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

**LICENCE FOR MARINE RENEWABLES CONSTRUCTION, OPERATION AND DEPOSIT OF SUBSTANCES OR OBJECTS IN THE SCOTTISH MARINE AREA**

Licence Number: **06266/17/0**

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

**Tocado Tidal Energy Ltd  
Clava House  
Cradlehall Business Park  
Inverness  
IV2 5GH**

**Under the Marine (Scotland) Act 2010,**

- 1) To deposit any substance or object (except for dredge spoil) within the Scottish marine area, either in the sea or on or under the seabed;
- 2) To deposit any substance or object (except for dredge spoil) in the sea or on or under the seabed from a vessel which was loaded with the substance or object either in Scotland or in the Scottish marine area;
- 3) To construct any works within the Scottish marine area either in or over the sea, or under the seabed: and
- 4) Removal of phase 1 at end of use and prior to building phase 2

required in the execution of the works (including construction and maintenance) described in Part 2 of the Schedule attached to this licence. The issue of this licence is subject to conditions as set out in Part 3 of the Schedule.

This licence allows the Licensee to generate electricity in excess of 1 MW by utilising the European Marine Energy Centre (EMEC) Fall of Warness Section 36 as granted by Scottish Ministers on 17<sup>th</sup> March 2016.

This licence remains in force from **22<sup>nd</sup> February 2017** to **21<sup>st</sup> February 2037** or until the Works have been decommissioned in accordance with an approved Decommissioning Programme prior to this date, and for which separate marine licences are required.

Signed: \_\_\_\_\_

  
Joao Queiros

For and on behalf of the Licensing Authority

Date of issue: **22<sup>nd</sup> February 2017**

Marine Laboratory, 375 Victoria Road,  
Aberdeen AB11 9DB  
[www.scotland.gov.uk/marinescotland](http://www.scotland.gov.uk/marinescotland)



## 1. PART 1 – GENERAL

### 1.1. Interpretation

In this licence, unless otherwise stated, terms are as defined in sections 1, 64 and 157 of the Marine (Scotland) Act 2010, and,

- a) **“Commencement of the Works”** means the date on which the first vessel arrives on the Site to begin carrying out any Licensed Activity in connection with the construction of the Works, as described in Part 2 of this licence;
- b) **“Company”** means Tocardo Tidal Energy Ltd (Company Registration Number SC331448) and having its registered office at The Innovation Centre – Clava House, Cradlehall Business Park, Inverness, IV2 5GH;
- c) **“Completion of the Works”** means the date on which the Works have been installed, or the Works have been deemed complete by the Licensing Authority, whichever occurs first;
- d) **“the 2010 Act”** means the Marine (Scotland) Act 2010;
- e) **“the Application”** means the marine licence application and supporting information submitted to the Licensing Authority by the company, on 20<sup>th</sup> January 2017;
- f) **“Licensable Marine Activity”** means any activity which is listed in section 21 of the 2010 Act;
- g) **“Licensed Activity and “Licensed Activities”** means any activity or activities listed in section 21 of the 2010 Act which is, or are authorised under this licence;
- h) **“Licensee”** means the company OR Tocardo Tidal Energy Ltd having its registered office at Innovation Centre – Clava House, Cradlehall Business Park, Inverness, IV2 5GH and registered in Scotland having its registered number as SC331448;
- i) **“the Licensing Authority”** means the Scottish Ministers;
- j) **“Decommissioning of the Works”** includes removal of the Works from the seabed, demolishing the Works or dismantling the Works;
- k) **“Decommissioning Programme”** means the programme for decommissioning the Works, to be submitted by the Licensee to the appropriate authority under section 105(2) of the Energy Act 2004 (as amended);
- l) **“the Site”** means the area outlined in the figure contained in Part 4 of this licence;
- m) **“the Works”** means the Tocardo Tidal Energy Ltd T2 Tidal Turbine Array, as described in Part 2 of this licence;
- n) **“MHWS”** means mean high water spring tide; and;
- o) **“Final Commissioning of the Works”** means the date on which all the Works (both phase 1 and phase 2) have been used to supply electricity on a commercial basis to the National Grid, or such earlier date as the Licensing Authority deem the Works to be fully commissioned.

All geographical co-ordinates contained within this licence are in latitude and longitude format World Geodetic System 84 (“WGS84”).

### 1.2. Contacts

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

Marine Scotland  
Licensing Operations Team  
Marine Laboratory  
375 Victoria Road  
Aberdeen  
AB11 9DB

Email: [MS.MarineRenewables@gov.scot](mailto:MS.MarineRenewables@gov.scot)

### **1.3. Other authorisations and consents**

The Licensee is deemed to have satisfied themselves that there are no barriers or restrictions, legal or otherwise, to the carrying out of the licensed activities in connection with Works. The issuing of this 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 this 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 this 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 out 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 –

- (a) 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
- (b) 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.

## 2. PART 2 – THE WORKS

### 2.1. Title of the works

The title of the Works to which this licence relates to is the 'Tocado Tidal Energy Ltd T2 Tidal Turbine Array'.

### 2.2. Description of the works

Installation and Operation of an offshore tidal turbine array, known as the Tocardo Tidal Energy Ltd T2 Tidal Turbine Array, with a maximum generating capacity of up to 1.4 MW.

These works will comprise of the following components:

#### Phase 1

- Temporary Foundation Structure (TFS) moored floating foundation
- 1 x T2 turbine design series on the TFS
- 4 x mooring lines with associated gravity anchors
- Dynamic and static intra-berth subsea cable. The dynamic subsea cable is connected between the foundation and the subsea connection hub. The dynamic subsea cable will be fitted with protection systems.
- Navigational aids, in line with requirements by the MCA and NLB, will be installed on the TFS platform. This will also include an AIS tracking system.

#### Phase 2

- Universal Foundation Structure (UFS) moored floating foundation
- 5 x T2 turbine design series
- 2 x mooring lines and 2 gravity anchors
- Subsea connection hub
- Dynamic and static intra-berth subsea cable. The dynamic subsea cable is connected between the foundation and the subsea connection hub. The dynamic subsea cable will be fitted with protection systems.
- Navigational aids, in line with requirements by the MCA and NLB, will be installed on the TFS platform. This will also include an AIS tracking system.

### 2.3. Location of the works

Phase 1 will be located in berth 8, once this has been removed phase 2 will be located in berth 6, both berths are within the European Marine Energy Centre (EMEC) tidal test facility at the Fall of Warness, situated West of the island of Eday in a narrow channel between the Westray Firth and Stronsay Firth, approximately 16 km from the Orkney Mainland, within the area bounded by joining the following points:

#### Fall of Warness lease area:

59° 09.780' N	002° 47.890' W	59° 09.250' N	002° 48.400' W
59° 08.360' N	002° 47.760' W	59° 08.370' N	002° 47.440' W
59° 08.370' N	002° 47.010' W	59° 07.600' N	002° 47.570' W
59° 07.860' N	002° 49.110' W	59° 07.820' N	002° 49.500' W
59° 07.910' N	002° 49.830' W	59° 09.590' N	002° 50.800' W
59° 09.740' N	002° 48.840' W	59° 10.010' N	002° 48.550' W

**Tocado Tidal Energy Ltd T2 Tidal Turbine Array:****Phase 1 (TFS)**

59° 8.771' N	002° 48.560' W	59° 8.771' N	002° 48.125' W
59° 8.378' N	002° 48.125' W	59° 8.378' N	002° 48.447' W
59° 8.600' N	002° 48.503' W	59° 8.614' N	002° 48.532' W

**Phase 2 (UFS)**

59° 9.082' N	002° 49.998' W	59° 9.083' N	002° 49.409' W
59° 8.813' N	002° 50.000' W	59° 8.814' N	002° 49.410' W

**2.4. Deposits**

This licence authorises the deposit of the undernoted substances and objects required in connection with the Works, subject to the maximum amounts as specified below:

**PERMANENT DEPOSITS****Phase 1 TFS**

Steel/Iron, 491 tonnes  
 Plastic/Synthetic, 10 tonnes  
 Cable, 100m tail cable already installed  
 Turbine, 1 x 16 tonne

**Phase 2 UFS**

Steel/Iron, 2265 tonnes  
 Plastic/Synthetic, 20 tonnes  
 Cable, 600m tail cable  
 Turbines, 80 tonne  
 Titanium/Aluminium, 12kg

**2.5. Persons responsible for the deposits of the substances or objects**

The operators, vessels and vehicles engaging in the Works must be notified to the Licensing Authority under condition 3.1.2 prior to their engagement in the Works:

<b>Name of Vessel or Vehicle Registration</b>	<b>Operator</b>	<b>Type(s)</b>
To be confirmed	To be confirmed	To be confirmed

**2.6. Persons acting on behalf of the licensee**

The name and address of any agents, contractors or sub-contractors appointed to carry out any part, or all, of the Works must be notified to the Licensing Authority under condition 3.1.2 prior to their engagement in the Works:

<b>Role</b>	<b>Company Name</b>	<b>Address</b>	<b>Contact Name</b>
Agent	Aquatera Ltd	Old Academy Business Centre, Stromness, Orkney, KW16 3AW	Mrs C Houghton

### 3. PART 3 – CONDITIONS

#### 3.1. General Conditions

##### 3.1.1. Compliance with the application and approved plans

The Licensee must at all times construct and operate the Works in accordance with this Licence, the Application, the environmental statement, the Section 36 consent and the plans and programmes approved by the Scottish Ministers.

The Licensee must, at all times, maintain the Works in accordance with the approved Operation and Maintenance Plan ("OMP").

Reason: To ensure compliance with the marine licence, the application for the marine licence and the environmental statement

##### 3.1.2 Licence conditions binding other parties

All conditions attached to this licence bind any person who for the time being owns, occupies or enjoys any use of the Works for which this licence has been granted in relation to those licensed activities authorised under item 5 in section 21(1) of the 2010 Act whether or not this licence has been transferred to that person.

Reason: To safeguard the obligations of the licence, in accordance with s.29(5) of the Marine (Scotland) Act 2010.

##### 3.1.3. Vessels, vehicles agents, contractors and sub-contractors

The Licensee must provide, as soon as reasonably practicable in advance of their engagement in the Works authorised under this licence, the name and function of any vessel, vehicle, agent, contractor or sub-contractor appointed to engage in the Works to the Licensing Authority. Where applicable the notification must include the vessel type, vessel IMO number and vessel owner or operating company.

The Licensee must ensure that any changes to the supplied details must be notified to the Licensing Authority, in writing, prior to any vessel, vehicle, agent, contractor or sub-contractor engaging in the Works.

The Licensee must ensure that only those vessels, vehicles, operators, agents, contractors or sub-contractors notified to the Licensing Authority are permitted to carry out any part of the Works.

The above details must be recorded in section 2.5 and 2.6 of this licence, if not provided at application these details and any subsequent changes will require a variation to the licence to update section 2.5 and 2.6 prior to engagement in the Works.

The Licensee must satisfy themselves that any masters of vessels or vehicle operators, agents, contractors or sub-contractors are aware of the extent of the Works for which this licence has been granted, the activity which is licensed and the terms of the conditions attached to this licence. All masters of vessels or vehicle operators, agents, contractors and sub-contractors permitted to engage in the Works must abide by the conditions set out in this licence.

The Licensee must give a copy of this licence, and any subsequent variations made to this licence in accordance with section 30 of the 2010 Act, to the masters of any vessels, vehicle

operators, agents, contractors or sub-contractors permitted to engage in the Works and must ensure that the licence and any such variations are read and understood by those persons.

**Reason:** *To ensure all parties involved in the Works are aware of the licence and its conditions to reduce the risk of a breach of the licence, in accordance with s.39(1)(b) of the 2010 Act.*

#### **3.1.4. Force Majeure**

Should the Licensee or any of their agents, contractors or sub-contractors, by any reason of *force majeure* deposit anywhere in the marine environment any substance or object, then the Licensee must notify the Licensing Authority of the full details of the circumstances of the deposit within 48 hours of the incident occurring (failing which as soon as reasonably practicable after that period of 48 hours has elapsed). *Force majeure* may be deemed to apply when, due to stress of weather or any other cause, the master of a vessel or vehicle operator determines that it is necessary to deposit the substance or object other than at the Site because the safety of human life or, as the case may be, the vessel, vehicle or marine structure is threatened. Under Annex II, Article 7 of the Convention for the Protection of the Marine Environment of the North-east Atlantic, the Licensing Authority is obliged to immediately report force majeure incidents to the Convention Commission.

**Reason:** *To provide a defence for the Master to protect himself and his crew in bad weather conditions, in accordance with s.29(2)(a) of the 2010 Act.*

#### **3.1.5. Material alterations to the licence application**

The Licensee must, where any information upon which the granting of this licence was based has after the granting of the licence altered in any material respect, notify the Licensing Authority of this fact, in writing, as soon as is practicable.

**Reason:** *To ensure that the Works are carried out in accordance with the Application documentation, in accordance with s.29(2)(a) of the 2010 Act.*

#### **3.1.6. Submission of plans and specification of studies and surveys to the licensing authority**

The Licensee must submit plans and the details and specifications of all studies and surveys that are required to be undertaken under this licence in relation to the Works, in writing, to the Licensing Authority for their written approval. Commencement of the studies or surveys and implementation of plans must not occur until the Licensing Authority has given its written approval to the Licensee.

Plans or the specification of studies and surveys prepared pursuant to another consent or licence relating to the Works by the Licensee or by a third party may also be used to satisfy the requirements of this licence.

**Reason:** *To ensure that the Licensing Authority is kept informed of the progress of the Works, in accordance with s.29(3)(c) of the 2010 Act.*

### **3.1.7. Submission of reports and notifications to the licensing authority**

The Licensee must submit all reports and notifications to the Licensing Authority, in writing, as are required under this licence within the time periods specified in this licence. Where it would appear to the Licensee that there may be a delay in the submission of the reports or notifications to the Licensing Authority, then the Licensee must advise the Licensing Authority of this fact as soon as is practicable and no later than the time by which those reports or notifications ought to have been submitted to the Licensing Authority under the terms of this licence.

The reports must include executive summaries, assessments and conclusions and any data must, subject to any rules permitting non-disclosure, be made publically available by the Licensing Authority or by any such party appointed at their discretion.

Reports prepared pursuant to another consent or licence relating to the Works by the Licensee or by a third party may also be used to satisfy the requirements of this licence.

Such reports will include, but not be limited to, Transport Audit sheets, deposits sheets and Marine Mammal Observer ("MMO") reports.

*Reason: To ensure that all reports and notifications are submitted within a reasonable timescale after the licence is granted, in accordance with s.29(3)(c) of the 2010 Act.*

### **3.1.8. Chemical usage**

The Licensee must ensure that all chemicals which are to be utilised in the Works have been approved prior to use. All chemicals which are to be utilised in the Works must be selected from the List of Notified Chemicals assessed for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended 2011), with exemption for sealed units. The Licensee must submit a report of all chemicals and quantities to be used (e.g. oils and fluorinated gases) during the construction and operation of the works to the Licensing Authority no later than one calendar month prior to the Commencement of the Works. Any changes to the types of chemicals which are proposed to be utilised must be consulted on with the Licensing Authority before the Commencement of the Works or; as the case may be, after the Commencement of the Works but prior to their utilisation.

*Reason: To minimise the environmental impact in the event of a release through the use of authorised chemicals in the interest of protecting the environment, in accordance with s.29(2)(b) of the 2010 Act.*

### **3.1.9. Fluorinated greenhouse gases**

The Licensee must ensure that all equipment to be utilised in the Works that contains fluorinated greenhouse gases (hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and other greenhouse gases that contain fluorine, listed in Annex I of Regulation (EU) 517/2014 and The Fluorinated Greenhouse Gases Regulations 2015 (the Regulations), or mixtures containing any of those substances) must take precautions to prevent the unintentional release ('leakage') of those gases. They must take all measures which are technically and economically feasible to minimise leakage of fluorinated greenhouse gases.

Where a leakage of fluorinated greenhouse gases is detected, the Licensee must ensure that the equipment is repaired without undue delay.



The Licensee must ensure that all equipment to be utilised in the Works that contains fluorinated greenhouse gases in quantities of 5 tonnes of CO<sub>2</sub> equivalent or more and not contained in foams must ensure that the equipment is checked for leaks in accordance with Annex 4 of the Regulations. Records of leak checks must be kept in accordance with Annex 6 of the Regulations. These records must be submitted to the Licensing Authority annually, and immediately in the event of discovery of any leak.

Where the equipment is subject to leak checks under Article 4(1) of the Regulations, and a leak in the equipment has been repaired, the Licensee must ensure that the equipment is checked by a certified person within **one** calendar month after the repair to verify that the repair has been effective. In such event, the Licensing Authority must be informed of the date of discovery, date of repair and date of inspection.

**Reason:** to ensure compliance of the Works with Regulation (EU) 517/2014 and The Fluorinated Greenhouse Gases Regulations 2015, in accordance with s.29(2)(b) of the 2010 Act.

### **3.1.10. Environmental protection**

The Licensee must ensure that all reasonable, appropriate and practicable steps are taken at all times to avoid or minimise any damage to the Scottish marine area caused as a result of the undertaking of the licensed activities.

The Licensee must ensure that all personnel adhere to the Scottish Marine Wildlife Watching Code where appropriate during all installation, operation and maintenance activities authorised under this licence.

The Licensee must ensure that any debris or waste material placed below MHWS during the construction of the Works are removed from the Site, as soon as is reasonably practicable, for disposal at a location above the MHWS approved by the Scottish Environment Protection Agency ("SEPA").

Prior to the Commencement of the Works the Licensee must agree with the Licensing Authority, in writing, the details of the appointment of a Marine Mammal Observer ("MMO"). When appointed, the MMO must, as a minimum, maintain a record of any sightings of marine mammals and maintain a record of the action taken to avoid any disturbance being caused to marine mammals during piling activities, as agreed in writing with the Licensing Authority. The Licensee must provide the Licensing Authority with the MMO's records no later than one calendar month following Commencement of the Works, and at monthly intervals thereafter.

The Licensee must ensure that all substances and objects deposited during the execution of the Works are inert (or appropriately coated or protected so as to be rendered inert) and do not contain toxic elements which may be harmful to the marine environment, the living resources which it supports or human health.

The Licensee must ensure that the risk of transferring marine non-native species to and from the Site is kept to a minimum by ensuring appropriate bio-fouling management practices are implemented during the Works.

The Licensee must ensure that if oil based drilling muds are utilised they must be contained within a zero discharge system. Any drill cuttings associated with the use of water-based drilling muds situated within Site of the Works need not be removed from the seabed.

**Reason:** To ensure environmental impacts are minimised, in accordance with s.29(2)(b) of the 2010 Act.

### **3.1.11. Availability of the licence for inspection**

The Licensee must ensure that copies of this licence and any subsequent amendments or variations are available for inspection at any reasonable time by any persons authorised by the Licensing Authority at:

- a) the premises of the Licensee;
- b) the premises of any agent, contractor or sub-contractor acting on behalf of the Licensee;
- c) any onshore premises directly associated with the Works; and
- d) aboard any vessels permitted to engage in the Works.

**Reason:** To ensure the licence is available for the purpose of inspection, in accordance with s.29(2)(b) of the 2010 Act.

### **3.1.12. Inspection of the works**

Any persons authorised by the Licensing Authority, must be permitted to inspect the Works at any reasonable time. The Licensee must, as far as reasonably practicable, on being given reasonable notice by the Licensing Authority (of at least 72 hours), provide transportation to and from the Site for any persons authorised by the Licensing Authority to inspect the Works.

**Reason:** To ensure access to the Site for the purpose of inspection, in accordance with s.29(2)(b) of the 2010 Act.

### **3.1.13. Emergencies**

If the assistance of a Government Department (to include departments of Administrations other than the Scottish Government) is required to deal with any emergency arising from:

- a) the failure to mark and light the Works as required by this 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.

**Reason:** To ensure licensee is aware of financial liabilities, in accordance with s.29(2)(b) of the 2010 Act.

## **3.2. Conditions specific to the works**

### **3.2.1. Conditions applicable to all phases of the works**

#### **3.2.1.1. Project Environmental Monitoring Programme ("PEMP")**

The Licensee must, prior to the Commencement of the Works, obtain the written approval of the Licensing Authority for the PEMP submitted at Application. Such approval may only be granted following consultation by the Licensing Authority, with Scottish Natural Heritage ("SNH") and any other ecological advisors or organisations as required at the discretion of

the Licensing Authority. The PEMP must be in accordance with the Application as it relates to environmental monitoring.

The PEMP must set out measures by which the Licensee must monitor the environmental impacts of the Works. Monitoring is required throughout the lifespan of the Works where this is deemed necessary by the Licensing Authority. Lifespan in this context includes pre-construction, construction, operational and decommissioning phases.

Monitoring must be done in such a way as to ensure that the data which is collected allows useful and valid comparisons between different phases of the Works. Monitoring may also serve the purpose of verifying key predictions in the Application. Additional monitoring may be required in the event that further potential adverse environmental effects are identified for which no predictions were made in the Application.

The Licensing Authority may agree that monitoring may be reduced or cease before the end of the lifespan of the Works.

The PEMP must cover, but not be limited to the following matters:

- a) Pre-construction, construction (if considered appropriate by the Licensing Authority) and post-construction monitoring surveys as relevant in terms of the Application and any subsequent surveys for:
  1. Operational Noise;
  2. Collision Risk;
  3. Entanglement risk to wildlife;
  4. Displacement/disturbance of wildlife;
  5. Potential impacts on Designated Species and Areas;
  6. Non native species

All initial methodologies for the above monitoring must be approved, in writing, by the Licensing Authority in consultation with SNH. Any pre-consent surveys carried out by the Licensee to address any of the above species may be used in part to discharge this condition subject to the written approval by the Scottish Ministers.

The PEMP submitted at application is a live document and must be regularly reviewed by the Licensing Authority, at timescales to be determined by the Licensing Authority to identify the appropriateness of on-going monitoring, the first of which should occur six months after deployment of the T2 tidal turbine array. Following such reviews, the Licensing Authority may require the Licensee to amend the PEMP and submit such an amended PEMP, in writing, to the Licensing Authority for their written approval. Such approval may only be granted following consultation with SNH and any other ecological, or such other advisors as may be required at the discretion of the Licensing Authority. The PEMP, as amended from time to time, must be fully implemented by the Licensee at all times.

The Licensee must submit written reports and associated raw data of such monitoring surveys to the Licensing Authority at timescales to be determined by the Licensing Authority. Subject to any legal restrictions regarding the treatment of the information, the results are to be made publicly available by the Licensing Authority, or by such other party appointed at their discretion.

### **3.2.1.2. Serious incident reporting**

In the event of any breach of health and safety or environmental obligations relating to the Works during the period of this licence, the Licensee must provide written notification of the

nature and timing of the incident to the Licensing Authority, including confirmation of remedial measures taken and/ or to be taken to rectify the breach, within 24 hours of the incident occurring.

**Reason:** To keep the Scottish Ministers informed of any such incidents which may be in the public interest, in accordance with s.29(3)(c) of 2010 Act.

### **3.2.1.3. Bunding and storage facilities**

The Licensee must ensure suitable bunding and storage facilities are employed to prevent the release of fuel oils and lubricating fluids associated with the plant and equipment into the marine environment.

**Reason:** To ensure pollution prevention is undertaken, in accordance with s.29(2)(b) of the 2010 Act.

### **3.2.1.4. Restoration of the Site to its original condition**

The Licensee must take all reasonable, appropriate and practicable steps to restore the Site to its original condition before the Works were undertaken, or to as close to its original condition as is reasonably practicable, in accordance with the Project Environmental Monitoring Plan ("PEMP") and the Decommissioning Programme ("DP") to the satisfaction of the Licensing Authority. Should the Works be discontinued prior to Completion of the Works, the Licensee must inform the Licencing Authority in writing of the discontinuation of the Works. A marine licence application will be required for the removal of Works.

**Reason:** To mitigate the effects of the activity on the Site, in accordance with s.29(3)(e) of the 2010 Act.

### **3.2.1.5 Emergency Response Co-operation Plans ("ERCoP")**

The Licensee must, in discussion with the Maritime and Coastguard Agency's ("MCA") Search and Rescue Branch, complete an Emergency Response Co-operation Plans ("ERCoP") for the construction and operation phases. The ERCoP should include full details for the construction and operation phases of the authorised scheme in accordance with MCA recommendations contained within Marine Guidance Notice ("MGN") 543 (or subsequent updates). A copy of the final plan must be submitted to the Licensing Authority no later than 3 Calendar months, or at such a time as agreed with the Licensing Authority, prior to the Commencement of the Works.

**Reason:** To ensure the Licensing Authority is aware of the ERCoP, in accordance with s.29(3)(c) of the 2010 Act.

## **3.2.2. Prior to the commencement of the works**

### **3.2.2.1. Commencement date of the works for both phases**

The Licensee must, prior to and no less than 1 calendar month before the Commencement of the Works, notify the Licensing Authority, in writing, of the date of Commencement of the Works authorised under this Licence.

**Reason:** To inform the Licensing Authority of the commencement date of the Works, in accordance with s.29(3)(c) of the 2010 Act.

**3.2.2.2. Collision risk modelling for phase 2**

The Licensee must undertake collision risk modelling prior to the commencement of phase 2. The results of such modelling must be submitted to MS LOT 3 months prior to construction of phase 2 and consulted on with SNH. MS LOT approval required before phase 2 construction.

**3.2.2.3. Monitoring of marine mammals for both phases**

Prior to the Commencement of the Works the Licensee must agree with the Licensing Authority, in writing, the details of the appointment of a Marine Mammal Observer ("MMO"). When appointed, the MMO must, as a minimum, maintain a record of any sightings of marine mammals and maintain a record of the action taken to avoid any disturbance being caused to marine mammals during noisy activities, as agreed in writing with the Licencing Authority. The Licensee must provide the Licensing Authority with the MMO's records no later than 6 months following Commencement of the Works.

During the breeding season exclusion of installation and maintenance vessels in the vicinity of seal haul-outs should be observed. This may be achieved by adherence to the guidelines associated with the Scottish Marine Wildlife Watching Code (SMWWC; [www.marinecode.org](http://www.marinecode.org)).

**3.2.2.4. Decommissioning Programme ("DP") for both phases**

Where the appropriate authority has, following consultation with the Licensing Authority, given notice requiring the Licensee to submit to the appropriate authority a Decommissioning Programme ("DP"), pursuant to section 105(2) and (5) of the Energy Act 2004, then construction of the Works may not begin until after the Licensee has submitted to the appropriate authority a DP in compliance with that notice. Phase 1 must be decommissioned and removed prior to the commencement of phase 2.

**Reason:** To ensure the decommissioning and removal of the works in an appropriate and environmentally acceptable manner, and in the interests of safety and environmental protection in accordance with s.29(3)(c) of the 2010 Act.

**3.2.2.5. Construction method statement for both phases**

The Works must, at all times, be constructed in accordance with the approved Construction Method Statement ("CMS") as submitted at Application . Any updates or amendments made to the approved CMS must be submitted, in writing, to the Licensing Authority for their prior written approval.

**Reason:** To ensure that the Works are carried out in accordance with the Application, in accordance with s.29(2)(a) of the 2010 Act.

**3.2.2.6. Noise registry for both phases**

The licensee must complete and submit a Proposed Activity Form in the online Marine Noise Registry for all aspects of the Works that will produce loud, low to medium frequency (10Hz-10kHz) impulsive noise no later than 7 days prior to commencement of the Works. If any aspects of the Works differ 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 7 days prior to commencement of the Works.

**Reason:** To ensure compliance with reporting requirements on marine noise, in accordance with s.29(3)(c) of the 2010 Act.

### **3.2.2.7. Navigation and charting for both phases**

The Licensee must, no later than **one** calendar month prior to Commencement of the Works, notify the UK Hydrographic Office ("UKHO") of the proposed works to facilitate the promulgation of maritime safety information and updating of nautical chart (BA2562) and publications through the national Notice to Mariners system with final locations after micro siting.

The Licensee must, no later than **one** calendar month prior to Commencement of the Works, ensure that local mariners, fishermen's organisations and HM Coastguard, in this case [zone2@hmcg.gov.uk](mailto:zone2@hmcg.gov.uk), are made fully aware of the Works through local Notice to Mariners or by any other appropriate means.

The Licensee must ensure that details of the Works are promulgated in the Kingfisher Fortnightly Bulletin, no later than **one** calendar month prior to the Commencement of the Works to inform the Sea Fish Industry of the vessel routes, the timings and the location of the Works and of the relevant operations.

The Licensee must, no later than eight weeks prior to the Commencement of the Works, complete an "Application for Statutory Sanction to Alter / Exhibit" form and submit this to the Northern Lighthouse Board ("NLB") for the necessary sanction to be granted.

**Reason:** To reduce the navigational risk to other legitimate users of the sea, in accordance with s.29(2)(b) of the 2010 Act.

### **3.2.2.8. Third Party Certification or Verification ("TPC" or "TPV") for phase 2**

The Licensee must, no later than 1 month 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) of the basis of design of the device and mooring system.

**Reason:** To provide independent certification or verification of the technology, materials or equipment, in accordance with s.29(2)(b) of the 2010 Act.

## **3.2.3. During the Construction of the Works**

### **3.2.3.1 Transportation audit sheet**

The Licensee must create, complete and submit to the Licensing Authority on the first working day of the month, a detailed transportation audit sheet for each month during the period when construction of the works is undertaken, which must cover all aspects all aspects of the construction of the works. The transportation audit sheet must include but not be limited to information on the loading facility, vessels, equipment, shipment routes, schedules and all materials to be deposited (as described in Part 2 of this licence) in that month. Where, following the submission of a transportation audit sheet to the Licensing Authority, any alteration is made to the component parts of the transportation audit sheet, the Licensee must notify the Licensing Authority of the alteration in the following month's transportation audit sheet.

If the Licensee becomes aware of any substances or objects on the transportation audit sheet that are missing, or becomes aware that an accidental deposit has occurred, the

Licensee must contact the Licensing Authority as soon as practicable after becoming aware, for advice on the appropriate remedial action (which may include requiring charts to be amended to show such deposits). Should the Licensing Authority deem it necessary, the Licensee must undertake a side scan sonar survey in grid lines (within operational and safety constraints) across the area of the Works, to include cable routes and vessel access routes from local service port(s) to the Site to locate the substances or objects. If the Licensing Authority is of the view that any accidental deposits associated with the construction of the works are present, then the deposits must be removed by the Licensee as soon as is practicable following the giving of such a view by the Licensing Authority, and at the Licensee's expense

Reason: To confirm that the deposits made were in accordance with the application documentation, and that any accidental deposits are recovered or charted appropriately in accordance with s.29(3)(c) of the 2010 Act.

### **3.2.3.2. Navigational safety for both phases**

The Licensee must in the case of damage to, or destruction or decay of, the Works, notify the Licensing Authority, in writing, as soon as reasonably practicable, following such damage, destruction or decay. The Licensee must carry out any remedial action as required by the Licensing Authority, and intimated to the Licensee in writing, which may include any requirement to display aids to navigation, following consultation with the MCA, the NLB or any such advisers as required by the Licensing Authority.

The Licensee must ensure that any vessels permitted to engage in the Works are marked in accordance with the International Rules for the Prevention of Collisions at Sea whilst under way, and in accordance with the UK Standard Marking Schedule for Offshore Installations if the vessel is secured to the seabed.

The Licensee must ensure that no radio beacon or radar beacon operating in the marine frequency bands is installed or used on the Works without the prior written approval of the Office of Communications ("OfCom").

The Licensee must ensure that navigational safety is not compromised by the Works. The navigable depth must not be altered by more than 5% of stated Chart Datum unless otherwise agreed, in writing, with the Licensing Authority in consultation with the MCA and NLB.

Reason: To reduce the navigational risk to other legitimate users of the sea, in accordance with s.29(2)(b) of the 2010 Act.

### **3.2.3.3 Markings, lighting and signals of the works and jack up vessels for both phases**

The Licensee must ensure that the Works are marked and lit in accordance with the requirements of the MCA, and the NLB at all times and such markings and/or lighting must be continued unless and until such time as the Licensing Authority, by notice, relevantly varies this licence under section 30(3)(c) of the 2010 Act.

The Licensee must not display any marks and lights additional to those required by virtue of this licence and as agreed in the Lighting and Marking Plan ("LMP") without the written approval of the Licencing Authority following consultation with the NLB and the MCA.

The Licensee must ensure that the works are marked and lit in accordance with IALA Recommendation O-139.

Reason: To ensure safe appropriate marking and lighting of the offshore Works, in accordance with s.29(2)(b) of the Marine (Scotland) Act 2010.

### **3.2.4. Conditions upon Completion of the Works**

#### **3.2.4.1. Date of completion of the works for both phases**

The Licensee must, no later than one calendar month following the Completion of the Works, notify the Licensing Authority, in writing, of the date of Completion of the Works.

Reason: To inform the Licensing Authority of the completion of the works, in accordance with s.29(3)(c) of the 2010 Act.

#### **3.2.4.2. Nature and quantity of deposited substances and objects**

The Licensee must, no later than one calendar month following the Completion of the Works, submit a final audit report, in writing, to the Licensing Authority stating the nature and quantity of all substances and objects deposited below MHWS within the Scottish marine area under the authority of this licence. Where appropriate, nil returns must be provided.

Reason: To confirm that the deposits made were in accordance with the Application, in accordance with s.29(3)(c) of the Marine (Scotland) Act 2010.

#### **3.2.4.3. Final commissioning of the works for both phases**

The Licensee must, no more than 1 month following the Final Commissioning of the Works, notify the Licensing Authority, in writing, of the date of the Final Commissioning of the Works.

Reason: To inform the Licensing Authority of the Final Commissioning of the works, in accordance with s.29(3)(c) of the 2010 Act.

#### **3.2.4.4. Noise registry close out for both phases**

The licensee must complete and submit a Close-out Report for all aspects of the Works that produced loud, low to medium frequency (10Hz-10kHz) impulsive noise in the online Marine Noise Registry no later than 12 weeks from the Completion of the Works.

Reason: To ensure compliance with reporting requirements on marine noise, in accordance with s.29(3)(c) of the 2010 Act.

#### **3.2.4.5. Navigational safety for both phases**

The Licensee must notify the UKHO of the Completion of the Works to facilitate the promulgation of maritime safety information and updating of Admiralty Chart BA2562/ nautical charts and publications through the national Notice to Mariners system.

The Licensee must ensure that the Completion of the Works is promulgated in the Kingfisher Fortnightly Bulletin to inform the Sea Fish Industry.

The Licensee must, where any damage, destruction or decay is caused to the Works, notify the Licensing Authority, in writing, of such damage, destruction or decay as soon as reasonably practicable following such damage, destruction or decay. The Licensee must carry out any remedial action which the Licensing Authority advises the Licensee, in writing, as requiring to be taken, which may include a requirement to display aids to navigation,



following consultation by the Licensing Authority with the MCA, the NLB or any such advisers as required.

The Licensee must ensure that no radio beacon or radar beacon operating in the marine frequency bands is installed or used on the Works without the prior written approval of the Office of Communications ("Ofcom").

The Licensee must not exhibit, alter or discontinue navigational lighting of the Works without the Statutory Sanction of the Commissioners of Northern Lighthouses. An 'Application for Statutory Sanction to Exhibit/Discontinue' form must be completed by the Licensee as fully as possible and returned to the Northern Lighthouse Board via e-mail to [navigation@nlb.org.uk](mailto:navigation@nlb.org.uk) for the necessary sanction to be granted prior to exhibiting, altering or discontinuing navigational lighting.

**Reason:** To reduce the navigational risk to other legitimate users of the sea, in accordance with s.29(2)(b) of the 2010 Act.

#### **3.2.4.6 Markings, lighting and signals of the works for both phases**

The Licensee must ensure that above the device should be predominantly yellow in colour and lit by a yellow light, 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. Additionally, a radar reflector of such design as to increase the conspicuity of the device to marine radar should be fitted to the device at a similar elevation.

If AIS is to be fitted to the device it should be an AIS Aid to Navigation unit transmitting a Type 21 message.

The statutory sanction of the Northern Lighthouse Board will be required to display such navigation lights, an application form is enclosed.

The position of the unit should be actively monitored, and a contingency plan developed to respond to any reported off-station events. This should include the transmission of local Radio Navigation Warnings.

**Reason:** To ensure safe appropriate marking and lighting of the offshore Works, in accordance with s.29(2)(b) of the 2010 Act.

#### **3.2.4.7 Operation and maintenance of the works for both phases**

The Licensee must provide an operation and maintenance plan (OMP) 1 month prior to construction and must operate and maintain the works in accordance with the approved OMP. Notification must be provided at least 3 months in advance of any maintenance of the Works where any additional deposits are required. In the event that these works are not assessed in the Application and are considered by the Licencing Authority as being material they will require further Marine Licences.

**Reason:** To ensure compliance with the approved OMP to prevent decay of the Works and to ensure that any maintenance work is carried out under an appropriate licence in accordance with s.29(3)(b) of the 2010 Act.

### **3.3. Removal of the works for phase 2**

This licence does not permit the Removal of the Works, for which a separate marine licence is required.

The Licensee must, no later than 3 months prior to any proposed removal works, submit a plan for the Removal of the Works, in writing, to the Licensing Authority, along with a marine licence application for the Removal of the Works.

Removal of the Works must not occur until the Licensing Authority has given its prior written approval to the plan and issued a marine licence.

**Reason:** To ensure that removal of works is carried out under an appropriate licence, in accordance with s.29(3)(a) of the 2010 Act.

### **3.4. Decommissioning for phase 2**

This licence does not permit the Decommissioning of the Works, for which a separate marine licence is required.

**Reason:** To ensure that decommissioning is carried out according to the approved decommissioning programme under an appropriate licence, in accordance with s.29(3)(d) of the 2010 Act



