

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

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

Licence Number: **MS-00010450**

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

Orbital Projects 3 Limited
Innovation Centre - Orkney
Hatston Pier Road
Kirkwall
KW15 1ZL

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

The licence is valid from **01 April, 2024** until **31 December, 2045**

Signed:
[Redacted]

For and on behalf of the Licensing Authority

Date of issue: 20 October, 2023

1. PART 1 - GENERAL

1.1 Interpretation

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

- a) "**the 2010 Act**" means the Marine (Scotland) Act 2010;
- b) "**Licensed Activity**" means any activity or activities listed in section 21 of the 2010 Act which is, or are authorised under the licence;
- c) "**Licensee**" means Orbital Projects 3 Limited
- d) "**Mean High Water Springs**" means any area submerged at mean high water spring tide;
- e) "**Commencement of the Licensed Activity**" means the date on which the first vehicle or vessel arrives on the site to begin carrying on any activities in connection with the Licensed Activity;
- f) "**Completion of the Licensed Activity**" means the date on which the Licensed Activity has been installed in full, or the Licensed Activity has been deemed complete by the Licensing Authority, whichever occurs first;

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

1.2 Contacts

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

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

1.3 Other authorisations and consents

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

1.4 Variation, suspension, revocation and transfer

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

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

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

1.5 Breach of requirement for, or conditions of, licence

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

1.6 Defences: actions taken in an emergency

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

1.7 Offences relating to information

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

1.8 Appeals

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

2. PART 2 – PARTICULARS

2.1 Agent

2.2 Location of the Licensed Activity

Berth 3, Fall of Warness Tidal Test Site, European Marine Energy Centre ("EMEC"),

59° 08.157 'N 02° 49.288 'W

59° 07.799 'N 02° 48.839 'W

59° 08.446 'N 02° 48.443 'W

59° 08.101 'N 02° 47.971 'W

As shown in Annex One.

2.3 Description of the Licensed Activity

To construct, alter and improve (including decommissioning) the Orbital O2.2 floating tidal energy device at Berth 3, Fall of Warness tidal Test Site, EMEC

As described in the application dated 06 June, 2023 and correspondence submitted in support of the application.

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

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

Materials to be used in permanent construction

Steel/Iron - 4868 tonnes

Timber - 0.6 tonnes

Plastic/synthetic - 29 tonnes

Stone/rock/gravel - 480 tonnes (30 - 63 millimetres)

Concrete bags/mattresses - 384 tonnes

Cable - 1500 metres

Aluminium/zinc - 1.2 tonnes

Anchor paint - 0.3 tonnes

Resin - 0.6 tonnes

Grout - 6 cubic metres

Materials to be used in temporary construction

Steel/Iron - 210 tonnes

Submersible rig - 40 tonnes

2.5 Contractor and Vessel Details

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 The Licensee must at all times construct and maintain the works in accordance with the licence, the application and the plans and programmes approved by the Licensing Authority.

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

3.1.3 The Licensee must ensure that only the materials, substances or objects listed in Part 2 of the licence are used during the execution of the Licensed Activity and that all materials, substances or objects used during the execution of the Licensed Activity are inert and do not contain toxic elements which may be harmful to the marine environment, the living resources which it supports or human health.

3.1.4 The Licensee must ensure that the Licensed Activity does not encroach on any recognised anchorage, either charted or noted in nautical publications, within the licensed area.

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

3.1.6 The Licensee must notify Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (e-mail: sdr@ukho.gov.uk; tel.: 01823 484444) of the progress and upon completion of the Licensed Activity. Such notification must include a copy of the licence, and wherever possible, 'as built plans', in order that all necessary amendments to nautical publications are made.

3.1.7 If it is desired to display any marks or lights not required by the licence then details must be submitted to the Northern Lighthouse Board and its ruling complied with. The display of unauthorised marks or lights is prohibited.

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

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

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

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

3.1.11 Should the Licensee proceed to undertake the Licensed Activity under the authority of this licence, the Licensed Activity authorised under the previous marine licence in favour of Orbital Projects 3 Limited, dated 27 July 2022 (MS-00009694) is not permitted.

3.2 Prior to the commencement of the Licensed Activity

3.2.1 The Licensee must complete and submit a proposed activity form in the online Marine Noise Registry for all Licensed Activity that will produce loud, low to medium frequency (10Hz-10kHz) impulsive noise no later than seven days prior to commencement of the Licensed Activity. If any aspects of the Licensed Activity differs from the proposed activity form in the online marine noise registry, the Licensee must complete and submit a new proposed activity form no later than seven days prior to commencement of the Licensed Activity.

3.2.2 The Licensee must provide the name and function of any agent, contractor or sub-contractor appointed to undertake the Licensed Activity, as soon as is reasonably practicable prior to the Licensed Activity commencing.

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

3.2.4 The Licensee must, prior to and no less than seven calendar days before the Commencement of the Licensed Activity, notify the Licensing Authority, in writing, of the date of Commencement of the Licensed Activity authorised under the licence.

3.2.5 The Licensee must ensure that HM Coastguard, in this case zone2@hmcg.gov.uk, The National Maritime Operations Centre is made aware of the works prior to commencement.

3.2.6 The Licensee must issue local notification to marine users – including fisherman's organisations, neighbouring port authorities and other local stakeholders – to ensure that they are made fully aware of the Licensed Activity, clearly stating the nature and duration of the works.

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

3.2.8 The Licensee must, no later than 3 calendar months prior to the Commencement of the Works, provide the Licensing Authority with Third Party Certification or Verification ("TPC" or "TPV") (or a suitable alternative as agreed in writing with the Licensing Authority). The TPV or TPC must either cover the entirety of the works for the lifespan of the works or, where the licensee can demonstrate to the Licensing Authority that this is not possible, set out the initial TPC or TPV as far as reasonably practicable and clearly document the timeframe for submission of all further TPC or TPV to cover the entirety of the works for the lifespan of the works. In this condition, the term "lifespan" means the entire period that this licence remains in force or until the works have been decommissioned in accordance with an approved Decommissioning Programme prior to this date.

The TPC or TPV should follow the guidance provided in the Offshore wind, wave and tidal energy applications: consenting and licensing manual published by Marine Scotland or any other relevant document which may supersede this. There must be no Commencement of the Works unless the TPC or TPV is provided as described above unless otherwise agreed with the Licensing Authority.

3.2.9 The Licensee must, no later than three months prior to the Commencement of the Licensed Activity, submit an updated Project Environmental Monitoring Programme ("PEMP"), in writing, to the Licensing Authority for its written approval. Such approval may only be granted following consultation by the Licensing Authority with NatureScot, and any such other advisors or organisations as may be required at the discretion of the Licensing Authority. Commencement of the Licensed Activity cannot take place until such approval is granted.

The updated PEMP must include commitment to the minimum distance maintained by vessels from designated seal haulout sites, a PEMP reporting schedule and methodology for acoustic monitoring, unless otherwise agreed with the Licensing Authority.

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

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

3.2.12 The Licensee must submit full details of the vessels to be utilised in respect of the Licensed Activity to the Licensing Authority no later than one month, or at such a time as agreed with the Licensing Authority, prior to the Commencement of the Licensed Activity. The vessel details provided must include the vessel type, vessel's International Maritime Organisation Number and vessel owner or operating company.

3.3 During the Licensed Activity

3.3.1 The Licensee must ensure that the Licensed Activity is maintained at all times in good repair.

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

3.3.3 The Licensee must ensure that only those agents, contractors or sub-contractors notified to the Licensing Authority are permitted to undertake the works and/or Licensed Activity.

3.3.4 The Licensee must ensure that a copy of the licence is given to each contractor employed to undertake the Licensed Activity. The Licensee must ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:

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

3.3.5 The tidal energy device must be predominately yellow in colour, with 2 lit yellow poles fitted with radar reflectors, mounted at either end of the tidal energy device. The lights should display a character of flash yellow every three seconds (Fl. Y. 3s) with a nominal range of 3 nautical miles, mounted a minimum of 3 metres above any other obstruction and be synchronised and positioned on the outer, lengthwise extremities of the device. One light shall have a yellow "St Andrew's 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 tidal energy device should be fitted with an Aid to navigation (Type 21) Automatic Identification System.

3.3.6 The Licensee must apply to the Northern Lighthouse Board for a Statutory Sanction to establish the Aid to Navigation via navigation@nlb.org.uk.

3.3.7 The tidal energy device must be actively monitored during its installation, operation, maintenance and removal phases and any catastrophic failure events must be responded to as described within the approved ERCoP.

3.3.8 The Licensed Activity must, at all times, be constructed in accordance with the Project Information Document ("PID") and Project Environmental Monitoring Programme ("PEMP") as submitted at Application or otherwise approved, in writing, by the Licensing Authority. Any updates or amendments made to the approved PID and PEMP must be submitted, in writing, to the Licensing Authority for their prior written approval.

3.3.9 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. The materials used under the authority of the licence shall be removed to the satisfaction of the Licensing Authority.

3.4 Upon Completion of the Licensed Activity

3.4.1 The Licensee must, no later than 14 days following the Completion of the Licensed Activity notify the Licensing Authority, in writing, of the date of the Completion of the Licensed Activity.

3.4.2 The Licensee must notify the UK Hydrographic Office to permit the promulgation of maritime safety information and updating of nautical charts and publications through the national Notice to Mariners system. 'As-built' plans should be provided to the UK Hydrographic Office to enable the update of navigational publications.

3.4.3 The Licensee must submit written reports to the Licensing Authority stating the exact location of the moorings and the nature and total quantity of all materials and structures used in the construction of the works. The written report must be submitted to the Licensing Authority within one month of construction.

3.4.4 The Licensee must take all reasonable, appropriate and practicable steps to ensure the removal of all materials, structures and objects, and restore the site to its original condition, in accordance with the PEMP and the approved DP to the satisfaction of the Licensing Authority.

3.4.5 The Licensee shall ensure that at least three months prior to the expiry of the licence, the works must be altered by taking all materials and structures to a place above Mean High Water Springs.

NOTES

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