

Dated

2015

THE COUNCIL OF THE BOROUGH OF LUTON

AND

LONDON LUTON AIRPORT LIMITED

AND

LONDON LUTON AIRPORT OPERATIONS LIMITED

AND

LONDON LUTON AIRPORT GROUP LIMITED

**DEED OF AMENDMENT AND
RESTATEMENT**

to a Deed of Amendment dated 2 January 2014
relating to a

Concession Agreement dated 20 August 1998
for London Luton Airport

THIS AGREEMENT is made as a deed on

2015

BETWEEN:

- (1) **THE COUNCIL OF THE BOROUGH OF LUTON**, of the Town Hall, Luton LU1 2BQ (the "**Council**");
- (2) **LONDON LUTON AIRPORT LIMITED**, (formerly known as Luton International Airport Limited), a private company limited by shares registered in England and Wales under company number 2020381 whose registered office is at Hart House Business Centre, Kimpton Road, Luton LU2 0LA ("**LLA**");
- (3) **LONDON LUTON AIRPORT OPERATIONS LIMITED**, a private company limited by shares registered in England and Wales under company number 3491213 whose registered office is at Navigation House, Airport Way, London Luton Airport, Luton, Bedfordshire LU2 9LY (the "**Concessionaire**"); and
- (4) **LONDON LUTON AIRPORT GROUP LIMITED**, a private company limited by shares registered in England and Wales under company number 3491191 whose registered office is at Navigation House, Airport Way, London Luton Airport, Luton, Bedfordshire LU2 9LY (the "**Guarantor**"),

(each a "**party**" and together the "**parties**").

BACKGROUND

- (A) The parties entered into a concession agreement dated 20 August 1998, which agreement has been amended by agreements dated 30 June 2000, 12 August 2003, 21 June 2004 and 7 January 2005, by a supplemental agreement dated 8 August 2012, by a deed of amendment dated 22nd October 2013 and a further deed of amendment dated 2 January 2014 under which, amongst other things, the Concessionaire is responsible for operating and managing the Airport and providing certain core airport services (the "**Concession Agreement**").
- (B) Pursuant to the Concession Agreement, a Concession Fee is payable by the Concessionaire to LLA. In order to help promote future growth at the Airport, the parties entered a deed of amendment dated 2 January 2014 to amend the terms relating to the Concession Fee on the basis that any agreed amendment to the Concession Fee is passed on, in full, by the Concessionaire in respect of qualifying passengers to all airlines providing those qualifying passengers (the "**Original Deed of Amendment**")
- (C) The intention of the parties is that the reduction in the Concession Fee contemplated under this Agreement will benefit all relevant parties on a commercial basis. The parties further intend that the spirit of the arrangement is for all parties to benefit and if the arrangement is misused by any airline, the Concessionaire, in consultation with LLA may withdraw the benefit of the scheme for that particular airline.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

- 1.1.1 capitalised terms shall have the meaning given to them in the Concession Agreement unless otherwise defined herein;
- 1.1.2 "**Airline Passenger Growth Incentive**" means, for each Growth Passenger carried by a Qualifying Airline in an Applicable Period, a [REDACTED] reduction in the Concession Fee to be paid by the Concessionaire to LLA;
- 1.1.3 "**Applicable Period**" means the period from the Effective Date to 31 March 2014 and each period of 12 months thereafter until the end of the Concession Year which finishes on 31 March 2020;
- 1.1.4 "**Departing Passenger**" means any Passenger who departs on a flight from the Airport;
- 1.1.5 "**Effective Date**" means 1 April 2013;
- 1.1.6 "**Growth Passenger**" means a Passenger carried by an Airline User in excess of the Passenger Threshold;
- 1.1.7 "**Incentive Amount**" means the aggregate of Airline Passenger Growth Incentives and any Super Growth Incentive granted to all Qualifying Airlines and Super Growth Airlines in an Applicable Period;
- 1.1.8 "**Passenger**" has the meaning given to it in the definition of Work Load Unit in the Concession Agreement;
- 1.1.9 "**Passenger Threshold**" means the relevant Passenger number threshold determined in accordance with clause 3.2.1;
- 1.1.10 "**Second Super Growth Period**" has the meaning given to it in clause 4.1
- 1.1.11 "**Super Growth Airline**" has the meaning given to it in clause 4.1
- 1.1.12 "**Super Growth Incentive**" means, for each Growth Passenger carried by a Super Growth Airline in the Second Super Growth Period, a [REDACTED] reduction in the Concession Fee to be paid by the Concessionaire to LLA in the Applicable Period in which the Second Super Growth Period falls, such percentage to be calculated as if the Airline Passenger Growth Incentive had not been incurred at all;
- 1.1.13 "**Super Growth Period**" has the meaning given to it in clause 4.1; and
- 1.1.14 "**Qualifying Airline**" has the meaning given to it in clause 3.1.3

2. **EFFECTIVE DATE**

- 2.1 With effect from the date of this Agreement, the Original Deed of Amendment is amended and restated so that it shall be read and construed for all purposes as set out below. The parties agree that the terms of this Agreement shall take effect and be binding on them as of the Effective Date.

3. **PASSENGER GROWTH INCENTIVE**

3.1 **Qualifying Airline**

3.1.1 Subject always to clause 6, the Concessionaire shall offer the Airline Passenger Growth Incentive to all Qualifying Airlines, on a non-discriminatory basis. Where a Qualifying Airline accepts such offer, the Concessionaire shall ensure that the Qualifying Airline receives a rebate of its Concession Fee of a sum equivalent to the Airline Passenger Growth Incentive for its Growth Passengers without any deduction, withholding or set-off, which shall be payable in accordance with clause 5.

3.1.2 If an Airline User is not a Qualifying Airline in any Applicable Period, it is not entitled to claim the Airline Passenger Growth Incentive or the Super Growth Incentive.

3.1.3 Subject to clause 6, an Airline User shall be a "**Qualifying Airline**" if the number of Passengers carried by that Airline User in an Applicable Period exceeds the Passenger Threshold for that Applicable Period.

3.2 **Passenger Threshold**

3.2.1 The Passenger Threshold for each Applicable Period shall be as set out in the table below, but does not apply if there are less than two thousand (2000) Departing Passengers in any Applicable Period:

Applicable period	Passenger Threshold
1 April 2013 – 31 March 2014 (" first Applicable Period ")	The actual number of Passengers carried by the Airline User during the period 1 April 2012 – 31 March 2013
1 April 2014 – 31 March 2015 (" second Applicable Period ")	The highest number of Passengers carried by the Airline User in any earlier Applicable Period
1 April 2015 – 31 March 2016 (" third Applicable Period ")	The highest number of Passengers carried by the Airline User in any earlier Applicable Period
1 April 2016 – 31 March 2017 (" fourth Applicable Period ")	The highest number of Passengers carried by the Airline User in any earlier Applicable Period

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4. SUPER GROWTH INCENTIVE

- 4.1 If, within the period commencing from the start of the second six months of the fourth Applicable Period to the end of the sixth Applicable Period, an Airline User exceeds the relevant Passenger Thresholds by more than 10% over any 12 month period (which may transcend any Applicable Period) (a "**Super Growth Period**"), and in the immediately subsequent 12 month period (which may also transcend any Applicable Period) that Airline User further exceeds the Passenger Threshold by more than 10% (the "**Second Super Growth Period**"), subject to clause 6 that Airline User shall be a "**Super Growth Airline**".
- 4.2 The Concessionaire shall offer the Super Growth Incentive to all Super Growth Airlines on a non-discriminatory basis. Where a Super Growth Airline accepts such offer, the Concessionaire shall ensure that the Super Growth Airline receives a rebate to its Concession Fee of a sum equivalent to the Super Growth Incentive for each Growth Passenger carried by a Super Growth Airline in the Applicable Period in which the Second Super Growth Period falls without any deduction, withholding or set-off, which shall be payable in accordance with clause 5.
- 4.3 A Super Growth Airline may not claim the Passenger Growth Incentive for the same Applicable Period as it claims the Super Growth Incentive. An Airline User may receive the Super Growth Incentive in two Applicable Periods only, after which it may only claim the Passenger Growth Incentive (provided it is a Qualifying Airline).

5. CALCULATION OF THE INCENTIVE AMOUNT

- 5.1 Subject to this Agreement, for each Growth Passenger achieved in the relevant Applicable Period. Such to be calculated as follows:

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- (a) the cumulative number of Passengers carried by each Airline User up to and including that month of the Applicable Period;
 - (b) the number of and identity of any Qualifying Airline(s) and/or Super Growth Airlines (if any);
 - (c) the number of Growth Passengers carried by each of those Qualifying Airlines and/or Super Growth Airlines and ;
 - (d) together with any other information or data LLA may reasonably require from time to time;
 - (e) the cumulative rebate for each Qualifying Airline and/or Super Growth Airline;
 - (f) identifying any Qualifying Airline and/or Super Growth Airline who in the opinion of the Concessionaire is breaching the spirit of the agreement; and
 - (g) any other information which the Concessionaire possesses which it believes might materially affect Passenger numbers in the future.
- 5.1.3 where a Qualifying Airline or Super Growth Airline accepts the offer of the Airline Growth Incentive Amount or Super Growth Incentive (as the case may be) made by the Concessionaire in accordance with this Agreement, the Concessionaire will calculate the Airline Passenger Growth Incentive and/or Super Growth Incentive for each Qualifying Airline and/or Super Growth Airline (as appropriate) from the data used to compile the report at Clause 5.1.2 , and grant the appropriate Airline Passenger Growth Incentive to each Qualifying Airline accordingly;
- 5.1.4 the Concessionaire will aggregate the Airline Passenger Growth Incentive and/or the Super Growth Incentive for all Qualifying Airlines and/or Super Growth Airlines for the relevant Applicable Period in order to calculate the Incentive Amount; and
- 5.1.5 the Calculated Concession Fee shall be reduced by an amount equal to the Incentive Amount following the end of the relevant Applicable Period and the Concessionaire shall pay to LLA the subsequently reduced Calculated Concession Fee on the next Concession Fee Payment Date in accordance with the terms of the Concession Agreement.
- 5.1.6 The parties shall hold a meeting in April of each Applicable Period to discuss and agree the number of Passengers carried by an Airline User in the previous Applicable Period in order to settle the Passenger Threshold for the current Applicable Period, and agree the Incentive Amount to be awarded to all Qualifying Airlines and/or Super Growth Airlines (the "**Baseline Review Meeting**").

6. TERMINATION AND EXCLUSIONS

- 6.1 The parties agree that the spirit of this arrangement is genuine passenger growth at the Airport. The parties therefore agree that if the Concessionaire considers that the spirit of the arrangement is being breached by a Qualifying Airline or Super Growth Airline, that the Concessionaire, in consultation with LLA, may terminate the arrangement for that particular Airline User on 6 months written notice.
- 6.2 If an Airline User changes its name (or otherwise changes its corporate identity) during an Applicable Period then the number of Passengers carried by that Airline User prior to such change shall be taken into account in calculating whether the Airline User is a Qualifying Airline and/or Super Growth Airline in that Applicable Period.
- 6.3 If an Airline User:
- 6.3.1 is the subject of a merger or an acquisition or a significant stake is taken in it or any like activity happens ("**Reactive Event**") and the acquirer and the Airline User are both Airline Users during the Applicable Period the combined number of Passengers carried by such Airline Users prior to the Reactive Event shall be excluded from the calculation of Growth Passengers when considering whether the resulting Airline User is a Qualifying Airline and/or Super Growth Airline in that Applicable Period;
 - 6.3.2 merges with, acquires or takes a significant stake in another Airline User or undertakes any like activity ("**Active Event**") and the target and Airline User are both Airline Users during the Applicable Period the combined number of Passengers carried by such Airline Users prior to the Active Event shall be excluded from the calculation of Growth Passengers when considering whether the resulting Airline User is a Qualifying Airline and/or Super Growth Airline in that Applicable Period;

7. DISPUTE RESOLUTION

- 7.1 The parties agree that Clause 37.12 (Dispute Procedures) and Schedule 13 (Dispute Resolution Procedures) of the Concession Agreement shall not apply to any difference or dispute arising out of or in connection with this Agreement (a "**Dispute**"). Any Dispute shall be raised by the parties at the Baseline Review Meeting unless the parties agree to consider such Dispute sooner.
- 7.2 At the Baseline Review Meeting the parties shall each use reasonable endeavours to resolve any Dispute by discussion in good faith between the Chief Finance Officer of the Concessionaire and the Business Development Manager of LLA.
- 7.3 If within 14 days of the Baseline Review Meeting the parties are unable to resolve the Dispute, the Dispute shall be escalated to a prompt discussion in good faith between the Managing Director of the Concessionaire and the Chief Operating Officer of LLA for resolution.
- 7.4 If within 14 days of such referral, the parties have been unable to resolve the Dispute, then the Dispute shall be referred to a chartered accountant who has been

professionally qualified for not less than 10 years nominated by or on behalf of the President of the Institute of Chartered Accountants in England and Wales pursuant to paragraph 3.2.4 of Schedule 13 (Dispute Resolution) to the Concession Agreement (the "**Expert**"). The Expert shall make a fair determination, taking due regard of all relevant circumstances. Such determination shall be final and binding on all the parties in relation to that particular Dispute.

8. GENERAL

- 8.1 This Agreement shall be supplemental to the Concession Agreement, and all references in the Concession Agreement to "this Concession Agreement" or "this Agreement" shall on and after the Effective Date be construed as meaning the Concession Agreement as amended and supplemented by this Agreement.
- 8.2 The Concession Agreement shall, as amended by this Agreement, continue in full force and effect.
- 8.3 This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument and which shall have effect as if the signatures on the counterparts were on a single copy of this Agreement.

9. GOVERNING LAW AND JURISDICTION

- 9.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and, subject to the provisions of Clause 7 of this Agreement, the parties irrevocably agree that the Courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS WHEREOF the parties hereto have executed and delivered this Agreement as a deed on the date and year first before written.

EXECUTED and delivered as a **DEED** by)
THE COUNCIL OF THE BOROUGH OF LUTON)
by the affixing of its common seal in the presence of:

Signature

Name (block capitals)

Authorised Signatory

Signature

Name (block capitals)

Authorised Signatory

EXECUTED and delivered as a **DEED** by)
LONDON LUTON AIRPORT LIMITED)

Signature

Name (block capitals)

Director

Signature

Name (block capitals)

Director

EXECUTED and delivered as a **DEED** by)

LONDON LUTON AIRPORT OPERATIONS LIMITED)

Signature

Name (block capitals)

Director

Signature

Name (block capitals)

Director

EXECUTED and delivered as a **DEED** by)

LONDON LUTON AIRPORT GROUP LIMITED)

Signature

Name (block capitals)

Director

Signature

Name (block capitals)

Director