

DRAFT – LAST UPDATED 28 SEPTEMBER 2021

Commented [NSC1]: With NSC comments 29/09/21

2020

Section 106 and Section 106A of the Town & Country Planning Act 1990
(as amended) relating to Bristol Airport

North Somerset Council ⁽¹⁾
Bristol Airport Limited ⁽²⁾
Bristol Airport Developments Limited ⁽³⁾
South West Airports Limited ⁽⁴⁾ and
Credit Agricole Corporate & Investment Bank ⁽⁵⁾



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DATE

PARTIES

- (1) North Somerset Council of Town Hall, Walliscote Grove Rd, Weston-super-Mare BS23 1UJ (the **Council**)
- (2) Bristol Airport Limited (CRN: 02078692) whose registered office is at Bristol Airport, Bristol, BS48 3DY (the **Owner**)
- (3) Bristol Airport Developments Limited (CRN: 05175337) of Lulsgate House, Bristol Airport, Bristol BS48 3DW (**BADL**)
- (4) South West Airports Limited (CRN: 05403045) whose registered office is at Lulsgate House, Bristol Airport, Bristol BS48 3DW (**SWAL**)
- (5) 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**

BACKGROUND

- (A) Save as where expressly defined in a Schedule to this Agreement, the terms and expressions that are used and defined in this Agreement have the meaning stated at clause 2.1 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 [] 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.
- (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 Parties have agreed to enter into this Agreement in order to secure the planning obligations pursuant to S106 and S106A of the 1990 Act and other enabling powers contained in this Agreement conditional upon the grant of the **12mppa Planning Permission**.
- (L) The Parties consider and agree 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 this Agreement and that save where expressly stated within this Agreement, the **10mppa S106 Agreement** will have no further legal effect.
- (N) This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one deed.

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 to on plan P11-02- rev 2 attached hereto at Appendix [●].
10mppa Trigger Date	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.
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 included at Schedule 1
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.
1980 Act	means the Highways Act 1980 as amended or any other statutory re-enactment or amendment thereto.

Commented [NSC2]: On advice from Counsel these recitals need to be reviewed to ensure they make sense in view of the inconsistencies between the permissions

Commented [SW3R2]: These provisions have been in the agreement for some time and it is not clear what issue this presents. To be discussed in NSC/BAL meeting on 30/09/2021.

Commented [NSC4]: It is noted that BAL are still compiling the plans and drawings referred to however it will be necessary to review these before final confirmation of the relevant defined terms

Commented [SW5R4]: This is underway and will be shared by close of play on 4th October 2021.

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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 Agreement 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: monitoring and ensuring delivery of the 2012 ASAS and associated targets; and providing input to completion of the Replacement ASAS and thereafter to monitor and ensure delivery of the Replacement ASAS.
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 Agreement excludes the following operations: site clearance; and site investigations, archaeological investigations erection of site hoardings and site advertisements.
Effective Date	means the date when: 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 ii) all statutory review proceedings or other legal challenge proceedings concerning the 12mppa Planning Permission 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.

Commented [NSC6]: This is inconsistent with paragraph 2.4 below.

Commented [SW7R6]: To be discussed in NSC/BAL meeting on 30/09/2021

Commented [NSC8]: The only challenge can be via s. 288 – s. 288 is an exclusive provision. This point repeats though this definition.

Commented [SW9R8]: The only potential successful challenge could be via a s288 but this does not prevent other challenges from coming forward and the Courts would still need to process them before they are disposed of.

Commented [NSC10]: Insert reference to High Court. Delete reference to any other appellate body. This follows from the above comment re. s288.

Commented [SW11R10]: As above.

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Development	means the development authorised by the 12mppa Planning Permission.
Highways Improvement Fund	a fund to support improvements to the local highway network serving the Airport including junction capacity, highway safety and footway and cycleway improvements to be used to mitigate adverse impacts arising from the Development.
Index	means the United Kingdom Retail Prices Index (All Items) as published by the United Kingdom Office for National Statistics or in the event of the said index being discontinued the nearest equivalent index, which in the case of Public Transport is the Coach & Passenger Transport regional index
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 Agreement.
mppa	means throughput in million passengers per annum.
Owners	means together the Owner, SWAL and BADL.
Parties	means the Parties to this Agreement 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.

Working Day a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in England

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 Agreement.

1.3 Where in this Agreement 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 Agreement.

1.4 The headings in this Agreement are intended for convenience only and shall not affect the construction or interpretation of this Agreement.

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 Agreement 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 Agreement is made pursuant to section 106 and section 106A of the 1990 Act, section 278 of the 1980 Act, section 111 and section 120 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and section 1 of the Localism Act 2011.

2.2 Upon the Effective Date, this Agreement replaces the 10mppa S106 Agreement in its entirety and the Council agrees that the planning obligations contained within the 10mppa S106 Agreement, save where expressly stated within this Agreement, are hereby discharged pursuant to S106A of the 1990 Act.

2.3 This Agreement 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.

2.4 The obligations within this Agreement at Clause 19 and Schedules 2, 3, 4, and 5 constitute planning obligations pursuant to section 106 and section 106A of the 1990 Act and are enforceable by the Council as local planning authority against the Owners so as to bind the Application Site and a planning obligation not to do any act or thing includes an obligation not to

cause or permit or suffer that act or thing to be done by any other person and the said obligations are entered into with the intent that they shall be enforceable by the Council against the Owners.

- 2.5 [The Parties agree that the 10mppa Planning Permission and the 12mppa Planning Permission are capable of being simultaneously implemented in accordance with the provisions of this Agreement as set out below:
- 2.5.1 The Owners covenant with the Council following the grant of the 12mppa Planning Permission not to implement or further implement the works referred to at all the sites shown on plan P11-02-REV 2 authorised by the 10mppa Planning Permission and attached at Appendix 1 [save for sites H and I (completion of the Multi Storey Car Park and Link Bridge)].
- 2.5.2 The Owners covenant with the Council that, following the grant of the 12mppa Planning Permission until the date of a written notice served on the Council by the Owner confirming that the 10mppa Planning Permission is fully discharged, the Multi Storey Car Park and Link Bridge works referred to at sub-clause 3.5.1 above will be capable of continued implementation as authorised by the 10mppa Planning Permission but only in accordance with, and subject to, planning conditions 12, 27-29 (inclusive), 44, 46-57 (inclusive), 61-63 (inclusive) and 68 together with the following approved drawings at condition 70: S1-01 Existing Site Plan Rev 0; S1-02 Existing site plan with application boundary Rev 1; p1-01 proposed site plan Rev 1; PI-01 Landscape Master Plan Rev A; p2-201 multi-storey car park level 1 Rev 1; p2-202 multi-storey car park level 2 Rev 1; p2-203 multi-storey car park level 3 Rev 1; p2-204 multi-storey car park level 4 Rev 1; p2-205 multi-storey car park level 5 Rev 1; p3-201 multi-storey car park elevations Rev 2; p3-202 ticket building plan, section & elevations Rev 1; p5-201 multi-storey car park sections Rev 1; p9-201 multi storey car park section through timber clad up-stand and elevation Rev 2; p9-202 multi storey car park deck parapet detail Rev 0; p11-01 Phasing reference Rev 1; p11-02 site reference Rev 2; 2078-p1-01 landscape master plan Rev a; 2078-p1-02 landscape master plan north Rev a; 2078-pl-07 landscape treatment of multi storey car park facades of the 10mppa Planning Permission or any other drawings as the Council may approve.
- 2.5.3 [The Parties agree that the development and operation of the Application Site or any part thereof pursuant to the 10mppa Planning Permission shall from the date hereof no longer be subject to planning conditions 1-11 (inclusive), 13-26 (inclusive), 30-31 (inclusive), 34-43 (inclusive), 45, 58-60 (inclusive), 64-67 (inclusive), and 69 and the following approved drawings pursuant to condition 70 [insert drawing refs of no legal effect]. The Parties hereby agree that such conditions have been observed or discharged].
- 2.5.4 The Parties further agree that the development and operation of the Application Site or any part thereof pursuant to the Silver Zone 2018 Planning Permission shall from the date hereof no longer be subject to condition 2 contained therein or condition 3 of the Silver Zone 2016 Planning Permission.
- 2.5.5 For the avoidance of doubt, the development authorised by the 12mppa Planning Permission will be subject to the planning conditions listed on the 12mppa Planning Permission from the date that the 12mppa Planning Permission is issued.
- 2.6 The Parties agree that the governance of the SASG under this Agreement shall continue in accordance with any terms of reference set out in or agreed pursuant to the 10mppa S106 Agreement unless otherwise stated in this Agreement or agreed between the Owner and the Council.
- 3. CONDITIONAL ENTRY INTO FORCE**
- 3.1 This Agreement shall come into effect immediately upon the grant of the 12mppa Planning Permission, save that:

Commented [NSC12]: It would be more appropriate to include this wording as a recital.

Commented [SW13R12]: It is not clear the extent of this paragraph that needs to be moved to the recitals so this can be discussed in NSC/BAL meeting on 30/09/2021 but in principle BAL have no objection to this approach.

Commented [NSC14]: It would be more appropriate to include this paragraph as a recital.

Commented [SW15R14]: It is not clear the extent of this paragraph that needs to be moved to the recitals so this can be discussed in NSC/BAL meeting on 30/09/2021 but in principle BAL have no objection to this approach.

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- 3.1.1 clause 18 shall take effect on the date of this Agreement
- 3.1.2 subject to clause 3.1.3, clause 19 shall not take effect until Commencement of Development; and
- 3.1.3 clause 19 shall take effect on the date of this Agreement insofar as it relates to the obligations and restrictions set out in Schedule 3 (A38 Highway Improvement and Works) only.

4. DURATION

- 4.1 This Agreement 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 If this Agreement ceases to have effect in accordance with Clause 4.1 the Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Agreement.
- 4.3 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 Agreement 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 Agreement will apply to 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.
- 4.4 In the event that the Secretary of State grants the 12mppa Planning Permission pursuant to the Appeal but expressly states in his decision letter that any obligation (or part thereof) contained in this Agreement:
 - 4.4.1 is not a material planning consideration; or
 - 4.4.2 that no weight can be attached to the obligation in determining the Appeal; or
 - 4.4.3 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 Agreement and the Parties agree to cooperate in respect of the drafting and negotiation of any deed of variation to this Agreement which may reasonably be required by any Party in order to document the Secretary of State's finding.

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 Agreement 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.
- 5.2 The Council hereby covenants with the Owners and the Chargee that it will, upon reasonable request from any such party (and subject to the Council's reasonable and proper professional costs and charges in connection with a request under this Clause 5.2) after any of the obligations undertakings, covenants and agreements contained in this Agreement have been discharged by performance or otherwise fulfilled (whether in whole or in part), issue written confirmation of that fact and shall enter a note on the Register of Local Land Charges confirming the discharge by

Commented [NSC16]: With the exception of modification powers in ss. 97 – 100 TCPA 1990.

Commented [SW17R16]: This is a standard clause and does not usually exclude powers in 97-100 of the TCPA 1990.

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performance or fulfilment or removal from the Register of Local Land Charges as the case may be.

6. CHARGEES CONSENT

- 6.1 The Chargee acknowledges and declares that this Agreement has been entered into by the Owners with its consent and that the Airport shall be bound by the obligations as provided for in this Agreement 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 Agreement PROVIDED THAT the Chargee shall not be personally liable for any of breach of the obligations of this Agreement unless committed or continuing at a time when the 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 Agreement shall be exclusive of any value added tax properly payable.

8. LOCAL LAND CHARGE

- 8.1 This Agreement shall be registerable by the Council as a local land charge.

9. NO FETTERING OF DISCRETION

- 9.1 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any powers exercisable by it under the 1990 Act or the 1980 Act or any other powers vested in the Council under any statute byelaw statutory instruments orders and regulations (already or in the future to be passed) or any government department public or competent authority or Court of competent jurisdiction.

10. NO WAIVER

- 10.1 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 Agreement 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.
- 10.2 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.

11. TITLE

- 11.1 The Owners warrant that they have power to carry out the obligations under this Agreement.
- 11.2 [The Owners warrant 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.
- 11.3 The Council acknowledges that Owners' obligations in this Agreement are subject to the rights of parties having an interest in the Application Site as referred to in Schedule [●].]

12. NOTICES AND APPROVALS

- 12.1 Any notices or other written communication to be served, or documents to be submitted on or to, any Party to this Agreement 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.
- 12.2 A notice or communication shall be served or given:-

12.2.1 On the Owners at [] marked for the attention of []

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

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

12.3 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.

12.4 Where in this Agreement there is any reference to an expression of satisfaction, certificate, approval, agreement or other consent to be given or made by the Council, such expression of satisfaction, certificate, approval, agreement or other consent shall be requested in writing and the Council shall not unreasonably withhold or delay the giving or making of the same and in any event, the Council shall use reasonable endeavours to provide such expression of satisfaction, certificate, approval, agreement or other consent within 28 Working Days of receiving a request for the same.

12.5 Where in this Agreement any matter is referred to Dispute Resolution under Clause 17, the findings of the Expert shall (save in respect of a manifest error) be binding on the Parties and such findings shall be deemed to constitute the required approval or agreement for the purposes of this Agreement.

12.6 The Owners agree to give the Council immediate written notice of any material change in ownership, disposition or charge of any of their interests in any part of the Airport occurring before all of the obligations under this Agreement have been fully discharged with such notice to give details of the transferee's or chargee's full name and registered office (if a company or usual address if not) together with details of the interest acquired and the area of the Airport or unit of occupation purchased by reference to a plan. For the avoidance of doubt, any change in the identity of any shareholder is not required to be notified to the Council under this clause.

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

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

12.9 Failure to provide the notices at 12.7 and 12.8 above do not render this Agreement inoperative.

13. SEVERANCE

13.1 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.

14. CONTRACTS (RIGHT OF THIRD PARTIES) ACT 1999

14.1 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 Agreement are enforceable by a third party and any term may be rescinded or varied without the consent of any third party.

15. ENFORCEMENT

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

15.1.1 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;

- 15.1.2 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;
- 15.1.3 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;
- 15.1.4 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.

16. OTHER DEVELOPMENT

- 16.1 Nothing in this Agreement 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 Agreement.

17. DISPUTES PROCEDURE

- 17.1 In the event of any dispute arising between the Parties out of the provisions of this Agreement, the same may be referred to a person having appropriate qualifications and experience in such matters as appointed in accordance with sub-clause 18.1.1 below (the **Expert**) for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any Party to seek the resolution of any matter relating to the Agreement from the Courts and/or in accordance with Section 106 (6) of the 1990 Act and the referral of any matter to the Expert shall not prejudice, prevent or delay the recourse of any Party to the Courts or to the provisions of Section 106 (6) for the resolution of any matter arising from the Agreement:
- 17.1.1 The Expert shall be appointed by the relevant Parties to the dispute (the **Relevant Parties**) or in default of agreement by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the Relevant Parties.
- 17.1.2 The decision of the Expert will be final and binding upon the Relevant Parties and the following provisions apply:
- (a) the charges and expenses of the Expert will be borne equally between the Relevant Parties unless the Expert shall otherwise direct;
 - (b) the Expert will give the Relevant Parties an opportunity to make representations and counter representations to him before making his decision;
 - (c) the Expert will be entitled to obtain opinions from others if he so wishes;
 - (d) the Expert will make his decision within the range of any representations made by the Relevant Parties themselves;
 - (e) the Expert will comply with any time limit or other directions agreed by the Relevant Parties on or before this appointment.

18. JURISDICTION AND LEGAL EFFECT

- 18.1 The validity, construction and performance of this Agreement shall be governed by English law and each Party agrees to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising under this Agreement.

18.2 The provisions of this Agreement (other than this Clause 19) shall be of no effect until this Agreement is dated.

19. COVENANTS BY THE OWNERS AND THE COUNCIL

19.1 The Owners covenant with 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 Schedule 2, Schedule 3, Schedule 4, and Schedule 5 of this Agreement.

Commented [NSC18]: See previous comment re paragraph 2.4 – to be discussed with BAL

19.2 The Council covenants with the Owners that it will observe and perform the obligations and restrictions set out in Schedule 2, Schedule 3, Schedule 4, and Schedule 5 of this Agreement.

Commented [SW19R18]: Noted

19.3 The Council shall apply any financial contribution or any other sum or part thereof paid to it pursuant to this Agreement to the purposes specified in this Agreement and for which they have been paid in accordance with the terms of this Agreement.

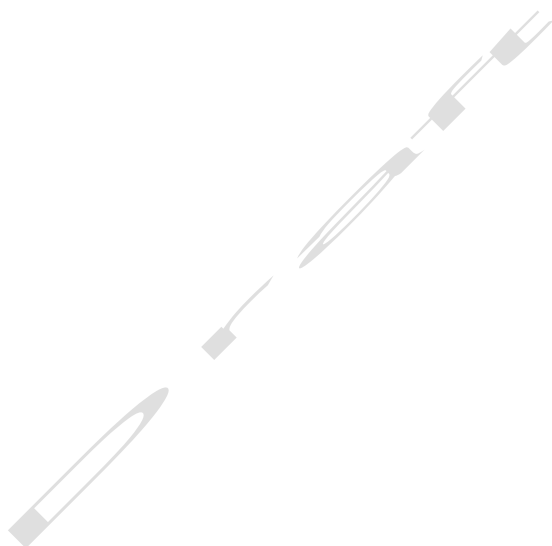
19.4 Where at the end of the period of 10 years following receipt of the financial contribution in question or where payments are made in instalments, receipt of the last instalment of such financial contribution, the Council has not spent the whole of the financial contribution within 10 years of the date of receipt, then the Council shall as soon as reasonably practicable thereafter repay any such unspent or uncommitted amount together with any interest accrued as at the date of repayment to the person who paid the financial contribution in question provided that the Council shall not be required to repay any sums or sums which the Council has already committed to spend or any sum which is required to secure the completion of any works, project, service or facilities which have commenced but which have not been completed as at the end of the said period of 10 years.

19.5 The Council shall on reasonable notice from the Owner provide details of how the sums paid to it pursuant to this Agreement have been spent.

EXECUTED AS A DEED by the Parties on the date which first appears in the Agreement.

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SCHEDULE 1
The 10mppa Planning Permission



SCHEDULE 2

Obligations relating to Transport and Travel

Part 1

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 Where in this Schedule 2 (and where relevant Schedules 3 to 5), the following defined terms and expressions are used they have the following meaning unless otherwise stated:

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 this Agreement.
Workplace Travel Plan	the Workplace Travel Plan to be agreed between the Owner and the Council pursuant to paragraph Part 24 of this Schedule 2.

Part 2

2. SURFACE ACCESS STEERING GROUP AND BRISTOL AIRPORT TRANSPORT FORUM

- 2.1 The Owner will facilitate the establishment of the SASG by nominating one representative of the Owner and inviting the Council to nominate a representative to be a SASG member and to constitute the SASG within three months of the Effective Date.
- 2.2 Prior to the 10mppa Trigger Date the Owner shall establish a Public Transport Improvement Fund for the purposes set out in Schedule 5 and shall agree transitional arrangements with the SASG for the management of funds under the 10mppa S106 Agreement and this Agreement.
- 2.3 The Owner covenants that it will convene the BATF within three months of the Effective Date to meet on a bi-annual basis and to convene related working groups where necessary reporting back to the BATF on a regular basis.

3. NEW PUBLIC TRANSPORT SERVICES

- 3.1 Subject to paragraph [Schedule 1Part 11](#), within five months of Commencement of Development the Owner covenants to provide a flyer shuttle service (**Flyer Shuttle**) to

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Passenger and Staff Survey Report

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An annual transport monitoring report of all passenger transport modes to be submitted to the Council and the SASG by the Owner pursuant to paragraph 3.3.6 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.

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Clevedon, Yatton and Nailsea (to include Nailsea and Yatton Stations) from the Airport based on a demand responsive service operating on demand 24 hours per day and seven days per week.

- 3.2 The Flyer Shuttle service referred to in paragraph 3.1 above shall operate for a minimum period of 24 months and be subject to a comprehensive review by the SASG of the demand and viability of the service at six-monthly intervals. Reviews of the Flyer Shuttle shall include (but not be limited to);

- 3.2.1 consideration of the ongoing service viability, taking account of patronage levels,
- 3.2.2 vehicle capacity,
- 3.2.3 the availability of the service to passengers and staff,
- 3.2.4 the timetable,
- 3.2.5 use of ULEV vehicles subject to viability, and
- 3.2.6 the route.

4. WORKPLACE TRAVEL PLAN

- 4.1 With effect from the Effective Date until the provision by the Owner of the Workplace Travel Plan referred to in paragraph 4.2, the Owner will continue to observe and comply with Clauses 11 and 12 of Part 1 of Schedule 4 of the 10mppa S106 Agreement relating to Staff Travel Plans as therein defined unless otherwise agreed with the Council or approved by the Council as having been superseded by the measures under this Agreement.
- 4.2 Within six months of the Effective Date the Owner shall submit a proposed methodology and draft workplace travel survey to the Council for approval. The workplace travel survey will be undertaken in the first available month of September following the approval of the draft workplace travel survey. Upon completion of the workplace travel survey, the Owner shall submit the Workplace Travel Plan to the Council for approval which must include a commitment to achieve a stretch modal share target of 30% of employees using sustainable travel upon the air passenger throughput reaching 12mppa and monitoring of progress to achieve this through annual employee travel surveys as referred to at paragraph
- 4.3 The Owner will comply with and operate the Airport in accordance with the approved Workplace Travel Plan which shall include proposals for an Employee Travelcard Scheme that applies to all employees working at the Airport to promote and encourage their use of sustainable transport modes.

5. DROP OFF ZONES AND TRAFFIC REGULATION ORDERS

- 5.1 The Owner covenants that it will undertake a review of Drop Off Zone (DOZ) charges which will:
- 5.1.1 consider the impact of drop-off trips on the transport network;
- 5.1.2 promote the Transport Mode Hierarchy within the ASAS; and
- 5.1.3 seek to move as many people as possible higher up the hierarchy.
- 5.2 The Owner covenants that it will take reasonable endeavours to co-ordinate discussions with local parish councils and stakeholders to facilitate the Council's delivery of Traffic Regulation Orders targeting parking restrictions in local roads and laybys at locations in the vicinity of the Airport to be agreed with the Council.

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Commented [NSC22]: This is not agreed. This is a critically important service for staff and passengers in low public transport mode share areas in North Somerset. Airport were in agreement at all times for this service. Pilot for 24 months. This is not fundable through PTIF alone.

BAL's claim that the DRT provision could be met by the existing PTIF funding is unfounded giving the costings known to both parties.

Agree the pilot for 24 months can be funded from existing contributions but not the permanent provision. PTIF only holds £780k for 7-11 year period.

The Flyer Shuttle is required as there is low public transport use within North Somerset Council area for access to BAL. 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;

Commented [SW23R22]: The 24 month period was agreed to ensure a full trial of the service could be completed, to establish ridership and with the objective of developing a service that is commercially viable. This would be funded from the PTF. Beyond that, if some

Deleted: ~~Following the initial period of 24 months referred to in paragraph 3.2, the Flyer Shuttle shall only be funded through the Public Transport Improvement Fund at the discretion of the SASG.~~

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Deleted: covenants to continue implementation of the Staff Travel Plan

Commented [NSC24]: There needs to be a corresponding obligation to amend/implement following the review. NSC propose implementation within 6 months.

Commented [SW25R24]: BAL can agree this. Wording to be prepared by BAL.

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6. MONITORING

- 6.1 Upon passenger numbers exceeding 10mppa the Owner will undertake a programme of traffic surveys to monitor traffic levels at the locations specified in paragraph 6.3.
- 6.2 The traffic surveys referred to in paragraph 6.1, shall commence within [●] months of the 10mppa Trigger Date and, unless otherwise agreed with the Council, shall be repeated every two years or, where annual growth exceeds 0.5mppa, shall be undertaken on an annual basis.
- 6.3 The traffic surveys referred to in paragraph 6.1, shall be undertaken in accordance with a full monitoring plan to be agreed with the Council which will require surveys to be undertaken at the following locations (unless otherwise agreed with the Council):
- 6.3.1 Airport site access junctions;
 - 6.3.2 A38 Barrow Street signal junction;
 - 6.3.3 A38 Churchill signal junction (if required following capacity analysis work);
 - 6.3.4 B3130 Chew Valley route (at locations to be agreed).
- 6.4 The Owner will provide the results of such traffic surveys to the SASG in order to inform decisions by the SASG on potential highway improvements and any such highway improvements proposed to be undertaken by the SASG due to the results of the traffic surveys shall only be undertaken if they can be funded by the Highways Improvement Fund.

7. PUBLIC TRANSPORT INTERCHANGE

- 7.1 Within 9 months of the Effective Date the Owner shall submit details of a Public Transport Interchange (PTI) to the Council for approval if the details are different from those granted under the 10mppa Planning Permission (such approval not to be unreasonably withheld or delayed) and, subject to securing all necessary consents and approvals, the Owner shall:
- 7.1.1 complete the PTI and ensure that it is fully open and operational **before** the 10 mppa Trigger Date.
 - 7.1.2 In the event that the PTI approved under the 10mppa Planning Permission is carried out, the PTI will be fully open and operational by the 10mppa Trigger Date.

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SCHEDULE 3

A38 Highway Improvement and Works

Part 1

1. DEFINITIONS AND INTERPRETATIONS

Where in this Schedule 3 (and where relevant Schedules 2 and 5), the following defined terms and expressions are used they have the following meaning unless otherwise stated:

A38 Highways Scheme a detailed highway mitigation scheme shown in principle on plan C1124-SK-A38-010 Rev11.0 to be agreed between the Owner and the Council in accordance with paragraph [6] of this Schedule.

A38 Highways Works means the works required to implement the A38 Highways Scheme.

A38 Highways Works Land means all land interests and rights required to fully construct and maintain the A38 Highways Works, which are not within the publicly adopted highway or within the Council's title.

Compulsory Purchase Order Date means the date when:

- i) the period for challenging the confirmation of the Bristol Airport Limited (Land At A38 And Downside Road) Compulsory Purchase Order 2020 has passed without any statutory review proceedings or other legal challenge having been made; or
- ii) all statutory review proceedings or other legal challenge proceedings concerning the Bristol Airport Limited (Land At A38 And Downside Road) Compulsory Purchase Order 2020 have been finally disposed of and the Bristol Airport Limited (Land At A38 And Downside Road) Compulsory Purchase Order 2020 remains confirmed will full effect.

Force Majeure Events [means any event or sequence of events beyond a party's reasonable control and that could not have been reasonably anticipated or avoided and which prevents it from, or delays it in, performing its obligations under this Agreement including, but not limited to, (a) an act of God, fire, flood, drought, earthquake, windstorm or other natural disaster; (b) an act of any sovereign including war (or threat of, or preparation for war), armed conflict (or threat of, or preparation for, armed conflict), invasion, act of foreign enemies, hostilities (whether war be declared or not), rebellion, revolution, insurrection, military or usurped power or confiscation; (c) acts of terrorism, civil war, civil commotion or riot (or the threat of, or preparation for, acts of terrorism, civil war, civil commotion or riot); (d) civil emergency (whether an emergency be declared or not); (e) fire or explosion (other than, in each case, one caused by breach of contract by, or with the assistance of, the party seeking to rely on it as a force majeure event or by a member of the same group as such party); (f) adverse weather conditions; (g) nationalisation, requisition, destruction or damage to property by or under the order of any government or public or local authority; (h) embargo, blockade, imposition of sanctions or breaking off of diplomatic relations or similar actions; (i) radioactive, nuclear, chemical or

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Commented [BS26]: As discussed at the meeting on Monday 27th

Commented [SW27R26]: To be discussed in the meeting between NSC and BAL on 30.09.2021

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biological contamination or sonic boom, pressure waves caused by aircraft travelling at sonic or supersonic speeds; (j) law, or governmental order, rule, regulation or direction, judgment, order or decree; (k) epidemic or pandemic; (l) labour dispute including, but not limited to, strikes, industrial action, lockouts or boycott of a third party workforce; (m) interruption or failure of utility service including to electric power, gas, water, internet or telephone service; (n) loss at sea; (o) collapse of building structures; (p) failure of the transportation of any personnel, equipment, machinery supply or material required by a party for performance of the agreement; (q) failure of plant machinery, machinery, computers or vehicles; (r) non-performance by suppliers or sub-contractors; (s) malicious or negligent damage or other act (other than, in each case, by the party seeking to rely on it as a force majeure event or by a member of the same group as such party).

Highways Land

means that part of the A38 Highways Works Land which the Council and the Owner have agreed will form part of the publicly adoptable highway.

Owner's Contribution

means the sum representing the reasonable design and construction costs of completing the A38 Highways Works only including project management and quantity surveying support

Payment Schedule

means a schedule outlining the staged payment of the Owners Contribution at certain milestones in the delivery of the A38 Highways Works, which will include (unless otherwise agreed between the parties):

- a) an advance payment sufficient to cover the costs of:
 - site surveys and investigations on the Highways Land; and
 - the detailed design process for the A38 Highways Scheme; and
- b) a percentage of the remainder of the Owners Contribution to be paid by the Owner to the Council:
 - prior to the commencement of pre-construction work such as enabling works and pre-construction due diligence, preparatory works;
 - in advance of particular points in the construction phase as set out in an agreed activity schedule;
 - upon practical completion of the Highways Works; and
 - upon the issuing of the final certificate in respect of the Highways Works.

Preparatory Works

means site and utility surveys,

2. The following paragraphs 3 to 14 shall not take effect until the later of the Effective Date and the Compulsory Purchase Order Date, provided always that, if the Effective Date and the Compulsory Purchase Order Date have not occurred prior to 31 July 2022, nothing in this Schedule would prevent the Council from undertaking the A38 Highways Scheme at its discretion.

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Commented [BS28]: BAL to confirm if this was the intended meaning.

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3. Until completion of the A38 Highways Works the Owner shall safeguard the A38 Highways Works Land within its control for the purposes of the A38 Highways Works only and shall not use the Highways Land for any other purpose unless otherwise agreed in writing with the Council and for the avoidance of doubt there is no obligation on the Owner to safeguard any land within the Owner's control which is not required to construct and maintain the A38 Highways Works.
4. The Council and the Owner will facilitate the establishment of a A38 Highways Works group by nominating one representative of the Owner and inviting the Council to nominate a representative to be a A38 Highways Works member and to constitute the group within three months of the Effective Date.
5. The Council and the Owner shall use reasonable endeavours to agree the A38 Highways Scheme and the Payment Schedule for payment of the Owner's Contribution to the Council, and the Owner shall make such payments as agreed in the Payment Schedule. The Council and the Owner shall share current and up to date information regarding any work on design specification including any proposals to amend the A38 Highways Scheme and shall give each other the opportunity to make representations on such design specification and the contractor procurement process (including the preparation of the design brief, tender pack, tender adjudication and subsequent appointment), and the Council shall take such representations into account before any decisions on appointments or scheme design are made.
6. The Council and the Owner shall use reasonable endeavours to respond to each other in writing with any comments on the A38 Highways Works within 10 Working Days of receipt.
7. The Council will ensure that updates are provided to the Owner on a quarterly basis in respect of any bids submitted by the Council (or on behalf of the Council) for funding streams which could have an impact on the A38 Highways Works and its planned delivery or any subsequent funding awarded.
8. Both parties will use reasonable endeavours to agree who will undertake the A38 Highways Works no later than 31 July 2022. In the event that the Council has not communicated its decision in writing to the Owner on whether it wishes to deliver the A38 Highways Works by 31 July 2022 then the Owner will have the option to deliver the A38 Highways Works.
9. In the event that the Owner undertakes the A38 Highways Works in accordance with paragraph 9 above and subject to there not being any delays in programme due to Force Majeure Events the Owner covenants to complete the A38 Highways Works before the 10mppa Trigger Date.
- In the event that the Council undertakes the A38 Highways Works in accordance with paragraph 9 above the Owner covenants to pay to the Council the Owner's Contribution in accordance with the Payment Schedule and the Owner shall offer to transfer to the Council on reasonable terms at nil cost (including the Council's reasonable legal costs incurred in the negotiation, preparation and completion of any such transfer) the Highways Land.
10. Within [3 months] of the Effective Date or the Compulsory Purchase Order Date whichever is the later, both parties shall agree the Preparatory Works in respect of the Highways Land which shall be commenced as soon as reasonably practicable in order to ensure that the A38 Highways Works can progress in a timely manner. If by the Effective Date the Council has not communicated its decision in writing to the Owner to confirm it wishes to undertake the A38 Highways Works then the Owner will undertake the Preparatory Works in consultation with the Council. In such circumstances the parties agree to deduct any monies required to undertake the Preparatory Works from any part of the Owner's Contribution that would have been used by the Council towards this purpose.
11. Prior to an award of any building contract connected to the A38 Highways Works which will rely upon the Owner's Contribution to fund the contract price the Council will inform the Owner of the contribution sought with a detailed justification on an open book basis and thereafter the parties will use reasonable endeavours to agree the Owner's Contribution within 6 weeks of the Owner having received the details of the contribution sought.

Commented [SW29]: To be discussed at the meeting between NSC and BAL on 30.09.2021

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Commented [BS32]: We think that the offer needs to be a transfer of the Highways Land and a licence for the rest of the A38 Highways Works Land or a licence for the A38 Highways Works Land in order to make the rest of the drafting work. Please see below.

Commented [SW33R32]: To be discussed at the meeting between NSC and BAL on 30.09.2021

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Commented [SW34]: Principle agreed but period to be discussed at the meeting between NSC and BAL on 30.09.2021

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12. If the Council accepts the offer to transfer the Highways Land under paragraph [] the parties agree to enter into the transfer as soon as reasonably practicable
13. If the Council does not accept the offer to transfer the Highways Land pursuant to paragraph [11] above the Owner shall offer to enter into a licence agreement on reasonable terms with the Council in respect of the A38 Highways Works Land to enable the Council to undertake the A38 Highways Works
- 13.1 at nil cost to the Council;
- 13.2 to include agreement under section 38 of the Highways Act 1980 that any part of the Highways Land which the Council and the Owner have agreed will form part of the publicly adoptable highway will be dedicated and adopted as publicly maintainable highway on completion of the A38 Highways Works; and
- 13.3 with the Council's reasonable legal costs incurred in the negotiation, preparation and completion of any such licence to be met by the Owner;
14. Provided that the Council has not accepted the offer to transfer the Highways Land pursuant to paragraph [11] above, the Owner shall use reasonable endeavours to enter into a licence agreement with the Council in accordance with paragraph [13] by 31 July 2023.
15. The Owner shall not undertake the A38 Highways Works in accordance with paragraph 20, or serve prior written notice on the Council in accordance with paragraph [14], unless and until:
- 15.1 the A38 Highways Scheme has been agreed between the Council and the Owner (such agreement not to be unreasonably withheld);
- 15.2 the Owner has offered to enter into a licence agreement with the Council in accordance with paragraph 13; and
- 15.3 either:
- 15.3.1 a period of twelve (12) months following the offer to licence the A38 Highways Works Land to the Council pursuant to paragraph 4 has passed and either:
- (a) the Council has not agreed in writing to accept the licence; or
- (b) the Council has agreed in writing to accept the licence but the licence agreement has not been completed; or
- 15.3.2 the Council has agreed in writing that the Owner may undertake the A38 Highways Works.
16. Subject to the A38 Highways Works Land being [transferred/licensed] to the Council in accordance with [paragraph [14]] and Provided That the Owner has not served prior written notice on the Council in accordance with paragraph [13] and subject to there not being any delays in programme due to Force Majeure Events, the Council undertakes to use reasonable endeavours to procure and complete the construction of the A38 Highways Works expeditiously and with all due care and diligence within a period of 52 weeks from commencement of the construction phase of the A38 Highways Works.
17. Subject to paragraph [13] above, the Owner may at any time prior to the Council letting a contract for the A38 Highways Works serve a written notice on the Council which will confirm that the Owner will itself undertake the A38 Highways Works provided that the Owner will reimburse the Council for any costs reasonably and properly incurred in respect of the A38 Highway Scheme (and for the avoidance of doubt shall exclude any works undertaken by the Council towards the submission of bids for funding in respect of the A38 Highways Works).

Commented [BS35]: The Highways Land only covers the land to be included within the adopted highway, and not all works required to construct it. How would the Council access the entirety of the A38 Highway Works Land in the event that the transfer offer is taken up?

Commented [SW36R35]: To be discussed at the meeting between NSC and BAL on 30.09.2021

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19. The Council covenants with the Owner that any contract that is let by them for the construction of the A38 Highways Works will provide for (but the Owner is not obliged to accept) step-in rights for the Owner (and its employees, contractors and/or representatives) as regards the obligations/rights therein relating only to the A38 Highways Works.
20. Where written notice is served by the Owner under paragraph [13], the Owner and the Council will use reasonable endeavours to enter into a section 278 agreement under the Highways Act 1980 as soon as reasonably practicable to enable the Owner to undertake the A38 Highways Works and any part of the Owners Contribution which has been paid to the Council which remains unspent or uncommitted will be used towards any bond/deposit required therein.
22. Upon completion of the A38 Highways Works by the Owner pursuant to [paragraph 9 or 15] and the issue of the final certificate by the Council in accordance with [the agreement entered into pursuant to paragraph [14]], the Owner will be discharged from the obligation to pay the Owner's Contribution to the Council and any monies already paid by the Owner to the Council which remain unspent or uncommitted will be returned to the Owner within 25 Working Days together with any interest accrued.
23. As soon as reasonably practicable following completion of the A38 Highways Works under paragraph [14.1], and in the event that the Council has previously opted to enter into a licence rather than accept transfer of the Highways Land the Owner shall again offer to transfer to the Council on reasonable terms at nil cost (including the Council's reasonable legal costs incurred in the negotiation, preparation and completion of any such transfer) the Highways Land.
17. Prior to the [A38 Highways Works Land being transferred / licensed to the Council], the Owner will use reasonable endeavours to assist the Council in gaining access to the A38 Highways Works Land for the purpose of undertaking site investigations to inform the design of the A38 Highways Works, including the exercise of powers under Part 7 of the Housing and Planning Act 2016 if access cannot be gained by other means within a reasonable timeframe specified by the Council and following a request from the Owner shall share the results of any surveys undertaken with the Owner within 10 Working Days.
24. The parties agree that the Owner will have the right to use intellectual property rights created in respect of the A38 Highways Scheme.

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SCHEDULE 4

Obligations relating to Environmental and Social matters

Part 1

1. DEFINITIONS AND INTERPRETATIONS

Where in this Schedule 4 the following defined terms and expressions are used, they have the following meaning unless otherwise stated:

Airport Consultative Committee	a forum to enable communities in the vicinity of the Airport, local authorities, local business representatives and other interested parties to exchange information and ideas, which is independently chaired and whose membership comprises stakeholders from local communities, business groups and airport users.
AMR	an annual monitoring report to be published in accordance with the 12mppa Planning Permission
Current AQAP	The existing Air Quality Action Plan prepared by the Owner in accordance with the 10mppa Planning Permission.
Flight Operations Committee	the committee established by the Owner with representatives of the main airlines operating at the Airport and NATS and which is intended to meet regularly (at least quarterly) to ensure the development of best practice in flight operations by the said airline operators in order to minimise effects on the local community and maximise the capacity opportunities whilst ensuring that safety continues to be given the highest priority at all times.
GNMS	a comprehensive Ground Noise Management Strategy that will form a component of the Noise Action Plan submitted to the Council in accordance with Schedule 4 of this Agreement and operated continuously by the Owner in order to minimise ground noise disturbance from aircraft using the Airport and which shall incorporate the approved conditioned measures relating to ground noise.
NATS	NATS Holdings Limited (Company number 04138218), in its capacity as the main air navigation service provider in the United Kingdom
Noise Action Plan	a Noise Action Plan published by the Owner in compliance with the requirements of the Environmental Noise Directive 2002/49/EC and where applicable other related Government regulations.
Noise Mitigation Scheme	A scheme to provide noise insulation or suitable alternative means of ventilation to all habitable rooms, and kitchens used for dining in qualifying properties.

NCS

the Noise Control Scheme as defined in Part 2 of the Fourth Schedule to the 10mppa Planning Agreement and subsequently implemented at the Airport.

Revised NCS

A Revised NCS which shall, in addition to the obligations in the NCS, contain a mechanism to impose penalties on airlines for the breach of noise limits, including publication of an airline performance league table, and provide incentives for the use of quieter aircraft as well as further measures to encourage operators of aircraft to adopt operational procedures and practices in conjunction with the Flight Operations Committee, aimed at achieving ongoing improvements in the levels of aircraft noise and minimising the impact of noise by facilitating the adoption of such procedures and practices, including:

The use of continuous descent approaches wherever possible, consistent with flight safety;

The avoidance of reverse thrust between 23:00 hours and 06:59 hours, consistent with flight safety;

The application of best practice flight management procedures which might reasonably be expected to reduce noise and fuel burn

SEP

a Skills and Employment Plan developed with [appropriate agencies TBC] and delivered in accordance with Schedule 4Part 45 of this Schedule.

Part 2

Air Quality

2. AIR QUALITY

2.1 With effect from the date hereof, the Owner will continue to adhere to the Current AQAP, monitor current air quality data and report on its findings in the AMR.

2.1.1 The owner will operate an air quality monitoring programme for nitrogen oxides and fine particulate matter consisting of:

- I. Continuous monitoring of oxides of nitrogen and fine particulate matter (PM10 & 2.5) at two appropriate fixed sites (one existing and one new location) to be agreed with and the Council.
 - a. a. The new monitoring location will be representative of receptors most affected by the proposed development based on the information in ES Addendum Appendices 7A and 7B, having regard to the location of the existing monitoring station.
 - b. b. The new monitoring equipment will be procured, located, installed and operated to be consistent with the methods used for the UK Automated Urban and Rural Network, as summarised by Defra (<https://uk-air.defra.gov.uk/networks/network-info?view=aurn>) with information on monitoring methods and instruments provided here: <https://uk-air.defra.gov.uk/networks/monitoring-methods?view=eu-standards>.
- II. Diffusion tube monitoring of nitrogen dioxide at not less than 16no. sites to be agreed with the Council. In addition, co-location monitoring with at least three diffusion tubes will be established at the site of the fixed continuous monitor.
- III. An annual report (in the format of a section in the Annual Operations Monitoring Report) with a summary of the results described in (i) and (ii) above. The Annual

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- Operations Monitoring Report will be presented to the Airport Consultative Committee and made public.
- IV. The Air quality monitoring results will be reviewed with NSC on an annual basis, taking account of the following:
- Any new national policies such as newly enacted air quality standards/guidelines, or local policies
 - Updates to best practice methodologies
 - New scientific or technical developments
 - Performance of the airport against air quality standards and guidelines

The new elements of the air quality monitoring programme will be located, procured, installed and operational within 12 months of the Effective Date.

2.1.2 The data in paragraph 0 above will be provided within the AMR.

- 2.2 If the results of the monitoring as detailed in the AMR identify any exceedances of an applicable air quality criteria in force at the time, or the results indicate a need for measures to avoid or prevent any significant adverse effects on the environment arising from the operation of the Airport, the Owner shall carry out investigation into the causes and exceedances as soon as reasonably practicable following the submission of the AMR to the Council and no later than three months from the date of submitting the AMR submit a mitigation plan to the Council for approval detailing the steps to improve air quality.

Part 3

Noise (Air and Ground Noise)

3. AIR NOISE

- 3.1 Within 6 months of the Commencement of Development, the Owner shall submit to the Council for the Council's approval a draft **Revised NCS** which shall be prepared in consultation with the Council and the Flight Operations Committee and shall form a component of the Noise Action Plan.
- 3.2 [Within 12 months of the Commencement of the Development], the Owner shall implement the Revised NCS with details of progress and monitoring data captured within the AMR.
- 3.3 As soon as reasonably practicable following the publication of the third AMR following the Effective Date, and subsequently at three yearly intervals as soon as reasonably practicable following the publication of the relevant AMR, the Owner shall submit to the Council for its approval a verification report which shall identify the input data, the methodology and the output data used to calculate the noise contours and recommend the appropriate calculation procedure for producing the noise contours.
- 3.4 The Owner shall publish the verification reports referred to in paragraph 3.3 following approval by the Council.

4. GROUND NOISE

- 4.1 Within six months of Commencement of Development the Owner shall submit to the Council the **GNMS** for the Council's approval which shall aim to achieve ongoing improvements to minimise the levels and impacts of ground noise at the Airport.

Commented [NSC39]: There needs to be a corresponding obligation to amend/implement following the review

Commented [SW40R39]: The AQAP will address this.

- 4.2 Prior to submitting the **GNMS** to the Council in accordance with paragraph 4.1 of this Schedule 4, the Owner shall prepare the **GNMS** in consultation with NATS, relevant airlines and the Council and the GNMS shall identify measures including:
- 4.2.1 operational and procedural controls on the ground running of aircraft including:
- (a) Measures to reduce noise from pre-flight servicing / checks of the aircraft while stationary at aircraft stands;
 - (b) Measures to reduce and phase out the use of mobile diesel generators, through fixed electrical ground power (FEGP) and any transitional arrangements towards FEGP at all aircraft stands;
 - (c) Measures to reduce aircraft engine noise while aircraft are taxiing;
- 4.2.2 identification of key performance indicators for monitoring ground noise management;
- 4.2.3 the installation of a permanent ground noise monitor which will be situated at the Airport at a location to be agreed with the Council.
- 4.3 [Within six months of the GNMS being agreed with the Council], the Owner shall implement and maintain the **GNMS** by reviewing, producing, maintaining and enforcing standing instructions in relation to activities covered by the GNMS and will use reasonable endeavours to procure the implementation by aircraft operators of the GNMS including pursuing follow up action with the operators of aircraft that disregard the standing instructions, subject to safety constraints.
- 4.4 The Owner shall report progress on the implementation and maintenance of the GNMS to the Council through the AMR.

Part 4

Skills and Employment Plan

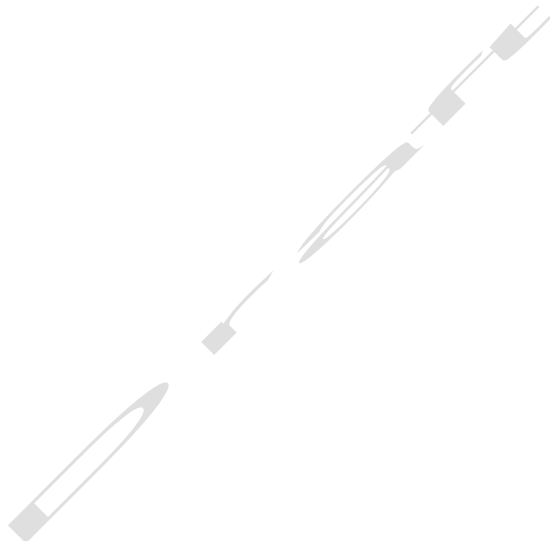
5. SKILLS AND EMPLOYMENT PLAN

- 5.1 [Within six months of the Commencement of Development], the Owner shall submit the SEP to the Council for approval.
- 5.2 The SEP must include measures which aim to deliver employment opportunities at the Airport for residents of the settlements in the vicinity of the Airport, including South Bristol and Weston super-Mare and shall include:
- 5.2.1 A 'Construction Phase Local Labour Agreement and Action Plan' which consists of a local labour agreement and action plan, bound by the principles of the 'Construction Training Industry Board (CITB) Client Based Approach', relating to the construction phase of the Development.
- 5.2.2 An 'Achieve Programme' to deliver employment and skills interventions and a programme of activities with education providers relating to the operational phase of the Development, which includes a financial contribution of up to a maximum of £300,000 to commission a specialist employment support provider to deliver a suite of employment and skills interventions to support residents to access end use/ operational phase jobs. The timing of the payment and associated work shall be agreed with the Council and the fund shall be held and administered jointly by the Owner and the Council.
- 5.2.3 An 'Operational Phase Education Programme' which requires the Owner to engage with the education sector from primary level through to university and develop

opportunities for young people and adults to access employment at the Airport. Details of its timing and a review shall be agreed with the Council.

5.2.4 A 'Monitoring Programme' which sets out the agreed key performance indicators against which the implementation of the SEP will be monitored.

5.3 Following approval by the Council, the Owner shall implement the SEP.



SCHEDULE 5

Contributions

Part 1

1. DEFINITIONS AND INTERPRETATIONS

Where in this Schedule 5 (and where relevant Schedule 2 and Schedule 3), the following defined terms and expressions are used they have the following meaning unless otherwise stated:

Airport Environmental and Amenity Improvement Fund (AEAIF)	a fund to provide for mitigation to address unforeseen or unforeseeable adverse environmental impacts or adverse impacts on the amenity of the local community arising from the Development
Metrobus Contribution	an initial sum of £500,000 managed by the SASG through the Public Transport Improvement Fund as a contribution to fund the Metrobus Improvements.
Metrobus Improvements	service enhancements, integration and infrastructure improvements to deliver service integration connecting the Airport (excluding the Public Transport Interchange) with the Metrobus network as identified in the Metrobus Service Integration and Network Improvements feasibility study.
Planning and Parking Enforcement Officer Contribution	£225,000 to be paid to the Council made up of five annual instalments of £45,000 towards the costs of funding one full time equivalent Council parking/ enforcement officer over a period of 5 years.
WECA MaaS Platform Contribution	£25,000 to be paid to the Council as a contribution towards the West of England Combined Authority Mobility as a Service platform.

Part 2

2. PUBLIC TRANSPORT FUND

- 2.1 Subject to the Effective Date having first occurred, the Owner covenants to pay a fixed sum of £140,000 annually until the 10mppa Trigger Date into the Public Transport Fund established under the 10mppa S106 Agreement to provide a transition from the 10mppa S106 Agreement to a new **"Public Transport Improvement Fund"** governed under this Agreement.
- 2.2 Any payments made out of the Public Transport Fund must be spent according to the direction of the SASG in order to provide public transport improvements to the network serving the Airport including but not limited to:
- 2.2.1 the development of new routes in addition to those identified in Schedule 2;
- 2.2.2 the provision of services at an increased frequency on existing routes;

- 2.2.3 increases in the quality of provided public transport services;
- 2.2.4 bus priority measures;
- 2.2.5 passenger interchange improvements;
- 2.2.6 improved passenger information;
- 2.2.7 improved ticketing;
- 2.2.8 technological innovations and improvements; and
- 2.2.9 trial of demand-responsive services.

2.3 From the 10mppa Trigger Date, the Owner covenants to make available a fixed sum of **£870,000** to be drawn down by the SASG through the **Public Transport Improvement Fund** Provided That funding shall be available on a kick-start basis only, with continuing funding for service improvement subject to viability.

2.4 Any payments made out of the Public Transport Improvement Fund must be spent according to the direction of the SASG to bring forward improvements to public transport services and infrastructure at the Airport in order to contribute towards modal shift to public transport services, including but not limited to:

- 2.4.1 Improvements to the Bristol Temple Meads interchange
- 2.4.2 Worle Station Improvements (study)
- 2.4.3 Bus/rail information/ticketing integration
- 2.4.4 Bath Spa interchange improvements

2.5 In the event any part of the Public Transport Fund or the Public Transport Improvement Fund paid to the Council is not spent for the purposes provided for within 10 years of the date of payment that part shall be repaid to the Owner together with any interest accrued within 14 days from the expiry of that 10 year period.

3. METROBUS CONTRIBUTION

3.1 In the event that measures are identified by the Metrobus Service Integration and Network Improvements feasibility study for implementation, the Owner covenants that it will pay the Metrobus Contribution [to be held in an interest bearing account jointly by the Owner and the Council and to be administered by the SASG] PROVIDED THAT in the event any part of the Metrobus Contribution paid by the Owner is not spent for the Metrobus Improvements within 10 years of the date of payment that part shall be repaid to the Owner together with any interest accrued within 14 days from the expiry of that 10 year period.

4. HIGHWAYS IMPROVEMENT FUND

4.1 Upon the 10mppa Trigger Date the Owner covenants that it will pay sum £200,000 to the Highways Improvement Fund to be held in an interest bearing account jointly by the Owner and the Council and to be administered by the SASG to provide a fund for necessary highway improvements to the local network serving the Airport identified as part of the traffic monitoring to be carried out pursuant to paragraph 8 of Schedule 2..

4.2 Any payments made out of the Highways Improvement Fund must be spent according to the direction of the SASG in order to provide a fund for necessary highway improvements to the local network serving the Airport and in the event any part of the fund is not spent for the purposes provided for within 10 years of the date of payment that part shall be repaid

Commented [NSC41]: Discussions are ongoing about the years covered by the PTIF. Methodology to calculate this contribution is agreed as £125,000 annually. NSC refer to CD2.21 (table 3.2 pdf p15) 'Core Case with Development' shows 10mppa exceeded from 2024 – therefore 2024 is the trigger year for PTIF payment.

Commented [SW42R41]: BAL accept the principle of the methodology and will consider wording to ensure no double payment of the PTF and PTIF at the year 10mppa is reached

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to the Owner together with any interest accrued within 14 days from the expiry of that 10 year period.

5. FEASIBILITY STUDY FOR THE A370/SBL

- 5.1 The Owner covenants that it will within six months following the 10mmpa Trigger Date pay £50,000 to the Council towards a feasibility study for future strategic improvements at the A370 junction with the South Bristol Link.

6. PARKING CONTROLS

- 6.1 The Owner covenants with the Council within six months of the Effective Date to pay to the Council the first instalment of the Planning and Parking Enforcement Officer Contribution and on an annual basis thereafter such date pay the four remaining instalments PROVIDED THAT in the event any part of the Planning and Parking Enforcement Officer Contribution paid to the Council is not spent for the purposes provided for within 5 years of the date of payment that part shall be repaid to the Owner together with any interest accrued within 14 days from the expiry of that 5 year period.

7. WECA MOBILITY AS A SERVICE PLATFORM

- 7.1 The Owner covenants with the Council within [six months of the Effective Date], to pay to the Council the WECA MaaS Platform Contribution PROVIDED THAT in the event any part of the WECA MaaS Platform Contribution paid to the Council is not spent for the purposes provided for within 10 years of the date of payment that part shall be repaid to the Owner together with any interest accrued within 14 days from the expiry of that 10 year period.
- 7.2 The Council covenants that upon receipt of the WECA MaaS Platform Contribution it shall pay that contribution to WECA or to such appropriate fund as is stipulated by WECA to be applied to the development of the WECA Mobility as a Service platform for regional implementation, including at the Airport.

8. AIRPORT ENVIRONMENTAL AND AMENITY IMPROVEMENT FUND

- 8.1 Within six months of the Effective Date the Owner will provide details of the geographical area and terms of reference for the AEAIF.

- 8.2 The Owner covenants with the Council that within 12 months of the Effective Date, it will contribute £100,000 to the AEAIF to be held in an interest bearing account jointly by the Owner and the Council and to be administered by representatives of the Owner and the Council.
- 8.3 The AEAIF shall be used for the purposes of mitigation to address unforeseen adverse environmental impacts or adverse impacts on the amenity of the local community arising from the Development.
- 8.4 The Owner covenants to pay on an annual basis a fixed amount of £100,000 per annum for 9 further years from the date of the first payment described in paragraph 8.1, which sum shall also be held with the AEAIF.
- 8.5 The Owner shall provide details of the account referred to in paragraph 8.1 to the Council within 12 months of the Effective Date.

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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 affixing the common seal of
North Somerset Council

Affix Seal here

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:

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Director

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Director/Secretary

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

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Director

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Director/Secretary

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APPENDIX 1

