

NATS (SERVICES) LIMITED STANDARD TERMS AND CONDITIONS FOR THE SALE OF WIND FARM PRE-PLANNING SERVICES

1. CONTEXT

1.1 NATS (Services) Limited ("**NATS**") provides a windfarm pre-planning service as set out in NATS' webpages [here](#) (click to follow link).

1.2 Delivery of NATS' wind farm pre-planning service is subject to the following terms and conditions.

2. INTERPRETATION

2.1 In this Contract, unless the context otherwise requires, the following definitions will apply:

"Client"	means the Developer as listed in the pre-planning consultancy wind farm application form;
"Contract"	means the contract between the Client and NATS for the provision of Services;
"Contract Price"	means the price payable by the Client to NATS;
"Deliverables"	means any report, work or any other product produced by NATS and delivered to the Client in performance of the Services;
"Dispute"	means any dispute, difference or question of interpretation 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;
"Group"	means in relation to a company, that company, any company of which it is a Subsidiary (its holding company) and any other Subsidiary of such holding company; and each company in a group is a member of the group. Unless the context requires otherwise, the application of the definition of Group to any company at any time shall apply to the company as it is at that time;
"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 trade marks 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;

“Services”

means all services and works which NATS is required to supply and/or carry out as set out in the wind farm pre-planning service web pages here (control and click to follow link);

“Subsidiary”

means in relation to a company wherever incorporated (a holding company), means a "subsidiary" as defined in section 1159 of the Companies Act 2006 and any other company which is a Subsidiary (as so defined) of a company which is itself a Subsidiary of such holding company; Unless the context requires otherwise: (a) the application of the definition of Subsidiary to any company at any time shall apply to the company as it is at that time; and (b) references to Subsidiary are references to a Subsidiary of the company.

“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.

2.2 Unless otherwise stated, references to Clauses are to clauses of this Contract.

2.3 References to any party shall, where relevant, be deemed to be references to or to include, as appropriate, their respective lawful successors, assigns or transferees.

2.4 The headings used in the Contract are for convenience only and shall not affect the interpretation of the Clauses.

2.5 References to the plural include the singular, references to the male include female and vice versa where applicable.

2.6 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.

2.7 In this Contract (unless the context otherwise requires):

2.7.1 the words "including" and "include" and words of similar effect shall not be deemed to limit the general effect of the words which precede them;

2.7.2 reference to any Contract, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated;

2.7.3 obligations undertaken by a party which comprises more than one person shall be deemed to be made by them jointly and severally; and

2.7.4 words importing persons shall include firms, companies and bodies corporate and vice versa.

3. THE PROVISION OF THE SERVICES

NATS agrees to provide and the Client agrees to take and pay for the Services in accordance with the terms and conditions of this Contract.

4. NATS' OBLIGATIONS

4.1 NATS shall provide the Services to the Client with reasonable skill and care.

4.2 NATS may supply written advice or confirm oral advice in writing or deliver a final written report or make an oral presentation on completion of the Services. Prior to completion of the Services, NATS may supply oral, draft or interim advice or reports or presentations but in such circumstances written advice or a final written report shall take precedence.

4.3 NATS shall be under no obligation in any circumstances to update any advice, report or any other product of the Services, oral or written, for events occurring after the advice, report or product concerned has been delivered by NATS to the Client in final form.

5. CLIENT'S OBLIGATIONS

5.1 The Client warrants that you are properly authorised to enter into this Contract on behalf of the Client.

5.2 The Client shall pay the Contract Price to NATS for the Services together with any other amounts that become due under this Contract including, but not

limited to, any foreign taxes or duties or any travel, accommodation or other expenses reasonably incurred (except to the extent that such costs are already stated in this Contract as being included in the Contract Price).

5.3 The Client shall provide such co-operation, assistance, equipment and facilities as are specified in this Contract, or as NATS reasonably requires, for the provision of the Services.

5.4 To enable NATS to perform the Services, the Client shall supply promptly all information and access to all relevant documentation in its possession, custody or under its control and to personnel under its control where required by NATS.

5.5 The Client 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.

5.6 Notwithstanding NATS' duties and responsibilities in relation to the Services, the Client shall retain responsibility and accountability for:

- 5.6.1 the management and conduct and operation of its business affairs;
and
- 5.6.2 deciding on its use and implementation of the Deliverables.

6. PAYMENT

6.1 Unless otherwise specified in this Contract and subject to Clause 6.2, the Client shall pay the Contract Price upon presentation by NATS of any Deliverables required under this Contract or, if no Deliverables are required, on completion of the provision of the Services.

6.2 If the Services are to be provided over a period of three months or more, NATS shall be entitled to submit interim invoices.

6.3 Payment will be due within 30 days of the date of NATS' invoice.

6.4 Unless otherwise specified in this Contract, all payments will be made:

- 6.4.1 by electronic transfer to:
NATS (Services) Limited National Westminster Bank Plc Bloomsbury Parr's
Branch PO Box 158 214 High Holborn London, WC1V 7BX
Account number: 90103033 Sort code: 60-30-06.

6.5 NATS shall (if applicable) add to the price of the Services, and the Client shall pay, an amount equal to any VAT. If the Client is required under any applicable law to withhold or deduct any amount from the payments due to NATS, the Client shall increase the sum it pays to NATS by the amount 5 of 12 necessary to yield NATS an amount equal to the sum it would have received if no withholdings or deductions had been made.

6.6 No payment will be deemed to have been received until NATS has received cleared funds.

6.7 All payments will be made without any withholding, deduction, set-off or counterclaim.

6.8 The Client shall pay to NATS interest on any overdue amount at the rate of three per cent per annum above the base rate from time to time of Barclays Bank plc from the due date until actual payment both before and after any judgement, calculated on a daily basis and compounded monthly.

6.9 If this Contract is terminated or suspended, NATS shall be entitled to payment for outlays incurred to that time and to payment of fees (plus VAT where appropriate) for work done.

7. CONFIDENTIALITY

7.1 In Clause 7, "Confidential Information" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by NATS to the Client whether before or after the date of the Contract including, but not limited to, information relating to NATS' products, operations, processes, plans or intensions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.

7.2 During the term of the Contract and after termination or expiry of the Contract for any reason neither party shall:

7.2.1 use Confidential Information for a purpose other than the performance of its obligations under the Contract; and

7.2.2 disclose Confidential Information to any person except with the prior written consent of the disclosing party or in accordance with Clauses 7.4 and 7.5.

7.3 During the term of the Contract the Client may disclose Confidential Information to any of its directors, other officers, employees ("Recipient") to the extent that disclosure is reasonably necessary for the purposes of the Contract.

7.4 Before disclosure of Confidential Information to a Recipient, the Client shall ensure that such Recipient is made aware of and complies with the client obligations of confidentiality under the Contract as if the Recipient was a party to the Contract.

7.5 Clauses 7.2 to 7.4 do not apply to Confidential Information which:

7.5.1 is at the date of the Contract or becomes at any time after that date publicly known other than by the Client or Recipient's breach of the Contract; or

7.5.2 can be shown by the Client to NATS' satisfaction to have been known by the Client before disclosure by NATS to the Client; or

7.5.3 is or becomes available to the Client otherwise than pursuant to the Contract and free of any restrictions as to its use or disclosure; or

7.5.4 is required to be disclosed by law; or

7.5.5 is being disclosed as part of communications between NATS and any respective UK airport as the relevant affected ANSP in connection with this wind farm pre-planning service.

8. INTELLECTUAL PROPERTY

8.1 Subject to full payment of all sums owing under this Contract, NATS shall grant the Client a non-exclusive, perpetual, non-transferable, royalty-free licence to use, for the Client's own internal business purposes only, such of NATS' IPR as is necessary for the Client to use the Deliverables and enjoy the Services.

8.2 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 shall belong exclusively and absolutely to NATS and the Client 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 8.2.

8.3 For the purposes of delivering the Services to the Client 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 Client.

8.4 This Clause will not affect the IPR in any works, including designs, drawings, written material and software belonging to third parties or existing prior to the date of this Contract.

8.5 The Client shall defend and indemnify NATS, its officers, directors, employees, agents, successors and assigns against all liabilities, claims, damages and expenses (including all reasonable legal fees) in relation to any infringement or alleged infringement of IPR belonging to a third party which they may incur as a result of carrying out the Services in accordance with designs, specifications or materials provided by the Client or using any other of the Client's IPR.

9. LIMITATION OF LIABILITY

9.1 Except as set out in Clause 4.1, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, non supply or delay in supplying the Services are excluded to the extent permitted by law.

9.2 Subject to the provisions in Clause 9.5 below, NATS is not liable to the Client 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 supplying the Services or otherwise in connection with this Contract:

- 9.2.1 loss or damage incurred by the Client as a result of third party claims; or
- 9.2.2 loss of actual or anticipated profits; or
- 9.2.3 loss of business opportunity; or
- 9.2.4 loss of anticipated savings; or
- 9.2.5 loss of goodwill; or
- 9.2.6 injury to reputation; or
- 9.2.7 any indirect, special or consequential loss or damage howsoever caused even if NATS was advised of the possibility of such loss or damage in advance.

9.3 Subject to Clauses 9.2 and 9.5, the entire liability of NATS arising out of or in connection with the supply, non-supply or delay in supplying 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 the Contract Price in respect of each event or series of connected events or in the aggregate.

9.4 Subject to Clauses 9.2 and 9.5 in respect of each event or series of connected events but notwithstanding Clause 9.3, the entire liability of NATS in contract, tort (including negligence or breach of statutory duty) or otherwise for loss or

damage to the Client's tangible property resulting from NATS' negligence is limited to a figure equivalent to one hundred thousand pounds (£100,000) in respect of each event or series of connected events or in the aggregate.

9.5 Nothing in this Contract shall operate to exclude or restrict NATS' liability for:

9.5.1 death or personal injury resulting from NATS' negligence as defined in the Unfair Contract Terms Act 1977; and

9.5.2 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 Client in the context of this Contract.

10. TERMINATION

10.1 Without prejudice to any other rights or remedies under this Contract either party may suspend or terminate this Contract by notice in writing forthwith if:

10.1.1 the other party is in serious breach of any term of this Contract and fails to remedy such breach within 30 days; or

10.1.2 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

10.1.3 the other party dies or ceases to carry on business or a judgment against it or him remains unsatisfied for seven days. 8 of 12.

10.2 Without prejudice to any other rights or remedies NATS may suspend or terminate this Contract forthwith if the Client fails to pay any sums due under this Contract within seven days' after written notice from NATS.

10.3 Termination or suspension of this Contract will be without prejudice to the accrued rights and remedies of either party provided that without prejudice to such rights or remedies the Client will be entitled to the product of any Services then completed and NATS will be entitled to payment of its fees and expenses due or incurred at that date or a fair and reasonable part of them if the Services are not complete.

10.4 The following Clauses of this Contract shall survive expiry or termination of this Contract: Clauses 2, 7, 8, 9, 10.3, 10.4, 11, 25 and 26.

11. DISPUTE RESOLUTION PROCEDURE

11.1 The parties shall resolve Disputes arising out of or in connection with this Contract in accordance with this Clause 11.

11.2 The parties shall attempt in good faith to resolve any Dispute promptly by negotiation which shall be conducted as follows:

11.2.1 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;

11.2.2 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 Client 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.

11.3 All negotiations and discussions pursuant to Clause 11.2 are confidential and shall be treated as compromise and settlement negotiations for the purpose of any applicable rules of evidence.

11.4 If the Dispute cannot be resolved pursuant to Clause 11.2 within 10 Working Days after the date of any meeting pursuant to Clause 11.2.2, either party may initiate court proceedings in respect of the Dispute.

11.5 Unless this Agreement has already been terminated, the parties shall continue to perform their obligations under the Agreement regardless of the nature of the Dispute and notwithstanding this Dispute Resolution Procedure.

11.6 This Clause shall survive the expiry or earlier termination of the Contract. 9 of 12

12. ASSIGNMENT

12.1 Subject to Clause 12.2 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 other. The assignor will remain liable for the acts and defaults of any assignee and will on demand hold the other party fully indemnified in respect of such acts and defaults.

12.2 NATS shall be entitled to assign or transfer this Contract in whole or in part to any company in the same Group as NATS.

13. THIRD PARTY RIGHTS

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.

14. FORCE MAJEURE

14.1 Neither 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.

14.2 Each party shall exercise its best efforts to mitigate the extent of the excusable delay or failure described in Clause 14.1 and their adverse consequences and to recommence performance of the affected obligations to the extent reasonably practicable.

15. WAIVER OF RIGHTS AND REMEDIES

15.1 Neither 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 right shall be affected by any delay, failure or omission to enforce or express forbearance granted in respect of any obligation of the other.

15.2 Neither party's rights shall be prejudiced or restricted by any concession, indulgence or forbearance extended to the other.

16. PUBLICITY

The Client shall not make any press announcements or publicise this Contract or the contents of the same in any way without the prior written consent of NATS except as required by law.

17. SEVERANCE

17.1 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.

17.2 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. 10 of 12

18. ENTIRE AGREEMENT

18.1 This Contract, 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.

18.2 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.

18.3 Nothing in this Clause 18 shall operate to exclude any liability for fraud.

19. DATA PROTECTION

19.1 For the purposes of this Clause 19, the expressions 'personal data', 'data controller', 'data processor' and 'process' shall have the meanings given to them in section 1(1) of the Data Protection Act 1998 and references to the 'Information Commissioner' shall mean the person appointed under the provisions of section 6 of the Data Protection Act 1998.

19.2 In the course of NATS providing the Services under this Contract it may be necessary for NATS to have access to personal data belonging to or retained by the Client and for NATS to process that personal data on behalf of the client. For

the purposes of this Clause 19, the Client shall be the data controller and NATS shall be the data processor.

19.3 The Client shall ensure that:

- 19.3.1 it is lawfully entitled to transfer the relevant personal data to NATS;
and
- 19.3.2 any processing of that personal data is fair and lawful as determined in accordance with Schedule 1 of the Data Protection Act 1998.

19.4 NATS will process the personal data only in accordance with:

- 19.4.1 the terms of this Contract; and
- 19.4.2 any instructions given by the Client from time to time.

19.5 At the reasonable request and expense of the Client, NATS shall assist the Client in complying with its obligations as data controller.

19.6 Except as otherwise agreed in writing by the Client or in accordance with the Client's express instructions, NATS shall not:

- 19.6.1 process the personal data outside the European Economic Area ("**EEA**"); or
- 19.6.2 transfer the personal data outside the EEA. 11 of 12

19.7 Each party shall, having regard to the state of technological development and the cost of implementing any measures, take appropriate technical and organisational measures against:

- 19.7.1 the unauthorised or unlawful processing of the personal data;
and/or
- 19.7.2 the accidental loss or destruction of, or damage to, the personal data, to ensure a level of security appropriate to: (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage in relation to the personal data; and (b) the nature of the personal data to be protected.

19.8 Except as expressly agreed otherwise between the parties, all IPR in and relating to the personal data will belong to the Client and any relevant third party licensors of the Client.

20. RIGHTS CUMULATIVE

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

21. AMENDMENTS

No amendments to this Contract will be binding on either party unless they are in writing and signed by both Parties.

22. COUNTERPARTS

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.

23. NO PARTNERSHIP

23.1 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:

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

23.1.2 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.

24. COSTS

Each party shall bear its own costs and expenses incurred in relation to the negotiation, preparation, execution and implementation of this Contract and all other documents to be completed in accordance with its provisions.

25. NOTICES

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 12 of 12 three Working Days later (unless returned through the post); by facsimile transmission or 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:

General Counsel and Company Secretary NATS (Services) Limited Corporate and Technical Centre Mailbox 15 4000 Parkway Whiteley Fareham Hampshire PO15 7FL and in the case of all other notices to:

Head of External Business NATS (Services) Limited Corporate and Technical Centre Mailbox 15 4000 Parkway Whiteley Fareham Hampshire PO15 7FL

26. GOVERNING LAW AND JURISDICTION

26.1 This Contract and any matter arising from or in connection with it shall be governed by and construed in accordance with English law.

26.2 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.