

13 June 2012

Crown Estate coastal foreshore and seabed Local Management Agreement

Instruction Notes for completion of this Agreement:-

Note 1: Complete legal designation of the Local Partner(s)

Note 2: Complete milestones from the Business Plan

Note 3: Complete each milestone date from the Business Plan

Note 4: Attach the plan with the Agreement Area outlined red and where appropriate mark out (i) any relevant areas within the Agreement Area required for each occupancy agreement outlined in the Business Plan and (ii) any relevant areas of adjacent dry land, foreshore or seabed necessary to carry through the Business Plan

Note 5: Complete start date and the duration of the Agreement. The duration will reflect the completion of all the Milestone Dates but should not normally exceed 10 years. The Milestone Dates will reflect the scale and complexity of any proposed development.

Note 6: These clauses are jurisdiction specific. It is drafted for Scotland but should be amended as appropriate for other jurisdictions.

Note 7: Complete the agreed Milestones and the Milestone Dates from the Business Plan

Note 8: Insert plan of Agreement Area as per Note 4.

Note 9: Insert forms of relevant Occupancy Agreement for applicable jurisdiction – to include details of duration of each occupancy agreement. It may be that only one form of Occupancy Agreement is needed in which case paragraph 7.2 (a) is not needed.



DATED _____ **20[]**

THE CROWN ESTATE COMMISSIONERS

and

[LOCAL PARTNER]

LOCAL MANAGEMENT AGREEMENT
for
[Foreshore / seabed at [•]]

Anderson Strathern LLP
1 Rutland Court
Edinburgh EH3 8EY

Ref. []

Contents [AMEND PER FINAL FORM/LAYOUT]

INDEX

Clause

- 1 Purpose of this Agreement
 - 2 Length of Agreement
 3. Area to which Agreement applies
 - 4 Local Partner's duties
 - 5 Early Access and works and equipment
 - 6 Public Rights and The Crown Estate rights
 - 7 Occupancy Agreement
 - 8 Rights to bring this Agreement to an end
 - 9 General Matters
-
- Annex 1 Milestones
- Annex 2 Plan of Agreement Area
- Annex 3 Form of Occupancy Agreements

AGREEMENT

Between

THE CROWN ESTATE – meaning The CROWN ESTATE COMMISSIONERS on behalf of Her Majesty acting in exercise of the powers of The Crown Estate Act 1961 (And their successors)

and

The Local Partner [Full designation – **Note 1]**

1 Purpose of this Agreement

The purpose of this Agreement is to assist the Local Partner:

- (1) to plan for, prepare and develop its proposals for development and/or use of [foreshore] [seabed] [foreshore and seabed] as [the proposals are] set out in column 1 of Annex 1 to the Agreement (“the Milestones”) **[Note 2]**;
- (2) to consult and discuss the proposals with relevant local interest bodies and persons;
- (3) to arrange necessary funding for carrying out and operating the proposals;
- (4) to allow the Local Partner to proceed with taking forward its proposals which have been agreed with the Crown Estate and are set out in the Local Partner’s Business Plan dated [] (“the Business Plan”); and
- (5) to apply for and obtain all necessary statutory and other consents to enable the proposals in the Business Plan to be lawfully conducted.

2. Length of this Agreement

This Agreement starts on the last date of signing of it and will run for [– **Note 5**] years from that date unless brought to an end earlier [in terms of] (“the Period”).

3 Area to which this Agreement applies

3.1 Agreement Area

This Agreement applies to the area of [foreshore] [seabed] [foreshore and seabed] shown outlined in [red] on the plan in Annex 2 **[Note 4]** (“the Agreement Area”) only.

3.2 Changes to Agreement Area

3.2.1 The Crown Estate can change the Agreement Area to exclude any part or parts in any of the following circumstances if The Crown Estate reasonably considers it is appropriate to do so:

- (i) if part or parts are required for matters relating to interests of importance (which may include, for example, matters such as the defence of the realm, the generation or supply of energy whether from oil, gas, wind, wave or tidal power or any other source, the provision of infrastructure for communications of any sort, for water and/or sewerage of any sort, matters of public safety or security, the exploration for the extraction/exploitation of minerals, matters connected with aquaculture or any other matter of national or local interest) which in the reasonable opinion of The Crown Estate is necessary in, or beneficial to the interests of the nation or general locality.
- (ii) if required to comply with any statute or statutory obligation or with any direction from any government or other appropriate authority.

3.2.2 Where it is reasonably possible to do so The Crown Estate will first discuss the consequences of excluding any such areas from the Agreement Area with the Local Partner and will consider if alternate available areas of approximately equivalent extent may be offered for inclusion in the Agreement Area. In no circumstances, however, will The Crown Estate be prevented from excluding any such areas from this Agreement nor shall they be liable for any compensation to the Local Partner for doing so.

3.2.3 Any area or areas to be excluded from the Agreement Area under the powers in this paragraph 3.2 shall be excluded by The Crown Estate giving a written notice to the Local Partner specifying the area or areas to be excluded.

3.2.4 The Local Partner shall give a written notice to The Crown Estate specifying any area or

areas within the Agreement Area it no longer requires to be part of the Agreement Area.

- 3.2.5 Except as set out in this paragraph 3.2, the Agreement Area cannot be changed unless both The Crown Estate and the Local Partner agree.

4. Local Partner's Duties

4.1 Business Plan and Milestones

- 4.1.1 The Milestones set out in column 1 of Annex 1 have been agreed between the Local Partner and The Crown Estate, and form part of the Business Plan.

- 4.1.2 The Crown Estate and the Local Partner agree that the dates by which the steps required to take the proposals in the Business Plan forward are set out in column 2 of Annex 1 ("the Milestone Date **[Note 3]**").

- 4.1.3 The Local Partner shall:

- (a) take all steps necessary to meet the Milestones by the relevant Milestone Date,
- (b) at all times keep The Crown Estate informed of progress on such steps
- (c) supply to The Crown Estate at least quarterly a written report on the steps taken and advise The Crown Estate if the Local Partner anticipates the relevant Milestones will be achieved within the agreed timescales and, if not, why not,
- (d) arrange an annual meeting with The Crown Estate to review progress generally on the Milestones and associated matters,
- (e) not lodge any application for any statutory consent unless it is in accordance with the Business Plan,

- 4.1.4 No change to either the Business Plan or the Milestones or their respective Milestone Dates can be made unless both The Crown Estate and the Local Partner agree. Neither party is obliged to agree to any such changes.

4.2 Nuisance

The Local Partner must not do anything that would cause damage, annoyance, nuisance or disturbance to any owners or occupiers of adjacent property.

4.3 Indemnity

The Local Partner must keep The Crown Estate free from any claims by any person caused by any acts or failures of the Local Partner whether affecting the Agreement Area or any property of any other person. If any claims are made against The Crown Estate as a result of anything done or omitted to be done by the Local Partner then the Local Partner must fully indemnify The Crown Estate.

5 Early Access and works and equipment

5.1 If the Local Partner wants to use the Agreement Area in any way, or carry out any surveys, prior to entering into the Occupancy Agreement, it must first sign a separate agreement with The Crown Estate.

5.2 Unless otherwise agreed with The Crown Estate any equipment or items placed on the Agreement Area by the Local Partner, or by any person for them, must be removed and any repair any work needed as a consequence, carried out and completed to the reasonable satisfaction of The Crown Estate when this Agreement comes to an end in accordance with the provisions of the separate agreement.

6 Public Rights and The Crown Estate Rights

6.1 Public Rights

The Local Partner has no authority under this Agreement to and must not interfere with any public rights that may affect the Agreement Area.

6.2 The Crown Estate Rights

6.2.1 Rights as Owner

The Crown Estate may exercise any of the rights of the owner of the Agreement Area at any time during this Agreement. This includes dealing with any statutory or other notice, matters of safety or security and compliance with any obligation The Crown Estate has.

6.2.2 Grant of rights to others

(i) The Crown Estate can give other persons rights to use any part of the Agreement Area for which an Occupancy Agreement has not been entered into with the Local Partner until such time as an Occupancy Agreement is entered into with the Local

Partner for that area.

- (ii) The Crown Estate may give other persons rights to lay cables, pipes and other conduits within any part of the Agreement Area for which an Occupancy Agreement has not been entered into with the Local Partner provided that The Crown Estate informs the Local Partner of the proposal to grant such rights.

7 Occupancy Agreement

- 7.1 Provided the Local Partner achieves each Milestone by the relevant Milestone Date and subject to all the terms of this Agreement, The Crown Estate grants to the Local Partner the right to require The Crown Estate to grant an Occupancy Agreement to the Local Partner to allow the appropriate proposal in their Business Plan to proceed.

The form of the Occupancy Agreement[s] to be entered into [is/are] in Annex 3;

- 7.2 Notice by Local Partner

If the Local Partner wishes to enter into an Occupancy Agreement, it shall give The Crown Estate written notice which must include or be accompanied by the following:

- (a) [Occupancy Agreement:
details of the Occupancy Agreement the Local Partner wishes to enter into][**Note 9**]

- (b) Plan:
A plan showing the part of the Agreement Area to which the Occupancy Agreement is to apply and which shall reflect the Local Partner's proposals for that area under the Business Plan;

If there are other existing rights affecting the relevant part of the Agreement Area to be included in any Occupancy Agreement then at the request of The Crown Estate these rights will be excluded from the area or the Local Partner will require the Local Partner to assume responsibility for managing these rights;

- (c) Details of Works:
 - (i) full details of what work the Local Partner intends to construct on the area;
 - (ii) full details of the use to which the area is to be put; and
 - (ii) full details of the works programme and timetables for completion of the

work;

(d) Consents:

Copies of all consents including non statutory consents required to permit the work to be completed and for the proposed use.

The Crown Estate must be satisfied that there are no liabilities or obligations that could be enforced against The Crown Estate or the owner of any adjacent property as a consequence of the Local partner commencing to implement any statutory consents obtained by the Local Partner to permit the work to be completed and for the proposed use;

(e) Costs and Funding:

Full details of the costs of the development and evidence as to the availability of funding;

(f) Sub-leases:

Full details of any proposed sub-leases or other occupancy rights to be given to others by the Local Partner.

The terms of any proposed sub-leases or other occupancy rights to be given to others by the Local Partner must not conflict with the terms of any Occupancy Agreement and must be comply with The Crown Estate's statutory duties, of which The Crown Estate will be the sole judge;

(g) Start Date:

The Local Partner's preferred date for the Occupancy Agreement to start;

(h) Other Information:

Such other information as The Crown Estate may reasonably ask for so that in can be satisfied as the viability and safety of the proposed development.

7.3 The Crown Estate Assessment of Notice and Information

7.3.1 The Crown Estate will inform the Local Partner as soon as reasonably practical if it is satisfied with the information provided by the Local partner as set out in paragraph 7.2, or if not what additional information is required and by when.

7.3.2 The Crown Estate will be reasonable in assessing the information provided but

must at all times comply with the duty Parliament has imposed on it for good management of The Crown Estate.

7.4 Conditions of Occupancy Agreement

On the date The Crown Estate confirms in writing to the Local Partner it is satisfied with all matters (the "Confirmation Date"), then the parties will agree the following conditions of the Occupancy Agreement:

7.4.1 Start Date and duration:

The start date will be no more than 6 months after the date all matters relating to the terms of the Occupancy Agreement are agreed. The start date must be after the date required by The Crown Estate to bring to an end any existing rights which are not to continue during the Occupancy Agreement.

The date the Occupancy Agreement is to end shall be as set out in the relevant Occupancy Agreement in Annex 3 [or such other date as shall be agreed between the parties].

7.4.2 Payments (including provisions for periodic review of payments):

It is agreed The Crown Estate is obliged to:

- (a) achieve the best consideration in money or money's worth which, in their opinion, can reasonably be obtained, having regard to all relevant circumstances but excluding any element of monopoly value attributable to the extent of The Crown Estate's ownership of comparable land, and
- (b) maintain and enhance the value and the financial return obtained from The Crown Estate, but with due regard to the requirements of good management.

If The Crown Estate and the Local Partner cannot agree either or both (i) the initial payments to be made under the Occupancy Agreement or (ii) the provisions for the periodic review of these payments within 2 months of the Confirmation Date, these matters may be referred by either party to either (a) the Valuation Office Agency of HM Revenue and Customs or, (b) at the request of either party to such other agreed independent valuer (or in the event that an independent valuer cannot be agreed one who shall be appointed

by the President for the time of the Royal Institution of Chartered Surveyors in Scotland at the request of either the Local Partner or The Crown Estate) for decision.

The decision of the Valuation Office Agency (or independent valuer as appropriate) shall be binding on both the Local Partner and The Crown Estate and their costs shall be split equally.

7.5 Right to cease negotiations

If the Local Partner decides it does not wish to proceed with an Occupancy Agreement it shall inform The Crown Estate in writing as soon as possible.

8. Rights to bring this Agreement to an end

8.1 Local Partner right to bring this Agreement to an end:

The Local Partner can bring this Agreement to an end at any time by giving written notice to The Crown Estate to that effect.

8.2 The Crown Estate rights to bring Agreement to and end:

8.2.1 The Crown Estate can bring this Agreement to an end immediately at any time by giving written notice to the Local Partner to that effect if the Local Partner:

- (a) fails to achieve any Milestone by the relevant Milestone Date;
- (b) becomes insolvent or bankrupt or suffers an equivalent process;
- (c) gives written notification to The Crown Estate that it no longer wishes to proceed with its proposals in the Business Plan;
- (e) is no longer owner of, or entitled to occupy, any adjacent land, foreshore or seabed required for the proposal in the Business Plan to be carried out.

8.2.2 The Crown Estate may bring this Agreement to an end at any time by giving written notice to the Local Partner to that effect if the Local Partner breaches any of the other terms of this Agreement but The Crown Estate must first give the Local Partner written notice to put right the breach within a reasonable time, which does not need to be more than 28 days.

8.2.3 If at the end of this Agreement (however ended) any part of the Agreement Area is not occupied under any signed Occupancy Agreement, then The Crown Estate is entitled to grant rights over the Agreement Area to any other person.

8.3 Local Partner's right to an Occupancy Agreement:

If, when this Agreement comes to an end at the end an Occupancy Agreement has not been signed by both the Local Partner and The Crown Estate, then the Local Partner shall lose their right to require any Occupancy Agreement to be signed and all obligations of The Crown Estate under this Agreement shall come to an end.

9. General matters

9.1 The Crown Estate Commissioners:

None of the Crown Estate Commissioners is personally liable for any obligation of The Crown Estate in this Agreement.

9.2 The Crown Estate right to the Agreement Area:

9.2.1 The Agreement Area is owned by Her Majesty but there is no written title. The Crown Estate can grant the rights under this Agreement by virtue of the Crown Estate Act 1961.

9.2.2 No legal title will be exhibited to the Agreement Area.

9.2.3 The Local Partner agrees that the Keeper of the Land Register of Scotland may exclude indemnity in any Land Certificate to be issued if the Local Partner applies to register any right granted by The Crown Estate. That is a matter solely at the Local Partner's risk with no right to any claim against The Crown Estate should the Keeper of the land Register do so. **[Note 6]**

9.3 No warranty

The Crown Estate gives no warranty or assurance (i) of the condition of the Agreement Area or its suitability for the Local Partner's proposals as set out in their Business Plan and (ii) that any or all relevant statutory or other consents necessary to carry out the Local Partners proposals as set out in their Business Plan will be granted and if granted what conditions may apply to them.

In agreeing any matters relating to the Business Plan The Crown Estate neither gives nor implies any view or assurance as to the practical or financial viability of the Business Plan proposals

9.4 This Agreement cannot be transferred

The Local Partner cannot assign or transfer its rights or obligations under this Agreement.

9.5 Notice to the other party

Any notice to be given by either party to the other must be in writing and sent by recorded delivery to the address on this Agreement or any other address either party instructs the other in writing to use.

9.6 Stamp Duty Land Tax

The Local Partner will pay any stamp duty land tax (or similar tax arising from time to time) on this Agreement or the rights under it and any such tax payable as a consequence of any Occupancy Agreement being granted.

9.7 If more than one person is the Local Partner

If the Local Partner is made up of more than one person, each person who has an interest in the Local Partner is jointly and severally liable for the obligations of the Local Partner under this Agreement.

9.8 Costs

9.8.1 This Agreement

The Local Partner and The Crown Estate shall each meet their own legal and agents' fees in connection with entering into this Agreement.

9.8.2 Occupancy Agreement

The Local Partner will pay The Crown Estate's reasonable legal and agents' fees, including Value Added Tax, and costs of providing any plans in connection with any Occupancy Agreement granted under the terms of this Agreement.

9.9 Disagreements

If The Crown Estate and the Local Partner do not agree on any matter arising in this Agreement (other than the initial payment or provisions for periodic review of payments

under an Occupancy Agreement), then the Local Partner may ask for any such disagreement to be referred to The Crown Estate Director of Rural and Coastal Estates for resolution.

The Director of Rural and Coastal Estates will discuss any such matters with the Local Partner or its nominated agent and will seek to reach agreement.

If the parties remain unable to reach agreement then the matter may be referred to an independent consultant appointed on the application of either party by the Chartered Institute of Arbitrators Scottish Branch. The costs of such independent consultant to be paid as decided by such independent consultant or otherwise shared equally between the parties.

9.10 Legal Agreement

This is a legal agreement and is governed by the Law of Scotland. **[Note 6]**

[Note 6] This Agreement typewritten on this page and the [] previous pages with the three annexes is signed as follows:

Signed in terms of Act of Parliament
by

authorised by the Crown Estate
to act on behalf of a Secretary of the
Office of The Crown Estate
at **[complete Town]**
on the **[complete date]**
before me

Witness

Signature

Full name in
block capitals

Address

and signed by the Local Partner
all together at **[complete Town]**
on **[complete date]**
before me

Witness

Signature

Full name in
block capitals
Address

These are the Annexes to the Agreement between The Crown Estate and [Note 6]

Annex 1

Column 1

Column 2

Milestone

[Note 7]

Milestone Date

1

1

2

2

3

3

4

4

Etc

Etc

Annex 2

Agreement Area *[Note 8]*

Annex 3

Form(s) of Occupancy Agreement *[Note 9]*