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Maritime Area Regulatory Authority

2nd Floor, Menapia House,

Drinagh Business Park,

Drinagh,

Wexford,

Y35RF29

9th August 2024

Sent by email only to licence@mara.gov.ie

Re: Maritime Area Planning Act 2021 – Application for a licence to carry out marine environmental surveys. Ref: LIC230008

A Chara,

ESB acknowledge receipt of proposed conditions that shall apply to the Marine Usage Licence (LIC230008) as issued by the Maritime Area Regulatory Authority (MARA) on the 2nd of August 2024.

ESB confirm acceptance of the majority of these conditions subject to some suggested minor rewording to 5no conditions. Details of which are provided in Attachment A of this letter.

I would appreciate acknowledgement of this letter and if possible, provide timelines for the final decision on this license.

If you have any queries please contact me. I would be grateful if correspondence could be sent by email [REDACTED] if possible.

Yours sincerely,

[REDACTED]

[REDACTED]

Consenting Project Manager, Engineering & Major Projects, ESB.

Attachment A: ESB Comments relating to Maritime Usage Licence Application (LIC230008)

Section	Condition	Original Proposed Condition	Comment
1. Definitions	1.1	<p>In this Licence, the terms are as defined in Part 1 section 2(1), Part 5 and Part 6 of the Act are applicable unless otherwise stated here.</p> <ul style="list-style-type: none"> (a) "Act" means the Maritime Area Planning Act 2021. (b) "Commencement Date" means the date identified as the Commencement Date on the Particulars Schedule. (c) "Condition" means (i) a provision of this Licence as set out in the Particulars Schedule and/or the numbered clauses which contains a condition which may be attached to this Licence by virtue of Section 120 of the Act; and (ii) each of the Specific Conditions. (d) "Force Majeure" means an event or circumstance or a combination of events and/or circumstances not within the reasonable control of the Holder which has the effect of delaying or preventing the Holder from complying with its obligations under this Licence or the Act provided that Force Majeure shall not include lack of funds and/or the inability of the Holder to pay, the mechanical or electrical breakdown or failure of machinery, plant or other facilities owned or utilised by the Grantor in carrying out the Permitted Maritime Usage or any strike or industrial action save for a strike or industrial action of a national or industry wide character. (e) "the Grantor" means the Maritime Area Regulatory Authority (f) "the Holder" means the person who has been granted this Licence as set out in the Particulars Schedule. (g) "Law" means any Act of the Oireachtas, regulation, statutory instrument, bye law, European Community obligation, direction of a regulatory or other competent authority, condition of any licence, authorisation, licence or other permission granted by any regulatory or other competent authority and any decision of a court of competent jurisdiction, but does not include this Licence. (h) "This Licence" means this licence (including for the avoidance of doubt the foregoing Particulars Schedule and Recitals) and its appendices. (i) "Licensed Area" means that part of the maritime area as identified in Appendix 1. (j) "Particulars Schedule" means the schedule of information on page 3 of this Licence. (k) "Permitted Maritime Usage" means the maritime usage identified as the Permitted Maritime Usage in the Particulars Schedule (l) "Pre-commencement Conditions" means any Condition which requires the Grantor to carry out an obligation under that Condition before commencing the Permitted Maritime Usage (m) "Specific Conditions" means the conditions as referenced in condition 6 and set out in Appendix 2 	Noted

		<p>(n) "State Persons" means Ireland, any Minister of the Government and where the context so requires, any organ of the State (including the Grantor).</p> <p>(o) "State Territory" means the Republic of Ireland</p> <p>(p) "Term" means the period of time identified as the Term in the Particulars</p>	
2. Interpretation	2.1	Any requirement in this Licence for the Holder not to do any act or thing includes an obligation not to permit or suffer such act or thing to be done and to use best endeavours to prevent such act or thing being done by another person.	Noted
	2.2	To the extent that there is a conflict between this Licence and the applicable provisions of the Act, the interpretation of the Act shall prevail.	
	2.3	Any reference to a statute or a statutory instrument includes any amendments or re-enactments for the time being in force.	
	2.4	Unless the context requires otherwise, words in the singular may include the plural and vice versa.	
	2.5	Headings are inserted for convenience only and do not affect the construction or interpretation of this Licence.	
3. Grant of Licence	3.1	This Licence is granted by the Grantor to the Holder pursuant to section 119(1)(a) of the Act.	Noted
	3.2	This Licence permits the Holder to occupy and use the Licensed Area for the Term on a non-exclusive basis for the purpose of carrying out the Permitted Maritime Usage in accordance with the Conditions and the requirements of the Act.	
	3.3	This Licence does not confer on the Holder any estate or proprietary interest in the Licensed Area or any other part of the maritime area and for the avoidance of doubt the Grantor and/or any other State Persons authorised so to do may at any stage during the Term grant maritime area consents or licences in respect of the Licensed Area.	
4. Commencement of the Permitted Maritime Usage	4.1	<p>Notwithstanding the Commencement Date, the Holder shall not commence any activities, operations, works or development associated with the Permitted Maritime Usage in the Licensed Area unless and until:</p> <p>(i) the Holder has complied with all Pre-Commencement Conditions; and</p> <p>(ii) the Holder has provided the Grantor a minimum of 14 days advance notice in writing of the Holder's intention to commence the Permitted Maritime Usage in the form and manner as set out in Appendix 3, unless otherwise agreed with the Grantor. This notification shall include an up to date Programme of Works for the completion of the Permitted Maritime Usage</p>	Noted
5. Compliance with this licence and the Act	5.1	The Holder shall not use the Licensed Area for any purpose other than the Permitted Maritime Usage.	Noted
	5.2	The Holder shall ensure that its contractors, and their subcontractors, are made aware of all Conditions.	
6. Specific Conditions	6.1	The Holder shall comply with the Specific Conditions.	Noted
	6.2	<p>If the Holder becomes aware that the Permitted Maritime Usage authorised by this Licence does not comply with the Specific Conditions the Holder shall immediately:</p> <p>(i) notify the Grantor in writing with particulars of the non-compliance; and</p> <p>(ii) unless the Grantor otherwise agrees in writing, take all reasonable and timely steps to ensure that the Permitted Maritime Usage is undertaken in accordance with the Specific Conditions and that any adverse consequences</p>	

		of not complying with the Specific Conditions are rectified to the satisfaction of the Grantor as soon as reasonably possible.	
7. Change in Circumstances	7.1	The Holder shall provide the Grantor with notice in writing of any material change of circumstances within the meaning of section 136 of the Act.	Noted
8. Indemnity	8.1	The Holder shall keep the Grantor, the State Persons, and their officers, servants, visitors, agents and employees fully indemnified from and against all or any actions, proceedings, claims, demands, losses, costs, fees, expenses, damages, penalties and other liabilities: (i) arising directly or indirectly from the undertaking of the Permitted Maritime Usage the subject of this Licence; and (ii) arising directly or indirectly from a failure by the Holder to comply with: a) a Condition; b) a condition deemed to be attached to this Licence in accordance with the Act; c) any provision of the Act relevant to this Licence;	Noted
	8.2	Without prejudice to the generality of the foregoing, the Holder shall make good all loss sustained by the Grantor in consequence of any breach by the Holder of any Conditions.	Noted
9. Insurance	9.1	Without prejudice to the Holder's liability to indemnify the Grantor, the Holder shall: (i) effect and keep in force a public liability insurance policy of indemnity in the joint names of the Grantor and the Holder in an insurance office licensed to operate in the State Territory with a limit of € 6,500,000.00 (six million five hundred thousand euro) in respect of any one claim or a series of claims arising out of a single occurrence for any damage, loss or injury which may occur to any property (not being the property of the Grantor or the Holder) or to any person by or arising out of the admission of any person to the Licensed Area, and to extend such policy so that the Grantor is indemnified by the insurers in the same manner as the Holder; (ii) effect and keep in force an employer's liability insurance policy of indemnity in the name of the Holder in an insurance office licensed to operate in the State Territory with a limit of €13,000,000.00 (thirteen million euro) for any one claim or a series of claims arising out of a single occurrence and to extend such policy so that the Grantor is indemnified by the insurers in the same manner as the Holder in respect of all actions, costs, proceedings, losses, damages, or claims for personal injuries by employees of the Holder. This policy should include an indemnity to principles clause with a specific indemnity to the Grantor; (iii) whenever required to do so by the Grantor, produce to the Grantor for inspection the said policy or policies together with the latest receipt of the premium paid for renewal of the said policy or policies together with evidence of waiver of subrogation rights against the Grantor by the Holder's insurers, and to comply with all	<p>Clause 9.1 (i) requires the Holder to hold Public liability insurance in "joint names" with the Grantor. ESB preference would be to provide a specific indemnity to the Grantor. The following alternative wording is proposed: <i>"Without prejudice to the Holder's liability to indemnify the Grantor, the Holder shall: (i) effect and keep in force a public liability insurance policy of indemnity in an insurance office licensed to operate in the State Territory with a limit of € 6,500,000.00 (six million five hundred thousand euro) in respect of any one claim or a series of claims arising out of a single occurrence for any damage, loss or injury which may occur to any property (not being the property of the Grantor or the Holder) or to any person by or arising out of the admission of any person to the Licensed Area, and to extend such policy so that the Grantor is indemnified by the insurers in the same manner as the Holder. This policy should include a specific indemnity to the Grantor."</i></p> <p>Clause 9.1 (iii) Requires the Holder to provide insurance policies rather than a standard confirmation of cover letter and a waiver of subrogation in favour of the Grantor.</p>

		<p>conditions pertaining to any such policy or policies;</p> <p>(iv) (not do or omit to do anything which might cause any policy of insurance (if required) relating to the Licensed Area or any other part of the maritime area affected by the Permitted Maritime Usage to become void or voidable, wholly or in part, nor (unless the Holder has previously notified the Grantor and the Holder has agreed to pay the increased premium) to do anything whereby any abnormal or loaded premium may become payable;</p> <p>(v) immediately notify the Grantor in writing of the making of any claim under any policy of insurance and to provide the Grantor with all information in relation to any such claim;</p> <p>(vi) ensure that any contractors, servants, agents, invitees or visitors of the Holder engaged in connection with activities in the Licenced Area or otherwise in connection with this Licence have appropriate insurance and that all copies of such insurance policies shall be provided to the Grantor as soon as is reasonably practicable;</p>	<p>ESB preference is the “waiver of subrogation” is removed and a detailed cover letter is provided rather than providing the full ESB policy. The following alternative wording is proposed: <i>“whenever required to do so by the Grantor, produce to the Grantor for inspection certificates of insurance in the form of insurance broker cover letters and to comply with all conditions pertaining to any such policy or policies”.</i></p> <p>Clause 9.1 (v), requires the holder to notify the Grantor immediately of any claim being made – Given ESB’s size and scale it may be unachievable to immediately notify the grantor. The following alternative wording is proposed: <i>“As soon as reasonably practicable, the holder should notify the Grantor in writing if making any claim under any policy of insurance and to provide the Grantor with all information in relation to any such claim.</i></p>
<p>10. Rights and Obligations of the licence holder on Termination or expiry of the licence</p>	<p>10.1</p>	<p>The Holder shall remove all plant, machinery, equipment or any other thing used in connection with the Permitted Maritime Usage from the Licensed Area (or if applicable from any other part of the maritime area) and restore the Licensed Area (and if applicable any other part of the maritime area) to the condition it was prior to the commencement of the Permitted Maritime Usage to the satisfaction of the Grantor.</p>	<p>Noted</p>
<p>11. Force Majeure</p>	<p>11.1</p>	<p>Except as otherwise provided by this Licence, the Holder is rendered wholly or partially incapable of performing all or any of its obligations under this Licence or the Act, by reason of Force Majeure:</p> <p>(i) as soon as is reasonably practicable, the Holder shall notify the Grantor, identifying the nature of the event, its expected duration and the particular obligations affected and shall furnish reports at such intervals reasonably requested by the other party during the period of Force Majeure;</p> <p>(ii) this Licence shall remain in effect but the Holder’s obligations, except for an obligation to make payment of money shall be suspended, provided that the suspension shall be of no greater scope and no longer duration than is required by the Force Majeure;</p> <p>(iii) the Holder shall use all reasonable efforts to remedy its inability to perform all or any of its obligations under this Licence by reason of Force Majeure and shall do all things reasonably practicable to mitigate the consequences of the Force Majeure and shall resume full performance of its obligations under this Licence as soon as is reasonably practicable;</p>	<p>Noted</p>

12. Inspections	12.1	The Holder of a licence shall facilitate and shall not obstruct the Grantor in: (i) entering the Licenced Area for the purpose of enabling the Grantor to carry out inspections (including periodic inspections) for the purposes of ascertaining whether or not subparagraph (ii) applies, (ii) entering the Licensed Area if the Grantor gives the Holder notice in writing that the Grantor is satisfied that the Holder has materially contravened: (a) a Condition; (b) a condition deemed to be attached to a Licence in accordance with the Act; (c) a provision of this Act relevant to this Licence.	Noted
13. Exercise of Rights	13.1	Save as may be permitted under this Licence, the Holder shall exercise this Licence in such a manner as to cause no damage or injury to the Licensed Area, any occupants of the Licensed Area and any other part of the maritime area affected by the Permitted Maritime Usage and to forthwith from time to time with due diligence repair and make compensation for any such damage or injury that may be so caused.	For the removal of doubt, can MARA include a definition for " <i>occupants of the Licenced Area</i> " in Condition No. 1 Definitions.
14. Notices	14.1	Any notice to be given by the Holder under this Licence shall either be sent by registered post or by email.	Noted
	14.2	Where the notice is sent by registered post, the notice shall be furnished or sent to the address of the Grantor as contained in the Particulars Schedule.	Noted
	14.3	Where the notice is delivered by email, it shall be issued to the e-mail address of the Grantor as contained in the Particulars Schedule.	Noted
	14.4	All notices shall be deemed to have been served as follows: (i) if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of An Post (and not returned undelivered); (ii) (ii) if communicated by email, on the next calendar day following transmission.	Noted
15. Amendments this Licence	15.1	Section 125 of the Act shall apply to any application by the Holder to amend this Licence.	Noted
16. Surrender	16.1	Sections 126 and 127 of the Act shall apply to any application by the Holder to surrender this Licence.	Noted
17. Automatic Termination	17.1	Without prejudice to any other remedies available pursuant to this Licence and at law, this Licence shall terminate immediately upon the occurrence of any of the events provided for in section 144(1) of the Act.	Noted
18. Termination for Breach	18.1	Without prejudice to any other remedies available pursuant to this Licence and at law, the Grantor may terminate this Licence for breach in accordance with section 144A of the Act.	Noted
19. Governing Law and Jurisdiction	19.1	This Licence and all other documents relating to it shall be governed by and construed only in accordance with the laws of the Republic of Ireland.	Noted
Appendix 1 The Licence Area		That part of the maritime area outlined in red on the Maritime Usage Licence Map 1 of 1, LIC230008	Noted
Appendix 2 Specific Conditions	20	Prior to the commencement of the Permitted Maritime Usage the Holder shall consult and comply with the requirements of the Underwater Archaeology Unit of the Department of Housing Local Government and Heritage. National Monuments Service, G37, Custom House, Custom House Quay, Dublin 1, D01 W6X0.	Noted

	21	<p>Prior to the commencement of the Permitted Maritime Usage the Holder shall, through consultation and agreement with the Department of Transport, Marine Survey Office and Commissioners of Irish Lights, arrange for the publication of a Marine Notice through the Maritime Safety Policy Division. Navtext and radio broadcast warnings frequency to be agreed with the Irish Coast Guard.</p>	<p>This condition appears to be more applicable to projects located further offshore. ESB are of the understanding that all marine activates from Kerry Head to Loop Head and Limerick City fall under the statutory jurisdiction of Shannon Foynes Port Company (SFPC).</p> <p>Can MARA clarify if marine notices should be agreed with and issued through SFPC instead of the Department of Transport.</p>
	22	<p>On completion of the Permitted Maritime Usage, the Holder shall submit to MARA a statement from a Chartered Engineer confirming that works are completed in accordance with the documents submitted and the Maritime Area has been restored to its natural condition.</p>	<p>Given the nature of the works on the seabed and the potential for wide interpretation of this condition, new wording is proposed: The following alternative wording is proposed: <i>On completion of the Permitted Maritime Usage, the Holder shall submit to MARA a statement from a Chartered Engineer confirming that works are completed in accordance with the documents submitted and the Maritime Area has been restored to its original profile, where reasonable to do so.</i></p>
	23	<p>Prior to the commencement of the Permitted Maritime Usage, the Holder shall engage with other relevant authorisation holders for the maritime area the subject of this licence, including but not limited to the following; a. The holder of Oyster Fishery Order Site id: T08/004BOFO, b. The holder of Foreshore Licence File reference: FS005791 for Submarine Power Cable, to plan and schedule the Permitted Maritime Usage to ensure any disruption, if any, to the other relevant authorisation holders is managed appropriately. Records of all engagements and consultations held and agreements reached, if any, shall be maintained by the Holder and made available to the Grantor if requested.</p>	<p>Noted</p>
	24	<p>This licence is for the purposes of licensing under the Act and nothing in this licence shall be construed as negating the Holders statutory obligations or requirements under any other enactments or regulations.</p>	<p>Noted</p>
	25	<p>The Permitted Maritime Usage shall be carried out in accordance with the plans and particulars submitted by the Holder in support of the application for this Licence.</p>	<p>Noted</p>
	26	<p>The Holder shall ensure that all vessels engaged in this Permitted Maritime Usage conform to Irish Certification standards for vessels, as required by the Marine Survey Office.</p>	<p>Noted</p>
	27	<p>The Holder shall ensure that all vessels used in this Permitted Maritime Usage are free of invasive marine species on their hulls and in their ballast water.</p>	<p>Noted</p>

	28	The holder shall give consideration to and carry out early consultation with the operators of the Killimer-Tarbert ferry to ensure there is no disruption to the operation of the ferry route.	Noted
	29	<p>Marine Mammals</p> <p>i. The Holder shall appoint a marine mammal observer for the purposes of overseeing the activity. The Holder shall ensure the marine mammal observer shall satisfy the requirements of National Parks and Wildlife Service guidance.</p> <p>ii. The Holder shall implement risk control and mitigation measures for marine mammals in accordance with National Parks and Wildlife guidance.</p> <p>iii. All reporting shall be forwarded to offshore@npws.gov.ie</p>	Noted
	30	<p>Reef Habitat</p> <p>i. The Holder shall review the outputs of the geophysical surveys to identify any areas of reef habitat; and no environmental, ecological or metocean survey equipment will be deployed onto identified reef habitat.</p> <p>ii. The Holder shall undertake a visual survey (i.e., undertaken by divers, autonomous underwater vehicle (UAV) or remotely operated vehicle (ROV)) at each survey location, prior to undertaking the geotechnical and benthic survey. If reef habitats are present, geotechnical sampling locations shall be micro sited away from the reef habitat and benthic sampling locations shall be sampled by video survey only.</p> <p>iii. All jack-up operations associated with geotechnical surveys, or placement of moorings for metocean devices (ADCPs) shall be positioned to avoid any identified reef features.</p>	Noted
	31	<p>In-combination effects</p> <p>i Prior to the commencement of the Permitted Maritime Usage, the Holder shall coordinate with other authorisation holders carrying out geophysical, seismic and geotechnical activities within a 10km radius of the site boundary.</p> <p>ii. Where a vessel-to-vessel distance of greater than 10 km cannot be maintained with respect to geophysical, seismic and geotechnical activities, the Holder shall co-ordinate with other authorisation holders to prevent temporal overlap of the activities. Where the Holder can submit evidence that there is a vessel-to-vessel distance of greater than 10km, no temporal co-ordination of activities is required.</p> <p>iii. Where the Holder becomes aware of temporal overlap that cannot be resolved within the prescribed distance, the Holder shall notify the Grantor who shall determine the timing of activities.</p> <p>iv. Records of all engagements held and agreements reached, if any, shall be maintained by the Holder and made available to the Grantor if requested.</p>	Noted

	32	On completion of the Permitted Maritime Usage the Holder shall provide the United Kingdom Hydrographic Office (UKHO) at hdc@hdc.hydro.gov.uk with the final bathymetric data from this Permitted Maritime Usage so that the appropriate charts can be updated.	Noted
	33	The Holder is required to submit details of all acoustic surveys undertaken in accordance with this licence to Marine Environment, Department of Housing, Local Government and Heritage at marine.env@housing.gov.ie . This data shall be provided in the reporting format of the OSPAR Impulsive Noise registry.	For the removal of doubt. Can MARA include a draft template for the OSPAR reporting format in the final licence to ensure compliance with Condition 33.
	34	The Holder shall keep the following documents together and available for inspection by the Grantor: i. a copy of the licence related to this Permitted Maritime Usage; ii. all correspondence with the Grantor; iii. up to date drawings, plans and maps relating to the Permitted Maritime Usage; iv. such records and/or photographs required to demonstrate compliance by the Holder with the Specific Conditions; v. marine positional log; and, vi. any elements of the licence application and associated documentation referenced in this licence.	Noted
	35	Accidental events The Holder shall ensure that there is an oil pollution emergency plan on-board any survey vessels. This plan should specify: i. Information on the location and detail of spill response resources on-board; ii. Information on crew training in relation to oil pollution response; iii. How crew will interface with other site investigation operators, where applicable.	Noted