a place above Mean High Water Springs.

3.3.4 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; and
- b) the premises of any agent acting on behalf of the Licensee;

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

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

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

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

3.3.9 The Licensee must ensure that:

- a) The devices must be predominantly yellow in colour and lit by 2 all-round yellow lights, flashing once every three seconds (Fl. Y. 3s) with a nominal range of 3 nautical miles, mounted a minimum of 3 metres above any other obstruction.
- b) The two lights must be synchronised, and positioned on the outer, lengthwise extremities of the device.
- c) It is not required that the Aid to Navigation on these devices are synchronised with those of any other device in the immediate vicinity.
- d) One light must have a yellow "St Andrews Cross" topmark installed above the light.
- e) A radar reflector of such design as to increase the conspicuity of the device to marine radar must also be installed at a similar elevation.
- f) The devices are to be marked by AIS as an Aid to Navigation, transmitting a Type 21 message. A separate AIS Licence application will be required for this via OFCOM. The broadcast names should readily identify the nature



of device being marked, and the individual identity of each device.

3.3.10 The Licensee must ensure that the device is actively monitored during installation, operation, maintenance and removal phases, and any catastrophic failure events should be responded to as described within the approved ERCoP.

3.3.11 The Licensee must report all dropped objects to the Licensing Authority, UK Hydrographic Office and HM Coastguard using the Dropped Object Procedure Form as soon as reasonably practicable and no later than 6 hours after the Licensee becoming aware of an incident. Immediate notification should be made to HM Coastguard via telephone where there is a perceived danger or hazard to navigation. The Licensing Authority may require surveys to be completed and / or obstructions to be removed from the seabed at the Licensee's expense.

3.3.12 The Licensee must apply a 500 metre exclusion zone around Seal Skerry (Eday) seal haul out site and Muckle and Little Green Holm seal haul out site for the duration of the Licensed Activity.

3.3.13 The Licensee must ensure that the the Scottish Marine Wildlife Watching Code is adhered to for the duration of the Licensed Activity

### 3.4 Upon Completion of the Licensed Activity

3.4.1 The Licensee must notify Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (e-mail: sdr@ukho.gov.uk; tel.: 01823 484444) no later than 10 days following completion of the Licensed Activity. Such notification must include a copy of the licence, latitude and longitude coordinates in WGS84 (ETRS89) datum of the installed works on and/or above the seabed, any changes to engineering drawings, post dredge surveys, details of new or changed aids to navigation where applicable, and 'as-built' plans, in order that all necessary amendments to nautical publications are made. A copy of the notification must be sent to the Licensing Authority within 5 working days of the notification being sent.

3.4.2 The Licensee must submit a written report regarding the materials used during the works to the Licensing Authority. The written report must be submitted on completion of the works and on the forms provided by the Licensing Authority no later than 31 October 2056.

3.4.3 The Licensee must ensure the seabed is returned to the original profile, or as close as reasonably practicable, following the Completion of the Licensed Activity

## **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.