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MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

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

Licence Number: 05965/20/0

Reference Number: 05965

The Scottish Ministers hereby authorise:

**Aberdeen Harbour Board
Harbour Office
16 Regent Quay
Aberdeen
AB11 5SS**

to construct, alter or improve works within the Scottish marine area, in or over the sea, or on or under the seabed as described in Part 2 of the attached Schedule.

This licence is subject to the conditions set out in Part 3 of the said Schedule and is valid from **27 February 2020** until **30 June 2020**.

[Redacted]

Signed

Malcolm Rose

For and on behalf of the licensing authority

Date: 14 February 2020

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:

- a) "the 2010 Act" means the Marine (Scotland) Act 2010
- b) "licensable marine activity" means any activity listed in section 21 of the 2010 Act
- c) "licensee" means the recipient of the licence
- d) "the licensing authority" means the Scottish Ministers
- e) "mean high water springs" means the average of high water heights occurring at the time of spring tides
- f) "seabed" means the ground under the sea

All geographical co-ordinates contained within this licence are in latitude and longitude format 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

Tel: +44 (0) 300 244 5046
Email: ms.marinelicensing@gov.scot

1.3. Other authorisations and consents

The licensee is deemed to have satisfied themselves that there are no barriers or restrictions, legal or otherwise, to the carrying out of the licensed operations. 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 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 the provisions of this licence or for any such other reason that appears to be relevant to the authority under section 30(2) or (3) of the 2010 Act.

Under section 30 of the 2010 Act the licensing authority may on an application made by the licensee, vary this licence if satisfied that the variation being applied for is not material.

Under section 30 of the 2010 Act the licensing authority may on an application made by the licensee, 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 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 provide full details of the matter to 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, either 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 by 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 Scottish Ministers under section 29(1) of the 2010 Act.

2. PART 2 - PARTICULARS

2.1. Name(s) and address(es) of any other agents, contractors or sub-contractors acting on behalf of licensee:

See condition 3.1.2.

2.2. Location of construction works:

North Breakwater, Nigg Bay, Aberdeen, within the area bounded by joining the following points:

57° 08.283' N	002° 02.834' W
57° 07.896' N	002° 02.834' W
57° 07.896' N	002° 02.956' W
57° 08.256' N	002° 02.956' W

South Breakwater, Nigg Bay, Aberdeen, within the area bounded by joining the following points:

57° 07.770' N	002° 02.968' W
57° 07.991' N	002° 02.473' W
57° 07.928' N	002° 02.374' W
57° 07.695' N	002° 02.927' W

North Quay, Nigg Bay, Aberdeen, within the area bounded by joining the following points:

57° 08.249' N	002° 02.984' W
57° 08.152' N	002° 02.984' W
57° 08.114' N	002° 03.465' W

East Quay, Nigg Bay, Aberdeen, within the area bounded by joining the following points:

57° 08.264' N	002° 02.924' W
57° 07.930' N	002° 02.924' W
57° 07.930' N	002° 02.983' W
57° 08.249' N	002° 02.984' W

South East Pier, Nigg Bay, Aberdeen, within the area bounded by joining the following points:

57° 07.930' N	002° 02.924' W
57° 07.920' N	002° 02.924' W
57° 07.909' N	002° 03.068' W

57° 07.919' N	002° 03.157' W
57° 07.930' N	002° 03.157' W
57° 07.930' N	002° 02.983' W
57° 07.930' N	002° 02.924' W

Revetment, Nigg Bay, Aberdeen, within the area bounded by joining the following points:

57° 07.832' N	002° 03.334' W
57° 07.846' N	002° 03.308' W
57° 07.889' N	002° 03.422' W
57° 07.938' N	002° 03.506' W

2.3. Description of the works:

Construction works for Aberdeen Harbour Expansion Project ("AHEP"), Nigg Bay, Aberdeen including the following activities:

- Open Quay: construction of revetment
- Rock breaking at South Area with rock breaker and ripper. Transport and placement within South Breakwater
- Caissons bedding/seabed preparation at North Quay and South East Pier
- Placement of caissons at North Quay
- North Breakwater: remedial works chainage 520 to chainage 390 and placement of 44-tonne blocks (including seabed preparation)
- Closed Quay: backfill caissons and reclamation area
- Connection between North Breakwater and South East Pier: rock ripping, underwater concrete, T-blocks placement.

As described in application dated 17 May 2016, Environmental Statement ("ES") dated 04 November 2015, further information dated 26 April 2016 and variation request submitted on 16 October 2019 all other associated information and correspondence.

2.4. Nature and quantity of materials*:

Steel/Iron (incl. piles, anchor walls, fenders, storage tanks), 10000 tonne
Concrete (incl. copes & piles, scour protection and concrete armour units), 261000 m³
UFI outfall pipe - 60 cm diameter, 70 m
MSS water intake pipe - 45 cm diameter, 600 m
Zinc sacrificial anodes, 70 tonne

Less any materials used under licence 05965/16/0.

*List of materials to be used in construction works is indicative only.

3. PART 3 – CONDITIONS

3.1. General conditions

3.1.1. 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.

3.1.2. Agents, contractors and sub-contractors

The licensee must provide, as soon as is reasonably practicable prior to the licensed activities commencing, the name and function of any agent, contractor or sub-contractor appointed to undertake the licensed activities.

Any changes to the supplied details must be notified to the licensing authority, in writing, prior to any agent, contractor or sub-contractor undertaking any licensed activity.

The licensee must ensure that only those agents, contractors or sub-contractors notified to the licensing authority are permitted to undertake the licensed activities.

The licensee must give a copy of this licence and any subsequent variations that have been made to this licence in accordance with section 30 of the 2010 Act to any agent, contractor or sub-contractor appointed to carry out any part, or all, of the licensed activities. The licensee must satisfy themselves that any such agent, contractor or sub-contractor is 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.

3.1.3. Vessels

The licensee must notify the licensing authority, in writing, of any vessel being used to carry on any licensed activity under this licence on behalf of the licensee. Such notification must be received by the licensing authority no less than 72 hours before the commencement of the works. The notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

The licensee must ensure that a copy of this licence and any subsequent variations made to it in accordance with section 30 of the 2010 Act have been read and understood by the masters of any vessels being used to carry on any licensed activity under this licence, and that a copy of this licence is held on board any such vessel.

3.1.4. Force Majeure

If by any reason of *force majeure* any substance or object is deposited other than at the site which is described in this licence, 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, vehicle or marine structure determines that it is necessary to deposit the substance or object other than at the specified 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.

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.

3.1.6. Submission of reports to the licensing authority

Where it would appear to the licensee that there may be a delay in the submission of the reports, studies or surveys 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, studies or surveys ought to have been submitted to the authority under the terms of this licence.

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

3.1.7. Environmental protection

The licensee must ensure that all required mitigation identified in the Environmental Impact Assessment ("EIA") process is implemented to address significant environmental effects.

The licensee must ensure that all reasonable, appropriate and practicable steps are taken at all times to minimise damage to the Scottish marine area caused by the licensed activity authorised under this licence.

The licensee must ensure that any debris or waste materials 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 MHWS approved by the Scottish Environment Protection Agency.

The licensee must ensure that all substances and materials used 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 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.

No blasting is permitted under the licence.

3.1.8. Availability of the licence for inspection

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, contractor or sub-contractor acting on behalf of the licensee; and
- c) any onshore premises directly associated with the licensed activities.

3.1.9. 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, on being given reasonable notice by the licensing authority (of at least 72 hours), provide transportation to and from the site (weather permitting) for any persons authorised by the licensing authority to inspect the site.

3.2. Prior to the licensed works commencing

- 3.2.1.** The licensee must, no later than 7 days prior to commencement of the works, notify the licensing authority of the proposed start date of the works.
- 3.2.2.** The licensee must ensure that a Notice to Mariners is issued prior to commencement of the works, clearly stating the nature and duration of the works.
- 3.2.3.** The licensee must complete and submit a Proposed Activity Form in the online Marine Noise Registry for all licensable marine activities that will produce loud, low to medium frequency (10Hz-10kHz) impulsive noise no later than 7 days prior to commencement of the licensable marine activities. If any aspects of the licensable marine activities 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 licensable marine activities.

- 3.2.4.** The licensee must submit a detailed Construction Environmental Management Document ("CEMD") to the licensing authority for their written approval, no later than two months or at such a time as agreed with the licensing authority, prior to the commencement of the works. It is not permissible for the works to commence prior to the granting of such approval. In granting such approval, the licensing authority may consult any such other advisors, organisations or stakeholders as may be required at their discretion. The CEMD must be consistent with the marine licence application, ES and supporting information.

The CEMD must include, but shall not be limited to, the following:

- a) detailed Construction Method Statements ("CMS") and Construction Environmental Management Plans ("CEMP") including the following specific management plans:
- I. marine mammal protection plan ("MMPP");
 - II. vessel management plan ("VMP");
 - III. noise and vibration mitigation plan (including hours of operation)
 - IV. lighting plan (including strategy for dimmed and directional lighting)
 - V. traffic management plan;
 - VI. pollution prevention plan;
 - VII. otter protection plan;
 - VIII. piling management plan;
 - IX. fish species protection plan;
 - X. habitat management plan;
 - XI. waste management plan;
 - XII. Nigg Bay Site of Special Scientific Interest management plan;
 - XIII. dredging and dredge spoil disposal management and monitoring plan;
 - XIV. marine non-native species and biosecurity management plan; and
 - XV. a plan to protect and appropriately locate existing abstractions and discharges in the vicinity of the licensed activities.
- b) commencement dates, duration and phasing information of key elements of construction;
- c) a schedule of mitigation and monitoring measures to protect the environment, including cross-referencing between relevant management plans or other documents;
- d) processes to control changes from the agreed schedule of mitigation;
- e) processes to detail how each and all contractors and sub-contractors will be made aware of environmental sensitivities, what requirements they are expected to adhere to, how chains of command will work including shore to vessel communications; and
- f) a process and schedule for providing the licensing authority with regular updates on construction activity, issues encountered and how these have been addressed.

In the event that the licensee wishes to request staged approval of the CEMD, the licensee must submit, in writing, a detailed schedule of the proposed CEMD submission stages and associated documents relative thereto, to the licensing authority for their written approval, no later than two months or at such a time as agreed with the licensing authority, prior to the commencement of the works.

In the event that the licensee wishes to update or amend the CEMD, the licensee must submit, in writing, details of the proposed updates or amendments to the licensing authority for their written approval, no later than one month or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any works associated with the proposed updates or amendments to proceed prior to the granting of such approval.

Unless otherwise agreed, in writing by the licensing authority, all works must proceed in accordance with the approved CEMD.

- 3.2.5.** The licensee must submit a detailed MMPP to the licensing authority for their written approval, no later than two months or at such a time as agreed with the licensing authority, prior to the commencement of the works. It is not permissible for the works to commence prior to the granting of such approval. In granting such approval, the licensing authority may consult any such other advisors, organisations or stakeholders as may be required at their discretion. The MMPP must be consistent with the marine licence application, ES, the CEMD (including CMS and CEMP) and supporting information.

In the event that the licensee wishes to update or amend the MMPP, the licensee must submit, in writing, details of the proposed updates or amendments to the licensing authority for their written approval, no later than one month or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any works associated with the proposed updates or amendments to proceed prior to the granting of such approval.

Unless otherwise agreed, in writing by the licensing authority, all works must proceed in accordance with the approved MMPP.

- 3.2.6.** The licensee must submit a detailed VMP to the licensing authority for their written approval, no later than two months or at such a time as agreed with the licensing authority, prior to the commencement of the works. It is not permissible for the works to commence prior to the granting of such approval. In granting such approval, the licensing authority may consult any such other advisors, organisations or stakeholders as may be required at their discretion.

Relative to the duration of the works, the VMP must include details on vessels, their speeds, routes and frequency of trips during the works, creation of high and

low disturbance areas, a vessel free buffer zone around Girdle Ness and Greyhope Bay, and details of how vessel management will be coordinated.

Relative to the operation of the harbour, the VMP must include a code of practice to guide the behaviour of vessels in and in the vicinity of the harbour around marine mammals and rafts of birds and avoidance of the area around Girdle Ness and Greyhope Bay.

In the event that the licensee wishes to update or amend the VMP, the licensee must submit, in writing, details of the proposed updates or amendments to the licensing authority for their written approval, no later than one month or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any works associated with the proposed updates or amendments to proceed prior to the granting of such approval.

Unless otherwise agreed in writing by the licensing authority, works must proceed in accordance with the approved VMP.

- 3.2.7.** The licensee must submit a detailed monitoring strategy to the licensing authority for their written approval, no later than two months or at such a time as agreed with the licensing authority, prior to the commencement of the works. It is not permissible for the works to commence prior to the granting of such approval. In granting such approval, the licensing authority may consult any such other advisors, organisations or stakeholders as may be required at their discretion. The monitoring strategy must be consistent with the marine licence application, ES, the CEMD (including CMS and CEMP) and supporting information.

The monitoring strategy must include, but shall not be limited to the following:

- a) monitoring of underwater noise produced from piling and effectiveness of mitigation;
- b) monitoring of use of Nigg Bay by marine mammals during construction;
- c) monitoring of use of the new harbour and its surroundings by eider duck during construction and once it is operational;
- d) development of monitoring programme to track adult salmon in the vicinity of the development site and entering the River Dee; and
- e) a binding timetable for reporting the findings of the monitoring.

In the event that the licensee wishes to update or amend the monitoring strategy, the licensee must submit, in writing, details of the proposed updates or amendments to the licensing authority for their written approval, no later than one month or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any works associated with the proposed updates or amendments to proceed prior to the granting of such approval.

Unless otherwise agreed in writing by the licensing authority, works must proceed in accordance with the approved monitoring strategy.

- 3.2.8.** The licensee must submit a lighting and marking plan covering all stages of the construction programme, to the licensing authority for their written approval, no later than two months or at such a time as agreed with the licensing authority, prior to the commencement of the works. It is not permissible for the works to commence prior to the granting of such approval. In granting such approval, the licensing authority may consult any such other advisors, organisations or stakeholders as may be required at their discretion.
- 3.2.9.** The licensee must submit a protocol for archaeological discovery to the licensing authority for their written approval, no later than two months or at such a time as agreed with the licensing authority, prior to the commencement of the works. It is not permissible for the works to commence prior to the granting of such approval. In granting such approval, the licensing authority may consult any such advisors, organisations or stakeholders as may be required at their discretion.
- 3.2.10.** The licensee must submit a landscape mitigation and compensation scheme, demonstrating effective mitigation and compensation for the scale of significant local impacts, to the licensing authority for their written approval, no later than two months or at such a time as agreed with the licensing authority, prior to the commencement of the works. It is not permissible for the works to commence prior to the granting of such approval. In granting such approval, the licensing authority may consult any such advisors, organisations or stakeholders as may be required at their discretion. The scheme must consider enhancements and linkages to greenspace in the wider area to increase its benefits for the local community.
- 3.2.11.** The licensee must ensure that construction of the breakwaters does not commence between 01 June and 31 August.
- 3.2.12.** Prior to commencement of the works, the licensee must appoint an Environmental Clerk of Works ("ECoW") who will be responsible for ensuring delivery of the CEMD. The ECoW must be on site during licensed activities, as determined by the CEMD, and shall have authority to halt activities if necessary.
- 3.2.13.** The licensee must ensure that HM Coastguard, in this case nmoccontroller@hmcg.gov.uk, The National Maritime Operations Centre, is made aware of the works prior to commencement.
- 3.2.14.** Should any foul connection associated with shipping or off-shore wastes be required, the licensee must submit a separate Pre-Development Enquiry to Scottish Water, prior to commencement of the works.
- 3.2.15.** The licensee must, once all water and wastewater requirements for the development are understood, apply to Scottish Water via an appointed Licence Provider for the required connections, prior to commencement of the works.

- 3.2.16.** The licensee must review where potential asset conflicts exist and contact Scottish Water's Asset Impact Team ("AIT") (service.relocation@scottishwater.co.uk) as soon as practicable to discuss any potential issues identified. All detailed design proposals relating to the protection or diversion of Scottish Water's assets must be submitted to AIT for review and written acceptance before any works take place.
- 3.2.17.** Prior to commencement of the works, the licensee must ensure that existing abstractions and discharges in the vicinity of the works are protected, diverted or relocated to ensure functionality is maintained during the construction and operation of AHEP, with particular reference to the outfalls (United Fish Industries, Scottish Water and East Tullos Burn) and intake (Marine Scotland Science aquarium) currently located in Nigg Bay.
- 3.2.18.** Prior to commencement of the works the licensee must submit proposals for communication with the local community to the licensing authority for their written approval. It is not permissible for the works to commence prior to the granting of such approval. Such proposals must include local liaison meetings with representatives of Aberdeen Harbour Board, Contractors, and Community Councils and can include regulators where appropriate. For the avoidance of doubt the remit of the liaison meetings shall be to promote effective communication and to discuss and resolve local issues.

3.3. During the works

- 3.3.1.** The licensee must ensure that the works take place in accordance with the approved indicative plan (Annex 1).
- 3.3.2.** The licensee must ensure that the works are carried out in accordance with the approved CEMD.
- 3.3.3.** The licensee must ensure that, during the execution of the works, the risk of transferring marine non-native species to and from the location of the works is minimised by implementing the approved marine non-native species and biosecurity management plan.
- 3.3.4.** The licensee must ensure that the works are marked and lighted as required by the Northern Lighthouse Board, in accordance with the agreed lighting and marking plan, and the marking and lighting is continued unless and until the licensing authority rescind this direction.
- 3.3.5.** If it is desired by the licensee to display any marks or lights not required by this licence then details of such marks or lights must be submitted to the Northern Lighthouse Board and their ruling must be complied with. The display of unauthorised marks or lights is prohibited.
- 3.3.6.** The licensee must ensure that the works are maintained at all times in good repair.

- 3.3.7.** The licensee must ensure that any debris or waste materials arising during the course of the works are removed from below Mean High Water Springs.
- 3.3.8.** In the event of the works being discontinued prior to their completion, the licensee must remove the works and clear the site to the satisfaction of the licensing authority.
- 3.3.9.** The licensee must remove all temporary structures constructed as part of the works before the expiry date of this licence.
- 3.3.10.** The licensee must remove all temporary stockpiles of dredged substances or objects before the expiry date of this licence.
- 3.3.11.** The licensee must complete and submit a Close-out Report for the licensable marine activities that produced loud, low to medium frequency (10Hz-10kHz) impulsive noise in the online Marine Noise Registry at 6 month intervals during the validity of the licence and no later than 12 weeks from the completion of the licensable marine activity.
- 3.3.12.** If, in the opinion of the licensing authority, the assistance of a Government Department, including the broadcast of navigational warnings, is required to deal with any emergency arising from:
- a) The failure to mark and light the works as required by licence;
 - b) The maintenance of the works; or
 - c) The drifting or wreck of the works.

The licensee is liable for any expenses incurred in securing such assistance.

3.4. On completion of the works

- 3.4.1.** The licensee must, within 7 days of completion of the works, notify the licensing authority of the date of completion of the works.
- 3.4.2.** The licensee must, within 28 days of completion of the works or within 28 days of the date of expiry of the licence, whichever is the sooner, submit a written report to the licensing authority stating the nature and quantity of all materials placed and removed under authority of the licence. Where appropriate, nil returns must be provided.
- 3.4.3.** The licensee must, within 28 days of completion of the works, supply Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (email: sdr@ukho.gov.uk; tel.: 01823 337900) with a copy of the 'as built plans', in order that all necessary amendments to nautical publications are made. The licensee must notify the licensing authority of the notification at the time it is made.