



With NSC Comments 29 September 2021

2021

Deed of Undertaking made pursuant to Section 106 of the Town and
Country Planning Act 1990
relating to
Bristol Airport

Bristol Airport Limited ⁽¹⁾
Bristol Airport Developments Limited ⁽²⁾
South West Airports Limited ⁽³⁾ and
Credit Agricole Corporate & Investment Bank ⁽⁴⁾

CONTENTS

Clause	Page
1. DEFINITIONS AND INTERPRETATION	2
2. LEGAL BASIS	5
3. CONDITIONAL ENTRY INTO FORCE	5
4. DURATION	5
5. PROVISIONS FOR RELEASE	6
6. CHARGEES'S CONSENT	6
7. VAT	6
8. NO FETTERING OF DISCRETION ERROR! BOOKMARK NOT DEFINED.	6
9. NO WAIVER	6
10. SEVERANCE ERROR! BOOKMARK NOT DEFINED.	6
11. REGISTRATION	6
12. TITLE	6
13. NOTICES AND APPROVALS	7
14. DISPUTE RESOLUTION ERROR! BOOKMARK NOT DEFINED.	7
15. CONTRACTS (RIGHT OF THIRD PARTIES) ACT 1999	7
16. ENFORCEMENT	7
17. OTHER DEVELOPMENT	8
18. JURISDICTION	8
19. COVENANTS BY THE OWNER	8
SCHEDULE 1	10
Obligations relating to Transport and Travel	10
Part 1	10
Part 2	10
SCHEDULE 2	15
Obligation relating to the Noise Mitigation Scheme	15
Part 1	15
Part 2	15
APPENDIX 1	17
Land Plan	17

Deleted: 6

Deleted: 7

Deleted: 7

Deleted: 7

Deleted: 7

Deleted: 7

Deleted: 8

Deleted: 8

Deleted: 9

Deleted: 9

Deleted: 9

Deleted: 11

Deleted: 11

Deleted: 11

Deleted: 16

Deleted: 16

Deleted: 16

Deleted: 18

Deleted: 18

DATE

PARTIES

- (1) Bristol Airport Limited (CRN: 02078692) whose registered office is at Bristol Airport, Bristol, BS48 3DY (the **Owner**)
- (2) Bristol Airport Developments Limited (CRN: 05175337) of Lulsgate House, Bristol Airport, Bristol BS48 3DW (**BADL**)
- (3) South West Airports Limited (CRN: 05403045) whose registered office is at Lulsgate House, Bristol Airport, Bristol BS48 3DW (**SWAL**)
- (4) Credit Agricole Corporate and Investment Bank (RCS Nanterre 304 187 701) of 9 quai du Président Paul Doumer 92920 Paris La Défense Cedex – France acting through its London branch located at Broadwalk House, 5 Appold Street, London EC2A 2DA (the **Chargee**)

together the **Parties**

TO

- (5) North Somerset Council of Town Hall, Walliscote Grove Rd, Weston-Super-Mare BS23 1UJ (the **Council**)

BACKGROUND

- (A) Save as where expressly defined in a Schedule to this Deed, the terms and expressions that are used and defined in this Deed have the meaning stated at Clause 1.1 below:
- (B) The **Council** is a unitary authority and is the local planning, highway and education authority for the area in which the **Airport** and the **Application Site** are situated.
- (C) The **Owner** is the freehold owner of the land registered at HM Land Registry pursuant to title numbers ST180919, ST241061, ST256857 and ST337957.
- (D) **SWAL** is the freehold owner of the land registered at HM Land Registry pursuant to title numbers ST331855, ST283749 and ST346326.
- (E) **BADL** is the freehold owner of the land registered at HM Land Registry pursuant to title number ST343009.
- (F) The **Chargee** is mortgagee of that part of the Airport registered under title numbers ST180919, ST343009 and ST346326 under the terms of the relevant charges.
- (G) Part of the **Application Site** edged [red] on the plan at Appendix 1 has the benefit of the **10mppa Planning Permission**.
- (H) An Agreement dated 16 February 2011 made pursuant to section 106 of the 1990 Act between the Council, the Owner and the Chargee, as varied by a section 106 and section 106A Supplemental Agreement dated 11 November 2016 made between the Council, the Owner, SWAL and the Chargee, were entered into in relation to the **10mppa Planning Permission** (collectively referred to as the **10mppa S106 Agreement**).
- (I) The Owner submitted the **Planning Application** to the Council for the **12mppa Planning Permission**. The Council refused the Planning Application and issued a decision notice to that effect on 19 March 2020.

Formatted: English (United States)

Deleted: AC_169759709_1

- (J) The Owner has lodged the **Appeal** with the **Secretary of State** in respect of the Council's refusal of the Planning Application.
- (K) The Owner has submitted this Deed to secure the planning obligations pursuant to S106 and S106A of the 1990 Act and other enabling powers contained in this Deed conditional upon the grant of the **12mppa Planning Permission**.
- (L) The Owner considers that the **10mppa Planning Permission** is extant and capable of ongoing lawful implementation simultaneously and concurrently with the implementation of the **Development** in accordance with the **12mppa Planning Permission** and the ongoing development of the **Airport**.
- (M) Subject to the 12mppa Planning Permission remaining in full force following the occurrence of the Effective Date the **Application Site** or part thereof pursuant to both the **10mppa Planning Permission** and the **12mppa Planning Permission** will be regulated in accordance with the provisions of the **12mppa S106 Agreement** and this Deed and that save where expressly stated within the **12mppa S106 Agreement** and this Deed, the **10mppa S106 Agreement** will have no further legal effect.

Deleted: The Parties have agreed to enter into this Deed in order to...

Deleted: The Parties consider and agree that t

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in Clause 1 apply:

10mppa Development	means the operational development and use of parts of the Application Site permitted by the 10mppa Planning Permission in the manner and use prescribed.
10mppa Infrastructure Works	the works identified on the sites A to Z inclusive referred on plan P11-02- rev 2 attached hereto at Appendix [●].
10mppa Trigger Date	<u>the date on which the latest monitoring report provided by the Owner to the Council in accordance with the 12mppa Planning Permission shows that the terminal throughput first exceeds 10 million passengers over a twelve month period.</u>
10mppa Planning Permission	the permission granted on 16 February 2011 pursuant to a planning application registered with the Council on 29 June 2009 with reference 09/P/1020/OT2.
10mppa S106 Agreement	an Agreement dated 16 February 2011 made pursuant to section 106 of the 1990 Act between the Council, the Owner and the Chargee, as varied by a section 106 and section 106A Deed of Variation dated 11 November 2016 made between the Council, the Owner SWAL and the Chargee, entered into in relation to the 10mppa Planning Permission.
12mppa Planning Permission	means the planning permission granted by the Secretary of State pursuant to the Appeal and the expression 12mppa Planning Permission shall include all subsequent approvals granted thereunder and any planning permission pursuant to an application under section 73 of the 1990 Act in respect of the conditions attached to the 12mppa Planning Permission.
12mppa S106 Agreement	An Agreement made pursuant to section 106 of the 1990 Act between the Council, the Owner, BADL, SWAL and the Chargee

Commented [NSC1]: Plans, drawings and appendices are still awaited and will need to be checked in order to confirm the definitions

Commented [SW2R1]: This is underway and will be provided by close of play on 04.10.2021.

Commented [NSC3]: The retrospective nature of this will need to be reconsidered in the context of a UU

Commented [SW4R3]: To be clarified with NSC

Formatted: English (United States)

Deleted: AC_169759709_1

	on the same date as this Deed in relation to the 12mppa Planning Permission.
1980 Act	means the Highways Act 1980 as amended or any other statutory re-enactment or amendment thereto.
1990 Act	means the Town & Country Planning Act 1990 as amended or any other statutory re-enactment or amendment thereto.
2012 ASAS	the Airport's existing ASAS prepared pursuant to the 10mppa Agreement and dated November 2012.
ASAS	a surface access strategy for airports produced and revised and reissued from time to time.
Airport	means the land within the Application Site forming Bristol Airport as shown edged brown on the plan at Appendix 1 and the land against which this Deed may be enforced.
Appeal	means the appeal against the refusal by the Council of the Planning Application made by the Owner and given the reference APP/D0121/W/20/3259234.
Application Site	means the land shown edged red on the plan at Appendix 1.
Bristol Airport Transport Forum (BATF)	means the Bristol Airport Transport Forum convened by the Owner at least twice in every year to include representatives from the Owner, the Council and other members as agreed between the Owner and the Council from time to time, and which is tasked with: <p>monitoring and ensuring delivery of the 2012 ASAS and associated targets; and</p> <p>providing input to completion of the Replacement ASAS and thereafter to monitor and ensure delivery of the Replacement ASAS.</p>
Charges	means the legal charges made on 7 May 2015 between (1) the Owner and (2) the Chargee in relation to numbers ST180919; ST343009 and ST346326.
Commencement of Development	the date specified by the Owner to the Council in a written notice served by the Owner on the Council as the date upon which the first of the Infrastructure Development Works authorised by the 12mppa Planning Permission is commenced by the carrying out of any act on the Application Site which constitutes a material operation within the meaning of Section 56 (4) (a to d) of the 1990 Act which for the purposes of this Deed excludes the following operations: site clearance and site investigations, archaeological investigations, erection of site hoardings and site advertisements.
Effective Date	means the date when: <p>i) the period for challenging the grant of the 12mppa Planning Permission has passed without any statutory review proceedings or other legal challenge having been made; or</p> <p>ii) all statutory review proceedings or other legal challenge proceedings concerning the 12mppa Planning Permission</p>

Commented [NSC5]: This should refer to Bristol Airport

Commented [SW6R5]: Definition is as agreed in the s106 agreement.

Commented [NSC7]: This is not appropriate in the context of a UU. The UU must be enforceable against the entirety of the Application Site

Commented [SW8R7]: To be discussed at the meeting between NSC and BAL on 30.09.2021

Commented [NSC9]: This needs to include s. 56(4)(e) – i.e. to capture the potential for a MCU via intensification; and the changes with Cogloop 1 and Cogloop 2.

Commented [SW10R9]: This is the same definition as agreed in the s106 agreement

Commented [NSC11]: The only challenge can be via s. 288 – s. 288 is an exclusive provision. This point repeats though this definition.

Commented [SW12R11]: See comments on s106 agreement in relation to this clause.

Formatted: English (United States)

Deleted: AC_169759709_1

	granted on Appeal have been finally disposed of whether by way of proceedings to the Court of Appeal, the Supreme Court or to any other appellate body and the 12mppa Planning Permission remains in full force and effect.
Development	means the development authorised by the 12mppa Planning Permission.
Infrastructure Development Works	means the infrastructure development works included within the 12mppa Planning Permission as shown within the sites on the plan at Appendix [●] and described in the table at Appendix [●] of this Deed.
mppa	means throughput in million passengers per annum.
Owners	means together the Owner, SWAL and BADL.
Parties	means the Parties to this Deed and Party shall be construed accordingly.
Planning Application	means the planning application made by the Owner to the Council and registered on 12 December 2018 with reference number 18/P/5118/OUT .
Public Transport Fund	a fund for the ongoing development of public transport serving the Airport established under the 10mppa S106 Agreement
Public Transport Improvement Fund	a new public transport improvement fund managed through SASG and the BATF to fund-improvements to public transport services and infrastructure at the Airport aimed at contributing towards modal shift to public transport services, and to ensure ongoing provision.
Replacement ASAS	an ASAS which fully replaces the 2012 ASAS to be prepared by the Owner with input from BATF.
Secretary of State	means the Secretary of State for Housing Communities and Local Government and/or the Secretary of State for Transport or an Inspector appointed by the Secretary of State for Housing, Communities and Local Government to determine the Appeal.
Silver Zone 2016 Planning Permission	the permission granted on 11 November 2016 pursuant to a planning application with reference 16/P/1486/F at Appendix [●].
Silver Zone 2018 Planning Permission	the permission granted on 25 October 2018 pursuant to a planning application with reference 18/P/4007/FUL at Appendix [●].
Surface Access Steering Group (SASG)	the Surface Access Steering Group (SASG) established pursuant to paragraph 2.1 of Schedule 2 which shall replace the Steering Group established pursuant to the 10mppa S106 Agreement and whose duties shall include the management of the Public Transport Fund, the Public Transport Improvement Fund and the Highways Improvements Fund, and who shall report to the BATF.
Steering Group	the steering group defined in the 10mppa S106 Agreement.

Commented [NSC13]: Insert reference to High Court. Delete reference to any other appellate body. This follows from the above comment re. s288.

Commented [SW14R13]: As above

Commented [NSC15]: This should refer to Bristol Airport

Commented [SW16R15]: This is the same as the S106 definition.

Commented [NSC17]: Correct reference to 12mppa S106 is required

Commented [SW18R17]: Noted

Formatted: English (United States)

Deleted: AC_169759709_1

- 1.2 Reference to any statute or statutory provisions includes a reference to:-
- 1.2.1 any modification, extension or re-enactment of that statute or statutory provision for the time being in force; and
- 1.2.2 shall include all instruments, orders, permissions and directions for the time being made issued, or given pursuant to it, or deriving validity from it whether before or after the date of this Deed.
- 1.3 Where in this Deed reference is made to any Clause, Paragraph, Appendix or Schedule such reference (unless the context otherwise requires) is a reference to a Clause, Paragraph, Appendix or Schedule in this Deed.
- 1.4 The headings in this Deed are intended for convenience only and shall not affect the construction or interpretation of this Deed.
- 1.5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.6 Words of the masculine gender include all genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.7 Whenever there is more than one person named as a Party and where more than one Party undertakes an obligation, all their obligations can be enforced against all of them jointly and against each individually, unless there is an express provision otherwise.
- 1.8 References to any Party to this Deed shall include the successors in title to that Party and to any deriving title through or under that Party and in the case of the Council, the successors to its statutory functions.

2. LEGAL BASIS

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act,
- 2.2 This Deed contains the planning obligations, restrictions and covenants necessary to regulate the continuing implementation, development and operation of the Application Site or any part thereof, as authorised by the 10mppa Planning Permission, the Silver Zone 2016 Planning Permission, the Silver Zone 2018 Planning Permission and the 12mppa Planning Permission.

3. CONDITIONAL ENTRY INTO FORCE

- 3.1 This Deed shall come into effect immediately upon the Effective Date, save that:
- 3.1.1 clause 15 shall take effect on the date of this Deed.

4. DURATION

- 4.1 This Deed shall cease to have effect and be extinguished automatically (insofar only as it has not already been complied with) in the event that the 12mppa Planning Permission is quashed, revoked or otherwise withdrawn or without the consent of the Owner is modified by any statutory procedure, upon which event the 10mppa S106 Agreement will forthwith take effect and remain in full legal force and effect.
- 4.2 In the event that a planning permission is granted pursuant to an application made under Section 73 of the 1990 Act (to carry out the Development without complying with a condition or conditions to which the 12mppa Planning Permission is subject), references to "the 12mppa Planning Permission" in this Deed will be deemed also to be references to that new planning permission and (without prejudice to the Council's discretion to seek additional or modified planning obligations as a precondition of the grant of any new planning permission) this Deed will apply to

Commented [SW19]: To be discussed at the meeting between NSC and BAL on 30.09.2021

Commented [NSC20]: This cannot be agreed. (1) It does not contain all relevant obligations etc. (2) Not accepted that the obligations which it contains are entirely necessary & justified.

Deleted: 18

Commented [NSC21]: This is unacceptable as it would extinguish the deed if any of the modification powers were used – see ss. 97 – 100 TCPA 1990.

Commented [SW22R21]: See comment in s106 agreement

Formatted: English (United States)

Deleted: AC_169759709_1

and remain in full force in respect of that new planning permission without the need for a further deed to be made pursuant to section 106 of the 1990 Act.

4.3 In the event that the Secretary of State grants the 12mpps Planning Permission pursuant to the Appeal but expressly states in his decision letter that any obligation (or part thereof) contained in this Deed:

- 4.3.1 is not a material planning consideration; or
- 4.3.2 that no weight can be attached to the obligation in determining the Appeal; or
- 4.3.3 otherwise fails to comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended);

then such an obligation (or part thereof) will be deemed to be null and void and severed from the remainder of this Deed.

5. PROVISIONS FOR RELEASE

5.1 Any person shall, upon parting with the whole or any part of their interest in the Application Site, be released from all obligations, undertakings, covenants and agreements contained in this Deed in relation to that interest or the relevant part thereof (as the case may be) but without prejudice to the rights of the Council in relation to any antecedent breach of those obligations undertakings or covenants.

6. CHARGEES CONSENT

6.1 The Chargee acknowledges and declares that this Deed has been entered into by the Owner, with its consent and that the Airport shall be bound by the obligations as provided for in this Deed and that the security of the Charges over that part of the Airport registered under titles ST180919, ST343009 and ST346326 shall take effect subject to this Deed PROVIDED THAT the Chargee (or any subsequent mortgagee or chargee) shall not be liable for any of breach of the obligations of this Deed unless committed or continuing at a time when the Chargee (or any subsequent mortgagee or chargee) is in possession of all or any part of the Airport in which case it too will be bound by the obligations as if it was a person deriving title from the Owner.

7. VAT

7.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

8. NO WAIVER

- 8.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.
- 8.2 No failure or delay by the Council to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy by the Council.

9. REGISTRATION

9.1 This Deed is a local land charge and may be registered as such by the Council.

10. TITLE

10.1 The Owner warrants that they have power to carry out the obligations under this Deed.

Commented [NSC23]: This is not necessary given the definition of 12mpps Planning Permission above

Commented [SW24R23]: This is as per the agreed wording in the s106

Deleted:

Commented [NSC25]: Reference should be to a 'Party'

Commented [SW26R25]: This is the same wording in the s106 agreement

Deleted: s

Deleted: personally

Deleted: s

Formatted: English (United States)

Deleted: AC_169759709_1

10.2 [The Owner, warrants that save for the proprietary interests as set out in Schedule [●], there are no other persons with any interest (legal or equitable) in the Airport or any part of it.

11. NOTICES AND APPROVALS

11.1 Any notices or other written communication to be served, or documents to be submitted on or to, any Party to this Deed shall be deemed to be validly served or given if personally delivered by hand or if sent by post (including registered or recorded delivery post) to that party upon whom it is served or to whom it is to be given on the next Working Day after the day of delivery.

11.2 A notice or communication shall be served or given:-

11.2.1 On the Owner at [] marked for the attention of []

11.2.2 On the Council at [] marked for the attention of []

11.2.3 On the Chargee at [] marked for the attention of []

11.3 Any notice or other written communication to be given by the Council shall be deemed to be valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.

11.4 The Owner, will give the Council not less than [7] days' notice of its intention to Commence the Development.

11.5 Within [7] days of Commencement of Development, the Owner, will give the Council notice that the Development has commenced.

11.6 Failure to provide the notices at 11.4 and 11.5 above do not render this Deed inoperative.

12. CONTRACTS (RIGHT OF THIRD PARTIES) ACT 1999

12.1 For the avoidance of doubt and with reference to Sections 1 and 2 of the Contracts (Rights of Third Parties) Act 1999, no terms of this Deed are enforceable by a third party and any term may be rescinded or varied without the consent of any third party.

13. ENFORCEMENT

13.1 The obligations, undertakings, covenants and agreements contained in this Deed shall not be binding or enforceable against:-

13.1.1 a bona fide occupier or tenant of any commercial premises on the Application Site other than the Owners whether constructed pursuant to the 12mppa Planning Permission or not, nor against those deriving title from them;

13.1.2 any statutory undertaker or other person who acquires any part of the Application Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services;

13.1.3 any person after he has disposed of his interest in the Application Site or in the event of a disposal of part in the part disposed of but not so far as to release that person from any antecedent breach, non-performance or non-observance of his obligations;

13.1.4 any chargee or mortgagee (including any chargee or mortgagee of a bona fide tenant) from time to time who shall have the benefit of a charge or mortgage of or on any part or parts of the Application Site or any receiver appointed by such chargee or mortgagee or any person deriving title through such chargee or mortgagee or receiver unless and until such chargee, mortgagee or receiver or person has entered into possession of the Application Site or part thereof to which such obligation, undertaking, covenant or agreement relates.

Commented [NSC27]: This information is still awaited

Commented [SW28R27]: To be provided

Deleted: s

Deleted: s

Deleted: s

Commented [NSC29]: This is inconsistent with the definition of Commencement of Development and cannot be accepted.

Commented [SW30R29]: This is the same as agreed in the s106 agreement.

Deleted: 13.5

Deleted: 13.6

Commented [NSC31]: This cannot be included in a UU as the Council is not a party

Commented [SW32R31]: BAL is considering the comment from NSC

Formatted: English (United States)

Deleted: AC_169759709_1

14. OTHER DEVELOPMENT

- 14.1 Nothing in this Deed shall prohibit or limit the right of the Owner to develop any part of the Application Site in accordance with a planning permission (other than the 10mppa Planning Permission or the 12mppa Planning Permission) granted after the date of this Deed.

15. JURISDICTION

- 15.1 This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

16. COVENANTS BY THE OWNER

- 16.1 The Owner covenants to the Council so as to bind the Owners' legal interests in the Airport that they will observe and perform the obligations and restrictions set out in this Deed.

Formatted: English (United States)

Deleted: AC_169759709_1

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by **Bristol Airport Limited** acting by a director and a director/secretary:

.....
Director

.....
Director/Secretary

Executed as a deed by **South West Airports Limited** acting by a director and a director/secretary:

.....
Director

.....
Director/Secretary

Executed as a deed by **Bristol Airport Development Limited** acting by a director and a director/secretary:

Director

Director/Secretary

Executed as a deed by **Credit Agricole Corporate & Investment Bank** acting by a director and a director/secretary:

.....
Director

.....
Director/Secretary

SCHEDULE 1

Obligations relating to Transport and Travel

Part 1

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 Where in this [], the following defined terms and expressions are used they have the following meaning unless otherwise stated:

CAA means the Civil Aviation Authority or any successor body in function from time to time in place.

Passenger and Staff Survey Report

An annual transport monitoring report of all passenger transport modes to be submitted to the Council and the SASG by the Owner pursuant to below, and include:

- annual Civil Aviation Authority UK airport survey reports and statistics data;
- Public Transport Modal Share monitoring data including use of primary and secondary modes of transport (by CAA data and similar supporting data);
- Staff Travel Plan and Workplace Travel Plan survey data via Travel West annual surveys or an agreed replacement;
- Automated traffic counts;

Parking monitoring data for the Owner's car parks and identification of external parking sites via an annual aerial survey only.

Employee TravelCard Scheme

A scheme to promote and encourage staff at the Airport to use sustainable transport modes with annual monitoring by 'Travel West' (or alternative) staff travel surveys covering all businesses at the Airport.

Public Transport

means any mode of transport other than private motor vehicles, hackney carriages and private hire vehicles.

Public Transport Modal Share (PTMS)

means the percentage of trips made to the Airport via Public Transport in a given period.

Staff Travel Plan

the Airport's current travel plan approved by the Council in January 2016 which will be replaced by the Workplace Travel Plan in accordance with the 12mppa S106 Agreement.

Workplace Travel Plan

the Workplace Travel Plan pursuant to paragraph [●] of the 12mppa S106 Agreement.

Part 2

2. AIRPORT SURFACE ACCESS STRATEGY

- 2.1 With effect from the Effective Date until the provision by the Owner of the Replacement ASAS referred to in paragraph 2.2, the Owner covenants to continue the actions and pursue the objectives contained in the 2012 ASAS.

Deleted: Schedule 2 (and where relevant Schedules 3 to 5)

Deleted: paragraph 3.3.6

Deleted: A

Deleted: A

Commented [NSC37]: (1) This isn't defined. (2) Needs to be specific to the airport.

Commented [NSC38]: This follows a rebasing of the PTMS using both CAA and bus ticket data, which must be undertaken to an agreed methodology and provided to the Council. NSC's position is that bus ticket data is essential to ongoing consideration of public transport service performance and should be provided for all services under contract and those required to be provided for both the 10mppa and 12mppa planning requirements. All other data of services accessing the site should be sought using best endeavours.

Commented [SW39R38]: It was agreed with NSC that a summary of bus ticket data would be provided (subject to permission by the bus operators) in order to inform ongoing consideration of public transport performance. BAL disagree that bus ticket data should be used to inform the calculation of the PTMS. The PTMS will be rebaselined using CAA survey data.

Commented [NSC40]: These terms need defining.

Commented [SW41R40]: Amended

Commented [SW42]: Further to meeting with NSC on 27.09.21 BAL will amend the definition of the passenger survey report to include reference to bus ticket data. It was agreed that this would be supplementary information and not included as part of the calculation for the PTMS.

Commented [NSC43R42]: NSC expect BAL to provide data on all contracted services and similar moving forward. This is required in 10 MPPA consent and must be continued so as to provide evidence based decision making for PT services.

Commented [SW44R42]: See comment above.

Commented [NSC45]: The details of frequency, locations etc will need to be provided as this is a UU

Commented [SW47R46]: Amendments made.

Deleted: to be agreed between the Owner and the Council

Commented [NSC46]: These are not relevant here as they are obligations in the bilateral S106

Commented [NSC48]: Sections 2.1, 2.2 and 2.3 of the S106 relating to the SASG and BATF also need to be carried across here as they are linked to the ASAS

Commented [SW49R48]: BAL have not pulled these sections across from the s106 agreement as they are not in dispute and are still being offered as obligations.

Deleted:

Commented [NSC50]: A UU cannot modify the 10mppa S106 in this way

Commented [SW51R50]: BAL are not modifying the 10mppa s106 but instead are stating that they will continue implement the 2012 ASAS

Formatted: English (United States)

Deleted: AC_169759709_1

2.2 The Owner covenants to

- 2.2.1 provide the Council with a Replacement ASAS within six months of the Effective Date and thereafter to continue the actions and pursue the objectives contained in the Replacement ASAS.

2.3 The Replacement ASAS must include (but not be limited to):

- 2.3.1 All of the obligations contained in paragraph to this Schedule to be imported into the Replacement ASAS in such a manner as to avoid any duplication and ensure that those obligations shall continue unencumbered as a result of being incorporated into the Replacement ASAS.
- 2.3.2 A 'Transport Mode Hierarchy', recognising the environmental impact of the different modes of transport, and with an objective to move as many people as possible higher up the hierarchy.
- 2.3.3 A new methodology to re-baseline and measure the PTMS of passengers based on Passenger Survey Reports.
- (a) A stretch target increase to the PTMS of 2.5% increase above the 10mppa consented baseline as re-baselined and measured under the new methodology to be achieved prior to the air passenger throughput reaching 12mppa through the procurement of service improvements and commitments to be identified in the Replacement ASAS and the obligations contained in paragraph 4 below.
- (b) A provision for the PTMS as determined in accordance with sub-paragraph 2.3.3 to be monitored and reported annually to the Council using the data from Passenger Survey Reports.
- (c) A provision for the Replacement ASAS to provide for an annual action plan which monitors all the service improvements and commitments contained therein against a set of key performance indicators (KPIs) together with any further measures considered necessary to achieve the PTMS target referred in sub-paragraph 2.3.3.
- (d) The KPIs referred to in sub-paragraph (c) shall include achieving an average increase of 0.5% improvement in public transport use per annum above the baseline referred to in paragraph 3.3.3(a) following the 10mppa Trigger Date as progress towards the overall target of 2.5%.
- (e) In the event that a 0.5% annual increase in PTMS increase in public transport use is not achieved additional measures must be identified and implemented to meet the mode share, the details of which shall be agreed by the Council.
- 2.3.4 Where the year on year KPI set out in sub-paragraph (d) is not met, the Replacement ASAS shall require the Owner:
- (a) In the first individual year of not achieving the KPI of 0.5% (as determined by a methodology to be agreed between the Owner and the Council), to undertake a comprehensive review of the ASAS and Workplace Travel Plan to a scope agreed between the Owner and the Council including a review of the funding of any revised measures by Owner
- (b) In the second consecutive year of not achieving the KPI of 0.5% (as determined by a methodology to be agreed between the Owner and the Council), apply additional funding of public transport measures or services beyond those set out in this Deed, the extent of which are to be agreed between the Owner and the Council; and

Commented [NSC52]: The Owner must continue to observe and comply with Clauses 2, 4, 5, 6, 7, 8, 9, 12 and 13 of Part 1 of Schedule 4 of the 10mppa S106 Agreement with respect to both the 2012 ASAS and the Replacement ASAS unless otherwise agreed with the Council or approved by the Council as having been superseded by the measures under this Agreement.

Commented [SW53R52]: To be discussed at the meeting between NSC and BAL on 30.09.2021

Commented [NSC54]: Reference missing

Commented [SW55R54]: Noted

Commented [NSC56]: Not agreed. NSC requires 5%. The Council requires an increase in Public Transport Mode Share (PTMS) Target of 5% to maximise sustainable transport as set out in Section 6.3 of Tim Colles' PoE.

Commented [NSC58]: There is no provision which deals with the need for approval.

Deleted: approved by the

Deleted: Council under sub-paragraph 3.3.3

Commented [NSC59]: There is no provision which deals with the need for approval.

Commented [SW60R59]: As above.

Deleted: approved by the Council

Commented [NSC61]: Not agreed. NSC requires 1%. The Council requires an annual increase in PTMS to maximise sustainable transport as set out in Section 6.3 of Tim Colles' PoE

Commented [NSC62]: Not agreed. NSC requires 5%.

Commented [NSC63]: Not agreed. NSC requires 1%.

Commented [NSC64]: This cannot be included as the Council is not a party

Commented [NSC65]: There must be an obligation to update if KPI not met

Commented [NSC66]: Not agreed. NSC requires 1%.

Commented [NSC67]: This cannot be included as the Council is not a party

Commented [NSC68]: This is an obligation in the bilateral S106.

Commented [NSC69]: This cannot be included as the Council is not a party. If BAL do not agree then there is no obligation. This cannot be accepted.

Commented [NSC70]: Not agreed. NSC requires 1%.

Commented [NSC71]: This cannot be included as the Council is not a party

Commented [NSC72]: This cannot be included as the Council is not a party

Formatted: English (United States)

Deleted: AC_169759709_1

- (c) In the third consecutive year of not achieving the KPI of 0.5% (as determined by a methodology to be agreed between the Owner and the Council), develop an action plan to include the principle of a reasonable reduction in consented parking spaces or other modifications, at a rate to be agreed with between the Owner and the Council.

2.3.5 Details of the service improvements and commitments that the Owner will undertake to increase the PTMS and reduce congestion including (but not limited to):

- (a) to maintain and increase the following express bus service connections to and from the Airport the cost of which shall be underwritten by the Owner;
- (i) to Bristol City Centre (referred to as the **Bristol Flyer**) with at least 6 services per hour to be increased to at least 8 services per hour beyond the 10mppa Trigger Date subject to patronage and viability;
- (ii) to Weston-super-Mare (referred to as the **Weston Flyer**), with at least an hourly seven days per week service from 8mppa until the 10mppa Trigger Date and at least a half hourly service beyond the 10mppa Trigger Date subject to patronage and viability. This service will be subject to a formal review after 12 months and the results of that review will be reported to the Steering Group;
- (iii) to Bath, with at least an hourly service from [the 10mppa Trigger Date onwards
- (b) within 6 months of the Effective Date, undertake the **Western Flyer feasibility** study to review to integration of the Weston Flyer service into Worle Station;
- (c) within 18 months of the production of the study in b) above, and subject to the securing of any necessary planning approvals and other consents or permissions, integrate the **Western Flyer** service into Worle Station including waiting and stop enhancements, supporting the future Worle Station enhancement works provided that such measures can be funded by existing allocations from the Public Transport Fund or Public Transport Improvement Fund.
- (d) to undertake an annual marketing programme the details of which shall be consulted with the Council in conjunction with the ASAS to raise awareness of, and promote, all sustainable modes of transport at the Airport including the development of the Bristol Airport website to enable customers to make a comparison between all journey options by different modes (including parking and public transport) and pricing during, or to inform, their booking.
- (e) within 6 months of the Effective Date, undertake the Metrobus Service Integration and Network Improvements feasibility study to review integration of the A1 Bristol Flyer service with the Metrobus network, subject to the Owner retaining full ownership and management of the service, the scope of which shall include (but not be limited to):
- (ii) Joint Metrobus/Airport branding of vehicles;
- (iii) Consideration of a two-zone fare structure with a central zone aligned with Metrobus fares and an Airport fare zone;
- (iv) Acceptance of Metrobus tickets for interim journeys within the central zone;
- (v) Upgraded information across the Metrobus network to add the Airport to the Metrobus network map;
- (vi) Off-bus ticketing options; and

Commented [NSC73]: Not agreed. NSC requires 1%.

Commented [NSC74]: This cannot be included as the Council is not a party. If BAL do not agree then there is no obligation. This cannot be accepted.

Commented [NSC75]: This cannot be included as the Council is not a party. If BAL do not agree then there is no obligation. This cannot be accepted.

Commented [NSC76]: This is too vague and uncertain that the obligation will actually be performed.

Commented [NSC77]: NSC here requires to review for fitness of purpose by the addition of the words "A formal review, the scope of which shall be agreed with the LPA shall be carried out within 12 months of the Effective Date"

Commented [NSC78]: Weston

Commented [NSC79]: Not agreed. NSC requires "Within 6 months of the Effective Date, to integrate the Weston Flyer service into Worle Station including waiting and stop enhancements, supporting the future Worle Station enhancement works provided that such measures can be funded by existing allocations from the Public Transport Fund or Public Transport Improvement Fund."

Commented [NSC80]: This relies on matters outside the control of the Owners and is therefore too vague and uncertain.

Commented [NSC81]: Weston

Commented [NSC82]: This is not acceptable as it could be avoided if (1) management company installed/management outsourced; and (2) if services sold.

Formatted: English (United States)

Deleted: AC_169759709_1

(vii) Review of stopping patterns.

- (f) within 18 months of the production of the study in e) above , and subject to agreement with the appropriate Metrobus authorities and the securing of any necessary planning approvals and other consents or permissions (including from the SASG), to use the Metrobus Contribution to fund the implementation of the Metrobus Improvements as per the study in ed) above, provided always that there shall be no requirement to implement the Metrobus Improvements beyond the value of the Metrobus Contribution unless the measures are capable of being funded through existing allocations from either the Public Transport Fund or the Public Transport Improvement Fund.
- (g) provided that such measures specified in this paragraph 3 are capable of being funded up to a maximum sum of £200,000 Indexed (such sum to be distributed evenly between improvements for the Somerset/Devon and South Wales routes) and can be allocated from existing funds within either the Public Transport Fund or the Public Transport Improvement Fund, promotion and development of the existing long-distance services to destinations in Somerset/Devon and South Wales (subject to patronage and viability) including but not limited to:
- (i) Delivery of service improvements, through enhanced timetables and/or greater network coverage.
 - (ii) Within six months of the Effective Date, delivery of a feasibility study in liaison with service operators and relevant local authorities to determine measures for and the design of infrastructure improvements to routes.
 - (iii) Subject to a positive outcome from the feasibility study referred to at sub-paragraph 3.3.5(g)(ii), commence delivery of infrastructure improvements to the routes within 6 months of the acceptance in writing by the Council of the feasibility study.
- (h) Within six months of the Effective Date, subject to agreement of scope and methodology with the Council, a multi-modal pricing review to ensure options higher up the modal hierarchy are supported and enabled financially through cost comparison analysis.
- (i) A local community concessionary fare system for residents within BS40, BS48 and BS49 postcodes which provides a discount of at least 50% on the published fare for the Bristol Flyer and includes a detailed marketing plan to raise awareness of the local community concessionary fare arrangements in the local community, which shall be retained as long as the Bristol Flyer service or any such replacement of this service is in operation.
- (j) Support and develop local bus services subject to patronage and viability.
- (k) Proposals to encourage those companies operating retail and catering concessions at the Airport to consolidate off-site the deliveries of goods to the Airport using a consolidation centre such as that at Avonmouth (used for Cabot Circus) to help to reduce the numbers of large goods vehicles on the A38 and other local roads serving the Airport.

3.3.6 An annual programme of monitoring including:

- (a) prior to Commencement of Development the Council and the Owner will agree when submission of the first Passenger Survey Report will be submitted to the Council for approval in writing taking into account when the first CAA survey will be undertaken and details shared with the Owner following the grant of Planning Permission;

Commented [NSC83]: This relies on matters outside the control of the Owners and is therefore too vague and uncertain.

Commented [NSC84]: Reference is incorrect

Commented [NSC85]: NSC does not agree that delivery of improvements should be conditional on a feasibility study outcome. The study should identify a suitable approach that can be implemented. This is therefore too vague and uncertain to be acceptable.

Commented [NSC86]: This cannot be included as the Council is not a party.

Commented [NSC87]: This is too vague and uncertain that the obligation will actually be performed. NSC does not agree that delivery of services should be conditional as local services need support to maximise PTMS

Commented [NSC88]: NSC requires the addition of a bespoke DR clause as follows:
(l) "Any referral of a dispute under this paragraph for expert determination under this clause will be accompanied by reports from at least 2 independent expert consultancies on the issue in dispute to be submitted within 3 months of identification of the issue"

Commented [NSC89]: This cannot be included as the Council is not a party.

Formatted: English (United States)

Deleted: AC_169759709_1

- (b) thereafter to submit the Passenger Survey Report to the Council and SASG on the annual anniversary of the date of approval by the Council of the first Passenger Survey report.

3. NEW PUBLIC TRANSPORT SERVICES

- 3.1 Following the initial period of 24 months referred to in paragraph 4.2 of the 12mppa S106 Agreement, the Flyer Shuttle shall only be funded through the Public Transport Improvement Fund at the discretion of the SASG.

4. PARKING

- 4.1 Unless otherwise agreed with the Council, the Owner covenants to implement car parking at the Airport in accordance with the following strategy:

4.2 Phase one –

4.2.1 development of the MSCP2 approved under the 10mppa Planning Permission; and

4.2.2 implementation of the year round use of the Seasonal car park known as Cogloop 1; in accordance with Condition [●] (Monitor and Manage) of the 12mppa Planning Permission.

4.3 Phase two –

4.3.1 implementation of the extension to the 'Silver Zone' car park known as Cogloop 2; and

4.3.2 development of the MSCP3;

- 4.4 in accordance with Condition [●] (Monitor and Manage) of the 12mppa Planning Permission.

Commented [NSC90]: There can be no obligation on the Council to approve and therefore this part fails as well

Commented [NSC91]: The 24 month pilot period can be funded by the PTIF but not the permanent provision.

The Flyer Shuttle is required as there is low public transport use within North Somerset Council area for access to the Airport for both passengers and staff. Staff hours are not consistent with traditional public transport services resulting in more airport staff driving to and from the airport. BAL have consistently supported the Flyer Shuttle provision for both staff and passengers to link to key corridors/interchanges and stations other than Bristol Temple Meads (Yatton and Nailsea). No alternative funding streams are available therefore BAL need to fund the Flyer Shuttle in its entirety. The Future Mobility Zone funding bid (which BAL were a partner to) was not successful. The Rural Mobility Zone funding bid (which BAL were partner to) was not successful.

The following are minimum costs for the Flyer Shuttle:

- Up front vehicle cost **£320,000**. 2 x ULEV low floor 12 to 16 seater - approx. £160k per vehicle. 2 likely to be required;
- Driver costs **£192,000** (4 drivers). Staff costs approx. £25-30/hour inc. on-costs (c. £48k pp) in current market;
- Back office system **£14,400** (2 vehicles) £600/month per vehicle; and
- Maintenance costs **£11,000**. £5,500 pa per vehicle based on third of purchase cost over lifetime.

The total costs would be from 2023 (after the trial) to 2030 (Core Growth Scenario) or 2034 (Slow Growth Scenario). The total cost a 7 year scheme is therefore vehicle cost £320,000 + 7 years x total annual cost £217,400 = **£1,521,800**. The total cost a 11 year scheme is therefore vehicle cost £320,000 + 11 years x total annual cost £217,400 = **£2,391,400**.

The above costs exclude fuel, marketing/promotion and inflation.

Commented [NSC92]: NSC requires to see green belt rationale for phasing of car parking.

Commented [NSC93]: This is not appropriate in a UU.

Commented [NSC94]: This is not agreed. It is the Council's case (paras 5.2.1 to 5.4.4 inclusive of Mr Colles' evidence) that the applicant has not demonstrated a sound case for the additional surface level car parking. The Council has proposed condition 6 instead.

Commented [NSC95]: Certainty is required and therefore this needs to be completion of construction and bringing into operation.

Formatted: English (United States)

Deleted: AC_169759709_1

SCHEDULE 2

Obligation relating to the Noise Mitigation Scheme

Part 1

1. DEFINITIONS AND INTERPRETATIONS

Where in this Schedule 2 the following defined terms and expressions are used, they have the following meaning unless otherwise stated:

Noise Mitigation Scheme A scheme to provide noise insulation and/or suitable alternative means of ventilation to all habitable rooms, and kitchens used for dining in qualifying properties.

Noise Mitigation Fund Means a fund to be provided by the Owner up to the value of £200,000 per annum which will make grants available upon application by qualifying properties who wish to undertake mitigation in accordance with the Noise Mitigation Scheme

Part 2

2. NOISE MITIGATION SCHEME

2.1 The Owner shall submit a Noise Mitigation Scheme to the Council for approval and shall not implement any planning permission that will increase passenger numbers above 10 million passengers per annum until a Noise Mitigation Scheme has been approved by the Council.

2.2 For the avoidance of doubt, if following submission of the Noise Mitigation Scheme the Owner does not receive approval from the Council within 3 months the Noise Mitigation Scheme will be treated as deemed approved and the restriction on passenger numbers detailed in 2.1 above will no longer apply.

2.3 The Owner agrees that the Noise Mitigation Scheme submitted for approval shall include the following:

2.3.1 residential properties located within the 57dB, 60 dB and 63 dB (A) LAeq, 16hr (07:00 – 23:00) contours and the 55 dB (A) LAeq, 8hr (23:00 to 07:00) contour shall be eligible for noise insulation grants as set out in the schedule below:

Contour	Sum
63 dB (A) LAeq, 16hr (0700h – 2300h)	£7,500
60 dB (A) LAeq, 16hr (0700h – 2300h)	£3,750
57 dB (A) LAeq, 16hr (0700h – 2300h)	£3,750
55 dB (A) LAeq, 8hr (23:00 to 07:00)	£5,500

Commented [NSC96]: This amount appears to be arbitrary – what is the justification, ie how many properties might qualify within each contour?

Commented [NSC97]: This potentially means that properties will need to wait to receive mitigation and be subject to adverse impacts in the interim whilst they wait. There should be details of when affected properties will be consulted and made aware of the fund and how to apply.

Commented [SW98]: Have para 2.2 to ensure that the Noise Mitigation Scheme is approved by the Council in a timely manner. If the Council feel that 3 months is too short then BAL can consider a longer period.

Commented [NSC99]: This is not agreed. The Council is effectively rendered powerless to prevent an unacceptable scheme being implemented.

Commented [NSC100]: The LOAEL threshold for qualifying for noise mitigation is 54dBA, not 57 dB LAeq, 16 hr. The NPPG and NPSE make it clear that all reasonably practicable mitigation needs to be provided to those experiencing noise impacts above LOAEL. Thus this proposal is not policy compliant.

Commented [NSC101]: This is BAL's night time SOAEL. BAL's night time LOAEL was 45dB. The LOAL must be used. Comments apply here for the same reasons.

Commented [NSC102]: It has not been evidenced that the sums of money proposed are sufficient to ensure that all reasonably practicable mitigation of noise in all bedrooms in all residential properties is achieved in accordance with NPPG and NPSE

Formatted: English (United States)

Deleted: AC_169759709_1

2.3.2 The noise mitigation measures included in any Noise Mitigation Scheme shall be supported by evidence of in-situ testing of effectiveness against aircraft noise for a representative sample of residential properties.

2.3.3 As well as noise mitigation measures the Noise Mitigation Scheme shall include measures to provide suitable alternative means of ventilation and prevention of overheating where appropriate and necessary.

2.3.4 The Noise Mitigation Scheme shall be designed to achieve (within the context of the individual properties) the recommended day and night internal LAeq,t noise levels from BS 8223:2014 without a 5 decibel uplift and on no more than 10 occasions per annum noise levels should reach no more than 45 dBA LAmax due to aircraft noise intrusion in bedrooms between 2300 and 0659 hrs.

2.3.5 From Commencement of Development the Owner will provide a Noise Mitigation Fund which will be available upon application to qualifying properties until 12 million passengers per annum has been reached. Any qualifying properties who apply for a grant from the Noise Mitigation Fund that are not successful in that year will be prioritised for the following Noise Mitigation Fund year.

2.4 Upon request, the Owner shall submit details of grants provided pursuant to the Noise Mitigation Fund to the Council.

Commented [NSC103]: This is too vague and imprecise – details are required such as who determines what a representative sample is? How does use of a representative measure ensure that amelioration in a specific property, e.g. temp control with windows shut in all bedrooms.

Commented [NSC104]: It has not been evidenced that the sums in the table above are sufficient to achieve this objective in all houses that qualify

Commented [NSC105]: It has not been explained what happens if not all properties have been insulated by this date, nor whether the £200k does not operate to limit the amount of houses that could be mitigated in that time.

For example – NW POE @ p. 49, table 9, identifies 250 dwellings above 55dB (A) LAeq 8hr in 12 mppa case. 250 dwellings multiplied by £5,500 is £1,375,000. Divide £1.375m by £200k is 6.8 years. The fund is introduced on the commencement of the development – from that point it would take 7 years to fund these houses alone (i.e. excluding houses in the other contours who are eligible). This would require 12 mppa permission to be implemented by 2023 on the core case for all properties in that one contour to be insulated. However, those properties will be experience unmitigated adverse noise impacts at night during that period, in some cases up to 7 years.

Commented [NSC106]: The Council is not a party to the UU and obligations to request these details cannot be imposed on the Council. Certainty should be provided as to when details will be provided and what they will entail.

Formatted: English (United States)

Deleted: AC_169759709_1

APPENDIX 1
Land Plan

Formatted: English (United States)
Deleted: AC_169759709_1