

Dated

10TH JULY

2018

**CONTRACT FOR SYSTEM MODIFICATION
TO MITIGATE RADAR HARM CAUSED BY FORMER NESTLE FACTORY NESTLES AVENUE
HAYES**

between

NATS (Services) Limited

and

NATS (En Route) plc

and

BDW Trading Limited

CRM Number: 5531

WITHOUT PREJUDICE AND SUBJECT TO CONTRACT

Legal Department - Corporate & Technical Centre
Mailbox 8, 4000 Parkway
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Fareham
Hants PO15 7FL

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PARTIES

BETWEEN

- (1) **NATS (Services) Limited**, a company incorporated in England and Wales with registered number 4129270 whose registered office is at 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL ("**NATS**")
- (2) **NATS (En Route) plc**, a company incorporated in England and Wales with registered number 4129273 whose registered office is at 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL ("**NERL**")
- (3) **BDW Trading Limited**, a company incorporated in England and Wales with registered number 3018173 whose registered office is at Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicester, LE67 1UF ("**the Developer**")

Each a "Party" and together "the Parties"

BACKGROUND: -

- (A) An application was made for Planning Permission pursuant to the Town and Country Planning Act 1990 to the Council registered under reference 1331/APP/2017/1883 ("**Application**") comprising construction of a new development as set out in the Application Former Nestle Factory, Nestle Avenue, Hayes. ("**Development**").
- (B) The Developer has an interest in the Site by reason of a sale and purchase agreement (between the Developer and the Owner of the Site dated 2 February 2016 as revised on 15th December 2017 which is conditional on the grant of Planning Permission), pertaining to the area which is shown outlined red on the Plan ("**Site**").
- (C) NERL provides en-route air navigation services for United Kingdom airspace. NERL is regulated by the Civil Aviation Authority and has a duty under licence to provide safe and efficient air traffic control services which are capable of meeting future demand.
- (D) NERL was consulted in relation to the Application and objected on the basis that a predicted increase in the number of false plots and reflections on Heathrow H10 Radar (the "**Asset**") would have an adverse impact on the NERL operations and its associated air traffic control operations. The parties acknowledge that NERL is a party to this Contract in its capacity as statutory objector to the Application.
- (E) The Parties agree that without appropriate technical mitigation, the Development will cause an unacceptable impact on the Asset and associated air traffic control operations.
- (F) The Parties have been in discussions regarding potential mitigation solutions to the impacts.
- (G) NATS agrees to perform the Services subject to the terms of this Contract.
- (H) As a result of the Conditions being agreed and imposed on the Planning Permission, the parties acknowledge that the Services shall be provided by NATS on behalf of the Developer and delivered for use to NERL.

1 INTERPRETATION

1.1 In this Contract (including the Background), unless the context otherwise requires, the following definitions will apply:

“Above Ground Works”	means any work of construction above ground height (temporary or otherwise) at the Site that exceeds twelve (12) metres in height;
“Applicable Laws”	means all regional, national and international laws, rules, regulations and standards including those imposed by any governmental or regulatory authority and all applicable industry standards and standards determined by any self-regulatory body which apply from time to time to the person or activity in the circumstances in question
“Application”	has the meaning set out in the Background;
“Commencement Date”	means the date of this Contract signed by the last Party to sign it (as indicated by the date stated under that Party’s signature);
“Conditions”	means the agreed Conditions set out at Schedule 4 attached to the Planning Permission granted pursuant to the Application;
“Contract”	means this Contract between the Developer, NERL and NATS, comprising the Clauses herein and the Schedules and any document referred to, completed or to be completed in accordance with its provisions;
“Contract Price”	means the price payable by the Developer to NATS for the Services as set out in Schedule 2;
“Council”	means the London Borough Of Hillingdon or any successor local planning authority;
“Crane Operation Plan”	has the meaning set out in Schedule 4;
“Data Controller”	shall mean the party that determines the purposes and means of the processing of Personal Data;
“Data Processor”	shall mean the party that is Processing the Personal Data on behalf of the Data Controller;
“Deliverables”	means any product produced by NATS and delivered to the Developer in performance of the Services;
“Development”	has the meaning set out in the Background;

“Discharge Letter”	means the letter in the form set out at 0;
“Dispute”	means any dispute arising out of the Contract;
“Force Majeure Event”	means any act, event, omission or accident beyond the reasonable control of the Parties including without limitation acts of God, governmental act, war, directions of a government authority, fire, flood, explosion, civil commotion, lock-outs, strikes or other labour disputes or any delays or materials shortages caused or contributed by sub-contractors or suppliers of NATS or NERL;
“IPR”	means rights in, and in relation to, any patents, petty patents, registered designs, design rights, trade marks, rights in domain names, trade and business names (including all goodwill associated with any trademarks or trade or business names), copyrights, moral rights, rights in databases, topography rights and utility models (including the benefit of all registrations of, applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing), trade secrets, confidential information and other proprietary rights in data and information, (including rights to know how and other technical information rights in the nature of unfair competition rights and rights to sue for passing off) and all other intellectual or industrial property rights of any nature whatsoever in or relating to the Services or any Deliverables for their full term (including any extensions or renewals thereof) and wherever in the world enforceable;
“Plan”	means the plan reproduced in Schedule 3;
“Personal Data”	shall mean any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
“Personnel”	shall mean the employees, subcontractors, consultants, contractors, advisers, officers or similar of a party;
“Processing” and “Process”	shall mean any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction

“Planning Permission”	means the consent for the Development from the Council (as may be amended via an application approved under section 96A of the Town and Country Planning Act 1990);
“Radar Mitigation Scheme”	has the meaning set out in Schedule 4;
“Services”	means the mitigation services set out at Schedule 1;
“Site”	has the meaning set out in the Background;
“VAT”	means value added tax payable under the Value Added Tax Act 1994 and any substituted or additional tax or duty applicable from time to time to sales or supplies of the Services; and
“Working Day”	means a day (other than Saturday or Sunday) on which banks in the City of London are generally open for business.

- 1.2 Unless otherwise stated, references to Schedules and Clauses are to schedules to and clauses including the Background of this Contract.
- 1.3 In the event that Planning Permission is granted the Developer will if it acquires a legal interest in the Site procure that during the term of the Contract any successors, assigns or trustees of any part of the Site enter into a contract with NATS and NERL on the same terms as the Contract.
- 1.4 The headings used in the Contract are for convenience only and shall not affect their interpretation.
- 1.5 References to the plural include the singular, references to the male include female and vice versa where applicable.
- 1.6 Reference to any enactment, regulation or other statutory instrument shall be construed to include any subsequent amendments or re-enactments of them or their replacements.
- 1.7 In this Contract (unless the context otherwise requires):
 - 1.7.1 the words "including", "included", "includes" and "include" and words of similar effect shall not be deemed to limit the general effect of the words which precede them;
 - 1.7.2 reference to any Contract, contract, document or deed shall be construed as reference to it as varied, supplemented or novated;
 - 1.7.3 obligations undertaken by a Party which comprises more than one person shall be deemed to be made by them jointly and severally;
 - 1.7.4 words importing persons shall include firms, companies and bodies corporate and vice versa;

- 1.7.5 the words "in writing" means a hard copy of the letter has been sent by post to the recipient at the address specified in clause 23, and "written" shall be construed accordingly.

2 COMMENCEMENT AND DURATION

- 2.1 This Contract shall commence on the Commencement Date and shall continue in force until termination pursuant to the provisions of Clause 9.

3 OBLIGATIONS OF NATS AND NERL

- 3.1 NATS shall:

3.1.1 carry out the Services; and

3.1.2 complete the Services

within six (6) months from the date NATS receives cleared funds of the Contract Price from the Developer in accordance with the payment terms set out at Clause 5 and Schedule 2.

- 3.2 NATS shall notify NERL as soon as reasonably practicable of the completion of the Services and NERL shall, within five (5) Working Days of such notification from NATS, send the Discharge Letter to the Council in respect of the Conditions.

- 3.3 To the extent that NATS requires any consent or authorisation from NERL in order to discharge any of its obligations under this Contract then NATS shall use reasonable endeavours to procure such consent or authorisation from NERL.

- 3.4 NATS shall provide the Services to the Developer using reasonable skill, care and attention.

4 DEVELOPER'S OBLIGATIONS

- 4.1 The Developer shall pay the Contract Price to NATS in accordance with Clause 5 and Schedule 2 (Contract Price) for the Services.

- 4.2 The Developer shall (i) comply with the Conditions and (ii) provide such co-operation and assistance as NATS reasonably requires for the provision of the Services, including but not limited to the submission of plans, drawings or other similar documents that relate to, or support the Development.

- 4.3 The Developer shall provide to NATS a schedule of the intended dates or dates of construction in relation to the Development subject to Clause 4.4. The Developer shall adhere to the Plan.

- 4.4 If the construction dates change from those set out in the schedule referred to at Clause 4.3 above and/or the Plan changes from that set out in Schedule 3, then the Developer shall immediately notify NATS of the revisions.

- 4.5 Subject to Clause 4.4, the Developer shall not carry out any Above Ground Work which deviates from and/or is contrary to the Planning Permission and the Plan.

- 4.6 The Developer shall not, during the term of this Contract and for a period of 12 months after the Services have been completed, directly or indirectly solicit or entice away any employee of NATS who is or has been engaged in providing the Services, whether by making an offer of employment or otherwise.
- 4.7 The Developer shall direct all correspondence relating to this Contract (other than notices required to be given in accordance with Clauses 4.3 and 4.4) to the NATS contact named in Schedule 1.
- 4.8 The Developer shall not commence Above Ground Works until:
- 4.8.1 It has complied with the Conditions (as applicable) relating to the Radar Mitigation Scheme (as defined in Schedule 4);
 - 4.8.2 It has a Crane Operation Plan (as defined in Schedule 4) approved by the Council; and
 - 4.8.3 NATS has confirmed that the Services have been completed, such confirmation not to be unreasonably withheld, delayed or conditioned.
- 4.9 Notwithstanding NATS's duties and responsibilities in relation to the Services, the Developer shall retain responsibility and accountability for:
- 4.9.1 the management and conduct and operation of its business affairs; and
 - 4.9.2 deciding on its use and implementation of the Deliverables.

5 PAYMENT

- 5.1 In consideration for the provision of the Services and subject to Clause 5.2, the Developer shall pay the Contract Price in accordance with this Clause 5 and Schedule 2.
- 5.2 Invoices shall be rendered by NATS in accordance with Schedule 2.
- 5.3 Unless otherwise provided in Schedule 2, the Contract Price shall be non-refundable and shall be exclusive of Value Added Tax (VAT), and the amount equal to the prevailing rate will be added to the Contract Price for the Services, and the Developer shall pay such aggregated amount. If the Developer is required under any applicable law to withhold or deduct any amount from the payments due to NATS, the Developer shall increase the sum it pays to NATS by the amount necessary to yield NATS an amount equal to the sum it would have received if no withholdings or deductions had been made.
- 5.4 No payment will be deemed to have been received, and the Services will not be provided, until NATS has received cleared funds.
- 5.5 All payments will be made without any withholding, deduction, set-off or counterclaim.
- 5.6 The Developer shall pay to NATS interest on any overdue amount at the rate of four (4) per cent per annum above the base rate from time to time of Barclays Bank from the due date until actual payment both before and after any judgement, calculated on a daily basis and compounded monthly.

6 CONFIDENTIALITY

- 6.1 In Clause 6, "Confidential Information" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by any Party, whether before or after the date of the Contract including, but not limited to, information relating to the other Parties' products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.
- 6.2 During the term of the Contract and after termination or expiry of the Contract for any reason no Party:
- 6.2.1 shall use Confidential Information for a purpose other than the performance of its obligations under the Contract; and
 - 6.2.2 shall disclose Confidential Information to any person except with the prior written consent of the other Party or Parties (as applicable) or in accordance with Clauses 6.3 and 6.4
- 6.3 During the term of the Contract no Party may disclose Confidential Information to any of its directors, other officers, employees, professional advisors or consultants ("Recipient") to the extent that disclosure is reasonably necessary for the purposes of the Contract.
- 6.4 Before disclosure of Confidential Information to a Recipient, the disclosing Party shall ensure that such Recipient is made aware of and complies with the obligations of confidentiality under the Contract as if the Recipient was a Party to the Contract.
- 6.5 Clauses 6.2 to 6.4 do not apply to Confidential Information which:
- 6.5.1 is at the date of the Contract or becomes at any time after that date publicly known other than by the disclosing Party or Recipient's breach of the Contract; or
 - 6.5.2 can be shown by the Developer to NATS' reasonable satisfaction (separately and/or on behalf of NERL as applicable) (or vice versa) to have been known by the Recipient before disclosure by NATS to the Developer, (or vice versa), or
 - 6.5.3 is or becomes available to the Developer or NATS or NERL (as applicable) otherwise than pursuant to the Contract and free of any restrictions as to its use or disclosure; or
 - 6.5.4 is required to be disclosed for the purposes of planning enforcement, a planning appeal or by law.
- 6.6 Subject to this clause 6 for the purposes of delivering the Services to the Developer or other clients, NATS shall be entitled to use, develop or share knowledge, experience and skills of general application gained through performing and delivering the Services to the Developer.

7 INTELLECTUAL PROPERTY

- 7.1 Subject to Clause 7.2, all rights, title and interest (including without limitation all IPR) in any and all ideas, concepts, designs, data, information, documentation, materials in any form (including but not limited to electronic form) created, conceived, prepared, made or developed pursuant to

this Contract by NATS or NERL (as applicable) shall belong exclusively and absolutely to NATS or NERL (as applicable) and the Developer shall, at no cost to NATS, execute (and/or procure the execution of) such further deeds and documents and do all such acts or things necessary or desirable to give full effect to the intent of this Clause 7.1.

- 7.2 In consideration of the payment of the Contract Price, NATS or NERL (as applicable) hereby grant to the Developer a non-exclusive, royalty free, perpetual licence to use those rights as referred to in Clause 7.1 solely for the purpose of developing the Development.

8 LIMITATION OF LIABILITY

- 8.1 All conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, non-supply or delay in performance of the Services are excluded to the extent permitted by law.

- 8.2 Subject to the provisions in Clause 8.4 below, no Party is liable to the other in contract, tort (including negligence or breach of statutory duty) or otherwise for any of the following losses or damages, whether direct or indirect, arising out of, or in connection with, the supply, non-supply or delay in performance of the Services or otherwise in connection with this Contract:

- 8.2.1 loss or damage incurred by the other Party as a result of third party claims; or
- 8.2.2 loss of actual or anticipated profits; or
- 8.2.3 loss of business opportunity; or
- 8.2.4 loss of anticipated savings; or
- 8.2.5 loss of goodwill; or
- 8.2.6 injury to reputation; or
- 8.2.7 any indirect, special or consequential loss or damage howsoever caused even if the other party was advised of the possibility of such loss or damage in advance.

The forgoing exclusions on the liability of both parties shall not apply with respect to any loss or damage sustained by one party as a result of any deliberate, knowing or wilful breach by the other party (whether by act or omission) of any of its obligations under this Contract.

- 8.3 Subject to Clause 8.4:

- 8.3.1 the maximum, aggregate, joint liability of NERL and NATS arising out of or in connection with the supply, non-supply or delay in performance of the Services or otherwise in connection with this Contract, whether in contract, tort (including negligence or breach of statutory duty) under any indemnity or otherwise, is limited to a figure equivalent to the Contract Price;
- 8.3.2 the maximum, aggregate liability of the Developer whether in contract, tort (including negligence or breach of statutory duty) under any indemnity or otherwise and arising out of or in connection with:

- (a) breach of Clause 4.5, Clause 4.8, (development in breach) and Clause 11 (Assignment) is limited to ten million pounds (£10,000,000) in the aggregate; and
- (b) any other liability in connection with this Contract is limited to the Contract Price in the aggregate.

8.4 Nothing in this Contract shall operate to exclude or restrict any Party's liability for:

- 8.4.1 death or personal injury resulting from NATS's negligence as defined in the Unfair Contract Terms Act 1977; and
- 8.4.2 fraud or other matter if and to the extent that, under English law, liability for it cannot be excluded, restricted or limited as against the Developer in the context of this Contract.

9 TERMINATION

9.1 Without prejudice to any other rights or remedies under this Contract either NATS or the Developer may terminate this Contract by notice in writing forthwith if:

- 9.1.1 the other Party is in material or persistent breach of any term of the Contract and fails to remedy such breach within thirty (30) days of receiving a notice from the party not in default requiring such breach to be remedied;
- 9.1.2 the other Party (or if it is a partnership any of the partners), or any of its or their assets is subject to any form of bankruptcy, winding up, dissolution, administration, administrative or other receivership, moratorium, insolvency proceedings, voluntary or other arrangements with creditors, enforcement of security, legal process, distress or repossession or anything similar outside England and Wales; or
- 9.1.3 the other Party ceases to carry on business or a judgment against it remains unsatisfied for seven days.

9.2 Without prejudice to any other rights or remedies NATS may terminate this Contract immediately if the Developer fails to pay any sums due under this Contract within ten (10) Working Days after written notice from NATS or if the Developer is in breach of its obligation at Clauses 4.5 and/or 4.8 and such breach is not remedied within ten (10) Working Days of being notified of the same.

9.3 Without prejudice to any other rights or remedies, either Party may terminate this Contract by written notice to the other Party if the Developer does not receive Planning Permission for the Development within twelve (12) months of the Commencement Date.

9.4 By terminating pursuant to Clause 9.3 above, the Developer agrees that it shall not (and shall procure that no other person will) carry out the Development.

9.5 Termination of this Contract will be without prejudice to the accrued rights and remedies of either NATS or the Developer against each other provided that without prejudice to such rights or remedies the Developer will be entitled to the product of any Services then completed and NATS will be entitled to that part of the Contract Price in payment of its reasonable and proper fees and

expenses due or incurred at that date in relation to the Services or a fair and reasonable part of them if the Services are not complete.

- 9.6 The following Clauses of this Contract shall survive expiry or termination of this Contract: Clauses 1, 4.5, 6, 7, 9.3, 9.6, 10, 14, 15, 16, 23 and 24.

10 DISPUTE RESOLUTION PROCEDURE

- 10.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with this Clause 10.
- 10.2 The Parties shall attempt in good faith to resolve any Dispute promptly by negotiation which shall be conducted as follows:
- 10.2.1 any Dispute shall in the first instance be referred by a written notice of Dispute (the "Notice of Dispute") from the referring Party to the other Party. Within 10 Working Days after the date on which the Notice of Dispute is received, the Party receiving the Notice of Dispute shall deliver to the other Party a written response to the Notice of Dispute (the "Response"). Both the Notice of Dispute and the Response shall include a statement of the position of the Party preparing the Notice of Dispute or Response, and shall annex any documents relied upon by that Party;
- 10.2.2 if the Dispute is not resolved within 5 Working Days of receiving a Response to a Notice of Dispute, or if no Response is delivered, within 10 Working Days of the date upon which the time for delivery of a Response expired, the Dispute shall be referred to the Managing Director of the Developer and NATS' Chief Executive Officer (or such other persons as they shall appoint) who shall within 5 Working Days meet at mutually acceptable times and places to discuss and try to reach agreement to resolve the Dispute.
- 10.3 All negotiations and discussions pursuant to Clause 10.2 are without prejudice and shall be treated as compromise and settlement negotiations for the purpose of any applicable rules of evidence.
- 10.4 If the Dispute cannot be resolved pursuant to Clause 10.2 the Parties shall attempt to resolve the Dispute by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure (the current version at the time of the Dispute ("CEDR Model Mediation Procedure")).
- 10.5 To initiate a mediation pursuant to Clause 10.4 the claiming Party must give notice in writing ("ADR Notice") to the other Party and the Chief Executive of CEDR requesting a mediation in accordance with Clause 10.4 and such notice must be given within 10 Working Days after the date upon which the time for resolution of the Dispute pursuant to Clause 10.2.2 expired.
- 10.6 The Parties will sign a mediation agreement in accordance with CEDR's Model Mediation Agreement (or in such other terms as may be agreed by the Parties in writing ("Mediation Agreement")). The Mediation Agreement will be signed not less than 7 days prior to the date fixed for the mediation of the Dispute.

- 10.7 The mediation shall take place in London, and the language of the mediation will be English. The Mediation Agreement referred to in the CEDR Model Mediation Procedure shall be governed by and construed and take effect in accordance with English law.
- 10.8 If the Parties are unable to reach a settlement at the mediation, neither Party shall call the mediator(s) as witnesses in any arbitration or court proceedings involving or relating to the Dispute.
- 10.9 If the Dispute is not settled by negotiation in accordance with Clause 10.2 or by mediation in accordance with Clauses 10.4 to 10.7 within 10 Working Days after the date of the conclusion of the mediation, either Party may initiate court proceedings in respect of the Dispute.
- 10.10 If proceedings have already been issued and served either Party may apply for the stay to be lifted and shall give at least 10 Working Days' written notice of this application to the other Party.
- 10.11 Unless this Contract has already been terminated, the Parties shall continue to perform their obligations under the Contract regardless of the nature of the Dispute and notwithstanding this Dispute Resolution Procedure.
- 10.12 Without prejudice to any other rights or remedies that NATS may have, the Developer acknowledges and agrees that damages alone would not be an adequate remedy for any material breach by the Developer of the provisions of this Contract and that accordingly NATS shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the provisions of this Contract.
- 10.13 This Clause shall survive the expiry or earlier termination of the Contract.

11 ASSIGNMENT

- 11.1 The Parties to this Contract may not assign this Contract or any benefits or rights arising under it without the prior written consent of the others (such consent not to be unreasonably withheld or delayed). Unless agreed otherwise as part of the provision of written consent to any assignment, the assignor will remain liable for the acts and defaults of any assignee and will on demand hold the other Parties fully indemnified in respect of such acts and defaults.

12 THIRD PARTY RIGHTS

- 12.1 A person who is not a Party to this Contract shall have no rights under The Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Contract.

13 FORCE MAJEURE

- 13.1 No Party shall be liable to the other for any delay or failure to perform any of its obligations hereunder, which delay or failure is due to a Force Majeure Event.
- 13.2 Each Party shall exercise its best efforts to mitigate the extent of the excusable delay or failure described in Clause 13.1 and their adverse consequences and to recommence performance of the affected obligations to the extent reasonably practicable.

14 WAIVER OF RIGHTS AND REMEDIES

- 14.1 No Party to the Contract shall be deemed to waive any rights or remedies unless the waiver is in writing and is signed by an authorised officer of that Party and neither Party's rights shall be affected by any delay, failure or omission to enforce or express forbearance granted in respect of any obligation of the other.
- 14.2 No Party's rights shall be prejudiced or restricted by any concession, indulgence or forbearance extended to the other.

15 PUBLICITY

- 15.1 No Party shall make any press announcements or publicise this Contract or the contents of the same in any way without the prior written consent of other except as required by law.

16 SEVERANCE

- 16.1 If any provision in this Contract is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this Contract which shall remain in full force and effect.
- 16.2 If any provision of this Contract is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

17 ENTIRE AGREEMENT

- 17.1 This Contract, including any Schedules and together with the documents referred to or attached to it constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters.
- 17.2 Each of the Parties acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Contract. The only remedy available to either Party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Contract.
- 17.3 Nothing in this Clause 17 shall operate to exclude any liability for fraud.

18 DATA PROTECTION AND PRIVACY

- 18.1 Each Party shall comply at all times with all Applicable Laws in respect of the protection and privacy of Personal Data including, without limitation, the General Data Protection Regulation (EU) 2016/679 (GDPR) and the Data Protection Act 2018 ("DP Laws") and shall not perform its obligations under this Contract in such a way as to cause the other Party to breach any of its obligations under such DP Laws. The provisions of the Contract in respect of the protection and privacy of Personal Data shall not exceed the requirements set out in the Applicable Laws unless otherwise agreed by the Parties in writing.

18.2 Each Party when acting in the capacity of a Data Controller will ensure that it is legally entitled to transfer the Personal Data to the Data Processor for the duration and purposes of this Contract.

18.3 Each Party when acting in the capacity of a Data Processor shall, in relation to any Personal Data which it is Processing in connection with the performance of its obligations under this Contract:

18.3.1 Process that Personal Data only in accordance with Schedule 6 – GDPR or on the written instructions of the Data Controller, unless required by Applicable Laws to Process Personal Data; in such circumstance the Data Processor shall, if legally allowed to do so, promptly notify the Data Controller of this before performing the Processing;

18.3.2 Ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss of destruction of, or damage to, Personal Data. Such measures shall be appropriate to (a) the harm that might result from any breach of such protection; and (b) the state of technological development and the cost of implementing any measures;

18.3.3 Ensure that all Personnel who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential;

18.3.4 Not subcontract the Personal Data without the prior written permission of the Data Controller;

18.3.5 Not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Data Controller has been obtained;

18.3.6 Notify the Data Controller without undue delay on becoming aware of any breach of the DP Laws;

18.3.7 On written request and/or termination of the Contract (at the written direction of the Data Controller) delete or return Personal Data to the Data Controller and delete copies thereof as soon as practicable unless required by Applicable Laws to store the Personal Data;

18.3.8 Maintain records sufficient to demonstrate compliance with this Clause 1 (Protection of Personal Data);

18.3.9 Allow for audits by the Data Controller or its designated auditor; and

18.3.10 Upon request, use all reasonable endeavours to assist the Data Controller to comply with its obligations in relation to:

(a) The rights of individuals to which the Personal Data relates;

(b) Assistance to the ICO; and/or

(c) Any data protection impact assessment the Data Controller carries out,

Provided that any such assistance shall be provided to the Data Controller subject to a fee payable to the Data Processor to be agreed between the Parties.

- 18.4 Except as expressly agreed otherwise between the Parties, all IPR in and relating to the personal data will belong to the Developer and any relevant third party licensors of the Developer.

19 RIGHTS CUMULATIVE

- 19.1 The rights of the Parties under this Contract are in addition to any other rights which they may have under general law or otherwise.

20 AMENDMENTS

- 20.1 No amendments to this Contract will be binding on any Party unless they are in writing and signed by the Parties.

21 COUNTERPARTS

- 21.1 This Contract may be executed in any number of counterparts, each of which when executed and delivered, shall be an original, and all counterparts together shall constitute one and the same instrument.

22 NO PARTNERSHIP

- 22.1 The relationship between the Parties under this Contract is that of independent contractors and nothing in this Contract shall be deemed to create a relationship of joint venture, partnership, employee/employer, agency or any other fiduciary relationship between the Parties and accordingly neither Party shall:

22.1.1 have any authority to incur expenditure in the name of or for the account of the other unless agreed in writing in advance; or

22.1.2 hold itself out or permit itself to be held out as having any authority to do or say anything on behalf or in the name of the other.

23 NOTICES

- 23.1 Any notice to be given under this Contract will be sent to the relevant Party's address as is stated in this Contract or to such other address as has been notified in writing to the other Party: by first class post, deemed to be received three (3) Working Days later (unless returned through the post); by e-mail, deemed received the next Working Day provided that the notice is also sent by first class post no later than the next Working Day after transmission; or by hand and shall in the case of NATS for notices of a legal nature be addressed to:

Legal Director
NATS
Corporate and Technical Centre
Mailbox 8
4000 Parkway
Whiteley
Fareham

Hampshire
PO15 7FL

and in the case of all other notices to:

NATS
Corporate and Technical Centre
Mailbox 21
4000 Parkway
Whiteley
Fareham
Hampshire
PO15 7FL

For the attention of:

Mark Balsdon
Head of Airlines and Airspace.

24 GOVERNING LAW AND JURISDICTION

- 24.1 This Contract and any matter arising from or in connection with it shall be governed by and construed in accordance with English law.
- 24.2 Each Party irrevocably agrees to submit to the non-exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with this Contract.

IN WITNESS whereof the Parties have executed this Contract the day and year first above written.

SIGNED FOR AND ON BEHALF OF NATS (SERVICES) LIMITED:

NAME: MARK BALDOW

TITLE: HEAD OF CUSTOMER SERVICE ATN

DATE: 10/7/2018

SIGNED FOR AND ON BEHALF OF NATS (EN ROUTE) PLC:

NAME: IAIN HARRIS

TITLE: DIRECTOR SERVICE OPERATIONS

DATE: 10/07/2018

SIGNED FOR AND ON BEHALF OF BDW TRADING LIMITED:

Acting by...

and

being two persons authorised to sign on behalf of BDW TRADING LIMITED pursuant to a Power of Attorney dated [21.06.18] in the presence of:

Witness signature

Name: Stephen Parfiter

Address: 23 Foxholes
waybridge
KT13 0BN

SCHEDULE 1 - SERVICES

- 1 Implement radar mitigation for the Asset in order to operationally manage the impact the generation of false targets.
- 2 This may include but is not limited to the following services:
 - a. Project management of delivery mitigation solution
 - b. Impact assessment of the reflection surface based on the supplied drawings from the developer
 - c. Amendment, verification, validation and operational transition of relevant software
 - d. Sending the Condition Discharge Letter in accordance with clause 3.2
 - This includes all internal and external required safety checks and authorisations
 - e. Generation, review and authorisation of the software file for the radar EMS SSR system configuration change
 - f. Site visit to undertake the software file deployment
 - This includes out of hours workings due to availability of suitable safe times for deployment
 - g. Site testing of the file and checks to ensure radar is in full operational service after deployment
 - h. Documentation updates
 - This includes all internal and external required safety checks and authorisations
 - i. Account management and administration of contract services.
 - j. Continued monitoring of required services for future changes to ensure mitigation is maintained during radar upgrades or replacement.

NATS Contact:

Emma Barrett
AAU Customer Management
NATS
4000 Parkway,
Whiteley, Fareham
Hants PO15 7FL

SCHEDULE 2 - CONTRACT PRICE

All prices set out in this Schedule are exclusive of VAT.

1. The Contract Price shall be the sum of £45,508 (Forty five thousand five hundred and eight pounds sterling).
2. NATS shall submit invoices for the price set out in 1 above to the Developer on or within thirty (30) days of the Commencement Date.
3. NATS shall submit the invoices in relation to this Contract to the Developer's address set out above.
4. The invoices shall be submitted in the name of NATS.
5. The invoices correctly submitted by NATS shall be paid by the Developer within ten (10) Working Days of receipt.
6. The Developer shall pay NATS' reasonable and properly incurred legal fees relating to this Contract.

SCHEDULE 3 - PLAN

SCHEDULE 4 - CONDITIONS

- 1 No construction work above 12m Ground Level (GL) shall commence on site until a Radar Mitigation Scheme (RMS), (including a timetable for its implementation during construction), has been agreed with the Operator and approved in writing by the London Borough of Hounslow Council. The Radar Mitigation Scheme (RMS) shall thereafter be implemented and operated in accordance with the approved details.
- 2 No construction work above 12m above Ground Level (GL) shall commence on site until the Developer has agreed a "Crane Operation Plan" which has been submitted to and has been approved in writing by the Local Planning Authority in consultation with the "Radar Operator". Construction at the site shall only thereafter be operated in accordance with the approved "Crane Operation Plan".

For the purpose of conditions 1 and 2 above;

"Operator" means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).

"Radar Mitigation Scheme" or "Scheme" means a detailed scheme agreed with the Operator which sets out the measures to be taken to avoid at all times the impact of the development on the Heathrow H10 Secondary Surveillance radar and air traffic management operations of the Operator.

"Crane Operation Plan" means a detailed plan agreed with the Operator which defines the type of crane and the timing and duration of all crane works to be carried out at the site in order to manage and mitigate at all times the impact of the development on the Secondary Surveillance Radar system at Heathrow Airport and associated air traffic management operations of the Operator.

- DISCHARGE LETTER

FAO Mr M Kolaszewski

Planning Department,
London Borough of Hillingdon
3N/04
Civic Centre
High Street
Uxbridge
Middlesex
UB8 1UN]

NATS CRM Reference: 5531

Dear Sir,

Former Nestle Factory, Nestle Avenue, Hayes. BDW Trading Limited – 1331/APP/2017/1883

In relation to the relevant planning conditions relating to the above, we can confirm that the radar mitigation agreed with **BDW Trading Limited** under a legal agreement has now been implemented to our satisfaction.

We are therefore satisfied that construction of development can continue above the 12 metre height restriction referred to in the planning conditions.

Please acknowledge receipt of this letter.

Yours faithfully

For and on behalf of NATS (En-Route) plc

SCHEDULE 6 – GDPR

In order for NATS to provide the Services under this Contract and for the duration of this Contract, the Developer (acting as the Data Controller) shall provide the following Personal Data to NATS, the Data Processor:

- Personal details referring to employees, contractors and other personnel.

The Data Processor shall be entitled to Process the Personal Data in order to facilitate and manage the Parties' commercial relationship and to deliver the Services to the Developer.