

**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;
 - (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
 - (vi) a risk assessment in respect of the matters specified in sub-paragraphs (c)(iv) and (c)(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;

“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 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 10.

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

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 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 10.

(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 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 and logistics plan approved under paragraph 5; or
 - (iii) to comply with any reasonable direction given by Natara.

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

- (a) no more than two cranes are present on 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;
- (d) access is not take 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 10.

(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 (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—

- (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).

(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.

Dispute resolution

10.—(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 9) 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—

- (a) 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;
- (b) 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(a) 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(b).

(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(c).

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

(a) 1833 c.41.

(b) S.I. 1998 / 3132 (L.17).

(c) S.I. 1998 / 649 as amended by S.I. 2011 / 2333.