

Heads of Terms for an Option Agreement and Agreement for Lease between:

Able UK

and

Network Rail Infrastructure Limited

**In connection with the Application for the Able Marine Energy Park
Development Consent Order ("the Order") ("the Application")**

Parties:

- (1) Network Rail Infrastructure Limited ("Network Rail") (Company number 02904587) of Kings Place, 90 York Way, London N1 9AG; and
- (2) Able UK ("Able") [company number] of [registered office]

These heads of terms form the basis of an agreement between Network Rail and Able which, once completed, will enable Network Rail to remove the Relevant Representation and the Written Representation submitted in connection with the Application ("the intended agreement").

1. Definitions:

- (a) "the Alternative Killingholme Loop Scheme" means a scheme approved by Network Rail, which is a viable alternative to the proposed Killingholme Loop scheme, the timing of construction of which is within Network Rail's discretion;
- (b) "Application" means Able's application for the Order;
- (c) "FOC" means Freight Operating Company;
- (d) "KIL1" means the Killingholme Branch Line 1;
- (e) "KIL2" means the Killingholme Branch Line 2;
- (f) "the Killingholme Loop" means the NR proposals for the provision of a new railway line which would run west from the Port of Immingham via the existing KIL2, over the Goxhill Branch and join into the rail network via the construction of a new chord;
- (g) "Order" means the proposed Able Marine Energy Park Development Consent Order;
- (h) "ORR" means the Office of the Rail Regulation;

- (i) "Paper of Amendments" means the Paper of Amendments to the Proposed DCO submitted by NR to the Examining Authority on 19th July 2012 and attached at Appendix [1];
- (j) "Plan" means the plan attached at Schedule [1];
- (k) "Proposed Development" means the proposed Able Marine Energy Park as applied for under the powers of the Order;
- (l) "the railway land" means the land identified on the plans submitted with the Application as plot nos. [xxxxxxx] which is owned by Network Rail and is operational railway land, shown edged red on the Plan;
- (m) "the Relevant Representation" means the relevant representation submitted by Network Rail to the Application on 26th March 2012;
- (n) "the Written Representation" means the written representation submitted by Network Rail to the Application on 29th June 2012.

2. **Conditions Precedent:**

2.1 The intended agreement will be conditional upon:

2.1.1 Able undertaking to submit to the Examining Authority the Paper of Amendments and to request the Examining Authority to recommend to the Secretary of State that the amendments are incorporated into the Order; and

2.1.2 The Order being made in substantially the form applied for, to include the amendments submitted in the Paper of Amendments.

2.2 Paragraph 4 of these heads of terms (Option for level crossing) will be conditional upon:

2.2.1 Able is the freehold owner of the land either side of the railway land.

2.2.2 The following level crossings are closed by Network Rail:

2.2.2.1 Regents Oil;

2.2.2.2 Level Crossing No.11;

2.2.2.3 Level Crossing No.12; and

2.2.2.4 Unnamed level crossing close to existing bridge;

which are identified on the Plan as LC1, LC2, LC3 and LC4, and those level crossings are removed from the operational railway and all rights to them and over them are surrendered.

- 2.2.3 Able obtaining all relevant permissions (other than those required from Network Rail) to construct a single level crossing across the operational railway on the railway land.
 - 2.2.4 Able obtaining planning permission, and any other relevant permission and/or agreement (including from the Highway Authority), for the construction of a road bridge for the passage of traffic diverted from the closed Regents Oil crossing. Such bridge to be in reasonable proximity to the site of Regents Oil crossing to form a no less commodious route from Rosper Road to the premises on the north side of the railway line served by Regents Oil Crossing.
 - 2.2.5 Able constructing the bridge referred to in paragraph 2.2.4 in accordance with a design approved by Network Rail, and to a specification approved by Network Rail.
 - 2.2.6 The completion of an Asset Protection Agreement in the form at Appendix [2] (Level Crossing Asset Protection Agreement).
 - 2.2.7 The completion of the Asset Protection Agreement in the form at Appendix [4] (Bridge Asset Protection Agreement).
 - 2.2.8 The agreement of a methodology in substantially the form at Appendix [3] (methodology for level crossing) for the construction of, and use of, the level crossing.
- 2.3 Paragraph 5 (Option for Bridge) of these heads of terms will be conditional upon:
- 2.3.1 Able being the freehold owner of the land either side of the railway land.
 - 2.3.2 Able obtaining all relevant permissions (other than those required from Network Rail) to construct one or more bridges over operational railway on the railway land.
 - 2.3.3 The completion of the Asset Protection Agreement in the form at Appendix [4] (Bridge Asset Protection Agreement).
 - 2.3.4 The agreement of a methodology for the construction of, and use of, the bridge or bridges substantially in the form at Appendix [5] (methodology for bridge or bridges over railway land).

- 2.3.5 Able constructing the bridge referred to in paragraph 2.2.4 in accordance with a design approved by Network Rail, and to a specification approved by Network Rail.
- 2.4 Paragraph 6 (Option to take a lease) of these heads of terms will be conditional upon:
 - 2.4.1 Able secures the relevant statutory authorisation (capable of being implemented by NR or such other party as Network Rail elect) for the construction and operation of the Alternative Killingholme Loop Scheme which will include, but will not be limited to, the following:
 - 2.4.1.1 A design procured by Able and approved by Network Rail;
 - 2.4.1.2 a link from the west side of the Port of Immingham to the main rail network;
 - 2.4.1.3 all necessary connections and signalling;
 - 2.4.1.4 compliance with all such operating criteria as are identified by Network Rail;
 - 2.4.1.5 secure the land powers over all land interests required for the Alternative Killingholme Loop Scheme;
 - 2.4.1.6 secure powers to build the operational railway comprising the Alternative Killingholme Loop Scheme; and
 - 2.4.1.7 secured any third party agreements as are necessary in connection with the Alternative Killingholme Loop Scheme, including (but not limited to):
 - (a) any such agreements with the Highways Authority concerning the construction of bridges comprising part of that scheme; and
 - (b) any such rights as may be required for use of any third party rail infrastructure utilised as part of the Alternative Killingholme Loop Scheme.
 - 2.4.2 Able will secure a financial bond in a form agreed with Network Rail to underwrite Network Rail's financial exposure in the following scenarios:
 - 2.4.2.1 The additional cost of the Alternative Killingholme Loop scheme as compared to the Killingholme Loop proposals;

- 2.4.2.2 the means by which the powers to construct the Alternative Killingholme Loop Scheme are the subject of judicial review; and
- 2.4.2.3 the time limit of any power (specifically the power to acquire or otherwise use land, or the power to complete the development) required to construct the Alternative Killingholme Loop Scheme expires prior to the commencement, or completion, of that scheme.
- 2.4.3 Network Change is in place to remove the section of KIL2 which runs through the site of the Proposed Development.
- 2.4.4 C.RO and C.GEN agree in principle to the grant of a lease of the railway land.
- 2.4.5 Able has in place agreements to legitimately operate such part of KIL2 as runs through the Proposed Development by one of the following means:
 - 2.4.5.1 operating agreements are in place between Able and the users of Humber Sea Terminal (including but not limited to C.RO, C.Gen and the FOCs), in a form agreed by Network Rail, which provide for train access from Humber Sea Terminal to KIL2 south of the site of the Proposed Development for the duration of the Lease; or
 - 2.4.5.2 Able has acquired the necessary rights to be Licensed Network Operator of that section (approved by the ORR) for the section of KIL2 serving the Humber Sea Terminal.

3. **Network Rail**

- 3.1 Network Rail will withdraw the Relevant Representation and the Written Representation and will refrain from further opposition to the Application.
- 3.2 Nothing in paragraph 3.1 will prevent Network Rail from objecting to or making representations against any proposed variation to the Proposed Development.

4. **Option for Level Crossing**

- 4.1 On the satisfaction of the conditions precedent set out paragraph 2.2, Network Rail will offer to Able the option to take an easement in form at Appendix [5] (Form of Easement for level crossing) on the following terms:
 - 4.1.1 Grant: to enter on to the railway land and construct a level crossing in a position agreed with Network Rail and in accordance with the agreed

methodology, and thereafter use the level crossing as access between the plots of land either side of the operational railway. Grant to be subject to the running of trains over the operational railway.

4.1.2 Term: the easement will expire after a period of 99 years after the date of grant.

4.1.3 Costs: Any costs incurred by Network Rail in connection with

4.1.3.1 the construction, use and maintenance of the approaches to and fencing to the level crossing; and

4.1.3.2 the maintenance of the deck and operational equipment

will be reimbursed by Able.

4.1.4 Maintenance: Network Rail will be responsible for the maintenance of the deck and operational equipment, and Able will otherwise be responsible for the maintenance of the level crossing.

4.1.5 Protection of the operational railway: Network Rail may enter onto the railway land and carry out any works required to safeguard the railway in the event that in its discretion it considers the safe operation of the railway to be compromised by the level crossing or operations on it.

4.1.6 Consideration: [tbc]

5. **Option to construct and use a Bridge**

5.1 On the satisfaction of the conditions precedent set out paragraph 2.3, Network Rail will offer to Able the option to take an easement in form at Appendix [6] (easement for bridges) on the following terms:

5.1.1 Grant: to enter on to the railway land and construct a bridge or bridges in accordance with the design agreed with Network Rail and to a specification agreed with Network Rail, and thereafter use the bridge or bridges as access between the plots of land either side of the operational railway. Grant to be subject to the running of trains over the operational railway.

5.1.2 Term: the easement will expire after a period of 99 years after the date of grant.

5.1.3 Costs: Any costs incurred by Network Rail in connection with the construction, use and maintenance of all or any of the bridges will be reimbursed by Able.

- 5.1.4 Maintenance: Able is responsible for the maintenance of each of the bridges.
- 5.1.5 Protection of the operational railway: Network Rail may enter onto the railway land and carry out any works required to safeguard the railway in the event that in its discretion it considers the safe operation of the railway to be compromised by any or all of the bridges or operations on it or them.
- 5.1.6 Consideration: [tbc]

6. **Option for Lease**

- 6.1 On the satisfaction of the Conditions Precedent set out in paragraph 2.4, Network Rail will offer to Able the option to take a lease on the following terms:
 - 6.1.1 Term: the lease will run for 99 years.
 - 6.1.2 Rent: [tbc]
 - 6.1.3 No Security of Tenure: the lease will be contracted out from the provisions of the Landlord and Tenant Act 1954
 - 6.1.4 Demise: the extent of the demise is shown edged red.
 - 6.1.5 Early termination provisions: Network Rail terminate the lease early on 1 year notice to Able in the following circumstances:
 - 6.1.5.1 non-payment of rent;
 - 6.1.5.2 if Able has not complied with any of the terms of the Lease;
 - 6.1.5.3 if Able enters into Liquidation [*definition tbc*]; or
 - 6.1.5.4 if an administration order is made in respect of Able or a receiver or administrative receiver is appointed over all or any of Able's assets.
 - 6.1.6 Permitted User: Authorised use of the land to include:-
 - 6.1.6.1 Use as access from between parts of Able's adjoining premises;
 - 6.1.6.2 Use as a private railway siding;

6.1.6.3 No alterations to be carried out save for [constructing access/road way; maintenance of access/road way; installing service media]

6.1.7 Tenant's repair and restore covenant: obligation to repair and restore on expiration of term.

6.1.8 Insurance covenant [tbc]

6.1.9 *[insert further terms of proposed lease in course of negotiations]*.

7. **Option Period**

7.1 The options in clauses 4, 5 and 6 above expire after [10] years from the date of this Agreement.

8. **The Railway Network**

8.1 For the avoidance of doubt, unless a lease is granted pursuant to the option in clause 6, the operational railway will remain part of the Rail Network.

9. **Costs**

9.1 [tbc]

10. **Termination**

10.1 Termination of the Agreement for Lease in the following circumstances:

10.1.1 [tbc]

11. **Confidentiality**

11.1 [NR standard terms]

12. **Dispute Resolution**

12.1 [tbc]