

Date: 28 February 2025

Natara Global Limited

as Natara

Planning Act 2008

Application by H2 Teesside Limited for an Order Granting
Development

Consent for the H2Teesside Project

Deadline 9 - Final Submissions

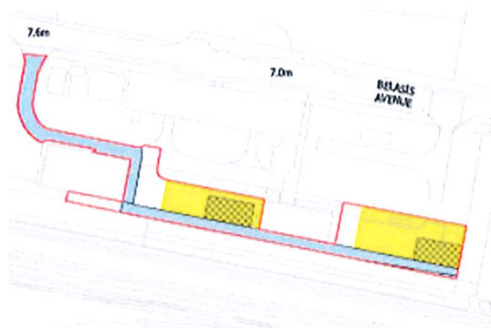
1. Introduction

- 1.1 Fieldfisher LLP acts for Natara (Interested Party Reference Number 20049369).
- 1.2 Natara's position remains as described in their written representations and as reserved in the representations made at the CAH1, CAH2 and deadlines 7 and 8.
- 1.3 Natara continues to have no objection to the Application in principle, provided that appropriate protective provisions are included in the Order, or preferably a comprehensive compromise agreement is agreed and entered into.
- 1.4 Natara remains of the view that there has been limited engagement from the Applicant to resolve Natara's concerns.
- 1.5 We note the comments in the letter from the Examining Authority on 25 February 2025 that the Examining Authority expresses "*its disappointment to the Applicant in regard to the apparent lack of progress on a significant number of matters ranging from Protective Provisions (PP) and side/other agreements to Statements of Common Ground (SoCG). Many Interested Parties (IP), throughout their written submissions have expressed dissatisfaction in regard to many of these matters*" and share this sentiment. In light of these comments, and the Examination deadline on 28 February 2025, Natara wishes to update the Examining Authority on its position since deadline 8.
- 1.6 By way of background, following a meeting between the parties on 5 February 2025, Natara expected a substantive response with a revised agreement on or around 12 February 2025. On 24 February 2025 at 16.49, Natara was provided with draft protective provisions, without a revised agreement.
- 1.7 In a meeting on 27 February 2025, the parties made substantive progress. The Applicant then issued revised protective provisions at 07:51 on 28 February 2025. A copy of these provisions is enclosed in Appendix 1.
- 1.8 In the meeting on 27 February 2025, the Applicant said it wishes to continue to negotiate an agreement. However, it is not possible to do this given the Examination deadline on 28 February 2025. As a result, Natara is submitting revised protective provisions to the Examining Authority. A tracked change version showing the additions to the draft received from Applicant on 28 February 2025 is enclosed at Appendix 2. A clean version is enclosed in Appendix 3. These are the protective provisions which Natara wishes to be included in the Order to protect its operations and business for the reasons set out below.

2. Natara's key concerns

- 2.1 Natara's key concerns/requirements, which have been articulated to the Applicant throughout this process, are that:
 - 2.1.1 the Applicant does not interrupt its business operations on its site, given the critical nature of this facility in its global supply chain; and
 - 2.1.2 it required compensation for any losses arising from the construction and operation of the authorised development. This includes any indirect or consequential loss or loss of profits by Natara.

- 2.2 In a draft agreement dated 24 January 2025, the Applicant proposed an indemnity but sought to limit its liabilities and request that Natara indemnify the Applicant for breaches of the agreement. As a meeting on 28 January 2025, Natara reiterated that this was not acceptable.
- 2.3 The Applicant's draft protective provisions, issued on evening of Monday 24 February 2025, exclude consequential damages and loss of profits during the construction of the authorised development. There is also no reference to operation of the authorised works in the drafting the Applicant has proposed. In addition, they do not contain an obligation to not materially prejudice Natara's operations, which Natara understood was previously accepted by the Applicant.
- 2.4 Natara sought to clarify a number of issues with the Applicant on Tuesday 25 February 2025. There followed a meeting with the Parties and their advisors on the morning of Thursday 27 February 2025. In that meeting the Applicant's solicitor stated that the wording of Article 32(6) of the Order would provide Natara with the ability to recover compensation for any losses arising from the carrying out of authorised development on Natara's site. Article 32 of the order provides for the temporary use of land for carrying out the authorised development.
- 2.5 Article 32(6) of the Order provides that "*The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.*"
- 2.6 As can be seen this provision relates to the "*loss or damage arising from the exercise in relation to the land of the provisions **of this article.***"
- 2.7 Applicant is seeking to temporarily use parts of the Natara site to erect a crane and lift articles over Natara's site as shown on the plan below. If there is any damage or disruption to operations outside this area, but within the site, this will not be covered by Article 32(6) as this is not land that is be used temporarily for the carrying out of the authorised development.



- 2.8 Nor does this article relate to the permanent easement that is required over this land, and Applicant's exercise of that as yet undefined right. Article 25 and Schedule 9 relates to the permanent acquisition of rights. The Applicant's solicitor said he would review this point and take instructions.
- 2.9 Following the meeting on 27 February 2025, the Applicant then issued revised protective provisions at 07:51 on 28 February 2025. These provisions included additional text about recovering compensation but still excluded compensation for any indirect or consequential loss or loss of profits by Natara. Please see Articles 9(3) and (4) in Appendix 1.
- 2.10 As drafted, the protective provisions are clearly intended to limit compensation that would otherwise be paid pursuant to those provisions and/or the Compensation Code. Natara is of the view that this is not fair, proportionate and reasonable in the circumstances. No justification has been provided for this limitation other than it is in the Applicant's commercial interests. This is not a compelling

reason for granting the Applicant powers of compulsory acquisition; particularly in circumstances where it has acknowledged that it does not require all the land it is seeking powers over to carry out the authorised works.

- 2.11 Natara has positively engaged with the Applicant in relation to the proposed use of its land to mitigate the impacts of the proposed compulsory acquisition and works. It has sought some measure of control and input over the authorised development on its site through the construction and logistics management plan. This is because it wishes to maintain its operations and minimise the circumstances where both parties could impede each other. From the discussions and meetings Natara has had with the Applicant and its representatives the controls and measures sought are entirely aligned with the extent of the Applicant's proposed activities at the site to deliver the authorised development and do not restrict or prejudice this in any way. The "cost" of the proposed protective provisions with this input, should not be a limit on its ability to recover any losses that may arise from the construction of the authorised works and/or acquisition of its land.
- 2.12 For these reasons Natara has amended the costs and compensation provisions of the protective provisions. This includes deleting specific references to certain articles in the Order on compensation. As a result, compensation is payable for any losses that arise (including land compensation pursuant to the Compensation Code) where powers of temporary and/or permanent acquisition are exercised pursuant to the Order. Natara has also included an indemnity based on other indemnities in the Order, with a proviso that Natara cannot recover any compensation it receives twice. We have also included an obligation to not materially prejudice Natara's operations. From the meetings, discussions and correspondence to date we understand that the Applicant does not object to such an obligation, but this has failed to materialise as a written commitment in draft protective provisions or agreement received to date.
- 2.13 In the draft agreements and discussions with the parties the Applicant has agreed in principle to reimburse Natara for its reasonable costs and expenses, including legal and other professional costs incurred in seeking to resolve these points. Given that no agreement can be entered into before 28 February 2025 (and such an agreement may not be ultimately forthcoming), Natara has also amended the protective provisions to recover its costs in respect of the application for, making of, and implementation of, the Order (including all costs relating to any negotiations between the parties).

3. Other amendments to the protective provisions

- 3.1 Natara has also made some practical amendments to the protective provisions so that they are clear and fully capture what it requires. It has sought to minimise any changes to the protective provisions issued by the Applicant on 28 February 2025. For ease of reference these changes are shown in Appendix 2.

4. Conclusion

- 4.1 If the revised protective provisions in Appendix 3 are included in the Order, or a mutually acceptable agreement is entered into, Natara will withdraw its objection to the Order.
- 4.2 We would remind the Applicant that the use of compulsory purchase powers is a matter of last resort and that negotiations for the relevant rights should take place.
- 4.3 Natara is of the view that the Applicant has not complied with the guidance on the use of CPO powers under the Planning Act 2008 which provides that:
- 4.3.1 Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.

- 4.3.2 The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.
- 4.3.3 The Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.
- 4.4 On this basis, there is currently no compelling case for the land and rights sought by the Applicant, without adequate protective provisions for Natara. If the Order is made without adequate operational safeguards and the ability to claim compensation it would unreasonably prejudice Natara.
- 4.5 Therefore, the Order should not be made unless the protective provisions in Appendix 3 are included in the Order.

Fieldfisher LLP
28 February 2025

Appendix 1

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATARA
GLOBAL LIMITED

1. This Schedule has effect for the protection of Natara unless otherwise agreed in writing between the undertaker and Natara.

2. In this Schedule—

“black land” means the land edged and cross-hatched black on the Natara site plan;

“blue land” means the land tinted blue on the Natara site plan;

“construction management and logistics plan” means a plan prepared by or on behalf of the undertaker which sets out in relation to the Natara land—

- (a) the construction programme, including—
 - (i) the profile activity across the day;
 - (ii) the periods when the yellow land will be in use; and
 - (iii) the proposed arrangements for delivery, erection, transfer and removal of any crane;
- (b) details of construction traffic entering the Natara land including—
 - (i) vehicle types and numbers;
 - (ii) any pedestrian movements on the Natara land including frequency and numbers;
 - (iii) means of access to and egress from the yellow land, including any temporary means of access or footbridges to be provided by the undertaker;
 - (iv) access routes through the Natara land; and
 - (v) the times and periods during which access to the Natara land is required;
- (c) details of any construction plant, machinery, equipment, materials or other items which will be brought onto the Natara land, including—
 - (i) where they will be located within the yellow land;
 - (ii) the periods during which they will be on the Natara land;
 - (iii) the method of operation; ~~and~~
 - (iv) the proposed arrangements for delivery, erection, operation, transfer and removal of any crane;
 - (v) the proposed method of operation of such crane, including any proposed oversailing of the Natara land; and
 - (iv)(vi) a risk assessment in respect of the matters specified in sub-paragraphs (c)(iv) and (v);
- (d) the proposed timing, scope and methodology of any pre-construction surveys of the Natara land, including—
 - (i) a survey of condition;
 - (ii) environmental surveys;
 - (iii) geotechnical surveys;
 - (iv) surveys of existing infrastructure; and
 - (v) other investigations for the purpose of assessing ground conditions on the Natara land;
- (e) any site preparation or clearance measures proposed on the Natara land, including—
 - (i) vegetation removal;
 - (ii) temporary protection of the surface of any street;
 - (iii) measures for the protection of Natara’s buildings, plant and equipment;
 - (iv) any temporary removal of street furniture, fencing or other obstructions;

- (v) any alteration of the position of services and utilities, whether temporary or permanent; and
- (vi) how the undertaker's working areas will be demarcated, including any fencing or markings proposed;
- (f) proposed external lighting, including any temporary lighting arrangements or alterations;
- (g) proposed health and safety management arrangements, including in respect of—
 - (i) personnel management;
 - (ii) the content and timing of any site safety briefings applicable to the Natara land;
 - (iii) the use of personal protective equipment;
 - (iv) the safe and efficient operation of the undertaker's plant, machinery and equipment;
 - (v) the location and specification of any safety or security fencing during construction;
 - (vi) the handling of any hazardous or inflammable materials or substances; and
 - (vii) site security;
- (h) proposals for the storage and disposal of waste arising as a result of the authorised development;
- (i) the provision of alternative access routes or other arrangements as are reasonably necessary to ensure that Natara's access to the Natara land during the construction and operation of the authorised development is not materially prejudiced;

~~“black land” means the land edged and cross-hatched black on the Natara site plan;~~

“Natara” means Natara Global Limited (company registration number 14641931) whose registered office address is located at Zinc Works Road, North Gare, Seaton Carew, Hartlepool, TS25 2DT;

“Natara land” means plots 2/12, 2/13, 2/14, 2/15, 2/16, 2/23 and 2/24;

“Natara site plan” means the plan which is certified as the Natara site plan by the Secretary of State under article 44 (certification of plans etc) for the purposes of this Order;

“waiting” has the same meaning as in section 2(2)(c) of the Road Traffic Regulation Act 1984 Act; and

“yellow land” means the land tinted yellow on the Natara site plan.

General duties of Natara and the undertaker

3.—(1) Where this Schedule provides—

- (a) that the acknowledgement, approval, agreement, consent or authorisation of Natara or the undertaker is required; or
- (b) that any thing must be done to Natara's reasonable satisfaction,

that acknowledgement, approval, agreement, consent, authorisation or intimation that the matter in question has been done to Natara's satisfaction shall not be unreasonably withheld or delayed.

(2) The undertaker must in carrying out the authorised development at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on Natara, including any disruption to access, supplies and other services that are required by Natara in order to carry out its operations.

(3) The undertaker and Natara shall use their reasonable endeavours to secure the amicable resolution of any difference, dispute or matter deemed to be in dispute arising between them out of or in connection with this Order in accordance with provisions of paragraph 910.

Review of draft construction management and logistics plan

4.—(1) At least 12 weeks prior to taking entry to or possession of the Natara land, the undertaker must submit a draft construction management and logistics plan to Natara for review.

(2) Following the submission of the draft construction management and logistics plan under sub-paragraph (1), the undertaker and Natara shall use reasonable endeavours to hold a joint site meeting on the Natara land within the period of six weeks commencing on the day next after the date of submission under sub-paragraph (1).

(3) Any joint site meeting held for the purposes of sub-paragraph (2) may be attended by representatives of both Natara and the undertaker, together with such professional and technical advisors as each of them may require.

(4) The prohibition in paragraph 5(2) does not apply to any joint site meeting held for the purposes of sub-paragraph (2).

(5) The undertaker must—

(a) have due and proper regard to any comments or representations made by Natara in respect of the draft construction management and logistics plan submitted under sub-paragraph (1), including any—

(i) written representations; or

(ii) oral comments provided at any joint site meeting held for the purposes of sub-paragraph (2); and

(b) take such comments and representations into account in preparing any construction management and logistics plan submitted under paragraph 5(1).

Approval of construction management and logistics plan

45.—(1) At least ~~12-6~~ weeks prior to taking entry to or possession of the Natara land, the undertaker must submit a ~~draft~~ construction management and logistics plan to Natara for its approval.

(2) No entry to or possession of the Natara land may be taken for the purposes of the authorised development until a construction management and logistics plan submitted under sub-paragraph (1)—

(a) has been approved by Natara under sub-paragraph (3)(a);

(b) is deemed to have been approved under sub-paragraph (4); or

(c) has been approved by an arbitrator following a reference under sub-paragraph (5).

(3) Following submission of a construction management and logistics plan under sub-paragraph (1), Natara must within 28 days of the date of receipt thereof notify the undertaker in writing—

(a) of its approval of all or any part of that ~~draft~~ construction management and logistics plan; or

(b) of its disapproval of all or any part of that ~~draft~~ construction management and logistics plan and the reasons for its disapproval.

(4) If Natara does not notify the undertaker of its decision within the period specified in sub-paragraph (3) then the ~~draft~~ construction management and logistics plan submitted under sub-paragraph (1) is deemed to be approved on the day next following the last day of that period.

(5) If Natara provides a response under sub-paragraph (3)(b) in respect of part only of that ~~draft~~ construction management and logistics plan then Natara shall be deemed to have approved the remainder of that ~~draft~~ construction management and logistics plan on the day next following the date of the notification under sub-paragraph (3)(b).

(6) If Natara gives notice to the undertaker under sub-paragraph (3)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 910.

(7) The authorised development must be executed only in accordance with the construction management and logistics plan—

- (a) approved by Natara under sub-paragraph (3);
- (b) deemed to be approved under sub-paragraph (4) or (5); or
- (c) approved following a reference to an arbitrator in accordance with sub-paragraph (6).

Restrictions on certain activities

56. During the construction and operation of the authorised development—

- (a) no part of the Natara land is to be used by the undertaker—
 - (i) for the waiting of vehicles; or
 - (ii) for the storage of materials;
- (b) where the undertaker exercises the powers in articles 32 and 33 of this Order in relation to the Natara land, those powers—
 - (i) may only be exercised in respect of the blue land and the yellow land; and
 - (ii) must not be exercised in respect of any other part of the Natara land;
- (c) any vehicles brought onto the Natara land by the undertaker must not stop on any part of the blue land except—
 - (i) in an emergency;
 - (ii) in accordance with a construction management plan approved under paragraph 5; or
 - (iii) to comply with any reasonable direction given by Natara.

67. Where the undertaker submits a draft construction management and logistics plan under paragraph 4 or a construction management plan under paragraph 5, that plan must ensure that—

- (a) no more than two cranes are present on the Natara land simultaneously;
- (b) any crane brought onto the yellow land in accordance with the plan—
 - (i) is located and operated only within the black land; and
 - (ii) does not oversail any land owned or occupied by Natara other than the blue land or the yellow land;
- (c) the blue land is only used for the purpose of accessing the yellow land;
- (a)(d) access is not taken over the blue land where a reasonably practicable alternative means of access is available, including any temporary access or footbridge provided by the undertaker; and
- (b)(e) there is no reduction in the number of car parking spaces available on the Natara land below the number set out in the report submitted under paragraph 78(3).

Reinstatement of the Natara land

78.—(1) This paragraph applies where a construction management and logistics plan approved or deemed to be approved under paragraph 4.5 contains a requirement for the undertaker to carry out a pre-construction survey of condition.

(2) Where this paragraph applies, the undertaker must carry out the pre-construction survey of condition in accordance with the approved timing, scope and methodology.

(3) A report containing the findings of the pre-construction survey of condition completed in accordance with sub-paragraph (2) must be prepared by the undertaker and submitted to Natara before commencing any activities comprising part of the authorised development on the Natara land.

(4) Upon completion of those parts of the authorised development in respect of which entry to and possession of the Natara land was taken, the undertaker must—

- (a) carry out a post-construction survey of condition in accordance with the same scope and methodology as the pre-construction survey of condition; and
- (b) prepare a report containing—

- (i) the findings of that post-construction survey of condition so as to enable a like-for-like comparison to be made to the findings of the pre-construction survey of condition; and
- (ii) particulars of any works which are required in order to reinstate the Natara land to the condition set out in the report submitted under sub-paragraph (3), together with a programme and methodology for their implementation.

(5) The undertaker must submit a copy of the report prepared under sub-paragraph (4)(b) to Natara for its approval.

(6) Following submission of a report under sub-paragraph (5), Natara must within 14 days of the date of receipt thereof notify the undertaker in writing—

- (a) of its approval of all or any part of that report; or
- (b) of its disapproval of all or any part of that report and the reasons for its disapproval.

(7) If Natara does not notify the undertaker of its decision within the period specified in sub-paragraph (6) then the report submitted under sub-paragraph (5) is deemed to be approved on the day next following the last day of that period.

(8) If Natara provides a response under sub-paragraph (6)(b) in respect of part only of that report then Natara shall be deemed to have approved the remainder of that report on the day next following the date of the notification under sub-paragraph (6)(b).

(9) If Natara gives notice to the undertaker under sub-paragraph (6)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 910.

(10) The undertaker must implement any works to which sub-paragraph (4)(b)(ii) applies in accordance with the particulars set out in the report—

- (a) approved by Natara under sub-paragraph (6);
- (b) deemed to be approved under sub-paragraph (7) or (8); or
- (c) approved following a reference to an arbitrator in accordance with sub-paragraph (9).

Costs and compensation

89.—(1) Subject to sub-paragraphs (2) and (6) to (8), the undertaker must pay to Natara the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Natara in, or in connection with, the discharge of any function by Natara under this Schedule, including in respect of ~~the review, assessment and approval of~~—

- ~~(a)~~ the review of a draft construction management and logistics plan submitted under paragraph 4(1);
- ~~(b)~~ attendance at any joint site meeting held for the purposes of paragraph 4(2);
- ~~(c)~~ the provision of comments or representations to the undertaker in terms of paragraph 4(5);
- ~~(a)(d)~~ the review and approval of a construction management and logistics plan submitted under paragraph 5(1); and
- ~~(b)(e)~~ the review and approval of a report submitted under paragraph 78(5).

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), Natara must give prior written notice to the undertaker of the activities to be undertaken and an estimate of the costs or expenses to be incurred.

(3) Subject to sub-paragraphs (4) to (8), if by reason or in consequence of the construction of the authorised development, any damage is caused to Natara, or there is any interruption in any service provided, or in the supply of any goods, by Natara, the undertaker must—

- (a) at Natara's election either—

- (i) bear and pay the cost reasonably incurred by Natara in making good such damage or restoring the supply; or
 - (ii) make good such damage to Natara's reasonable satisfaction; and
- (b) make reasonable compensation to Natara for any other expenses, loss, damages, penalty or costs incurred by Natara, by reason or in consequence of any such damage or interruption.
- (4) Nothing in sub-paragraph (3) imposes any liability on the undertaker with respect to—
- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Natara, its officers, employees, servants, contractors or agents; or
 - (b) any indirect or consequential loss or loss of profits by Natara.

(5) Natara must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(6) If the undertaker takes sole conduct pursuant to sub-paragraph (5) then it must have due and proper regard to any comments or representations made by Natara in respect of the settlement, compromise or proceedings in question.

(67) Natara must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph applies.

(78) If requested to do so by the undertaker, Natara must provide an explanation of how the claim or costs have been minimised or details to substantiate any cost or compensation claimed pursuant to this paragraph.

(89) The undertaker shall only be liable under this paragraph for claims or costs reasonably incurred by Natara.

(910) Where the undertaker has made good damage following an election by Natara under sub-paragraph (3)(a), the undertaker may request that Natara provide an intimation that the matter in question has been done to Natara's satisfaction for the purposes of sub-paragraph (3)(a)(ii).

(1011) Following a request under sub-paragraph (910), Natara must within 7 days of the date of receipt thereof give an intimation to the undertaker in writing that the matter in question—

- (a) has been done to Natara's satisfaction; or
- (b) has not been done to Natara's satisfaction and the reasons for this.

(112) If Natara does not notify the undertaker of its decision within the period specified in sub-paragraph (1011) then the matter in question is deemed to have been done to Natara's satisfaction.

(1213) If Natara gives notice to the undertaker under sub-paragraph (1011)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 910.

(14) For the purposes of articles 32(6) and 33(7) of this Order, the obligation on the undertaker to pay compensation is not limited to loss or damage which arises on the land of which temporary possession was taken, but also includes an obligation to pay such compensation in respect of any loss or damage suffered by Natara which arises outwith that land.

(15) Sub-paragraph (4) applies only to a liability of the undertaker under sub-paragraph (3) and does not apply to any other liability of the undertaker to pay any sum to Natara under any other provision of this Order.

Dispute resolution

910.—(1) Any difference, dispute or matter deemed to be in dispute arising between the undertaker and Natara (including as to the amount of any payment pursuant to paragraph 89) must, unless otherwise agreed between the undertaker and Natara, be referred and determined in accordance with this paragraph.

(2) Subject to the provisions of this Schedule, including sub-paragraphs (3) to (14) of this paragraph, the difference, dispute or matter referred shall be determined only in accordance with the Scheme.

(3) The Scheme shall apply as if—

- (a) this Schedule constituted a “construction contract”; and
- (b) the undertaker and Natara were the parties to that contract.

(4) For the purposes of paragraph 2(1)(b) of the Scheme, the Law Society of Scotland shall be the specified nominating body.

(5) Any party to which the notice of adjudication is given under paragraph 1 of the Scheme shall provide to the referring party a notice in response within five days setting out—

- (a) a proposed remedy for the difference, dispute or matter referred;
- (b) a date for a meeting to be held within five days of the date of the notice of response; or
- (c) a summary document for the dispute including any relevant correspondence or documents.

(6) If a notice is given pursuant to sub-paragraph (5)(a) and the referring party agrees to the proposed remedy then the difference, dispute or matter referred shall be determined on that basis and the parties shall implement that remedy.

(7) If a notice is given pursuant to sub-paragraph (5)(b)—

- (a) copies of that notice and the notice of adjudication shall immediately be provided to a director or manager within each party who has the authority on behalf of that party to resolve the difference, dispute or matter referred;
- (b) the persons to whom the documents are provided pursuant to sub-paragraph (a) shall use reasonable endeavours to meet within five days of the date on which the notice under sub-paragraph (5)(b) was given; and
- (c) if the persons to whom the documents are provided pursuant to sub-paragraph (a) agree a remedy within the five day period specified in sub-paragraph (b) (whether or not a meeting is actually held) then the difference, dispute or matter referred shall be determined on that basis and the parties shall implement that remedy.

(8) Where sub-paragraph (7) applies—

(a) the meeting referred to in sub-paragraph (7)(b) may (where relevant) take the form of a joint site meeting on the Natara land; and

(a)(b) the words “seven days” in paragraph 7(1) of the Scheme shall be deemed to read “fourteen days”.

(9) If a notice is given pursuant to sub-paragraph (5)(c) then a copy of that notice shall be provided to the adjudicator at the same time as the referral notice is provided to him under paragraph 7(1) of the Scheme.

(10) For the purposes of paragraphs 9(4), 11(1) and 25 of the Scheme—

- (b)(c) the adjudicator may determine how the payment is to be apportioned in which case the undertaker and Natara—
 - (i) are severally liable for only the sums apportioned to them in that determination; and
 - (ii) are not jointly and severally liable for any sum which remains outstanding following the making of any such determination;

(e)(d) _____ where the adjudicator makes no such determination, the undertaker and Natara shall be severally liable for one half each of the payment in question.

(11) In paragraph 22 of the Scheme, for the words “If requested by one of the parties to the dispute”, substitute “At the same time as delivering copies of his decision pursuant to paragraph 19(3)”.

(12) Subject to sub-paragraph (13)—

- (a) for the purposes of paragraph 23(2) of the Scheme the undertaker and Natara shall accept the decision of the adjudicator delivered under paragraph 19(3) of the Scheme as finally determining the difference, dispute or matter referred; and
- (b) the jurisdiction of the adjudicator, the scope of the adjudication, the decision of the adjudicator and any action taken by the adjudicator shall not be challenged or questioned by the undertaker or Natara in any proceedings whatsoever.

(13) If the undertaker or Natara is aggrieved by the decision of the adjudicator then they may, at any time within the appropriate period, appeal against the decision to His Majesty in Council in which case—

- (a) permission to appeal is not required; and
- (b) the Judicial Committee Act 1833 shall apply in relation to the adjudicator as it applies in relation to such courts as are mentioned in section 3 of that Act.

(14) In sub-paragraph (13), the “appropriate period” means the period of twenty-eight days starting on the day next following the date upon which copies of the decision are delivered pursuant to paragraph 19(3) of the Scheme.

(15) The decision of the adjudicator may be enforced by way of a TCC claim within the meaning of and brought under Part 60 of the Civil Procedure Rules 1998.

(16) In this paragraph, references to the “Scheme” are references to Part I of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.

(17) Article 46 (arbitration) of this Order does not apply to any difference or dispute to which this paragraph applies.

Appendix 2

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATARA
GLOBAL LIMITED

1. This Schedule has effect for the protection of Natara unless otherwise agreed in writing between the undertaker and Natara.

2. In this Schedule—

“black land” means the land edged and cross-hatched black on the Natara site plan;

“blue land” means the land tinted blue on the Natara site plan;

“construction management and logistics plan” means a plan (including method statements, specifications, risk assessments, schedules of condition and plans of appropriate scale and detail (in so far as relevant) in respect of any rights to be exercised pursuant to the Order prepared by or on behalf of the undertaker which sets out in relation to the Natara land—

- (a) the construction programme, including—
 - (i) the profile activity across the day;
 - (ii) the periods when the yellow land will be in use; and
 - (iii) the proposed arrangements for delivery, erection, transfer and removal of any crane;
- (b) details of ~~all vehicles construction traffic~~ entering the Natara land including—
 - (i) vehicle types and numbers;
 - (ii) any pedestrian movements on the Natara land including frequency and numbers;
 - (iii) means of access to and egress from the yellow land, including any temporary means of access or footbridges to be provided by the undertaker;
 - (iv) access routes through the Natara land; and
 - (v) the times and periods during which access to ~~or use of~~ the Natara land is required;
- (c) details of any construction plant, machinery, equipment, materials or other items which will be brought onto the Natara land, including—
 - (i) where they will be located within the yellow land;
 - (ii) the periods during which they will be on the Natara land;
 - (iii) the method of operation;
 - (iv) the proposed arrangements for delivery, erection, operation, transfer and removal of any crane;
 - (v) the proposed method of operation of such crane, including any proposed oversailing of the ~~yellow Natara~~ land; and
 - (vi) a risk assessment in respect of the matters specified in sub-paragraphs (c)(iv) and (v);
- (d) the proposed timing, scope and methodology of any pre-construction surveys of the Natara land, including—
 - (i) a survey of condition;
 - (ii) environmental surveys;
 - (iii) geotechnical surveys;
 - (iv) surveys of existing infrastructure; and
 - (v) other investigations for the purpose of assessing ground conditions on the Natara land;
- (e) any site preparation or clearance measures proposed on the Natara land, including—
 - (i) vegetation removal;
 - (ii) temporary protection of the surface of any street;
 - (iii) measures for the protection of Natara’s buildings, plant and equipment;

- (iv) any temporary removal of street furniture, fencing or other obstructions;
- ~~(v) any alteration of the position of services and utilities, whether temporary or permanent;~~
- and
- ~~(vi)~~(v) how the undertaker's working areas will be demarcated, including any fencing or markings proposed;
- (f) proposed external lighting, including any temporary lighting arrangements or alterations;
- (g) proposed health and safety management arrangements, including in respect of—
 - (i) personnel management;
 - (ii) the content and timing of any site safety briefings applicable to the Natara land;
 - (iii) the use of personal protective equipment;
 - (iv) the safe and efficient operation of the undertaker's plant, machinery and equipment;
 - (v) the location and specification of any safety or security fencing during construction;
 - (vi) the handling of any hazardous or inflammable materials or substances; and
 - (vii) site security;
- (h) proposals for the storage and disposal of waste arising as a result of the authorised development;
- (i) the provision of alternative access routes or other arrangements as are reasonably necessary to ensure that Natara's access to the Natara land ~~during the construction and operation of the authorised development~~ is not materially prejudiced by any rights exercised pursuant to the Order;

"Natara" means Natara Global Limited (company registration number 14641931) whose registered office address is located at Zinc Works Road, North Gare, Seaton Carew, Hartlepool, TS25 2DT and its successors in title;

"Natara land" means plots 2/12, 2/13, 2/14, 2/15, 2/16, 2/23 and 2/24;

"Natara site plan" means the plan which is certified as the Natara site plan by the Secretary of State under article 44 (certification of plans etc) for the purposes of this Order;

"waiting" has the same meaning as in section 2(2)(c) of the Road Traffic Regulation Act 1984; and

"yellow land" means the land tinted yellow on the Natara site plan.

General duties of Natara and the undertaker

3.—(1) Where this Schedule provides—

- (a) that the acknowledgement, approval, agreement, consent or authorisation of Natara or the undertaker is required; or
- (b) that any thing must be done to Natara's reasonable satisfaction,

that acknowledgement, approval, agreement, consent, authorisation or intimation that the matter in question has been done to Natara's satisfaction shall not be unreasonably withheld or delayed.

(2) The undertaker must in carrying out the authorised development at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on Natara, its business and its property including any disruption to access, supplies and other services that to are required by Natara or by Natara to third parties as part of its general -in order to carry out its operations and must further ensure that it does not exercise any rights under the Order in such a way as to materially prejudice Natara's ability to operate its site as efficiently as before and on a 24/7 basis;-

(3) The undertaker and Natara shall use their reasonable endeavours to secure the amicable resolution of any difference, dispute or matter deemed to be in dispute arising between them out of or in connection with this Order in accordance with provisions of paragraph 110.

Review of draft construction management and logistics plan

4.—(1) At least 12 weeks prior to taking entry to or possession of the Natara land, the undertaker must submit a draft construction management and logistics plan to Natara for review (which must contain sufficiently full detail so as to enable Natara to be able to assess the effect of the proposals on the safety, use, operations on and access to and from the Natara land.

(2) Following the submission of the draft construction management and logistics plan under sub-paragraph (1), the undertaker shall (without delay) provide any additional information Natara may reasonably request and the undertaker and Natara shall use reasonable endeavours to hold a joint site meeting on the Natara land within the period of six weeks commencing on the day next after the date of submission under sub-paragraph (1).

(3) Any joint site meeting held for the purposes of sub-paragraph (2) may be attended by representatives of both Natara and the undertaker, together with such professional and technical advisors as each of them may require.

(4) The prohibition in paragraph 5(2) does not apply to any joint site meeting held for the purposes of sub-paragraph (2).

(5) The undertaker must—

- (a) have due and proper regard to any comments or representations made by Natara in respect of the draft construction management and logistics plan submitted under sub-paragraph (1), including any—
 - (i) written representations; or
 - (ii) oral comments provided at any joint site meeting held for the purposes of sub-paragraph (2); and
- (b) take such comments and representations into account in preparing any construction management and logistics plan submitted under paragraph 5(1).

Approval of construction management and logistics plan

5.—(1) At least 6 weeks prior to taking entry to or possession of the Natara land, the undertaker must submit a construction management and logistics plan to Natara for its approval.

(2) No entry to or possession of the Natara land may be taken for the purposes of any rights to be exercised pursuant to the Order the authorised development until a construction management and logistics plan submitted under sub-paragraph (1)—

- (a) has been approved by Natara under sub-paragraph (3)(a);
- (b) is deemed to have been approved under sub-paragraph (4); or
- (c) has been approved by an arbitrator following a reference under sub-paragraph (5).

(3) Following submission of a construction management and logistics plan under sub-paragraph (1), Natara must within 28 days of the date of receipt thereof notify the undertaker in writing—

- (a) of its approval of all or any part of that construction management and logistics plan; or
- (b) of its disapproval of all or any part of that construction management and logistics plan and the reasons for its disapproval.

(4) If Natara does not notify the undertaker of its decision within the period specified in sub-paragraph (3) then the construction management and logistics plan submitted under sub-paragraph (1) is deemed to be approved on the day next following the last day of that period.

(5) If Natara provides a response under sub-paragraph (3)(b) in respect of part only of that construction management and logistics plan then Natara shall be deemed to have approved the remainder of that

construction management and logistics plan on the day next following the date of the notification under sub-paragraph (3)(b).

(6) If Natara gives notice to the undertaker under sub-paragraph (3)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 110.

(7) The authorised development must be executed only in accordance with the construction management and logistics plan—

- (a) approved by Natara under sub-paragraph (3);
- (b) deemed to be approved under sub-paragraph (4) or (5); or
- (c) approved following a reference to an arbitrator in accordance with sub-paragraph (6).

Restrictions on certain activities

6. During the exercise of any rights pursuant to the Order e-construction and operation of the authorised development—

- (a) no part of the Natara land is to be used by the undertaker—
 - (i) for the parking or waiting of vehicles; or
 - (ii) for the storage of materials or waste;
 - ~~(ii)~~(iii) for the relocation of accessways, services or utilities;
- (b) where the undertaker exercises ~~any the~~ powers in ~~the articles 32 and 33 of this~~ Order in relation to the Natara land, those powers—
 - (i) may only be exercised in respect of the blue land, ~~the black land~~ and the yellow land; and
 - (ii) must not be exercised in respect of any other part of the Natara land;
- (c) any vehicles brought onto the Natara land by the undertaker must not stop on any part of the blue land except—
 - (i) in an emergency;
 - (ii) in accordance with a construction management plan approved under paragraph 5; or
 - (iii) to comply with any reasonable direction given by Natara.

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~~(iii)~~ (d) the undertaker must not exercise any permanent rights under the Order over the Natara Land save by agreement in the form of a deed of easement and in respect only of access rights over the blue land for the purposes of accessing plots 2/10, 2/11, 2/17, 2/18, 2/19, 2.20, 2/21, 2/22, 2/23, 2/25, 2/26, 2/27, 2/28, 2/29, 2/30, 2/30, 2/31 for the purpose of operating the specified development where no reasonably practicable alternative means of access is available to the undertaker (including any temporary access or footbridge provided by the undertaker)

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7. Where the undertaker submits a draft construction management and logistics plan under paragraph 4 or a construction management plan under paragraph 5, that plan must ensure that—

- (a) no more than two cranes are present on the Natara land simultaneously;
- (b) any crane brought onto the yellow land in accordance with the plan—
 - (i) is located and operated only within the black land; and
 - (ii) does not oversail any land owned or occupied by Natara other than the blue land or the yellow land;
- (c) in respect of temporary rights the blue land is only used during the construction of the authorised development for the purpose of accessing the yellow land; and
- (d) in respect of any temporary rights access is not taken over the blue land where a reasonably practicable alternative means of access is available, including any temporary access or footbridge provided by the undertaker; and

- (e) there is no reduction in the number of car parking spaces available on the Natara land below the number set out in the report submitted under paragraph 8(3).

Reinstatement of the Natara land

8.—(1) This paragraph applies where a construction management and logistics plan approved or deemed to be approved under paragraph 5 contains a requirement for the undertaker to carry out a pre-construction survey of condition.

(2) Where this paragraph applies, the undertaker must carry out the pre-construction survey of condition in accordance with the approved timing, scope and methodology.

(3) A report containing the findings of the pre-construction survey of condition completed in accordance with sub-paragraph (2) must be prepared by the undertaker and submitted to Natara before commencing any activities comprising part of the authorised development on the Natara land.

(4) Upon completion of those parts of the authorised development in respect of which entry to and possession of the Natara land was taken, the undertaker must—

- (a) carry out a post-construction survey of condition in accordance with the same scope and methodology as the pre-construction survey of condition; and
- (b) prepare a report containing—
 - (i) the findings of that post-construction survey of condition so as to enable a like-for-like comparison to be made to the findings of the pre-construction survey of condition; and
 - (ii) particulars of any works which are required in order to reinstate the Natara land to the condition set out in the report submitted under sub-paragraph (3), together with a programme and methodology for their implementation.

(5) The undertaker must submit a copy of the report prepared under sub-paragraph (4)(b) to Natara for its approval.

(6) Following submission of a report under sub-paragraph (5), Natara must within 14 days of the date of receipt thereof notify the undertaker in writing—

- (a) of its approval of all or any part of that report; or
- (b) of its disapproval of all or any part of that report and the reasons for its disapproval.

(7) If Natara does not notify the undertaker of its decision within the period specified in sub-paragraph (6) then the report submitted under sub-paragraph (5) is deemed to be approved on the day next following the last day of that period.

(8) If Natara provides a response under sub-paragraph (6)(b) in respect of part only of that report then Natara shall be deemed to have approved the remainder of that report on the day next following the date of the notification under sub-paragraph (6)(b).

(9) If Natara gives notice to the undertaker under sub-paragraph (6)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 110.

(10) The undertaker must implement any works to which sub-paragraph (4)(b)(ii) applies in accordance with the particulars set out in the report—

- (a) approved by Natara under sub-paragraph (6);
- (b) deemed to be approved under sub-paragraph (7) or (8); or
- (c) approved following a reference to an arbitrator in accordance with sub-paragraph (9).

Costs and compensation

9.—(1) Subject to sub-paragraphs (2) and (6) to (78), the undertaker must pay to Natara the reasonable and properly incurred costs and expenses (including legal, professional and surveyors' costs and reasonable staffing costs if work is carried out in-house) incurred by Natara in, or in connection with, the discharge of any function by Natara under this Schedule, including in respect of—

- (a) the review of a draft construction management and logistics plan submitted under paragraph 4(1);
- (b) attendance at any joint site meeting held for the purposes of paragraph 4(2);
- (c) the provision of comments or representations to the undertaker in terms of paragraph 4(5);
- (d) the review and approval of a construction management and logistics plan submitted under paragraph 5(1); and
- (e) the review and approval of a report submitted under paragraph 8(5); and
- (f) the application for, making of and implementation of the Order (including all costs relating to any negotiations between the undertaker and Natara in relation thereto);

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), Natara must give prior written notice to the undertaker of the activities to be undertaken and an estimate of the costs or expenses to be incurred.

~~(3) Subject to sub-paragraphs (4) to (8), if by reason or in consequence of the construction of the authorised development, any damage is caused to Natara, or there is any interruption in any service provided, or in the supply of any goods, by Natara, the undertaker must —~~

- ~~(a) at Natara's election either —~~
 - ~~(i) bear and pay the cost reasonably incurred by Natara in making good such damage or restoring the supply; or~~
 - ~~(ii) make good such damage to Natara's reasonable satisfaction; and~~
- ~~(b) make reasonable compensation to Natara for any other expenses, loss, damages, penalty or costs incurred by Natara, by reason or in consequence of any such damage or interruption.~~

~~(4) Nothing in sub-paragraph (3) imposes any liability on the undertaker with respect to —~~

- ~~(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Natara, its officers, employees, servants, contractors or agents; or~~
- ~~(b) any indirect or consequential loss or loss of profits by Natara.~~

~~(5) Natara must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.~~

~~(6) If the undertaker takes sole conduct pursuant to sub-paragraph (5) then it must have due and proper regard to any comments or representations made by Natara in respect of the settlement, compromise or proceedings in question.~~

~~(7) Natara must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph applies.~~

~~(8) If requested to do so by the undertaker, Natara must provide an explanation of how the claim or costs have been minimised or details to substantiate any cost or compensation claimed pursuant to this paragraph.~~

~~(9) The undertaker shall only be liable under this paragraph for claims or costs reasonably incurred by Natara.~~

~~(10) Where the undertaker has made good damage following an election by Natara under sub-paragraph (3)(a), the undertaker may request that Natara provide an intimation that the matter in question has been done to Natara's satisfaction for the purposes of sub-paragraph (3)(a)(ii).~~

~~(11) Following a request under sub-paragraph (10), Natara must within 7 days of the date of receipt thereof give an intimation to the undertaker in writing that the matter in question—~~

- ~~(a) has been done to Natara's satisfaction; or~~
- ~~(b) has not been done to Natara's satisfaction and the reasons for this.~~

~~(12) If Natara does not notify the undertaker of its decision within the period specified in sub-paragraph (11) then the matter in question is deemed to have been done to Natara's satisfaction.~~

~~(13) If Natara gives notice to the undertaker under sub-paragraph (11)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 10.~~

~~(134) For the purposes of any rights exercised over the Natara land pursuant to articles 32(6) and 33(7) of this Order, the obligation on the undertaker to pay compensation or indemnify for loss is not limited to loss or damage which arises on the land of which temporary or permanent possession was taken (including but not limited to any compensation which may be payable pursuant to the undertaker's exercise of any powers of compulsory acquisition in the Order), but also includes an obligation to pay such compensation in respect of any loss or damage suffered by Natara which arises outwith that land.~~

~~(145) Where Natara has previously recovered any sum from the undertaker pursuant to either paragraphs 9 or 10 it may not double recover such sum pursuant to Sub-paragraph (4) applies only to a liability of the undertaker under sub-paragraph (3) and does not apply to any other liability of the undertaker to pay any sum to Natara under any other provision of this Order.~~

Indemnity

~~10.—(1) the undertaker must without unreasonable delay indemnify Natara in respect of any claim—~~

- ~~(a) incurred by Natara in respect of any relevant damage; and~~
- ~~(b) incurred by or recovered from Natara by reason or in consequence of any relevant damage.~~
- ~~(2) Unless sub-paragraph (3) applies, the fact that any works, act or thing may have been done—~~
 - ~~(a) by Natara on behalf of the undertaker;~~
 - ~~(b) in accordance with a consent, approval or agreement granted by Natara pursuant to this Schedule~~
 - ~~(c) under Natara's supervision.~~

~~will not excuse the undertaker from liability under sub-paragraph (1).~~

~~(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—~~

- ~~(a) any claim to the extent that it is attributable to the act, neglect or default of Natara, or Natara's officers, employees, servants, contractors or agents; or~~
- ~~(b) any claim by Natara which is not reasonably and properly incurred.~~

~~(4) Natara must give the undertaker reasonable advance notice of any claim or proposed claim.~~

~~(5) No settlement, admission of liability, compromise or demand of any claim or proposed claim is to be made without the consent of Natara (not to be unreasonably withheld or delayed)~~

~~(6) Natara must use its reasonable endeavours to mitigate in whole or in part and to minimise any claim or proposed claim to which the indemnity under this paragraph applies where it is within Natara's reasonable ability and control so to do.~~

~~(7) If requested to do so by the undertaker, Natara must without unreasonable delay provide the undertaker with—~~

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(a) adequate details to substantiate any claim, or proposed claim, of Natara to indemnification pursuant to this paragraph;

(b) a written explanation of how Natara has mitigated or minimised the matters referred to in sub-paragraph (6).

(8) In this paragraph—

“claim” means “costs, claims, expenses, losses, demands, proceedings, damages or penalties” and, for the purposes of sub-paragraph (1)(b), includes a claim incurred as a result of Natara becoming liable to pay any sum to a third party (including but not limited to any sum payable as a result of Natara being in breach of its supply contracts with such third party) as a result of any relevant damage and includes all indirect and consequential losses including business interruption and loss of profits;

“relevant cause” means—

(a) the construction, operation use, maintenance or failure of or access to any part of the authorised development;

(b) any works or access authorised or carried out by the undertaker pursuant to this Schedule;

(c) any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works or access; and

“relevant damage” means—

(d) any damage caused to any land or property of Natara; and

(e) any interference with or interruption of the business and operations on the Natara land (including but not limited to any adverse consequences of Natara not being able to operate the Natara land and operations thereon as efficiently as previously

(f) any fine or penalty incurred by Natara in respect of any breach of its obligations in its supply contracts arising as a direct result of any other relevant damage as defined in the preceding sub-paragraphs (a) and (b);

(g) breach of any statutory obligation applicable to the apparatus; or

(h) any interruption of Natara’s access to or from the apparatus,

which arises by reason or in consequence of any relevant cause.

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Dispute resolution

1140.—(1) Article 46 (arbitration) does not apply to the provisions of this Schedule and aAny difference, dispute or matter deemed to be in dispute arising between the undertaker and Natara (including as to the amount of any payment pursuant to paragraphs 9 and 10) must, unless otherwise agreed between the undertaker and Natara, be referred and determined in accordance with this paragraph.

(2) Subject to the provisions of this Schedule, including sub-paragraphs (3) to (14) of this paragraph, the difference, dispute or matter referred shall be determined only in accordance with the Scheme.

(3) The Scheme shall apply as if—

(a) this Schedule constituted a “construction contract”; and

(b) the undertaker and Natara were the parties to that contract.

(4) For the purposes of paragraph 2(1)(b) of the Scheme, the Law Society of Scotland shall be the specified nominating body.

(5) Any party to which the notice of adjudication is given under paragraph 1 of the Scheme shall provide to the referring party a notice in response within five days setting out—

(a) a proposed remedy for the difference, dispute or matter referred;

(b) a date for a meeting to be held within five days of the date of the notice of response; or

- (c) a summary document for the dispute including any relevant correspondence or documents.
- (6) If a notice is given pursuant to sub-paragraph (5)(a) and the referring party agrees to the proposed remedy then the difference, dispute or matter referred shall be determined on that basis and the parties shall implement that remedy.
- (7) If a notice is given pursuant to sub-paragraph (5)(b)—
- (a) copies of that notice and the notice of adjudication shall immediately be provided to a director or manager within each party who has the authority on behalf of that party to resolve the difference, dispute or matter referred;
 - (b) the persons to whom the documents are provided pursuant to sub-paragraph (a) shall use reasonable endeavours to meet within five days of the date on which the notice under sub-paragraph (5)(b) was given; and
 - (c) if the persons to whom the documents are provided pursuant to sub-paragraph (a) agree a remedy within the five day period specified in sub-paragraph (b) (whether or not a meeting is actually held) then the difference, dispute or matter referred shall be determined on that basis and the parties shall implement that remedy.
- (8) Where sub-paragraph (7) applies—
- (a) the meeting referred to in sub-paragraph (7)(b) may (where relevant) take the form of a joint site meeting on the Natara land; and
 - (b) the words “seven days” in paragraph 7(1) of the Scheme shall be deemed to read “fourteen days”.
- (9) If a notice is given pursuant to sub-paragraph (5)(c) then a copy of that notice shall be provided to the adjudicator at the same time as the referral notice is provided to him under paragraph 7(1) of the Scheme.
- (10) For the purposes of paragraphs 9(4), 11(1) and 25 of the Scheme—
- (c) the adjudicator may determine how the payment is to be apportioned in which case the undertaker and Natara—
 - (i) are severally liable for only the sums apportioned to them in that determination; and
 - (ii) are not jointly and severally liable for any sum which remains outstanding following the making of any such determination;
 - (d) where the adjudicator makes no such determination, the undertaker and Natara shall be severally liable for one half each of the payment in question.
- (11) In paragraph 22 of the Scheme, for the words “If requested by one of the parties to the dispute”, substitute “At the same time as delivering copies of his decision pursuant to paragraph 19(3)”.
- (12) Subject to sub-paragraph (13)—
- (a) for the purposes of paragraph 23(2) of the Scheme the undertaker and Natara shall accept the decision of the adjudicator delivered under paragraph 19(3) of the Scheme as finally determining the difference, dispute or matter referred; and
 - (b) the jurisdiction of the adjudicator, the scope of the adjudication, the decision of the adjudicator and any action taken by the adjudicator shall not be challenged or questioned by the undertaker or Natara in any proceedings whatsoever.
- (13) If the undertaker or Natara is aggrieved by the decision of the adjudicator then they may, at any time within the appropriate period, appeal against the decision to His Majesty in Council in which case—
- (a) permission to appeal is not required; and

(b) the Judicial Committee Act 1833 shall apply in relation to the adjudicator as it applies in relation to such courts as are mentioned in section 3 of that Act.

(14) In sub-paragraph (13), the “appropriate period” means the period of twenty-eight days starting on the day next following the date upon which copies of the decision are delivered pursuant to paragraph 19(3) of the Scheme.

(15) The decision of the adjudicator may be enforced by way of a TCC claim within the meaning of and brought under Part 60 of the Civil Procedure Rules 1998.

(16) In this paragraph, references to the “Scheme” are references to Part I of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.

~~(17) Article 46 (arbitration) of this Order does not apply to any difference or dispute to which this paragraph applies.~~

Appendix 3

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATARA
GLOBAL LIMITED**

1. This Schedule has effect for the protection of Natara unless otherwise agreed in writing between the undertaker and Natara.

2. In this Schedule—

“black land” means the land edged and cross-hatched black on the Natara site plan;

“blue land” means the land tinted blue on the Natara site plan;

“construction management and logistics plan” means a plan (including method statements, specifications, risk assessments, schedules of condition and plans of appropriate scale and detail (in so far as relevant) in respect of any rights to be exercised pursuant to the Order prepared by or on behalf of the undertaker which sets out in relation to the Natara land—

- (a) the construction programme, including—
 - (i) the profile activity across the day;
 - (ii) the periods when the yellow land will be in use; and
 - (iii) the proposed arrangements for delivery, erection, transfer and removal of any crane;
- (b) details of all vehicles entering the Natara land including—
 - (i) vehicle types and numbers;
 - (ii) any pedestrian movements on the Natara land including frequency and numbers;
 - (iii) means of access to and egress from the yellow land, including any temporary means of access or footbridges to be provided by the undertaker;
 - (iv) access routes through the Natara land; and
 - (v) the times and periods during which access to or use of the Natara land is required;
- (c) details of any construction plant, machinery, equipment, materials or other items which will be brought onto the Natara land, including—
 - (i) where they will be located within the yellow land;
 - (ii) the periods during which they will be on the Natara land;
 - (iii) the method of operation;
 - (iv) the proposed arrangements for delivery, erection, operation, transfer and removal of any crane;
 - (v) the proposed method of operation of such crane, including any proposed oversailing of the yellow land; and
 - (vi) a risk assessment in respect of the matters specified in sub-paragraphs (c)(iv) and (v);
- (d) the proposed timing, scope and methodology of any pre-construction surveys of the Natara land, including—
 - (i) a survey of condition;
 - (ii) environmental surveys;
 - (iii) geotechnical surveys;
 - (iv) surveys of existing infrastructure; and
 - (v) other investigations for the purpose of assessing ground conditions on the Natara land;
- (e) any site preparation or clearance measures proposed on the Natara land, including—
 - (i) vegetation removal;
 - (ii) temporary protection of the surface of any street;
 - (iii) measures for the protection of Natara’s buildings, plant and equipment;

- (iv) any temporary removal of street furniture, fencing or other obstructions;
- (v) how the undertaker's working areas will be demarcated, including any fencing or markings proposed;
- (f) proposed external lighting, including any temporary lighting arrangements or alterations;
- (g) proposed health and safety management arrangements, including in respect of—
 - (i) personnel management;
 - (ii) the content and timing of any site safety briefings applicable to the Natara land;
 - (iii) the use of personal protective equipment;
 - (iv) the safe and efficient operation of the undertaker's plant, machinery and equipment;
 - (v) the location and specification of any safety or security fencing during construction;
 - (vi) the handling of any hazardous or inflammable materials or substances; and
 - (vii) site security;
- (h) proposals for the storage and disposal of waste arising as a result of the authorised development;
- (i) the provision of alternative access routes or other arrangements as are reasonably necessary to ensure that Natara's access to the Natara land is not materially prejudiced by any rights exercised pursuant to the Order;

“Natara” means Natara Global Limited (company registration number 14641931) whose registered office address is located at Zinc Works Road, North Gare, Seaton Carew, Hartlepool, TS25 2DT and its successors in title;

“Natara land” means plots 2/12, 2/13, 2/14, 2/15, 2/16, 2/23 and 2/24;

“Natara site plan” means the plan which is certified as the Natara site plan by the Secretary of State under article 44 (certification of plans etc) for the purposes of this Order;

“waiting” has the same meaning as in section 2(2)(c) of the Road Traffic Regulation Act 1984; and

“yellow land” means the land tinted yellow on the Natara site plan.

General duties of Natara and the undertaker

3.—(1) Where this Schedule provides—

- (a) that the acknowledgement, approval, agreement, consent or authorisation of Natara or the undertaker is required; or
- (b) that any thing must be done to Natara's reasonable satisfaction,

that acknowledgement, approval, agreement, consent, authorisation or intimation that the matter in question has been done to Natara's satisfaction shall not be unreasonably withheld or delayed.

(2) The undertaker must in carrying out the authorised development at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on Natara, its business and its property including any disruption to access, supplies and other services that to Natara or by Natara to third parties as part of its general operations and must further ensure that it does not exercise any rights under the Order in such a way as to materially prejudice Natara's ability to operate its site as efficiently as before and on a 24/7 basis;

(3) The undertaker and Natara shall use their reasonable endeavours to secure the amicable resolution of any difference, dispute or matter deemed to be in dispute arising between them out of or in connection with this Order in accordance with provisions of paragraph 11.

Review of draft construction management and logistics plan

4.—(1) At least 12 weeks prior to taking entry to or possession of the Natara land, the undertaker must submit a draft construction management and logistics plan to Natara for review (which must contain

sufficiently full detail so as to enable Natara to be able to assess the effect of the proposals on the safety, use, operations on and access to and from the Natara land

(2) Following the submission of the draft construction management and logistics plan under sub-paragraph (1), the undertaker shall (without delay) provide any additional information Natara may reasonably request and the undertaker and Natara shall use reasonable endeavours to hold a joint site meeting on the Natara land within the period of six weeks commencing on the day next after the date of submission under sub-paragraph (1).

(3) Any joint site meeting held for the purposes of sub-paragraph (2) may be attended by representatives of both Natara and the undertaker, together with such professional and technical advisors as each of them may require.

(4) The prohibition in paragraph 5(2) does not apply to any joint site meeting held for the purposes of sub-paragraph (2).

(5) The undertaker must—

- (a) have due and proper regard to any comments or representations made by Natara in respect of the draft construction management and logistics plan submitted under sub-paragraph (1), including any—
 - (i) written representations; or
 - (ii) oral comments provided at any joint site meeting held for the purposes of sub-paragraph (2); and
- (b) take such comments and representations into account in preparing any construction management and logistics plan submitted under paragraph 5(1).

Approval of construction management and logistics plan

5.—(1) At least 6 weeks prior to taking entry to or possession of the Natara land, the undertaker must submit a construction management and logistics plan to Natara for its approval.

(2) No entry to or possession of the Natara land may be taken for the purposes of any rights to be exercised pursuant to the Order until a construction management and logistics plan submitted under sub-paragraph (1)—

- (a) has been approved by Natara under sub-paragraph (3)(a);
- (b) is deemed to have been approved under sub-paragraph (4); or
- (c) has been approved by an arbitrator following a reference under sub-paragraph (5).

(3) Following submission of a construction management and logistics plan under sub-paragraph (1), Natara must within 28 days of the date of receipt thereof notify the undertaker in writing—

- (a) of its approval of all or any part of that construction management and logistics plan; or
- (b) of its disapproval of all or any part of that construction management and logistics plan and the reasons for its disapproval.

(4) If Natara does not notify the undertaker of its decision within the period specified in sub-paragraph (3) then the construction management and logistics plan submitted under sub-paragraph (1) is deemed to be approved on the day next following the last day of that period.

(5) If Natara provides a response under sub-paragraph (3)(b) in respect of part only of that construction management and logistics plan then Natara shall be deemed to have approved the remainder of that construction management and logistics plan on the day next following the date of the notification under sub-paragraph (3)(b).

(6) If Natara gives notice to the undertaker under sub-paragraph (3)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 11.

(7) The authorised development must be executed only in accordance with the construction management and logistics plan—

- (a) approved by Natara under sub-paragraph (3);
- (b) deemed to be approved under sub-paragraph (4) or (5); or
- (c) approved following a reference to an arbitrator in accordance with sub-paragraph (6).

Restrictions on certain activities

6. During the exercise of any rights pursuant to the Order —

- (a) no part of the Natara land is to be used by the undertaker—
 - (i) for the parking or waiting of vehicles; or
 - (ii) for the storage of materials or waste;
 - (iii) for the relocation of accessways, services or utilities;
- (b) where the undertaker exercises any powers in the Order in relation to the Natara land, those powers—
 - (i) may only be exercised in respect of the blue land, the black land and the yellow land; and
 - (ii) must not be exercised in respect of any other part of the Natara land;
- (c) any vehicles brought onto the Natara land by the undertaker must not stop on any part of the blue land except—
 - (i) in an emergency;
 - (ii) in accordance with a construction management plan approved under paragraph 5; or
 - (iii) to comply with any reasonable direction given by Natara.
- (d) the undertaker must not exercise any permanent rights under the Order over the Natara Land save by agreement in the form of a deed of easement and in respect only of access rights over the blue land for the purposes of accessing plots 2/10, 2/11, 2/17, 2/18, 2/19, 2.20, 2/21, 2/22, 2/23, 2/25,2/26, 2/27, 2/28,2/29, 2/30, 2/30, 2/31 for the purpose of operating the specified development where no reasonably practicable alternative means of access is available to the undertaker (including any temporary access or footbridge provided by the undertaker)

7. Where the undertaker submits a draft construction management and logistics plan under paragraph 4 or a construction management plan under paragraph 5, that plan must ensure that—

- (a) no more than two cranes are present on the Natara land simultaneously;
- (b) any crane brought onto the yellow land in accordance with the plan—
 - (i) is located and operated only within the black land; and
 - (ii) does not oversail any land owned or occupied by Natara other than the blue land or the yellow land;
- (c) in respect of temporary rights the blue land is only used during the construction of the authorised development for the purpose of accessing the yellow land; and
- (d) in respect of any temporary rights access is not taken over the blue land where a reasonably practicable alternative means of access is available, including any temporary access or footbridge provided by the undertaker; and
- (e) there is no reduction in the number of car parking spaces available on the Natara land below the number set out in the report submitted under paragraph 8(3).

Reinstatement of the Natara land

8.—(1) This paragraph applies where a construction management and logistics plan approved or deemed to be approved under paragraph 5 contains a requirement for the undertaker to carry out a pre-construction survey of condition.

(2) Where this paragraph applies, the undertaker must carry out the pre-construction survey of condition in accordance with the approved timing, scope and methodology.

(3) A report containing the findings of the pre-construction survey of condition completed in accordance with sub-paragraph (2) must be prepared by the undertaker and submitted to Natara before commencing any activities comprising part of the authorised development on the Natara land.

(4) Upon completion of those parts of the authorised development in respect of which entry to and possession of the Natara land was taken, the undertaker must—

- (a) carry out a post-construction survey of condition in accordance with the same scope and methodology as the pre-construction survey of condition; and
- (b) prepare a report containing—
 - (i) the findings of that post-construction survey of condition so as to enable a like-for-like comparison to be made to the findings of the pre-construction survey of condition; and
 - (ii) particulars of any works which are required in order to reinstate the Natara land to the condition set out in the report submitted under sub-paragraph (3), together with a programme and methodology for their implementation.

(5) The undertaker must submit a copy of the report prepared under sub-paragraph (4)(b) to Natara for its approval.

(6) Following submission of a report under sub-paragraph (5), Natara must within 14 days of the date of receipt thereof notify the undertaker in writing—

- (a) of its approval of all or any part of that report; or
- (b) of its disapproval of all or any part of that report and the reasons for its disapproval.

(7) If Natara does not notify the undertaker of its decision within the period specified in sub-paragraph (6) then the report submitted under sub-paragraph (5) is deemed to be approved on the day next following the last day of that period.

(8) If Natara provides a response under sub-paragraph (6)(b) in respect of part only of that report then Natara shall be deemed to have approved the remainder of that report on the day next following the date of the notification under sub-paragraph (6)(b).

(9) If Natara gives notice to the undertaker under sub-paragraph (6)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 11.

(10) The undertaker must implement any works to which sub-paragraph (4)(b)(ii) applies in accordance with the particulars set out in the report—

- (a) approved by Natara under sub-paragraph (6);
- (b) deemed to be approved under sub-paragraph (7) or (8); or
- (c) approved following a reference to an arbitrator in accordance with sub-paragraph (9).

Costs and compensation

9.—(1) Subject to sub-paragraphs (2) and (6) to (7), the undertaker must pay to Natara the reasonable and properly incurred costs and expenses (including legal, professional and surveyors' costs and reasonable staffing costs if work is carried out in-house) incurred by Natara in, or in connection with, the discharge of any function by Natara under this Schedule, including in respect of—

- (a) the review of a draft construction management and logistics plan submitted under paragraph 4(1);
- (b) attendance at any joint site meeting held for the purposes of paragraph 4(2);
- (c) the provision of comments or representations to the undertaker in terms of paragraph 4(5);
- (d) the review and approval of a construction management and logistics plan submitted under paragraph 5(1); and
- (e) the review and approval of a report submitted under paragraph 8(5); and
- (f) the application for, making of and implementation of the Order (including all costs relating to any negotiations between the undertaker and Natara in relation thereto)

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), Natara must give prior written notice to the undertaker of the activities to be undertaken and an estimate of the costs or expenses to be incurred.

(3) For the purposes of any rights exercised over the Natara land pursuant to this Order, the obligation on the undertaker to pay compensation or indemnify for loss is not limited to loss or damage which arises on land of which temporary or permanent possession was taken (including but not limited to any compensation which may be payable pursuant to the undertaker's exercise of any powers of compulsory acquisition in the Order), but also includes an obligation to pay such compensation in respect of any loss or damage suffered by Natara which arises outwith that land

(4) Where Natara has previously recovered any sum from the undertaker pursuant to either paragraphs 9 or 10 it may not double recover such sum pursuant to any other liability of the undertaker to pay any sum to Natara under any other provision of this Order.

Indemnity

10.—(1) the undertaker must without unreasonable delay indemnify Natara in respect of any claim—

- (a) incurred by Natara in respect of any relevant damage; and
- (b) incurred by or recovered from Natara by reason or in consequence of any relevant damage.

(2) Unless sub-paragraph (3) applies, the fact that any works, act or thing may have been done—

- (a) by Natara on behalf of the undertaker;
- (b) in accordance with a consent, approval or agreement granted by Natara pursuant to this Schedule
- (c) under Natara's supervision,

will not excuse the undertaker from liability under sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any claim to the extent that it is attributable to the act, neglect or default of Natara, or Natara's officers, employees, servants, contractors or agents; or
- (b) any claim by Natara which is not reasonably and properly incurred.

(4) Natara must give the undertaker reasonable advance notice of any claim or proposed claim.

(5) No settlement, admission of liability, compromise or demand of any claim or proposed claim is to be made without the consent of Natara (not to be unreasonably withheld or delayed)

(6) Natara must use its reasonable endeavours to mitigate in whole or in part and to minimise any claim or proposed claim to which the indemnity under this paragraph applies where it is within Natara's reasonable ability and control so to do.

(7) If requested to do so by the undertaker, Natara must without unreasonable delay provide the undertaker with—

- (a) adequate details to substantiate any claim, or proposed claim, of Natara to indemnification pursuant to this paragraph;

(b) a written explanation of how Natara has mitigated or minimised the matters referred to in sub-paragraph (6).

(8) In this paragraph—

“claim” means “costs, claims, expenses, losses, demands, proceedings, damages or penalties” and, for the purposes of sub-paragraph (1)(b), includes a claim incurred as a result of Natara becoming liable to pay any sum to a third party (including but not limited to any sum payable as a result of Natara being in breach of its supply contracts with such third party) as a result of any relevant damage and includes all indirect and consequential losses including business interruption and loss of profits;

“relevant cause” means—

- (a) the construction, operation use, maintenance or failure of or access to any part of the authorised development;
- (b) any works or access authorised or carried out by the undertaker pursuant to this Schedule;
- (c) any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works or access; and

“relevant damage” means—

- (d) any damage caused to any land or property of Natara; and
 - (e) any interference with or interruption of the business and operations on the Natara land (including but not limited to any adverse consequences of Natara not being able to operate the Natara land and operations thereon as efficiently as previously
 - (f) any fine or penalty incurred by Natara in respect of any breach of its obligations in its supply contracts arising as a direct result of any other relevant damage as defined in the preceding sub-paragraphs (a) and (b);
 - (g) breach of any statutory obligation applicable to the apparatus; or
 - (h) any interruption of Natara’s access to or from the apparatus,
- which arises by reason or in consequence of any relevant cause.

Dispute resolution

11.—(1) Article 46 (arbitration) does not apply to the provisions of this Schedule and any difference, dispute or matter deemed to be in dispute arising between the undertaker and Natara (including as to the amount of any payment pursuant to paragraphs 9 and 10) must, unless otherwise agreed between the undertaker and Natara, be referred and determined in accordance with this paragraph.

(2) Subject to the provisions of this Schedule, including sub-paragraphs (3) to (14) of this paragraph, the difference, dispute or matter referred shall be determined only in accordance with the Scheme.

(3) The Scheme shall apply as if—

- (a) this Schedule constituted a “construction contract”; and
- (b) the undertaker and Natara were the parties to that contract.

(4) For the purposes of paragraph 2(1)(b) of the Scheme, the Law Society of Scotland shall be the specified nominating body.

(5) Any party to which the notice of adjudication is given under paragraph 1 of the Scheme shall provide to the referring party a notice in response within five days setting out—

- (a) a proposed remedy for the difference, dispute or matter referred;
- (b) a date for a meeting to be held within five days of the date of the notice of response; or
- (c) a summary document for the dispute including any relevant correspondence or documents.

(6) If a notice is given pursuant to sub-paragraph (5)(a) and the referring party agrees to the proposed remedy then the difference, dispute or matter referred shall be determined on that basis and the parties shall implement that remedy.

(7) If a notice is given pursuant to sub-paragraph (5)(b)—

- (a) copies of that notice and the notice of adjudication shall immediately be provided to a director or manager within each party who has the authority on behalf of that party to resolve the difference, dispute or matter referred;
- (b) the persons to whom the documents are provided pursuant to sub-paragraph (a) shall use reasonable endeavours to meet within five days of the date on which the notice under sub-paragraph (5)(b) was given; and
- (c) if the persons to whom the documents are provided pursuant to sub-paragraph (a) agree a remedy within the five day period specified in sub-paragraph (b) (whether or not a meeting is actually held) then the difference, dispute or matter referred shall be determined on that basis and the parties shall implement that remedy.

(8) Where sub-paragraph (7) applies—

- (a) the meeting referred to in sub-paragraph (7)(b) may (where relevant) take the form of a joint site meeting on the Natara land; and
- (b) the words “seven days” in paragraph 7(1) of the Scheme shall be deemed to read “fourteen days”.

(9) If a notice is given pursuant to sub-paragraph (5)(c) then a copy of that notice shall be provided to the adjudicator at the same time as the referral notice is provided to him under paragraph 7(1) of the Scheme.

(10) For the purposes of paragraphs 9(4), 11(1) and 25 of the Scheme—

- (c) the adjudicator may determine how the payment is to be apportioned in which case the undertaker and Natara—
 - (i) are severally liable for only the sums apportioned to them in that determination; and
 - (ii) are not jointly and severally liable for any sum which remains outstanding following the making of any such determination;
- (d) where the adjudicator makes no such determination, the undertaker and Natara shall be severally liable for one half each of the payment in question.

(11) In paragraph 22 of the Scheme, for the words “If requested by one of the parties to the dispute”, substitute “At the same time as delivering copies of his decision pursuant to paragraph 19(3)”.

(12) Subject to sub-paragraph (13)—

- (a) for the purposes of paragraph 23(2) of the Scheme the undertaker and Natara shall accept the decision of the adjudicator delivered under paragraph 19(3) of the Scheme as finally determining the difference, dispute or matter referred; and
- (b) the jurisdiction of the adjudicator, the scope of the adjudication, the decision of the adjudicator and any action taken by the adjudicator shall not be challenged or questioned by the undertaker or Natara in any proceedings whatsoever.

(13) If the undertaker or Natara is aggrieved by the decision of the adjudicator then they may, at any time within the appropriate period, appeal against the decision to His Majesty in Council in which case—

- (a) permission to appeal is not required; and

(b) the Judicial Committee Act 1833 shall apply in relation to the adjudicator as it applies in relation to such courts as are mentioned in section 3 of that Act.

(14) In sub-paragraph (13), the “appropriate period” means the period of twenty-eight days starting on the day next following the date upon which copies of the decision are delivered pursuant to paragraph 19(3) of the Scheme.

(15) The decision of the adjudicator may be enforced by way of a TCC claim within the meaning of and brought under Part 60 of the Civil Procedure Rules 1998.

(16) In this paragraph, references to the “Scheme” are references to Part I of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.