

DATED

2016

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF BROMLEY**

AND

BIGGIN HILL AIRPORT LIMITED

DRAFT

**DEED OF VARIATION
OF OPERATING CRITERIA**

Relating to a lease of
Biggin Hill Airport
Main Road
Biggin Hill

Director of Corporate Services
London Borough of Bromley
Civic Centre
Stockwell Close
Bromley BR1 3UH

Ref: L2/
(draft dated 06/05/2016)

**THIS DEED made the
BETWEEN**

2016

- 1 THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BROMLEY of Civic Centre Stockwell Close Bromley BR1 3UH (“the Landlord”) and
- 2 BIGGIN HILL AIRPORT LIMITED (Company Registration No 2891822) whose registered office is at 5th Floor 6 St Andrew Street London EC4A 4AE (“the Tenant”)

Background

- (A) This deed is supplemental and collateral to the Lease
- (B) Clause 2.11 of the Lease provides that the Operating Criteria may be varied from time to time as agreed by the Landlord (such agreement not to be unreasonably withheld)
- (C) The Tenant has applied for the Landlord's agreement pursuant to the Lease to vary the Operating Criteria
- (D) The Landlord and the Tenant have agreed to vary the Operating Criteria on the terms set out in this deed to include new operating hours and the NAP
- (E) The Landlord is entitled to the immediate reversion to the Lease
- (F) The residue of the term granted by the Lease is vested in the Tenant
- (G) The Tenant has provided and the Landlord has agreed the MIL setting out how the Tenant will implement the NAP

Agreed Terms

1 Definitions and Interpretation

In this deed the following words have the meanings given:

- 1.1 **Lease** means a lease of the Property dated 6 May 1994 and made between the Landlord (1) and the Tenant (2)
- 1.2 **Property** means Biggin Hill Airport Main Road Biggin Hill as demised by the Lease
- 1.3 **Conditions** means the conditions set out in the Schedule
- 1.4 **Effective Date** means the date on which the Landlord's Director of Transformation and Regeneration agrees (or, if the Landlord has no current Director of Transformation and Regeneration, or if he or she becomes incapable of acting, then the nearest equivalent official undertaking a similar role and responsibilities for the Landlord from time to time which shall forthwith be notified by the Landlord to the Tenant) that the Tenant has reasonably implemented the Conditions (such agreement not to be unreasonably withheld or delayed)
- 1.5 **Schedule** means a schedule to this deed unless otherwise stated
- 1.6 **NAP** means the agreed Noise Action Plan included in the Appendix to

this Deed

- 1.7 **Operating Criteria** means those matters set out in the Third Schedule to the Lease
- 1.8 **MIL** means the management information letter dated 8 April 2016 provided by the Tenant and agreed by the Landlord which is included in the Appendix to this Deed setting out how the Tenant will implement the NAP
- 1.9 Any headings used in this deed shall not be taken into account in its construction or interpretation
- 1.10 References to the **Landlord** include a reference to the person entitled for the time being to the immediate reversion to the Lease. References to the **Tenant** include a reference to its respective successors in title and assigns
- 1.11 A reference to the Lease includes any deed licence consent approval or other instrument supplemental to it
- 1.12 A reference to a statute or statutory provision is a reference to it as amended extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statutory or statutory provision
- 1.13 A person includes a natural person corporate body or unincorporated body (whether or not having a separate legal personality)
- 1.14 Except to the extent that they are inconsistent with the definitions and interpretations in this clause 1 the definitions and interpretation in clauses 1 and 2 of the Lease shall apply to this Deed

2 Variation

- 2.1 The Landlord and the Tenant agree and declare that the Operating Criteria shall be varied with effect from the Effective Date by:
 - 2.1.1 deleting that part of paragraph (c) of the Third Schedule to the Lease from the opening words "Limit the operating hours ..." up to and including at the end of sub-paragraph (i) ".... on weekdays only" and replacing it with the following:

"(c) Limit the operating hours of the Airport (including the ground-running of aircraft) to between 06.30 to 23.00 on weekdays and 08.00 to 22.00 on Saturdays Sundays and Public Holidays Provided That:-

- (i)
 - (1) On weekdays there shall be
 - (A) a maximum of 8 movements between 06.30 and 07.00; and
 - (B) a maximum of 8 movements between 22.00 and 23.00;

- (2) On Saturdays, Sundays and Public Holidays there shall be no circuit training permitted before 09.00 or after 17.00 during British Summer Time

2.1.2 adding a new sub-paragraph (k) as follows:

"(k) comply with the London Biggin Hill Airport Noise Action Plan dated 28 August 2015 a copy of which is appended to this lease (including, for the avoidance of doubt, any revisions to the NAP pursuant to its terms)"; and

2.1.3 appending a copy of the NAP to the Lease.

2.2 In the event of a successful legal challenge to the Landlord's decision to grant the variation contained in this Deed then this Deed shall forthwith become void and Schedule Three of the Lease shall revert to its original wording prior to the implementation of this Deed. For the avoidance of doubt, the NAP (and all of the Tenant's obligations therein) shall then cease to apply.

2.3 If the Effective Date has not occurred by 12 months after the date of this Deed (unless a request for agreement under clause 1.4 of this Deed has been made but not decided or such agreement has been unreasonably withheld or delayed) then this Deed shall forthwith become void and shall not take effect.

2.4 The parties agree and declare that except for this present variation of the Operating Criteria the Lease shall continue in full force and effect

2.5 The Landlord and the Tenant agree to be bound by the terms of the MIL for so long as the NAP forms part of the Operating Criteria

3 Costs

3.1 The Tenant shall pay the costs of the Council due pursuant to clause 5.10.1 of the Lease Provided That if the costs have not been agreed within 3 months of the date of this Deed either party may refer the matter to arbitration in accordance with the provisions of clause 3.13 of the Lease to determine the amount of such costs

3.2 The Tenant shall in addition reimburse the Landlord the additional costs properly and reasonably incurred by the Landlord in monitoring the Tenant's compliance with paragraph 1 of the Conditions prior to the Effective Date.

4 Registration of Variation against Tenant's Title

The Tenant agrees to apply to the Registrar for entry of notice of the agreement in clause 2 against Title Number SGL[]

5 Third Party Rights

Unless expressly stated nothing in this Deed will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the parties hereto

**SCHEDULE
THE CONDITIONS**

- 1. Acquiring installing and bringing into operation of a continuous Noise Monitoring Track Keeping System (NMTK), in accordance with paragraph 4.4 of the NAP.
- 2. Formalising the Tenant's established "no fly zones", in accordance with paragraph 4.21 of the NAP.
- 3. Introducing a system of fines and controls for aircraft that fail to comply with the published Noise Abatement Procedures (NAPrs) or which fail to adhere to the published Noise Preferential Routings (NPRs), in accordance with paragraph 4.37 of the NAP.
- 4. Drawing up a Ground Noise Management Plan, in accordance with paragraph 4.39 of the NAP.

EXECUTED as a deed by affixing)
THE COMMON SEAL OF THE)
MAYOR AND BURGESSES)
OF THE LONDON BOROUGH)
OF BROMLEY hereunto in the)
 presence of:-)

Mayor/Councillor

Director of Corporate Services/Senior Solicitor

EXECUTED AS A DEED BY)
BIGGIN HILL AIRPORT)
LIMITED acting by:)

APPENDIX

1. NOISE ACTION PLAN (NAP)

2. MANAGEMENT INFORMATION LETTER (MIL)