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

### SECTION 105 OF THE ENERGY ACT 2004

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

Licence Number: **06718/19/0**

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

**Magallanes Renovables S.L.**  
**C/ Prego de Montaos 7**  
**36800 Redondela**  
**Spain**

#### 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; and
- 3) To construct any works within the Scottish marine area either in or over the sea, or under the seabed,
- 4) To remove any works within the Scottish marine area either in or over the sea, or under the seabed;

required in the execution of the works (including construction, operation, maintenance decommissioning) 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 17th March 2016.

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This licence remains in force from **28 January 2019** to **31 March 2020** or until the Works have been decommissioned in accordance with an approved Decommissioning Programme prior to this date.

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

Roger May

For and on behalf of the licensing authority

Date: 28 January 2019

## 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) **“the Application”** means the Application letters and supporting information submitted to the Licensing Authority, by the Company on 22<sup>nd</sup> May 2018;
- b) **“Commencement of the Works”** means the date on which the first vessel arrives on the Site to begin carrying on any Licensed Activity in connection with the construction of the Works, as described in Part 2 of this licence;
- c) **“Company”** means Magallanes Renovables S.L.(Company Registration Number B94015963) and having its registered office at C/ Prego de Montaos 7, 36800 Redondela, Spain;
- d) **“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;
- e) **“the 2010 Act”** means the Marine (Scotland) Act 2010;
- f) **“Licensable Marine Activity”** means the activities listed in section 21 of the 2010 Act authorised under this licence;
- g) **“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** e.g. means Magallanes Renovables S.L.(Company Registration Number B94015963) and having its registered office at C/ Prego de Montaos 7, 36800 Redondela, Spain;
- 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 1 and figure 2 contained in Part 4 of this licence;
- m) **“the Works”** means the construction, operation and maintenance, deposit and decommissioning of the Magallanes ATIR Tidal Energy Device; and
- n) **“MHWS”** means mean high water spring tide.

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 on 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 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 –

- (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.

### **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 the sheriff of any sheriffdom against a decision taken by the Licensing Authority under section 29(1) of the 2010 Act.

## 2. PART 2 – THE WORKS

### 2.1 Title of the Works

The title of the Works to which this licence relates to is the of Magallanes ATIR Tidal Energy Device.

### 2.2 Description of the Works

Installation, operation, maintenance and decommissioning of Magallanes ATIR Tidal Energy Device in Berth 1, Fall of Warness

As described in application dated 22 May 2018, and correspondence submitted in support of the application.

The main specifications of the Magallanes ATIR Tidal Energy Device will comprise of the following components:

<b>Item</b>	<b>Specification</b>
Overall length	45 m
Extreme moulded breadth	6 m
Operational draught	23.4 m
Maximum output power	Up to 2 MW
Number of rotors	2
Type of rotor	Open-bladed rotor
Rotor diameter	19 m
Rotor depth	More than 2.5 m clearance from sea surface (4.4 m approx.)
Blade/rotor design	Blades with counter-rotating mechanism
Mooring system	gravity-based anchors with four mooring lines attached (ca. 300 m, each)
Relative position of the device on the water's surface	Not more than 300 m from the berth cable end

### 2.3 Location of the Works

Located at berth 1 within the European Marine Energy Centre (EMEC) tidal test facility at the Fall of Warness, Firth, approximately 16 km from the Orkney Mainland, within the area bounded by joining the following points:

Fall of Warness lease area:

59° 08.601' N 002° 49.391' W  
59° 08.483' N 002° 49.538' W  
59° 08.368' N 002° 48.978' W  
59° 08.288' N 002° 49.243' W

Located within the European Marine Energy Centre ("EMEC") tidal nursery site of Shapinsay Sound, within the area bounded by joining the following points:

59° 00.191' N 002° 53.201' W  
59° 00.308' N 002° 52.999' W  
59° 00.231' N 002° 52.756' W  
59° 00.109' N 002° 52.956' 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

Steel/Iron	2500 tonnes
Cable	420 m
Composite	10 tonnes

#### TEMPORARY DEPOSITS

Concrete Bags/Mattresses	400 tonnes
Plastic/Synthetic	30 m <sup>3</sup>
Steel/Iron	150 tonnes

## 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>
MV C-Odyssey	Leask Marine	Multicat Vessel
MV C-Fenna	Leask Marine	Multicat Vessel
MV Uskmoor	Leask Marine	Dive Support/Personnel Transfer
MV Challenge	Leask Marine	Personnel Transfer
MV Explorer	Leask Marine	Personnel Transfer
Fusion 490 Workboat	Leask Marine	Line Boat
Erlend	Orkney Towage Ltd	Tug
Einar	Orkney Towage Ltd	Tug

## 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	The European Marine Energy Centre Ltd	Old Academy Business Centre Stromness Orkney KW16 3AW	Caitlin Long

### 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, and supporting information submitted by the Company on 22<sup>nd</sup> May 2018.

**Reason: To ensure compliance with the marine licence, the application for the marine licence and the supporting information**

##### 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 days 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 will, 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 Reports, deposits sheets.

**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 seek prior written approval from the Licensing Authority for any chemicals in an open system which are to be utilised in the construction, operation and maintenance of the Works. Requests for approval must be submitted in writing to the Licensing Authority no later than one month prior to its intended use or such other period as agreed by the Licensing Authority. The Licensee must ensure that no chemicals are used in an open system without the prior written approval of the Licensing Authority.

If the proposed chemical is on the OCNS list, the approval request must include the chemical name, volume or quantity to be used, the OCNS list grouping or rank and the proposed frequency of use.

If the proposed chemical is not on the OCNS list, the approval request must include details of chemical to be used, including safety data sheet, depth and current at the Site, quantities or volumes and the proposed frequency of use.

The Licensee must notify the Licensing Authority of the types of chemicals to be used in a closed containment system prior to use.

The Licensee should take all practicable steps to avoid leakages from a closed containment system into the Scottish marine area. Any such leakages must be reported to the Licensing Authority as soon as practicable.

**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").

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 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 Site/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 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.*

#### **3.2.1.2 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.*

#### **3.2.1.3 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 Licensing 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.*

#### **3.2.1.4 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 must 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**

The Licensee must, prior to and no less than 7 calendar days 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 Decommissioning**

The Decommissioning of the Works must, at all times, adhere to the Decommissioning Plan as submitted at Application (document titled 'Decommissioning Plan'). Any updates or amendments made to the approved Decommissioning Programme ("DP") must, pursuant to section 105(2) and (5) of the Energy Act 2004, be submitted in writing to the Licensing Authority for their prior written approval.

**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.*

#### **3.2.2.3 Construction Method Statement**

The Works must, at all times, be constructed in accordance with the Project Information Summary and Construction Method Statement as submitted at Application. Any updates or amendments made to the approved Project Information Summary 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.*

#### **3.2.2.4 Noise Registry**

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.*

#### **3.2.2.5 Navigation and Charting**

The Licensee must, no later than 7 days 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 Admiralty charts BA2562 and publications through the national Notice to Mariners system.

The Licensee must, no later than 7 days prior to Commencement of the Works, ensure that local mariners, fishermen's organisations and HM Coastguard, in this case the National

Maritime Operations Centre, 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 7 days 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 gain the approval/agreement of the responsible local navigation authority or the Harbour Authority/Commissioners/Council. The Harbour Authority/Commissioners/Council may wish to issue local warnings to alert those navigating in the vicinity to the presence of the works as deemed necessary.

The Licensee must, no later than 7 days 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.**

### **3.2.2.6 Third Party Certification or Verification**

The Licensee must, no later than 3 calendar months prior to the Commencement of the Works at Shapinsay Sound, 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).

The Licensing Authority are satisfied with the Third Party Certification or Verification ("TPC" or "TPV") provided at application for the test site Berth 1 in the Fall of Warness. Any requirements of the TPV for installation, operation and maintenance should be adhered to.

**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 Report (“TAR”)**

The Licensee must submit to the Licensing Authority a detailed TAR for each calendar month during the construction phase of the Works. The TAR must be submitted within 14 days of the end of each calendar month.

The TAR must include the nature and quantity of all substances and objects deposited and materials used in construction (as described in Part 2 of this licence) in that calendar month. Alterations and updates can be made in the following month’s TAR. Where appropriate, nil returns must be provided.

If the Licensee becomes aware of any substances, objects or materials on the TAR that are missing, or becomes aware that an accidental deposit has occurred, the Licensee must notify the Licensing Authority as soon as practicable. The Licensee must undertake such survey as directed by the Licensing Authority to locate the substances, objects and materials. If the Licensing Authority is of the view that any accidental deposits have occurred and should be removed, then the materials must be removed by the Licensee as soon as is practicable and at the Licensee's expense.

**Reason:** *To confirm that the deposits made were in accordance with the application documentation, in accordance with s.29(3)(c) of the 2010 Act 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 Nature and quantity of deposited substances and objects**

The Licensee must, in addition to the transportation audit reports which are required to be submitted to the Licensing Authority under condition 3.2.3.1 following the Commencement of the Works, submit audit reports, in writing, to the Licensing Authority, stating the nature and quantity of all substances and objects deposited below MHWS under the authority of this licence. Such audit reports must be submitted by the Licensee at monthly intervals, with the first such report being required to be submitted on a date no later than 1 month following the Commencement of the Works. Where appropriate, nil returns must be provided.

**Reason:** *To confirm that the deposits made were in accordance with the application documentation, in accordance with s.29(3)(c) of the 2010 Act.*

#### **3.2.3.3 Navigational Safety**

The Licensee must notify the UKHO of the progress of the Works during installation and decommissioning to facilitate the promulgation of maritime safety information and updating of nautical charts and publications through the national Notice to Mariners system.

The Licensee must notify local mariners, fishermen's organisations and HM Coastguard, in this case the National Maritime Operations Centre ([nmoccontroller@hmcg.gov.uk](mailto:nmoccontroller@hmcg.gov.uk)), on a weekly basis of the progress of Construction of the Works through local Notice to Mariners or any other appropriate means.

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 navigable depth is not altered by more than 5% referenced to 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.*

#### **3.2.3.4 Markings, lighting and signals of the Works**

The Licensee must ensure that the Works are marked and lit in accordance with the requirements of the MCA and 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 without the written approval of the Licensing Authority following consultation with the NLB and the MCA.

The device should be predominantly yellow in colour and lit by 2 all-round yellow lights, flashing once every five seconds (Fl. Y. 5s) with a nominal range of 3 nautical miles, mounted a minimum of 3 metres above any other obstruction.

The two lights shall be synchronised, and positioned on the outer, lengthwise extremities of the device.

One light shall have a yellow "St Andrews Cross" topmark installed above the light.

A radar reflector of such design as to increase the conspicuity of the device to marine radar should also be installed at a similar elevation.

The device to be marked by automatic identification system ("AIS") as an Aid to Navigation, transmitting a Type 21 message. A separate AIS Licence application will be required for this.

Notices to Mariners and Local Radio Navigation Warnings in conjunction with Orkney Marine Services (Vessel Traffic Service) should be issued prior to installation and decommissioning, clearly stating the nature and duration of the works taking place.

The Licensee must notify the UKHO of the device installation date/position and removal date so that British Admiralty chart BA2562 can be correctly updated.

**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**

The Licensee must, no later than 7 days 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 7 days 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**

The Licensee must, no more than 7 days 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**

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**

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 and publications through the national Notice to Mariners system.

The Licensee must ensure that local mariners, fishermen's organisations and HM coastguard, in this case the National Maritime Operations Centre ([nmcccontroller@hmcg.gov.uk](mailto:nmcccontroller@hmcg.gov.uk)), are made fully aware of the Completion of the Works.

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**

The Licensee must ensure that the Magallanes ATIR Tidal Energy Device device is monitored in case of catastrophic failure.

The Licensee must develop a contingency plan which will include the actions taken when responding to a catastrophic event. This plan must be developed and submitted, in writing, to the Licensing Authority.

**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**

The Licensee must operate and maintain the Works in accordance with the Project information Summary document submitted at Application.

The Licensing Authority must be notified at least 7 days in advance of any maintenance of the Works. In the event that these works are not covered by the licence and are considered by the Licencing Authority as being material and being licensable marine activities then the works will require a new Marine Licence.

**Reason:** *To ensure compliance 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 Decommissioning**

This licence does permit the Decommissioning of the Works. The Decommissioning of the Works must, at all times, be adhered to accordance with the approved Decommissioning Plan as submitted at Application. Any updates or amendments made to the approved Decommissioning Plan must be submitted, in writing, to the Licensing Authority for their prior written approval.

**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 and Section 105 of The Energy Act 2004*

4. **PART 4 – PROJECT LOCATION:** Figure 1: Located at berth 1 within the European Marine Energy Centre (EMEC) tidal test facility at the Fall of Warness, Firth, approximately 16 km from the Orkney Mainland:

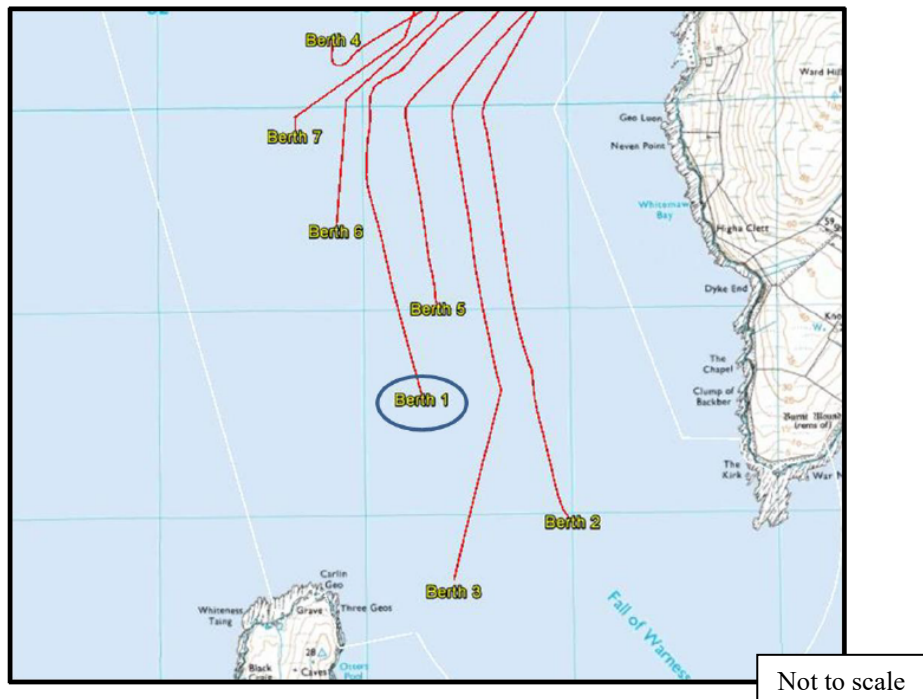


Figure 2: Located within the European Marine Energy Centre (“EMEC”) tidal nursery site of Shapinsay Sound:

