



HERBERT
SMITH
FREEHILLS

..... 2022

LONDON LUTON AIRPORT OPERATIONS LIMITED
and
LONDON LUTON AIRPORT LIMITED
and
NATWEST MARKETS PLC
and
LUTON BOROUGH COUNCIL

AGREEMENT

**Section 106 and Section 106A of the Town and
Country Planning Act 1990 (as amended)**

**Amending and restating a Section 106
Agreement dated 9 October 2017**

**Relating to land at London Luton Airport,
Airport Way, Luton**

Ref 21/00031/VARCON

Herbert Smith Freehills LLP

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THIS AGREEMENT is made on the [] day of [] 2022

BETWEEN:

- (1) **LONDON LUTON AIRPORT OPERATIONS LIMITED** (Company Registration No. 03491213) whose registered office is at Percival House, 134 Percival Way, London Luton Airport, Luton, LU2 9NU ("**the Operator**"); and
 - (2) **LONDON LUTON AIRPORT LIMITED** (Company Registration No. 02020381) whose registered office is at Hart House Business Centre, Kimpton Road, Luton, LU2 0LA ("**the Owner**"); and
 - (3) **NATWEST MARKETS PLC** (Company Registration No. SC090312) whose registered office is at 36 St Andrew Square, Edinburgh EH2 2YB and whose address for service in England and Wales is Syndicated Loans Agency, The Royal Bank of Scotland plc, Level 5, 135 Bishopsgate, London EC2M 3UR¹ ("**the Mortgagee**"); and
 - (4) **LUTON BOROUGH COUNCIL** of Town Hall, Luton LU1 2BQ ("**the Council**").
- (together, the "**Parties**" and each one a "**Party**")

RECITALS

- (A) The Council is the Local Planning Authority pursuant to the Act and the Local Highway Authority under the Highways Act 1980 for the Borough of Luton.
- (B) [The Operator is the lessee of the Land under leases dated 20 August 1998 and 25 February 1999 between the Owner, the Council (not as local planning authority) and the Operator each for a term of 30 years from 20 August 1998 and these leasehold interests are registered at HM Land Registry under title numbers BD206048 and BD216008 respectively and subject to a charge in favour of the Mortgagee]².
- (C) [The Owner is the freehold owner of the Land and this freehold interest is registered at the Land Registry under title numbers BD180578 and BD200841]³.
- (D) On 23 June 2014, the Council granted planning permission under ref: 12/01400/FUL for a full planning application for dualling of airport way/airport approach road and associated junction improvements, extensions and alterations to the terminal buildings, erection of new departures/arrivals pier and walkway, erection of a pedestrian link building from the short-stay car park to the terminal, extensions and alterations to the mid-term and long-term car parks, construction of a new parallel taxiway, extensions to the existing taxiway parallel to the runway, extensions to existing aircraft parking aprons, improvements to ancillary infrastructure including access and drainage, and demolition of existing structures and enabling works and outline planning application for the construction of a multi-storey car park and pedestrian link building (all matters reserved) (the "**First Planning Permission**").
- (E) On 18 June 2014 the Operator, the Council, the Owner and the Mortgagee entered into an agreement pursuant to Section 106 of the 1990 Act and other relevant powers containing covenants undertakings and obligations relating to the Land and the development to be undertaken pursuant to the First Planning Permission (the "**First S106 Agreement**").
- (F) On 13 October 2017, the Council granted planning permission under ref: 15/00950/VARCON pursuant to section 73 of the Act to vary condition 11(i) of the First Planning Permission (the "**Second Planning Permission**").
- (G) On 9 October 2017, the Operator, the Council, the Owner and the Mortgagee entered into an agreement pursuant to Section 106 of the 1990 Act and other relevant powers to provide that the terms of the First S106 Agreement continued to apply, with amendments, to the Second Planning Permission (the "**Second S106 Agreement**").

¹ HSF note: Mortgagee details to be confirmed by mortgagee prior to engrossing

² HSF note: Details to be confirmed prior to engrossing

³ HSF note: Details to be confirmed prior to engrossing

- (H) The Operator has now made an application [under reference 21/00031/VARCON](#) pursuant to section 73 of the Act to vary conditions 8 (passenger through cap), 10 (noise contours), 22 (car parking management), 24 (travel plan) and 28 (approved plans and documents) of the Second Planning Permission (the "**Section 73 Application**") (with any planning permission granted pursuant to the Section 73 Application being a "**Section 73 Planning Permission**").
- (I) The Council has resolved to grant permission pursuant to the Section 73 Application subject to ensuring that the terms of the Second S106 Agreement shall continue to apply, with amendment, to the Section 73 Permission.
- (J) The Secretary of State for Levelling Up, Housing and Communities by a letter dated 6 April 2022 to the Council called in the Section 73 Application and on 11 May 2022 the Secretary of State for Transport confirmed that the Section 73 Application would be determined jointly by the two Secretaries of State, who would decide whether the Section 73 Planning Permission should be granted following a public inquiry [to be held commencing on 27 September 2022](#).
- (K) The Parties have agreed that the Second S106 Agreement shall be amended and restated in accordance with this Agreement as set out in the Appendix to this Agreement (the "**Restated Section 106 Agreement**").
- (L) The Council confirms that the contributions payable to date pursuant to the First Section 106 Agreement and the Second S106 Agreement have been paid and used for the purposes designated in those agreements and within the specified timeframe and for the avoidance of doubt the Council is entitled to retain those contributions as set out in the First Section 106 Agreement and the Second Section 106 Agreement. Obligations in the First Section 106 Agreement and the Second Section 106 Agreement which have been fully complied with are not provided for in the Appendix to this Agreement.
- (M) If any of the Operator's covenants with the Council as set out in Schedules 1-8 of the Restated Section 106 Agreement are found by the Secretaries of State (or by the Inspector appointed by the Secretaries of State) not to comply with regulation 122 of the Community Infrastructure Levy Regulations 2010, or it is stated in the Secretaries of State's decision that no weight should be attached to any such obligation (or any part of an obligation), then the relevant obligation shall immediately (without any further act by the Parties) be cancelled and of no effect to the extent determined by the Secretaries of State in their decision and the Operator shall be under no obligation to comply with the relevant obligation, but such cancellation shall not affect the validity or enforceability of the remaining parts of this Agreement.

NOW THIS DEED WITNESSES as follows:

1. INTERPRETATION

- 1.1 Words importing the singular shall include the plural and vice versa.
- 1.2 Words importing one gender include all other genders.
- 1.3 Clause headings (if any) are inserted for convenience only and shall not affect the construction of this Agreement and all references to clauses and sub- clauses are to clauses and sub-clauses of this Agreement.
- 1.4 References to statutes or statutory instruments include references to any modification extension or re-enactment of them from time to time.
- 1.5 References in this Agreement to the Council shall include any successor to its statutory functions.
- 1.6 Reference in this Agreement to "Secretaries of State" shall mean the Secretary of State for Levelling Up, Housing and Communities and the Secretary of State for Transport.

2. STATUTORY POWER AND ENFORCING AUTHORITY

This Agreement is made as a deed pursuant to Section 106 and 106A of the Act and Section 111 of the Local Government Act 1972 and the obligations contained within the Restated Section 106 Agreement are planning obligations and covenants binding on the Land for the purposes of those statutory provisions and are enforceable by the Council.

3. COMMENCEMENT

- 3.1 Save for this clause 3 which shall come into effect on the date hereof, this Agreement takes effect on the date of grant of the Section 73 Planning Permission.
- 3.2 In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under Section 73 of the Act (or any re-enactment or replacement therefor) in respect of the conditions in the Section 73 Planning Permission (and for no other purpose whatsoever) references in this Agreement to the Section 73 Application and the Section 73 Planning Permission and the Development shall be deemed to include any such application and any planning permission granted pursuant to such application, and the resultant development respectively as aforesaid and this Agreement shall henceforth take effect and be read and construed accordingly Provided That the Secretaries of State do not deem it necessary to grant the said permission subject to a new Agreement under Section 106 of the Act.

4. AMENDMENT RESTATEMENT AND CONTINUATION

- 4.1 The Parties agree that with effect from the date of the Section 73 Planning Permission the Second S106 Agreement shall be amended and restated so that it reads as if it were restated in the form set out in the Appendix (~~"Restated Section 106 Agreement"~~) and so that the rights and obligations of the parties to this Agreement under the Second S106 Agreement shall, from the date of the Section 73 Planning Permission, be governed by and construed in accordance with the terms of the Restated Section 106 Agreement.

5. LEGAL EFFECT

- 5.1 No person shall be liable for any breach of the covenants, undertakings and obligations contained in this Agreement to the extent that such breach relates to any part of the Land in which that person has no interest and/or which occurs after he has parted with his interest in the Land or that part of the Land in respect of which such breach occurs, other than in respect of any breach by it at the time when it held such an interest.
- 5.2 No person other than the Council, the Mortgagee, the Operator and the Owner shall have the benefit of or be capable of enforcing any term of this Agreement as a result of the Contracts (Rights of Third Parties) Act 1999.

- 5.3 All parties to this Agreement acknowledge that they are under an obligation to act reasonably and (without prejudice to the generality of that obligation) if any certificate consent permission expression of satisfaction or other approval is due from one party to another or any person on their behalf under the terms of this Agreement it shall not be unreasonably withheld or delayed.
- 5.4 Nothing in this Agreement shall fetter prejudice or affect the Council's powers to enforce any specific obligation or term or condition nor shall anything contained in this Agreement fetter prejudice or affect any provisions rights powers duties and obligations of the Council in the exercise of its functions as a local planning authority for the purposes of the Act or otherwise as a local authority.
- 5.5 No waiver (whether express 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 from acting upon any subsequent breach or default.
- 5.6 If any provision in this Agreement shall in whole or in part be found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 5.7 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Section 73 Permission) granted (whether or not on appeal) after the date of this Agreement.
- 5.8 If the Section 73 Planning Permission is not granted by the Secretaries of State or is quashed revoked or expires the obligations in this Agreement shall (save for clause 6 of this Agreement) cease to have effect.
6. **LEGAL FEES**
- The Operator shall pay on completion of the Agreement the Council's reasonable legal costs in connection with the negotiation and completion of this Agreement.
7. **LOCAL LAND CHARGE**
- This Agreement is a Local Land Charge and shall be registered in the Register of Local Land Charges.
8. **GOVERNING LAW**
- This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS of which the Operator the Owner the Mortgagee and the Council have executed this Agreement as a Deed on the day and year above written.

APPENDIX 1
RESTATED AND AMENDED SECTION 106 AGREEMENT

1. 9. DEFINITIONS

1.1 9.1 In this Agreement unless expressly specified otherwise:

"the Act" means the Town and Country Planning Act 1990 as amended at the date of this agreement;

"Actual 55dB Night Contour" means the most recently published 55 dB LAeq 8h average mode summer night-time (23h00 to 7h00) airborne noise contour based on actual aircraft movements at the Airport for the summer period (16 June to 15 September) and which is used for the purposes of determining eligibility for sound insulation in accordance with this Agreement;

"the Actual 63dB Contour" means the most recently published 63dB LAeq 16h average mode summer daytime (07h00 to 23h00) airborne noise contour based on actual aircraft movements at the Airport for the summer period (16 June to 15 September) and which is used for the purposes of determining eligibility for sound insulation in accordance with this Agreement;

"the Airport" means the airport ~~situate~~-situated on the Land known as London Luton Airport;

"Airport Surface Access Strategy" means the surface access strategy for the Airport produced (and revised and reissued from time to time) in accordance with the Department for Transport's Guidance on Airport Transport Forums and Airport Surface Access Strategies (26 July 1999) (or any replacement or modification of such guidance) and the current version of which is the London Luton Airport Surface Access Strategy 2018 – 2022 (2019 Reissue);

~~**"Annual Monitoring Report"** means the annual report which the Operator is required to publish and submit to the Council pursuant to Schedule 7 and which shall (to the extent required by the obligations in this Agreement) report on the performance of the Operator in the preceding calendar year against the terms of the Section 73 Planning Permission and this Agreement;~~

"Community Fund" means the fund established by the Operator pursuant to Schedule 6 of this Agreement and administered by an independent body under which community projects may be funded within the Local Area;

"Construction Travel Plan" means the action plan approved by the Council on 14 August 2015 (ref: 15/00452/DOC) which shall be aimed at increasing travel by sustainable modes of surface transport including making the best use of public transport including provision for monitoring of the plan;

"the Daytime Ground Noise Threshold" means a free field noise level in excess of 55dB LAeq 16h daytime (07h00 to 23h00) based on the most recently published figures for actual aircraft operations at the Airport for the summer period (16 June to 15 September);

"the Development" means the development authorised by the Section 73 Planning Permission;

"Employment Skills and Recruitment Plan" means the plan entitled "Employment Skills and Recruitment Plan & Local Procurement Protocol" dated April 2015 which specifies the measures that will be taken by the Operator to make available to people in the Local Area opportunities to find employment and to improve their skills during the operation of the Development Provided That this shall not compromise the legislative requirements on the Operator and other businesses as employers and includes any update to the Employment Skills and Recruitment Plan from time to time approved by the Council in accordance with Schedule 5 to this Agreement;

"Environmental Management Payment" means the sum of £5,000 Index Linked to be spent by the Operator each year on hedgerow management of Wigmore Valley Park and areas around the perimeter fence line of the Airport

"Essential Service Provider" means an energy service company, statutory undertaker, services utility company or provider that shall acquire an interest in the Land for the purpose of providing the supply of electricity, gas, water, heat, power, drainage, telecommunications services or public transport services to or for the benefit of the Development (but excluding the Operator);

"Existing Sustainability Strategy" means the written strategy submitted to the Council on 19 February 2015 and attached at Annexure 2;

"First Planning Permission" means the planning permission dated 23 June 2014 with reference number 12/01400/FUL for a full planning application for dualling of airport way/airport approach road and associated junction improvements, extensions and alterations to the terminal buildings, erection of new departures/arrivals pier and walkway, erection of a pedestrian link building from the short-stay car park to the terminal, extensions and alterations to the mid-term and long-term car parks, construction of a new parallel taxiway, extensions to the existing taxiway parallel to the runway, extensions to existing aircraft [parking](#) aprons, improvements to ancillary infrastructure including access and drainage, and demolition of existing structures and enabling works and outline planning application for the construction of a multi-storey car park and pedestrian link building (all matters reserved);

"Independent Body" means the Bedfordshire and Luton Community Foundation or any replacement independent body approved pursuant to paragraph 3 of Schedule 6;

"Index Linked" means that any sum so described in this Agreement shall be increased by an amount in proportion to the increase in the All Items Index of Retail Prices ("**RPI Index**") issued by the Office for National Statistics from the date hereof until the date on which such sum is paid in accordance with the following formula:

$$X = \text{£Y} \times B/A$$

Where:

X is the sum in question after application of this formula

£Y is the sum due under this Agreement to which this formula is applied

A is the value of the RPI Index last published before the date of this Agreement; and

B is the value of the RPI Index last published before sum (£Y) is paid

provided that if the RPI Index shall cease to exist, there shall be substituted such other index as shall be specified by the Council acting reasonably.

"Initial Monitoring Fund" means the sum of £70,000 to be paid by the Operator to the Council to be applied by the Council towards the monitoring by the Monitoring Officer of the obligations in this Agreement;

"Interest" means interest at 5 per annum above the base lending rate of Lloyds Bank plc from time to time;

"the Land" means the land known as London Luton Airport, Airport Way, Luton shown edged red on Plan 1;

"LLACC" means the London Luton Airport Consultative Committee;

"Local Area" means together the administrative areas of Luton Borough Council, Central Bedfordshire Council, North Hertfordshire District Council, Stevenage Borough Council, St Alban's [City and](#) District Council, Dacorum Borough Council and Aylesbury Vale District Council;

"Local Procurement Protocol" means the procurement procedure that forms part of the Employment Skills and Recruitment Plan through which businesses in the Local Area are

given the opportunity to bid/tender for the provision of goods and services to the Development without compromising commerciality and any legislative requirements and includes any update to the Local Procurement Protocol from time to time approved by the Council in accordance with Schedule 5 to this Agreement;

"Monitoring Officer" means an officer of the Council who is in charge of monitoring compliance with the obligations set out in this agreement who should be contacted at Development Control, Town Hall, George Street, Luton, Bedfordshire, ~~LU2~~LU1 2BQ or by email to developmentcontrol@luton.gov.uk;

"the Night-time Ground Noise Threshold" means a free field noise level in excess of 48dB L Aeq 8h night-time (23h00 to 07h00) based on the most recently published figures for actual aircraft operations at the Airport for the summer period (16 June to 15 September);

"Noise Action Plan" means the London Luton Airport Noise Action Plan 2019 -2023 (Version 1) prepared in response to the Environmental Noise Directive (2002/49/EC) and in accordance with the Environmental Noise (England) Regulations 2006, as amended and revised from time to time;

"the Noise Insulation Fund" means a fund to be established and maintained in accordance with the terms of Schedule 1 to this Agreement and (unless otherwise agreed) administered by LLACC in order to fund the cost of the Residential Noise Insulation Scheme and the Non-Residential Noise Insulation Scheme.

"Noise Insulation Schemes" means the Residential Noise Insulation Scheme and the Non-Residential Noise Insulation Scheme.

"Noise Management Plan" means a comprehensive noise management plan as annexed at Annexure A of this agreement and operated continuously by the Operator in order to minimise noise disturbance from aircraft using the Airport and which incorporates the following additional matters:

- (a) the Residential Noise Insulation Scheme;
- (b) the Non-Residential Noise Insulation Scheme;
- (c) the Noise Control Scheme implemented pursuant to condition 11 of the First Planning Permission on 2 March 2015 under reference 14/01519/DOC;
- (d) the Noise Control Monitoring Scheme implemented pursuant to condition 13 of the First Planning Permission on 2 March 2015 under reference 14/01519/DOC; and
- (e) the Ground Noise Control Scheme implemented pursuant to condition 14 of the First Planning Permission on 2 March 2015 under reference 14/01519/DOC;

"Noise Management Plan Review Dates" means 30 June 2023, 30 June 2025, 30 June 2027, and subsequently every five years following 30 June 2027;

"Noise Violation Limits" means the Noise Violation Limits for aircraft established under the conditions attached to the Section 73 Planning Permission

"Non-Residential Buildings" means the following types of public buildings in noise sensitive community use and any other types of public building as agreed between the Operator and the Council:

- (a) schools and colleges;
- (b) doctors' surgeries, health centres, hospitals, nursing homes, care homes;
- (c) libraries, community centres (unless only used as social clubs), meeting halls, village halls;
- (d) churches and other places of religious worship;
- (e) children's and other day centres creches and nurseries.

"Non-Residential Noise Insulation Scheme" means the approved scheme incorporated within the Noise Management Plan for the funding of noise insulation works by the Operator for Non-Residential Buildings which are exposed to the highest airborne noise levels by reference to the most recently published average mode summer daytime (07h00 to 23h00) airborne noise contours or the average mode summer night-time (23h00 to 7h00) airborne noise contours based on actual aircraft movements at the Airport for the summer period (16 June to 15 September) . Such Non-Residential Buildings may be situated in any part of the Local Area. The Non- Residential Noise Insulation Scheme shall incorporate the following:

- (a) The eligibility criteria for Non-Residential Buildings;
- (b) Any restrictions on the number of applications for funding which may be made under the Non-Residential Noise Insulation Scheme;
- (c) A description including the range and specification of the works which may be funded by the Non-Residential Noise Insulation Scheme and how (if at all) these will vary according to which of the eligibility criteria are met;
- (d) Any exclusions from the eligibility criteria which may for the avoidance of doubt include buildings where the range or specification of works which may be funded by the Non-Residential Noise Insulation Scheme are already met by the condition of the existing building fabric;
- (e) Details of how the Non-Residential Noise Insulation Scheme is to be administered by LLACC including:
 - (i) the address to which applications are to be made;
 - (ii) the process by which it will be established whether the eligibility criteria for Non-Residential Buildings are met;
 - (iii) independent assessment of applications;
 - (iv) the timetable for processing applications; and
 - (v) the maximum amount and timing of payments.
- (f) Measures to publicise the Non-Residential Noise Insulation Scheme and the eligibility criteria.

"Non-Residential Noise Insulation Scheme Review Dates" means 30 June 2025 and subsequently every five years from 30 June 2025;

"Occupation" means occupation or the bringing into use of the Development for the purposes permitted by the Section 73 Planning Permission and the words "Occupy" and "Occupied" shall be construed accordingly.

"the Operator" means the first named party to this Agreement- London Luton Airport Operations Limited which is the operator of the Airport and shall include any person or persons deriving title to the Land from the Operator.

"the Operator Lease" means together the leases of the Airport referred to in recital ~~(B)~~ (D) under which the Operator is the lessee.

"the Owner" means the second named party to this Agreement- London Luton Airport Limited and shall include any person or persons deriving title to the Land from the Owner.

"Phase" means any phase of the Development identified as part of the phasing plan approved on 28 October 2016 (ref: 16/01484/DOC);

"Plan 1" means the plan attached hereto and numbered "1".

"Plan 2" means the plan attached hereto and numbered "2".

"Plan 3" means the plan attached hereto and numbered "3".

"Predicted Road Traffic Noise increase" means a predicted road traffic noise increase of not less than 1 dB as a result of the Development which for the avoidance of doubt has been identified in the First Planning Permission along the roads coloured blue on Plan 2.

"Quarterly ~~Monitoring~~ Flight Operations Report" means a report which the Operator is required to publish and submit to the Council pursuant to Schedule 7 of this Agreement and which shall report on a quarterly basis each year on the environmental information specified in Schedule 7 for the preceding quarter;

"Quota Count System" means the quota count system for the Airport established under the conditions attached to the Second Planning Permission;

"the Residential Eligibility Criteria" means any of the following:

- (a) Airborne Aircraft Noise
 - (i) Any habitable rooms at dwellings within the Actual 63dB Contour; or
 - (ii) Any habitable rooms which are used as bedrooms at dwellings within the Actual 55dB Night Contour; or
 - (iii) Any habitable rooms which are used as bedrooms at dwellings where the airborne noise level in excess of 90 dB SEL occurs externally at an annual average frequency of once or greater during the night-time (23h00 to 07h00).
- (b) Ground Noise
 - (i) Any habitable rooms at dwellings which are exposed externally to the Daytime Ground Noise Threshold; or
 - (ii) Any habitable rooms which are used as bedrooms at dwellings which are exposed externally to the Night-time Ground Noise Threshold.
- (c) Traffic Noise
 - (i) Any habitable rooms at dwellings with a facade incident noise level in excess of 66dB LAeq 16h daytime (07h00 to 23h00); and
 - (ii) which are subject to the Predicted Road Traffic Noise Increase.

"Residential Noise Insulation Scheme" means the approved scheme incorporated within the Noise Management Plan under which noise insulation works to residential dwellings that meet the Residential Eligibility Criteria and are situate in any local authority area will be funded by the Operator and which scheme incorporate each of the following:

- (a) The Residential Eligibility Criteria and any restrictions on the number of applications for funding which may be made under the Residential Noise Insulation Scheme;
- (b) A description including specification and standard of noise reduction for the works which may be funded by the Residential Noise Insulation Scheme and how (if at all) these will vary according to which of the Residential Eligibility Criteria are met;
- (c) Any exclusions from the Residential Eligibility Criteria which may for the avoidance of doubt include dwellings where the specification and standard of noise reduction for works which may be funded by the Residential Noise Insulation Scheme are already met by the condition of the existing building fabric;
- (d) Details of how the Residential Noise Insulation Scheme is to be administered by LLACC including:
 - (i) the address to which applications are to be made;
 - (ii) the process by which it will be established whether the applicant meets the Residential Eligibility Criteria;
 - (iii) the timetable for processing applications; and
 - (iv) the maximum amount and timing of payments.
- (e) Measures to publicise the Residential Noise Insulation Scheme and the Residential Eligibility Criteria.

"the RNIS Review Dates" means 30 June 2025 and subsequently every five years from 30 June 2025;

"Second Planning Permission" means the planning permission dated 13 October 2017 granted under ref: 15/00950/VARCON pursuant to section 73 of the Act to vary condition 11(i) of the First Planning Permission;

"Section 73 Application" means the application registered by the Council under ref: 21/00031/VARCON pursuant to section 73 of the Act to vary conditions 8 (passenger through cap), 10 (noise contours), 22 (car parking management), 24 (travel plan) and 28 (approved plans and documents) of the Second Planning Permission;

"Section 73 Planning Permission" means a planning permission which may be granted by the Secretaries of State pursuant to the Section 73 Application;

"the Sustainability Report" means the annual report which the Operator is required to publish and submit to the Council pursuant to Schedule 7 and which shall (to the extent required by the obligations in this Agreement) report on the performance of the Operator in the preceding calendar year against the terms of the Sustainability Strategy;

"the Sustainability Strategy" means the written strategy to be submitted to the Council in accordance with Schedule 4 which will have the objective of minimising environmental impact and maximising socio-economic impact with specific actions in the areas of net zero, sustainable aviation and community and social value;

"Track Violation Penalty System" means a system to be operated pursuant to Schedule 1 of this ~~agreement~~ Agreement through which such financial penalties as the Operator considers to be reasonable ("**Penalties**") are levied on an airline on any occasion when the aircraft which it operates at the Airport deviates from the noise preferential route without specific instruction to that effect from air traffic control or other than due to adverse weather conditions;

"the Transport Forum" means the partnership arrangements already established at the date of this Agreement by the Operator between itself, public transport operators, the Council, local people and businesses and other interested parties in accordance with the Department for Transport's Guidance on Airport Transport Forums and Airport Surface Access Strategies (26 July 1999) or any replacement or modification of such guidance;

"Travel Plan" means the document entitled "London Luton Airport 19mppa Expansion Travel Plan" prepared by Wood dated December 2020 and submitted with the Section 73 Application;

"Updated Airport Surface Access Strategy" means a strategy to be submitted pursuant to Schedule 2 of this Agreement which shall contain an emphasis on sustainable modes of transport including reference to (as applicable) additional staff parking, staff cycle parking and electric charging points;

"Updated Employment Skills and Recruitment Plan" means a plan to be submitted pursuant to Schedule 5 of this ~~agreement~~ Agreement which specifies the measures that will be taken by the Operator to make available to people in the Local Area opportunities to find employment and to improve their skills during the operation of the Development to take account of the uplifted capacity as a result of the Section 73 Planning Permission;

"Wigmore Valley Park" means the park known as Wigmore Valley Park shown for identification purposes coloured green on Plan 3.

"Wigmore Valley Park Works" means such grassland and hedgerow management at Wigmore Valley Park and areas around the perimeter fence line of the Airport as the Operator considers necessary (acting reasonably);

"Working Day" means a Monday through to and including Friday save for bank holidays in the UK;

1.2 ~~9.2~~ Words importing the singular shall include the plural and vice versa.

1.3 ~~9.3~~ Words importing one gender include all other genders.

1.4 ~~9.4~~ Clause headings (if any) are inserted for convenience only and shall not affect the construction of this Agreement and all references to clauses and sub-clauses are to clauses and sub-clauses of this Agreement.

1.5 ~~9.5~~ References to statutes or statutory instruments include references to any modification extension or re-enactment of them from time to time.

1.6 ~~9.6~~ References in this Agreement to the Council shall include any successor to its statutory functions.

2. ~~10.~~ **STATUTORY POWER AND ENFORCING AUTHORITY**

1.12.1 ~~11.1~~ This Agreement is made as a Deed pursuant to Section 106 and 106A of the Act and Section 111 of the Local Government Act 1972 and the obligations and the Schedules are planning obligations and covenants binding on the Land for the purposes of those statutory provisions and are enforceable by the Council.

3. ~~11.~~ **THE PLANNING OBLIGATIONS - OPERATOR**

1.23.1 ~~12.1~~ The Operator covenants with the Council so as to bind its leasehold interest in the Land:

3.1.1 ~~11.1~~ to observe and perform and cause to be observed and performed the covenants and restrictions contained in this clause and the Schedules to this Agreement; and

3.1.2 ~~11.2~~ not to carry out the Development or conduct the operation of the Airport otherwise than in accordance with this Agreement.

4. ~~12.~~ **THE PLANNING OBLIGATIONS - OWNER**

4.1 ~~12.1~~ The Owner covenants with the Council so as to bind the freehold interest in the Land to observe and perform the covenants and restrictions entered into by the Operator at Clause ~~11.3~~ 3 Provided That the second named party, London Luton Airport Limited (but not those deriving title from London Luton Airport Limited) shall not be obliged to perform its covenants under this Clause except at any time when the Operator Lease is determined and there is no lease or agreement with any person deriving title to the Land from London Luton Airport Limited or the Operator so as to render this agreement enforceable against that person by virtue of section 106(3)(b) of the Act.

4.2 ~~12.2~~ Liability under any covenant referred to in this clause shall be limited to the obligations or the parts of the obligations that remain to be performed under this Agreement at the time that the covenant is entered into.

5. ~~13.~~ **COUNCIL'S COVENANTS**

The Council covenants with the Owner and the Operator to observe and perform the obligations on its part contained in the Schedules to this Agreement.

6. ~~14.~~ **MORTGAGEE'S CONSENT**

The Mortgagee consents to the Operator's obligations at Clause 3 and acknowledges that the ~~land~~ Land shall be bound by them save that the Mortgagee (or any subsequent mortgagee or chargee) shall not be obliged to perform them unless it becomes a mortgagee in possession of the Land.

7. ~~15.~~ **LEGAL EFFECT**

7.1 ~~15.1~~ No person shall be liable for any breach of the obligations contained in this Agreement after it has parted with its interest in the Land or the relevant part of the Land in respect of which the breach relates, other than in respect of any breach by it at the time when it held such an interest.

7.2 ~~15.2~~ The obligations in this Agreement shall not be enforceable against any individual lessees or purchasers Occupying or entitled to immediate Occupation of any commercial units within the Development.

- 7.3 ~~15.3~~ The obligations in this Agreement shall not be enforceable against any Essential Service Provider.
- 7.4 ~~15.4~~ No person other than the Council, the Operator, the Mortgagee and the Owner shall have the benefit of or be capable of enforcing any term of this Agreement as a result of the Contracts (Rights of Third Parties) Act 1999.
- 7.5 ~~15.5~~ All parties to this Agreement acknowledge that they are under an obligation to act reasonably and (without prejudice to the generality of that obligation) if any certificate consent permission expression of satisfaction or other approval is due from one party to another or any person on their behalf under the terms of this Agreement it shall not be unreasonably withheld or delayed.
- 7.6 ~~15.6~~ Nothing in this Agreement shall fetter prejudice or affect the Council's powers to enforce any specific obligation or term or condition nor shall anything contained in this Agreement fetter prejudice or affect any provisions rights powers duties and obligations of the Council in the exercise of its functions as a local planning authority for the purposes of the Act or otherwise as a local authority.
- 7.7 ~~15.7~~ No waiver (whether express 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 from acting upon any subsequent breach or default.
- 7.8 ~~15.8~~ If any provision in this Agreement shall in whole or in part be found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 7.9 ~~15.9~~ Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Section 73 Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

8. ~~16.~~ NOTICES

- 8.1 ~~16.1~~ All notices served under or in connection with this Agreement shall be deemed to have been properly served if sent by recorded delivery (save for clause 8.2.1) to the principal address or registered office (as appropriate) of the relevant party.
- 8.2 ~~16.2~~ The provisions of section 196 of the Law of Property Act 1925 shall apply to any notice to be served under or in connection with this Agreement and any notice to the:
- 8.2.1 ~~16.2.1~~ Council shall be in writing or by email to the Monitoring Officer and shall cite the s106 reference number "S.106/21/00031/VARCON";
- 8.2.2 ~~16.2.2~~ Operator shall be in writing and addressed to the General Counsel, Percival House, 134 Percival Way, London Luton Airport, Luton, LU2 9NU;
- 8.2.3 ~~16.2.3~~ Owner shall be in writing and addressed to the Owner (c/o the Company Secretary), Town Hall, Luton LU1 2BQ; and
- 8.2.4 ~~16.2.4~~ Mortgagee shall be in writing and addressed to []⁴

9. ~~17.~~ LOCAL LAND CHARGE

This Agreement is a Local Land Charge and shall be registered in the Register of Local Land Charges.

10. ~~18.~~ INTEREST

If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment.

⁴ HSF note: Mortgagee to confirm details.

11. ~~19.~~ **VAT**

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

12. ~~20.~~ **DISPUTE RESOLUTION**

12.1 ~~20.1~~ In the event of any dispute or difference arising between any of the parties to this Agreement in respect of any matter contained in this Agreement (including the refusal of any approval required pursuant to this Agreement) other than the calculation of contribution amounts or the timing of payment of contributions such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the Chartered Institute of Arbitrators and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

12.2 ~~20.2~~ Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute.

13. ~~21.~~ **GOVERNING LAW**

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

IN WITNESS of which the Operator the Owner and the Mortgagee have executed this Agreement as a Deed and the Council has affixed its Common Seal the day and year above written.

SCHEDULE 1 NOISE MITIGATION

1. NOISE MANAGEMENT PLAN

1.1 The Operator shall implement and continue to operate the Noise Management Plan from the date of the Section 73 Planning Permission subject to such modifications as may be agreed in writing by the Council following review of the Noise Management Plan as provided for in the ensuing sub- paragraph 1.2 of this Schedule.

1.2 The Noise Management Plan shall be subject to periodic review by the Council on the Noise Management Plan Review Dates as follows:

1.2.1 On or before each of the Noise Management Plan Review Dates the Operator shall produce and submit to the Council for ~~its~~ [the Council's](#) written approval a report on the operation of the Noise Management Plan which shall review the effectiveness of the Noise Management Plan in achieving the principal objective of minimising noise disturbance from aircraft using the Airport and which shall include for the period since the Noise Management Plan was last approved by the Council or since the last Noise Management Plan Review Date (whichever shall be the later date) as a minimum the following:

- (A) **the details of aircraft using the airport including the numbers and types of aircraft taking off and landing at the Airport;**
- (B) **details of any infringements of noise limits specified for arriving and departing aircraft and of any deviations from the tracks to be followed by aircraft using the Airport;**
- (C) **the number of complaints received from the public in relation to noise disturbance, together with their details including their geographic origin and type;**
- (D) **details of any Penalties imposed upon aircraft operators under the terms of the Noise Management Plan;**
- (E) **details of the airborne noise and ground noise abatement procedures adopted for the Airport and their effectiveness;**
- (F) **the effectiveness of any modifications to the Noise Management Plan or earlier review of it previously implemented;**
- (G) **any proposed modifications to the Noise Management Plan to achieve better the principal objective of minimising noise disturbance from aircraft using the Airport.**

1.2.2 The Council shall either:

- (A) approve such report; or
- (B) (acting reasonably) request in writing that the report incorporates further or modified information and controls to the extent necessary to be able fully to monitor the operation of the Noise Management Plan or to achieve better the principal objective of minimising noise disturbance from aircraft using the Airport, including (if appropriate) further or alternative modifications to the Noise Management Plan.

1.2.3 If the Operator receives a written request from the Council pursuant to sub-paragraph 1.2.2(B) of this Schedule it shall resubmit a modified draft of the report within one month of receiving the written request and shall subsequently resubmit the report with further modifications as often as is reasonably necessary until the Council shall have approved in writing the report.

1.2.4 Any modifications to the Noise Management Plan incorporated in any report approved by the Council under sub-paragraph 1.2.2(B) or 1.2.3 above shall be implemented by the Operator within three months of that approval.

1.3 Nothing in this sub-paragraph 1 shall require the Operator to make modifications to matters within any Noise Action Plan that has been approved or accepted by the Department for Environment Food and Rural Affairs (or such other successive Government department or body which is responsible for the approval of noise action plans in England).

2. RESIDENTIAL NOISE INSULATION SCHEME

2.1 With effect from the date of the Section 73 Planning Permission, the Operator shall implement and subsequently continue to operate the approved Residential Noise Insulation Scheme in the manner provided for in sub-paragraphs 2.2 and 2.3 of this Schedule subject to such modifications as may be agreed in writing by the Council following review of the Residential Noise Insulation Scheme as provided for in the ensuing sub-paragraph 2.4 of this Schedule.

2.2 The Operator shall procure (unless otherwise agreed in writing by the Council) that with effect from the implementation of the approved Residential Noise Insulation Scheme the same is administered by LLACC and the Operator shall provide any necessary support and assistance reasonably requested by LLACC with the administration of the Residential Noise Insulation Scheme.

2.3 Any payments in respect of noise insulation works made under the Residential Noise Insulation Scheme shall be funded using the Noise Insulation Fund.

2.4 The Residential Noise Insulation Scheme shall be subject to periodic review by the Council on the RNIS Review Dates as follows:

2.4.1 On or before each of the RNIS Review Dates, the Operator shall produce and submit to the Council for its written approval a report on the operation of the Residential Noise Insulation Scheme which shall review the effectiveness of the Residential Noise Insulation Scheme and which shall include for the period since the Residential Noise Insulation Scheme was last approved by the Council or since the last RNIS Review Date (whichever shall be the later date) as a minimum the following:

- (A) the number of applications received under the Residential Noise Insulation Scheme, together with details of their geographic origin, the Residential Eligibility Criteria relied upon by the applicant and the outcome of each application;
- (B) the total expenditure under the Residential Noise Insulation Scheme in each year preceding the RNIS Review Date; and
- (C) details of any proposed modifications to the Residential Noise Insulation Scheme to improve its operation.

2.4.2 The Council shall either:

- (A) approve such report; or
- (B) (acting reasonably) request in writing that the report incorporates further or modified information to the extent necessary to be able fully to monitor the operation of the Residential Noise Insulation Scheme or to improve its operation, including (if appropriate) further or alternative modifications to the Residential Noise Insulation Scheme.

2.4.3 If the Operator receives a written request from the Council pursuant to sub-paragraph 0 of this Schedule it shall resubmit a modified draft of the report within one month of receiving the written request and subsequently resubmit the report with further modifications as often as reasonably necessary until the Council shall have approved [the report](#) in writing ~~the report~~.

2.4.4 Where any report approved by the Council under sub-paragraph 0 or 2.4.3 above incorporates modifications to the Residential Noise Insulation scheme the Operator shall:

- (A) where the modifications are within the control of the Operator, implement them within three months of that approval, or
- (B) where the modifications are within the control of LLACC, use reasonable endeavours to secure that they are so implemented.

3. **NON-RESIDENTIAL NOISE INSULATION SCHEME**

3.1 With effect from the date of the Section 73 Planning Permission, the Operator shall implement and subsequently continue to operate the approved Non-Residential Noise Insulation Scheme in the manner provided for in sub-paragraphs 3.2 and 3.3 of this Schedule, subject to such modifications as may be agreed in writing by the Council following review of the Non-Residential Noise Insulation Scheme as provided for in the ensuing sub-paragraph 3.4 of this Schedule.

3.2 The Operator shall procure (unless otherwise agreed in writing by the Council) that with effect from the implementation of the approved Non-Residential Noise Insulation Scheme, the same is administered by LLACC and the Operator shall provide any necessary support and assistance reasonably requested by LLACC with the administration of the Non-Residential Noise Insulation Scheme.

3.3 Any payments in respect of noise insulation works made under the Non-Residential Noise Insulation Scheme shall be funded using the Noise Insulation Fund.

3.4 The Non-Residential Noise Insulation Scheme shall be subject to periodic review by the Council on the Non-Residential Noise Insulation Scheme Review Dates as follows:

3.4.1 On or before each of the Non-Residential Noise Insulation Scheme Review Dates, the Operator shall produce and submit to the Council for its written approval a report on the operation of the Non-Residential Noise Insulation Scheme, which shall review the effectiveness of the Non-Residential Noise Insulation Scheme and which shall include for the period since the Non-Residential Noise Insulation Scheme was last approved by the Council, or since the last Non-Residential Noise Insulation Scheme Review Date (whichever shall be the later date) as a minimum the following:

- (A) the number of applications received under the Non-Residential Noise Insulation Scheme, together with details of their geographic origin, the eligibility criteria relied upon by the applicant and the outcome of each application;
- (B) the total expenditure under the Non-Residential Noise Insulation Scheme in each year preceding the Non-Residential Noise Insulation Scheme Review Date; and
- (C) details of any proposed modifications to the Non-Residential Noise Insulation Scheme to improve its operation.

3.4.2 The Council shall either:

- (A) approve such report; or
- (B) (acting reasonably) request in writing that the report incorporates further or modified information to the extent necessary to be able fully to monitor the operation of the Non-Residential Noise Insulation Scheme or to improve its operation, including (if appropriate) further or alternative modifications to the Non-Residential Noise Insulation Scheme.

3.4.3 If the Operator receives a written request from the Council pursuant to sub-paragraph 3.4.2(B) or 3.4.3 of this Schedule it shall resubmit a modified draft of the report within one month of receiving the written request, and subsequently

resubmit the report with further modifications as often as reasonably necessary until the Council shall have approved in writing the report.

3.4.4 Where any report approved by the Council under sub-paragraph 3.4.2(B) or 3.4.3 above incorporates modifications to the Non-Residential Noise Insulation scheme the Operator shall:

- (A) where the modifications are within the control of the Operator implement them within three months of that approval, or
- (B) where the modifications are within the control of LLACC use reasonable endeavours to secure that they are so implemented.

4. NOISE INSULATION FUND

4.1 The Operator shall maintain the Noise Insulation Fund in the following manner:

4.1.1 **The Operator shall procure (unless otherwise agreed in writing by the Council) that the Noise Insulation Fund shall be administered by LLACC in conjunction with the Noise Insulation Schemes.**

4.1.2 **The Operator agrees to fund noise insulation works to be carried out pursuant to the approved Non-Residential Noise Insulation Scheme and Residential Noise Insulation Scheme in order to operate the approved Noise Insulation Scheme;**

4.1.3 **Without prejudice to the general obligation contained within paragraph 4.1.2, the Operator shall use reasonable endeavours to ensure that a minimum of £150,000 (one hundred and fifty thousand pounds) Index Linked shall be spent every calendar year (for five calendar years after Section 73 Planning Permission is granted) on noise insulation works carried out pursuant to the approved Noise Insulation Scheme.**

5. TRACK VIOLATIONS

5.1 Having established the Track Violation Penalty System prior to the date of the Section 73 Planning Permission, the Operator shall operate and maintain the Track Violation Penalty System.

5.2 On each of the relevant reporting dates set out in Schedule 7 of this Agreement the Operator shall submit to the Council for its written approval a report on the operation of the Track Violation Penalty System-1 which shall review the effectiveness of the Track Violation Penalty System and which shall include as a minimum the following for the preceding year:

- 5.2.1 the number of Penalties levied by the Operator and the amount of revenue received by the Operator in payment of those Penalties;
- 5.2.2 the categories of the violations by the airlines which gave rise to the Penalties;
- 5.2.3 the amount levied against each airline and each aircraft type which operates at the Airport; and
- 5.2.4 whether modifications to the level of Penalty under the Track Violation Penalty System are necessary (and so the nature of those modifications) to improve its effectiveness in minimising the noise disturbance of residents.

5.3 The Council shall either:

- 5.3.1 approve such report; or
- 5.3.2 (acting reasonably) request in writing that the report incorporates further or modified information to the extent necessary to be able fully to monitor the operation of the Track Violation Penalty System-1 or further-1 or alternative modifications to the Track Violation Penalty System in order to improve its effectiveness in controlling the pattern of aircraft operations and minimising the

noise disturbance of residents from such aircraft and to improve the operation of the airport.

- | 5.4 If the Operator receives a written request from the Council pursuant to sub-paragraph 5.3.2 of this Schedule it shall resubmit a modified draft of the report within one month of receiving the written request and subsequently resubmit the report with further modifications as often as reasonably necessary until the Council shall have approved in writing the report.
- | 5.5 Any modifications to the Noise Management Plan incorporated in any report approved by the Council under sub-paragraph 5.3.2 or paragraph 5.4 above shall be implemented by the Operator within three months of that approval.

SCHEDULE 2 TRAFFIC AND TRANSPORTATION

1. TRANSPORT FORUM

- 1.1 With effect from the date of the Section 73 Planning Permission-the Operator shall continue to operate at its own expense and work with members of the Transport Forum to improve access to the Airport by surface transport.
- 1.2 The Operator shall continue to implement the actions and pursue the objectives contained in the approved Airport Surface Access Strategy and, within 12 months of the date of grant of the Section 73 Planning Permission, shall submit an updated Airport Surface Access Strategy for the approval of the Council and such updated Airport Surface Access Strategy shall contain an emphasis on sustainable modes of transport including reference to (as applicable) additional staff parking, staff cycle parking and electric charging points (the "**Updated Airport Surface Access Strategy**").
- 1.3 In the event that the Council declines to approve any draft of the Updated Airport Surface Access Strategy, the Operator shall submit a revised draft of the same to the Council within a further period of one month from receipt by the Operator of the Council's notification of the draft Updated Airport Surface Access Strategy not being acceptable and the revised draft shall address the Council's reasons for refusal to accept the previous draft. This process shall be repeated as often as reasonably necessary until the Updated Airport Surface Access Strategy is approved in writing by the Council.
- 1.4 Following approval of the Updated Airport Surface Access Strategy, the Operator shall implement the approved Updated Airport Surface Access Strategy in accordance with the respective programmes of implementation set out in each of them.
- 1.5 Annually and as part of each ~~Annual Monitoring Sustainability~~ Report (which the Operator shall make available to the Airport Transport Forum at the same time ~~aa-as~~ its submission to the Council) and provided that the Council shall have first supplied all relevant data concerning surface access to the Airport which is within its control at least two months prior to the due date for publication of the ~~Annual Monitoring Sustainability~~ Report-the Operator shall report on the operation of the Updated Airport Surface Access Strategy including the progress against each action and objective identified in the Updated Airport Surface Access Strategy and patterns of use of surface transport by staff and passengers travelling to and from the Airport, including:
- 1.5.1 Overall passenger numbers;
 - 1.5.2 Passenger journeys by time of day;
 - 1.5.3 Passenger mode shares;
 - 1.5.4 Passenger catchment area;
 - 1.5.5 Passenger car and taxi use;
 - 1.5.6 Staff journeys by time of day;
 - 1.5.7 Staff mode shares;
 - 1.5.8 Staff catchment area.
- 1.6 The Council covenants with the Owner and the Operator to provide all data within its control which may be relevant to the matters on which the Operator is obliged to report under paragraph 1.5 of this Schedule and shall do so at least two months prior to the due date for publication of the ~~Annual Monitoring Sustainability~~ Report in any one year.

2. TRAVEL PLANS

- 2.1 With effect from the date of the Section 73 Planning Permission-the Operator shall implement the approved Construction Travel Plan and subsequently until completion of the Development operate and maintain the Construction Travel Plan.

2.2 During the period of construction of the Development the Council (as local planning authority and local highway authority) and the Operator shall meet at least every 12 months and at that meeting review the effectiveness of the Construction Travel Plan for each Phase that is under construction against their respective objectives and targets and if the objectives and targets in ~~that the Construction~~ Travel Plan are not being met use reasonable endeavours to agree revised proposals to achieve those objectives and targets.

2.3 From the date of the Section 73 Planning Permission the Operator shall implement the approved Travel Plan in accordance with the programme of implementation set out within it.

2.4 On the occasion of the first anniversary of the date of ~~this Agreement~~ approval of the Updated Airport Surface Access Strategy and subsequently every five years the Operator shall produce and submit to the Council for its written approval a report on the Travel Plan which shall:

2.4.1 ~~(A)~~ **identify how the relevant travel plan has been performing against the agreed objectives and targets described in the ~~travel plan~~ Travel Plan; and**

2.4.2 ~~(B)~~ **if appropriate, state the proposals and remedies to improve performance of the ~~travel plan~~ Travel Plan to meet the agreed objectives and targets described in the ~~travel plan~~ Travel Plan (including without limitation modal split).**

In either case, if the report submitted by the Operator pursuant to paragraph 2.4 of this Schedule evidences in the reasonable opinion of the Council a travel plan which is not achieving the objectives and targets of the approved Travel Plan and does not include adequate proposals and/or remedies to achieve such objectives and targets, then the Operator shall submit to the Council for its approval in writing modified proposals and/or remedies or modified targets (including without limitation targets for modal split) for the relevant plan. This process shall be repeated as often as reasonably necessary until such revised proposals and/or remedies or such revised targets are approved by the Council.

2.5 The Operator shall implement the approved Travel Plan with any approved modifications arising from the review and reporting procedure identified in paragraph 2.4 of this Schedule and shall submit a copy of any such modified Travel Plan (following the review and reporting procedure or otherwise) to the Council.

2.6 During the period between the periodic reviews of the Travel Plan the Council (as local planning authority and local highway authority) and the Operator shall meet at least every 12 months following the date of the Section 73 Planning Permission and at that meeting review the effectiveness of the Travel Plan against their respective objectives and targets.

2.7 The Council shall otherwise:

2.7.1 provide support and advice to the Operator in implementing the Travel Plan;

2.7.2 respond to any report or proposals submitted pursuant to the review and reporting procedure in paragraph 2.4 of this Schedule within six weeks of the date of receipt of the same by the Council with either approval or the reasons to explain to the Operator why such report or proposal is not acceptable.

SCHEDULE 3
LONDON LUTON AIRPORT CONSULTATIVE COMMITTEE

1. The ~~Operator~~operator shall continue to operate the LLACC at its own cost as part of the facilities for consultation which it is obliged to maintain pursuant to its duties under section 35 Civil Aviation Act 1982 as manager of a designated aerodrome.
2. Having submitted a revised constitution for LLACC to the Council prior to the date of the Section 73 Planning Permission (attached at Annexure 6 to the Second S106 Agreement), the Operator shall, in each year of its publication, present the principal findings and conclusions of the ~~Annual Monitoring~~Sustainability Report to LLACC and shall provide LLACC with a copy of each ~~Environmental~~Quarterly Flight Operations Report at the same time as it is submitted to the Council in accordance with Schedule 7.

SCHEDULE 4SCHEDULE 4

~~SCHEDULE 5~~SCHEDULE 4
SUSTAINABILITY

1. The Operator shall implement and continue to operate the Existing Sustainability Strategy immediately following the date of the Section 73 Planning Permission.
2. Within 12 months of the date of the Section 73 Planning Permission, the Operator shall submit to the Council for approval an updated Sustainability Strategy.
3. During the operation of the Sustainability Strategy approved pursuant to paragraph 2 of this Schedule ~~4~~, the Operator shall report to the Council annually as part of the Sustainability Report on the performance of the Airport against the targets in the Sustainability Strategy.
4. At intervals of every five years from the date of approval of the Sustainability Strategy, the Operator shall produce and submit to the Council for its written approval a report on the implementation of the Sustainability Strategy which shall:
 - (A) describe the measures taken in the preceding five years and assess the outcome of those measures;
 - (B) assess the extent to which the Airport has met the performance targets identified in the Sustainability Strategy; and
 - (C) propose the modifications (if any) which should be made to the Sustainability Strategy in order to ensure that the Airport meets the performance targets identified in the then existing Sustainability Strategy or otherwise to improve the sustainability of the Airport without compromising the safety of operations at the Airport.
5. If the report submitted by the Operator pursuant to paragraph 4 of this Schedule:
 - (A) evidences in the reasonable opinion of the Council a Sustainability Strategy which is not achieving the performance targets in the approved Sustainability Strategy and does not include adequate modifications to achieve such targets; or
 - (B) does not include sufficiently realistic or challenging performance targets for achieving the objective of improving the sustainability of the Airport without compromising the safety of its operations.then the Operator shall submit to the Council for its approval in writing further modifications of the Sustainability Strategy and this process shall be repeated as often as reasonably necessary until such modifications are approved by the Council.
6. The Operator shall implement the approved Sustainability Strategy with any approved modifications arising from the review and reporting procedure identified in paragraphs 4 and 5 of this Schedule and shall submit a copy of any such modified Sustainability Strategy (following the review and reporting procedure or otherwise) to the Council.
7. In each calendar year, the Operator shall either procure the carrying out of the Wigmore Valley Park Works or commit a minimum of (but cannot be required to spend more than) the Environmental Management Payment for the purposes of the Wigmore Valley Park Works.

~~SCHEDULE 6~~**SCHEDULE 5**
LOCAL EMPLOYMENT AND SUPPLY CHAINS

1. Having obtained the approval of the Local Procurement Protocol and the Employment Skills and Recruitment Plan prior to the date of the Section 73 Planning Permission, the Operator shall carry out the Development in accordance with the approved Local Procurement Protocol and the approved Employment Skills and Recruitment Plan ~~provided that~~Provided That this shall not prejudice the proper and reasonable evaluation and selection of bidders, tenders and candidates by the Operator or its contractors.
2. Within 12 months of the date of the Section 73 Planning Permission, the Operator shall submit a draft Updated Employment Skills and Recruitment Plan to the Council for approval and forthwith from the date of approval of the Updated Employment Skills and Recruitment Plan by the Council, the Operator shall comply with such approved Updated Employment Skills and Recruitment Plan (and such updated plan shall be deemed to replace the currently approved Employment Skills and Recruitment Plan which shall no longer be of effect).
3. The Operator shall promote the Employment Skills and Recruitment Plan (as may be approved from time to time) and the Local Procurement Protocol to businesses operating at the Airport and shall use reasonable endeavours to ensure that the Development is Occupied in accordance with the Employment Skills and Recruitment Plan and the Local Procurement Protocol.
4. Provided that the Council shall have first supplied all relevant data concerning employment at the Airport which is within its control at least two months prior to the due date for publication of the ~~Annual Monitoring~~Sustainability Report the Operator shall report annually on the effectiveness of the Employment Skills and Recruitment Plan (or Updated Employment Skills and Recruitment Plan, once approved) and the Local Procurement Protocol as part of the ~~Annual Monitoring~~Sustainability Report.
5. The Council covenants with the Owner and the Operator to provide all data within its control which may be relevant to the matters on which the Operator is obliged to report under paragraph 4 of this Schedule and shall do so at least two months prior to the due date for publication of the ~~Annual Monitoring~~Sustainability Report in any one year.

~~SCHEDULE 7~~**SCHEDULE 6**
COMMUNITY FUND

1. Having established the Community Fund prior to the date of this Agreement, the Operator shall operate and shall maintain a Community Fund in the following manner:
 - (A) ~~2.~~The Operator shall retain the Community Fund in an interest-bearing account previously approved by the Council~~;~~
 - (B) ~~3.~~The Operator shall retain the Independent Body (or any future replacement independent body approved in writing by the Council) to administer the Community Fund and shall submit or procure submission by the approved Independent Body for the written approval of the Council the objectives of the Community Fund and the criteria against which applications for grants or other funding from the Community Fund shall be assessed; ~~and~~
 - (C) ~~4.~~By ~~31 January 2023 and by~~ 31 January in each ~~subsequent~~ year~~;~~ the Operator shall pay into the bank account for the Community Fund the sum of £50,000 (fifty thousand pounds) and shall provide the Council with evidence of the deposit of such sum in the bank account on or before 1 March in each relevant year Provided That the payments shall be in addition to any sums received by the Operator by way of payment under any sanctions imposed on airline operators for failure to act in accordance with noise, track-keeping or other operating requirements at the Airport pursuant to paragraphs 1 and 5 of Schedule 1~~;~~
 - (D) ~~5.~~The Operator shall publicise the availability of the Community Fund to communities in the Local Area~~;~~
 - (E) ~~6.~~The Operator shall report annually on the amount of the expenditure from the Community Fund and the projects funded by the Community Fund as part of the ~~Annual Monitoring Sustainability~~ Report~~;~~ ~~and~~
 - (F) ~~7.~~Any sums received by the Operator from airlines under the Track Violation Penalty System shall be paid by the Operator into the Community Fund.

~~SCHEDULE 8~~**SCHEDULE 7**
MONITORING AND REPORTING

1. By 30 June each year (Provided That the Council shall have first supplied all relevant data concerning surface access to the Airport and employment at the Airport which is within its control at least two months prior to the due date for publication of the ~~Annual Monitoring Sustainability~~ Report)-, the Operator shall submit to the Council the ~~Annual Monitoring Sustainability~~ Report which shall identify and assess the performance of the Airport in the preceding calendar year (January to December) against the information and requirements to include in particular those set out below:

(A) Noise:

- i. Annual average summer daytime and night-time noise contours;
- ii. Total number of aircraft movements;
- iii. Total number of night-time aircraft movements;
- iv. Adherence to noise limits and other controls;
- v. Complaints;
- vi. Use of a continuous descent approach;
- vii. Track keeping;
- viii. Number of breaches of noise limits or flying off-track;
- ix. Payments from the Noise Insulation Fund;
- x. Aircraft fleet mix.

- (B) The operation of the ~~Updated~~ Airport Surface Access Strategy (as required pursuant to Schedule 2 of this Agreement and otherwise as provided for in this paragraph ~~1.2~~):

- ~~xi.~~ i. Overall numbers of air passenger numbers using the Airport;
- ~~xii.~~ ii. Numbers and percentages of (i) staff and (ii) passengers travelling by car, bus, train and other modes of transport;
- ~~xiii.~~ iii. Passenger journeys by time of day;
- ~~xiv.~~ iv. Passenger catchment area;
- ~~xv.~~ v. Staff journeys by time of day;
- ~~xvi.~~ vi. Staff catchment area;
- ~~xvii.~~ vii. Assessment of the need for traffic counting equipment at road junctions and links on the approaches to the Airport and provision for a contribution by the Operator towards the cost of installing such equipment (if any);
- ~~xviii.~~ viii. Usage of the short term, mid-term and long term public car parks under the Operator's control;
- ~~xix.~~ ix. Usage of staff car parking under the Operator's control;
- ~~xx.~~ x. Performance against actions and targets contained in the Travel Plan.

(C) Sustainability

- ~~xxi.~~ i. As required by Schedule 4 the performance of the Airport against the targets in the Sustainability Strategy;
- ~~i. As required by paragraph~~ **Error! Reference source not found.** ~~of Schedule 4, the performance of the Airport in respect of promotion of waste management and recycling~~

- (D) The effectiveness of the Employment Skills and Recruitment Plan and the Local Procurement Protocol as required by Schedule 5.

2. ~~8.~~ The Operator will publish the ~~Annual Monitoring Sustainability~~ Report on its website and provide copies of the ~~Annual Monitoring Sustainability~~ Report to each member of LLACC by 30 June in each calendar year when it has been submitted to the Council.
3. ~~9.~~ In each calendar year the Operator shall submit to the Council the Quarterly ~~Monitoring Flight Operations~~ Report on or before each of the following dates:
- ~~(E)~~(A) 1 June in respect of the quarter year from 1 January to 31 March;
 - ~~(F)~~(B) 1 September in respect of the quarter year from 1 April to 30 June;
 - ~~(G)~~(C) 1 December in respect of the quarter year from 1 July to 30 September;
 - ~~(H)~~(D) 1 March in respect of the quarter year from 1 October to 31 December.
4. ~~10.~~ The Quarterly ~~Monitoring Flight Operations~~ Report shall include details of the following matters for the preceding quarter:
- ~~(I)~~(A) the aggregate number of aircraft movements at the Airport in each month;
 - ~~(J)~~(B) the aggregate number of air passengers using the Airport in each month;
 - ~~(K)~~(C) instances (if any) where daytime Noise Violation Limits have been breached;
 - ~~(L)~~(D) instances (if any) where night-time Noise Violation Limits have been breached;
 - ~~(M)~~(E) quarterly average night-time airborne noise contours;
 - ~~(N)~~(F) the number of night time aircraft movements;
 - ~~(O)~~(G) performance against the Quota Count System including the limits for the night quota period which forms part of the Quota Count System;
 - ~~(P)~~(H) track keeping violations;
 - ~~(Q)~~(I) any biodiversity monitoring including surveys and mitigation measures undertaken as part of the Sustainability Strategy.
5. ~~11.~~ The Council covenants with the Owner and the Operator to provide all data within its control which may be relevant to the matters on which the Operator is obliged to report under this Schedule and shall do so at least two months prior to the due date for publication of the ~~Annual Monitoring Sustainability~~ Report in any one year.

~~SCHEDULE 9~~**SCHEDULE 8**
MONITORING FUND

1. On or before 31 January 2023, the ~~Operator~~operator shall pay to the ~~Council the Initial Monitoring Fund~~council the initial monitoring fund.
2. By 1 January in each year following payment of the Initial Monitoring Fund, the Council shall provide the Operator with a written account of the expenditure and committed expenditure (if any) since 31 January of the preceding year of the sums received from the Operator pursuant to paragraph 1 of this Schedule and in that account the Council shall state the balance of such sums which it has available for future expenditure.
3. On or before 31 January in each subsequent year following payment of the Initial Monitoring Fund, the Operator shall pay to the Council such additional sum as is required to restore the balance of the Initial Monitoring Fund to £70,000.

THE COMMON SEAL of)
LUTON BOROUGH COUNCIL)
was affixed in the presence of)

Authorised signatory

Authorised signatory

EXECUTED as a **DEED** by)
LONDON LUTON AIRPORT)
OPERATIONS LIMITED)
acting by [two of its)
directors]/[a director and its secretary])
in the presence of:)
)

Director

Director/Secretary

EXECUTED as a **DEED** by)
LONDON LUTON AIRPORT LIMITED)
acting by [two of its)
directors]/[a director and its secretary])
in the presence of:)
)

Director

Director/Secretary

EXECUTED and **DELIVERED** as a)
DEED by **[NAME OF COMPANY]**)
)
)
) Director
acting by [Name of a director])
in the presence of:)
)

Signature of witness

.....

Name of witness
(in BLOCK CAPITALS)

.....
Address of witness

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.....
.....
.....

ANNEXURE 1
NOISE MANAGEMENT PLAN

ANNEXURE 2
EXISTING SUSTAINABILITY STRATEGY

Summary Report	
Title	CompareDocs Comparison Results
Date & Time	25/10/2022 12:16:45
Comparison Time	1.12 seconds
compareDocs version	v5.1.600.2

Sources	
Original Document	Section 106 Agreement - ref. 21_00031_VARCON - agreed draft for submission 13.9.2022.DOCX
Modified Document	Section 106 Agreement - ref. 21_00031_VARCON - updated draft dated 25.10.22.DOCX

Comparison Statistics	
Insertions	49
Deletions	63
Changes	66
Moves	2
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	180

Word Rendering Set Markup Options	
Name	Insert Delete Move
<u>Insertions</u>	
Deletions	
<u>Moves</u> / Moves	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after saving	General	Always
Report Type	Word	TrackChanges
Character Level	Word	False
Include Comments	Word	True
Include Field Codes	Word	True
Flatten Field Codes	Word	False
Include Footnotes / Endnotes	Word	True
Include Headers / Footers	Word	True
Image compare mode	Word	Insert/Delete
Include List Numbers	Word	True
Include Quotation Marks	Word	True
Show Moves	Word	True
Include Tables	Word	True
Include Text Boxes	Word	True
Show Reviewing Pane	Word	True
Summary Report	Word	End
Detail Report	Word	Separate (View Only)
Document View	Word	Print