
KENT INTERNATIONAL (MANSTON) AIRPORT – SECTION 106 AGREEMENT

To: **Full Council - 21 October 2004**

Main Portfolio Area: **Planning/Environment**

By: **Brian White – Head of Environmental Services**

Classification: **Unrestricted**

Ward: **Whole of Thanet**

Summary:

This report brings forward a draft Agreement, with a recommendation that it be made the subject of widespread public consultation and engagement. The report highlights changes since the existing Agreement was signed in 2000.

For Decision

1.0 Introduction and Background

- 1.1 A Section 106 Agreement under the terms of the Town and Country Planning Act 1990 and the Local Government Act was negotiated between the Council and the commercial owners of Manston Airport; Wiggins plc on a voluntary basis. Cabinet then formally approved the Agreement for a three-year period on 14th September 2000. During production of the Agreement, the Council agreed to seek and then make use of specialist consultancy advice.
- 1.2 The term of the Agreement lapsed in September of last year. Circumstances had changed in that the operator; now known as Planestation was beginning to develop new plans for its operation of the Airport against a background of increasing change in the Aviation industry. This change is largely driven by increased demand. It was subsequently agreed following discussions with the Leader and the Leader of the Opposition that a request be made to the Airport Operator to extend the existing Agreement on a voluntary basis, until a new Agreement could be renegotiated. In the meantime negotiations between the Council (represented by its Member/Officer Working Party) have taken place, leading to production of a first draft document.
- 1.3 The request to extend the existing Agreement was accepted and agreed by Planestation. The fact that the Agreement has operated successfully over many months on this voluntary basis is illustrative of a good working relationship between the Council and the Airport. The objective of the emerging new three-year Agreement is to build on this successful foundation by ensuring that the current and medium term plans of the operator achieve a balance between economic and environmental factors in such a way that the best interests of local communities are protected.
- 1.4 The particular changes at Kent International (Manston) Airport are the introduction of new, expanding, passenger services from September 2004 onward alongside the recent construction of a new “point of entry” facility to make the Airport more competitive for freight operations. Expansion of the UK economy has resulted in increased demand and there is no question that meeting this demand is good news for the regional and local economies concerned. On the other hand, as has been recently highlighted in the national media, environmental concerns, particularly about noise, also need to be

addressed. Even though the Aviation industry is producing quieter aircraft the available evidence suggests that complaints about noise are increasing, especially in respect of noise during night-time hours.

- 1.5 Best Practice in Local Government encourages public engagement on major local decisions. For this reason it has been considered appropriate by the Council Working Party to bring forward the content of a draft Agreement for the future, at a time when the new passenger service has commenced operation. Local awareness of how the aural environment has changed, with an increased number of flights from quieter aircraft, will make it easier for individuals and stakeholder groups to engage in the consultation process.

2.0 General Points

- 2.1 The draft agreement attached as Appendix I is very similar in format to the existing document. However, there are a number of key changes and these can be summarised as follows;

- (i) There is a presumption that there shall be no night-time flights between the hours of 2300 and 0700 hours. Other than the passenger flights between 0600-0700 as specified in the final paragraph of this section.
- (ii) Exemptions to the restriction on night-time flights will be 12 “relief emergency flights” in any one year, and possibly an additional 12 relief flights in extenuating factors (if agreed by the Chief Executive, or nominee, in consultation with the Leader). Freight cargo flights could also be possible, with the regime of fines retained.
- (iii) Local medical, coastguard and air sea rescue aircraft will also be exempt from the night flying restriction for obvious reasons.
- (iv) Scheduled flights delayed for mechanical, safety or other substantive reasons landing between 2300 hours and midnight would not be subject to night flight restriction.
- (v) During the first 12 months of the new three-year operation, the 2002/2003 noise contour map would not be permitted to expand. Thereafter, as before; 12 monthly updates of the contour will be produced for consideration.
- (vi) A Noise Strategy shall be produced using the data derived from the continuous monitoring stations.
- (vii) Recognising that individual complaints are often caused by perceived or real departures from agreed “noise abatement routes” secondary radar will be required within the three-year life of the new Agreement, thus enabling any departures from route to be reported and dealt with appropriately.

From the existing Agreement passenger flights to mainland Europe, and the UK, between 0600 and 0700 hours, alongside passenger arrivals from the USA would still be permitted.

- 2.2 As indicated in the draft Agreement, more discussion with the operator on the following subjects needs to take place. However, it is still considered appropriate to commence public consultation because the views of the public will usefully inform that dialogue. The outstanding matters include;

- (i) Final details of noise abatement routes.

- (ii) The procurement and installation of secondary radar.
 - (iii) Development of the “Airport Masterplan” and its relationship to the proposed Noise Strategy, the Environmental Statement and the Green Travel Plan. In the interests of transparency the individual and collective content of these documents needs to be linked and regularly updated.
 - (iv) Revised reporting methodology for aircraft movement to facilitate monitoring of the Agreement.
- 2.3 The Airport Operator may wish to consider the commercial effects of limiting scheduled passenger and freight arrivals to pre-2300 hours. And feedback on that matter, and the suggested exemption should delayed flights land before midnight (or perhaps later) will be fed back into the drafting process before Full Council takes its final decision. Similarly, the operator will have views on the timescale for secondary radar, and noise abatement routes. It is important to note that a new Agreement can only be reached and implemented with the support, and consent of the Airport operator. Consequently, discussion between the Council’s Working Party and the operator will continue over the next three months.
- 2.4 The Cabinet Office recommends to Local Authorities that effective public consultation requires a three-month period. This recommendation has been incorporated into our own practice and procedures at Thanet. It is therefore recommended that a process of public consultation is now commenced on the following basis;
- (i) A brief summary of the major changes in the draft Agreement is produced with introductory information. This to be made widely available.
 - (ii) More detailed briefing will be provided to adjoining Local Authorities, Parish and Town Councils, residents, stakeholder and special interest groups. All will be offered meetings/briefings from the Council.
 - (iii) The MACC has already formally requested that it be included in the process, a meeting is scheduled for December, at which a full presentation on the draft Agreement can be made.
 - (iv) Towards the end of the 12 week period, a public meeting, or meetings (dependent on demand) in the Ramsgate area, because it is the urban area closest to the Airport.
 - (v) The Working Party will continue to develop detail in the draft Agreement and work with the Airport operator in this regard.
 - (vi) Full information and updates will appear on the Council’s Website, and be issued to the media.
 - (vii) The February meeting of Full Council will then consider the final version of the Section 106 Agreement. Consultation will close 12 weeks from the 21st October, on 13th January 2005.
- 2.5 To protect its interests in 2000, the Council engaged Alan Stratford and Associates as consultants to advise on content and production of the Agreement. The consultancy has a strong track record on work of this type, and existing knowledge of the Airport. It is therefore considered appropriate that in accordance with Standing Orders that particular consultancy be reappointed for the purpose.

3.0 Options

- 3.1 The Council could proceed to negotiate a final Agreement with the Airport Operator without going to public consultation. It has no legal obligation to consult. But because the essence of the Agreement, if it is to be successful, is to protect the public interest and maintain its confidence it is considered essential that the Council does consult and therefore this is not recommended.
- 3.2 The Council has thus far produced a working document without the assistance and expertise of specialist consultants. However, on an issue as important as this it is considered essential that specialist advice in the production of the final document is secured.
- 3.3 The current Agreement is still in operation and is still being applied. Yet circumstances changed considerably since it was developed and most commentators would agree that if a new Agreement can be secured it will be more relevant to the current interests of the community.

4.0 Corporate Implications

4.1 Financial

- 4.1.1 Negotiation and adoption of revised Section 106 Agreements has no financial impact on the Council other than the expenditure of officer and Member time. But the cost of engaging specialist aviation consultant advice will be between £10,000 - £20,000 initial estimate. This cost can be met from Planning Delivery Grant and/or excess (over budget target) planning fee income.

4.2 Legal

- 4.2.1 The Agreement is not linked to any specific planning approval. Therefore, there is no strict legal requirement for its production. Once in place of course, the Agreement, though entered voluntarily by both parties, does have legal status.

4.3 Corporate

- 4.3.1 Kent International (Manston) Airport is a subject of major interest to the local community. Firstly, it is an important symbol of economic regeneration and progress. Improved communication and employment are obvious benefits to the community. But environmental issues, principally noise though also air pollution and traffic are significant factors, in particular for those living close to the Airport and beneath flight paths. In its role as community leader, the Council might consider it important that it can help produce an Agreement enabling the Airport to flourish and dictating a framework that protects the best interests of the majority in our community.
- 4.3.2 Confidence in the content of the Agreement will only be achieved if public consultation is effective.

5.0 Recommendation(s)

- 5.1 Members are requested to agree that the draft Agreement should be made subject to public consultation.
- 5.2 Members are requested to agree that a public consultation and engagement process as described in Section 2.4 of this report is commenced and completed such that a final version of the Agreement can be returned to Full Council in February 2005.

- 5.3 That in accordance with Contract Standing Orders, Alan Stratford and Associates, be appointed to advise the Council on the content and format of the Section 106 Agreement.
- 5.4 That the sum of £20,000 be identified from within the Planning Delivery Grant, and Planning Fee Income, to fund the engagement of consultancy advice.

6.0 Decision Making Process

- 6.1 This is a key decision.
- 6.2 The decision does have financial implications.
- 6.3 This report may be subject to formal call-in by Scrutiny.

Contact Officer: B J White - Head of Environmental Services - Extension 7007

Background Papers

- 1. Planning files.
- 2. Guidance on the Preparation of Airport Masterplans, Department for Transport 2004.

APPENDIX 1

– Kent International (Manston) Airport
Full Council Report, 21st October 2004

Dated:

(1) Thanet District Council

(2) Kent International Airport plc

**AGREEMENT PURSUANT TO SECTION 106 OF THE TOWN
AND COUNTRY PLANNING ACT 1990 AND SECTION 111
OF THE LOCAL GOVERNMENT ACT 1972**

**1st Draft for Thanet District Council,
and public consultation**

11th October 2004

“the Council’s Address”	means Cecil Street Margate Kent CT9 1XZ or such other address that the Council may from time to time notify the Owner of
“Engine Testing”	means any running of engines in connection with scheduled or planned maintenance or repair either with engines on or off of an aircraft
“Engine Testing Area”	means an area within the Property designated by the Owner for the purposes of Engine Testing
“Environmental Statement”	has the same meaning as in Regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (England And Wales) Regulations 1999
“Flight Movements”	means the taking off or landing of civilian aircraft at the Airport and includes any ‘touch and go’ movements which shall be deemed to constitute a landing and take off
<i>“Light Aircraft”</i>	<i>aircraft less than a maxuw 5700 at take off, and as such will include coastguard, medical and rescue aircraft.</i>
“the GPDO”	means the Town and Country Planning (General Permitted Development) Order 1995
“MACC”	means the Manston Airport Consultative Committee

“MAIF” means the Manston Airport Environmental Improvement Fund

“the Master Plan” means a plan to be prepared by or on behalf of the Owner *in accordance with the White Paper, ‘The Future of Air Transport’ (cm 6046 Dec 2003) and with reference to Department of Transport Guidance “The Preparation of Airport Master Plans” 2004.*

“Night-time” means 2300 – 06.00 hours

“Relief Emergency Flights” means flights required to relieve immediate suffering or prevent loss of life after a major disaster or conflict. Any subsequent movement of materials, personnel or infrastructure to commence the recovery/rebuilding operations will be considered to be a commercial activity

“Extenuating Factors”

- *the disaster/conflict is ongoing and ‘the Airport’ is the most appropriate airport for the emergency co-ordination activity;*
- *a National Government or internationally recognised relief agency advice that ongoing relief is essential to minimising the loss of life;*
- *the flights were programmed to depart within operational hours but security has indicated that that the departures have to occur outside those hours, and the flights are carrying relief materials like foodstuffs, medical supplies,*

*temporary accommodation, water purifying
equipment or similar*

“Noise Contours” means a line of equivalent continuous sound level superimposed on a geographical representation of the Airport and surrounds

“Noise Contour Map” means a computer generated map of weighted equivalent continuous sound level contours arising from all Flight Movements based on flight path aircraft types and destinations and such contours shall cover the period 0700 - 2300 hours and (if there are Regular Night Flying Operations) the period 2300 - 0700 hours

“Noise Monitoring Terminal” means a sound level meter optimised for continuous data capture for aircraft and background noise capable of storing and analysing a minimum of twelve months’ historical data

“the Owner’s Address” means 35 Berkeley Square Mayfair London W1X 5DA or such other address that the Owner may from time to time notify the Council of

“the Property” means the property described in the First Schedule

“the Register” means the register of local land charges maintained by the Council

“Regular Night Flying Operations” means *Flight Movements which are scheduled or programmed and which occur frequently or regularly to the same or similar patterns for the same operator during Night-time*

“Quota Count” means *the noise classification for an aircraft on take off or landing which shall be judged in accordance with the following table*

<u>Noise Classification</u>	<u>QC Points</u>
90 EPNdB	Less than 0.5
EPNdB	1
EPNdB	2
EPNdB	4
EPNdB	8
than 101.9 EPNdB	16

and for the avoidance of doubt an aircraft shall be deemed to have taken off or landed at the time recorded by the air traffic control unit of the airport

1.2 References to a clause schedule or paragraph are references where the context admits or requires to a clause schedule or paragraph of a schedule in this Agreement

- 1.3 The clause and paragraph headings in this Agreement are for ease of reference only and are not to be taken into account in the construction or interpretation of the clause or paragraph to which they refer
- 1.4 Words importing the singular meaning include the plural meaning and vice versa unless the context otherwise requires
- 1.5 Words of one gender include both other genders and words denoting natural persons include corporations and firms and all such words are to be construed interchangeably in that manner
- 1.6 Words denoting an obligation on a party to do any act matter or thing includes an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit or allow infringement of the restriction
- 1.7 Any reference to any enactment (whether generally or specifically) shall be construed as a reference to that enactment as amended extended re-enacted or applied or consolidated by or under any other enactment and shall include all instruments orders plans regulations permissions and directions made or issued thereunder or deriving validity therefrom
- 1.8 The expression “the Council” and “the Owner” shall where the context so admits or requires include the respective successors in title of the Council and the Owner
- 1.9 Reference in this Agreement to “the Parties” is a collective reference to the Council and the Owner
- 1.10 All references in this Agreement to time are references to local time

2. Enabling Power

This Agreement is entered into by the Council pursuant to:

- 2.1 its powers under Section 106 of the 1990 Act;
- 2.2 Section 111 of the Local Government Act 1972; and
- 2.3 all other powers enabling the Council in this behalf

3. Planning Obligation

All of the covenants and obligations of the Owner contained herein are planning obligations for the purposes of Section 106 of the Act and shall be enforceable by the Council against the Owner and any person deriving title to the Property or part thereof providing however that no person shall be bound by this Agreement after he has relinquished the whole of his interest in the Property save that nothing in this clause shall affect any liability for any antecedent breach of any of the provisions of this Agreement

4. Term of Agreement

- 4.1 This Agreement shall remain in force for the period of three years from the date hereof
- 4.2 The Parties shall not later than 33 months after the date of this Agreement consult to review the terms of this Agreement (or at any earlier date either in the event of a major development proposal being promoted by the Owner or if agreed by the Parties to consult earlier) and with a view to agreeing a new agreement of the same or a similar nature as this Agreement to address changing circumstances and the next planned phase of the development of the Airport

4.3 If the Parties shall not have agreed and executed a new agreement of the same or a similar nature as this Agreement prior to the ending of this Agreement then this Agreement at the option of the Council shall continue in force and the Owner shall operate the Airport in accordance with its terms

5 The Owner's Obligations

5.1 The Owner covenants to comply with the obligations set out in the Second Schedule.

5.2 This Agreement shall disregard use of the Property (or any part thereof) for the purposes of:

5.2.1 any commemorative flights (except during Night-time); and

5.2.2 any public air display or exhibition (which includes Flight Movements) provided they are:

5.2.2.1 not on more than two occasions in any calendar year; and

5.2.2.2 limited to a single 24-hour period and for 24 hours before and after the event

6. GPDO and Planning

It is hereby declared that:

6.1 Nothing in this Agreement shall affect restrict or inhibit or be construed to affect restrict or inhibit in any way whatsoever any permitted development rights that the Owner enjoys under the GPDO

6.2 Nothing in this Agreement shall restrict or inhibit or be construed to restrict or inhibit the Owner in making any application for planning permission of whatsoever nature in connection with the Property during the continuance of this Agreement

6.3 Nothing in this Agreement shall restrict or inhibit or be construed to restrict or inhibit the current planning permissions or certificates of lawful use the Airport has the benefit of or enjoys during the continuance of this Agreement

7. MACC

The Owner agrees to:

7.1 meet the administrative salaries and costs of MACC; and

7.2 provide for the use of MACC a meeting room at the Airport, or within the district of Thanet, dependent on the requirements of the Committee itself.

8. Statutory Provisions

In the event that the Owner or the Council are required to comply with any planning condition or other statutory or legal obligation (other than a contractual one) imposed upon them by any relevant authority the terms of which conflict with the provisions of this Agreement such condition or obligation shall prevail over the provisions of this Agreement and the Owner and the Council as the case requires shall not be in breach of this Agreement by reason of their compliance with such condition or obligation provided that the parties hereto may review the relevant provision of this Agreement in the event of such conflict and the Owner and the Council shall give full and proper consideration to any reasonable proposal which they may bring forward to resolve such conflict

9. The Agreement

9.1 The Council hereby releases the Owner from the covenants contained within the *2000* Agreement

9.2 Contemporaneous with this Agreement the Council will forthwith remove the 2000 Agreement from the Register

10. Registration of this Agreement

10.1 This Agreement shall be registered as a local land charge in the Register

10.2 Where in the opinion of the Owner any provision of this Agreement has been completed and/or satisfied (as the case may be) the Owner shall be entitled to make application to the Council for a certificate to the effect that the provisions of this Agreement have been completed and/or satisfied (as the case may be) and upon the Council (which shall act reasonably and diligently in considering such application) being satisfied that such obligations have been completed and/or satisfied the Council shall issue a certificate to such effect and forthwith place a note of such certificate with the Register or remove this Agreement from the Register (as the case may be)

11. Notices

Any notice required to be served or given under this Agreement shall be made in writing and shall be deemed given when delivered in person or sent by first-class pre-paid post and served:

11.1 on the Council at the Council's address

11.2 on the Owner at the Owner's address

FIRST SCHEDULE

Definitions of Property,

Possessory title numbers etc...

Legal drafting to follow

SECOND SCHEDULE

This schedule sets out the obligations of the Owner

1. Night-time Flying Noise Policy

The Owner agrees:

1.1 not to cause suffer or permit any Regular Night Flying Operations (except as permitted by either 1.2 or 1.4 below) at any time before a night-time flying noise policy shall have been prepared in accordance with the following, namely, that at least six months before the commencement of any Regular Night Flying Operations to prepare a night-time flying noise policy in consultation with the Council and lodge a copy thereof with the Council. The consultation process shall include providing all relevant information to the Council and affording an adequate period within which the Council may consider the issues arising and formulate its views which shall be taken into account by the Owner and due weight given to such views; in the event that the Owner does not propose to accept the views of the Council in formulating its policy it shall first provide to the Council a reasoned justification and shall take into account and give due weight to such further views of the Council as may be expressed. The policy will specifically address the following matters:

- (a) the restriction on all aircraft likely to cause unacceptable disturbance, such that no scheduled aircraft (subject to exceptions at clause 1.2, and 1.4) shall be permitted to take off or to land during Night-time;

- (b) a process for the sharing of data on details of aircraft operating during Night-time; and
 - (b) the embodiment of the principles of UK best practice at the time and the appropriateness of those principles to prevailing local conditions.
- 1.2 the obligation to prepare a night-time flying noise policy, above shall not apply where the only Night-time operation proposed is:
 - (a) for departures to European destinations (including the UK) or for arrivals from North America by solely passenger carrying aircraft, scheduled to occur between 0600 and 0700, on any day, and
- 1.3 in any event (and whether or not a night-time flying noise policy shall have been prepared) to pay £1,000 for the first occasion when an aircraft undertakes a Flight Movement during Night-time and during the following twelve calendar months to pay an amount increased by a factor of two for each successive occasion by the same aircraft (namely £2,000 for the second occasion £4,000 for the third occasion £8,000 for the fourth occasion and so on) and at the end of such twelve month period the payments shall re-commence at the level of £1,000 and a further period of twelve months as aforesaid shall follow and such increasing payments shall be made
- 1.4 for the avoidance of doubt relief emergency flights (as defined in section 1.1 of this Agreement) by relief organisations on not more than 12 occasions during any calendar year shall not oblige the Owner to prepare a night-time flying noise policy regardless of the time of any such flight or the Quota Count rating of the aircraft concerned. Similarly there will be no obligation in respect of aircraft arrivals post

23.00 as set out in clause 1.4.3. Paragraph 1.3 of this schedule shall not apply to any such flights not exceeding 12 in number as aforesaid

1.4.1 relief or emergency flights by relief organisations on not more than 12 occasions during any calendar year; and

1.4.2 the Chief Executive, or nominee in consultation with the Leader of the Council, will agree an additional 12 relief or emergency flights if they agree that some or all extenuating factors apply

1.4.3 Extenuating factors as described in section 1.1 of this Agreement aircraft landing between 23.00 and 24.00 will not be in breach of this Agreement provided that they are not scheduled to arrive post 11.00 and there are valid safety, mechanical or other reason for delay.

not to cause suffer or permit any training flights during Night-time by any jet or large aircraft (being an aircraft with a maxuw in excess of 5700) £10,000 for each and every occasion when a contravention occurs

1.5 The owner shall be under no obligation to make any payment under paragraph 1.4 above where the Flight Movement concerns the type of flight referred to in paragraph 1.4.1 and 1.4.2 or 1.4.3 above.

2. General Noise Limitations

2.1 The Owner with a view to ensuring that the operation of aircraft shall cause the least disturbance by reason of noise will:

2.1.1 ensure that the number of Flight Movements during the first 12 months following the date of this Agreement shall not result in *an* expansion of the

2002/3 63dB LAeq (16-hour 0700 - 2300 hours) contour as attached as plan ‘

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- 2.1.2 within 12 months of the date of this Agreement and again between 21 and 24 months of the date of this Agreement submit to the Council a 63dB LAeq (16-hour 0700 - 2300 hours) noise contour map for the Airport based on the previous 12 months of airport operations, which will have been produced by an independent and appropriately qualified consultant using ANCON or INM models (or agreed alternatives)
- 2.2 If the Owner fails to comply with any obligation in para 2.1 above by the appropriate date, or, in the event that the 63dB LAeq (16-hour) contour, so produced, has expanded beyond the same contour produced in 1996 (Plan 2 attached) but not by more than 5% the Owner shall pay a sum of £10,000 and if by more than 10% the Owner shall pay a sum of £40,000 and if by more than 15% the Owner shall pay a sum of £100,000

3. Dwelling Insulation Scheme

The Owner will submit to the Council a detailed scheme for noise insulation of dwellings that fall within the 63dB LAeq (16-hour 0700 - 2300 hours). The contour is to be calculated on actual Flight Movements during the previous 12-month period and annually re-calculated in terms of any potential extensions of the scheme. The scheme of noise insulation submitted will indicate to the Council what level of noise retardation is to be achieved and over what period

4. Preferred Departure Runway

The Owner will:

- 4.1 adopt the use of runway 28 as the preferred departure runway and will use its reasonable endeavours to achieve a target of seventy per cent (70%) of all departures on that runway subject to safety requirements at all times and to air traffic and weather requirements; and
- 4.2 supply data on runway departure usage to the Council and MACC on a monthly basis

5. Noise Abatement Routes

Subject to ongoing discussion. Detail to follow, and include in consultation.

Cross referenced to the Airport Manual and the Masterplan.

5.3 Training Flights
The owner will not permit any training flights on Sundays and Bank Holidays

6. Noise Monitoring Terminals

6.1 The Owner will:

- 6.1.1 *Within this Agreement maintain* at least two Noise Monitoring Terminals which shall have been agreed by an independent aviation acoustic consultant having regard to the guidelines laid down by the International Civil Aviation Organisation;
- 6.1.2 calibrate and maintain the Noise Monitoring Terminals in accordance with manufacturer's instructions;
- 6.1.3 provide the results of the noise monitoring to the Council and MACC on a monthly basis; and
- 6.1.4 within this Agreement *continue to* provide for use by the Council a self-contained portable noise monitoring unit (capable of providing noise pressure data for a continuous 24-hour period) which complies fully with all appropriate British Standards/Codes of Practice for use in domestic and institutional properties and thereafter be responsible for both repair and replacement of the unit

6.1.5 using the monitoring data obtained, in liaison with the Council, produce in writing a Noise Strategy, whereby a planned approach to noise control is developed and implemented.

6.2 The Council will:

6.2.1 on receipt of the portable noise monitoring unit supplied by the Owner assume responsibility for maintenance and calibration of the unit and keep the unit suitably and adequately insured for replacement in the event of loss damage or third party claims

7. **Pollution Monitoring**

The Owner will:

7.1 *within this Agreement* install *and continue to maintain* not less than three passive atmospheric pollution monitoring tubes at such locations as the Owner (using a best practice policy) may determine;

7.2 the pollutants to be monitored at each site will be determined by the Owner in consultation with the Council and in accordance with any good practice policy advised by the Department of Trade and Industry; and

7.3 provide the results of the pollution monitoring to the Council and MACC on a monthly basis

8. **Noise Monitoring**

The Owner will:

8.1 by () (or having carried out twelve months of noise monitoring at the Airport) agree with the Council new maximum noise levels for aircraft movements

which will produce a significant reduction in the noise impact for individual aircraft over the previous two years of operation and which in no circumstances will be less than a 5% reduction over the average of the previous two years. Failure to agree on a suitable reduction level will result in the matter of a suitable reduction level being put to a mutually agreed and independent expert in aviation matters, or in the event of failure to agree within one month he shall be appointed by the President of the Institute of Vibration and Acoustic Engineers. The expert will decide the appropriate level of reduction suitable for the Airport by reference to the levels of individual aircraft noise acceptable at one or more comparable airports, judged to be comparable by reference to the characteristics of operation and geographic proximity to urban areas. The expert will act as an expert and not as an arbitrator and shall be entitled to rely on his own judgement and opinion. He shall afford the Parties a reasonable opportunity to submit both representations and counter-representations to him and shall consider all of the same. He shall give to the Parties written notice of his determination (within 25 working days after counter-representations) (if any) and his decision shall be binding on both Parties to the Agreement in respect of the level of reduction to be achieved;

8.2 on and after 1st April 2002 pay the sum of £500 per aircraft exceeding the agreed or imposed maximum noise level referred to in 8.1 and for every 1 decibel (dB) above the agreed base level the additional sum of £500

9. Engine Testing

The Owner agrees:

9.1 that no Engine Testing (other than for emergency purposes which shall in any case not exceed five separate occurrences in any calendar year) shall occur within the Airport between 2300 - 0800 hours on. Between 2100 - 2300 hours the number of occurrences of Engine Testing (whether for emergency purposes or otherwise) shall not

exceed 10 separate occurrences in any calendar year. For every occurrence of Engine Testing above these limits the Owner will pay the sum of £1,000. For the purposes of this provision "emergency" shall be taken to refer to any occurrence or circumstances not reasonably foreseeable

9.2 within six months from the date of this Agreement to submit to the Council a proposal for the location of an Engine Testing Area located in such a position as to minimise potential noise disturbance;

9.3 thereafter to be restricted to this defined location and that:

- (a) no continuous Engine Testing will exceed a period of sixty minutes' duration and that a break of a period at least equal to the period of any Engine Testing shall be allowed after any Engine Testing before any further Engine Testing takes place;
- (b) Engine Testing will be restricted to 0800 - 2100 hours (other than in the circumstances referred to in 9.1 above);
- (c) the alignment of any aircraft on which engines are being tested will be such as to project the noise envelope over the maximum airport area; and,
- (d) the cumulative effect of Engine Testing will be restricted to ensure that the 13-hour noise level around the Airport does not increase by more than 1dB (as determined by benchmark background noise measurement)

9.4 Not knowingly to allow any aircraft to land at the Airport for the purpose of any Engine Testing on any land adjoining the Airport except in accordance with the terms of paragraph 9.

10. Green Travel Strategy

To develop and link to Airport Masterplan.

11. Environmental Statement

To develop and link to Airport Masterplan.

12. Payments

12.1 The references in paragraphs 1, 2, 8 and 9 of this Schedule to any sums of money to be paid by the Owner shall mean an obligation for the Owner to pay such sums into a fund called the MAEIF one month of the occurrence in question.

12.2 If MACC shall have been constituted as a charitable or other trust and shall administer the MAEIF the same shall be expended at the discretion of such trust.

12.3 If MACC does not become so constituted or fails to administer the MAEIF payments shall be made to the Council and may be expended by the Council in consultation with MACC (or in the event that the same ceases to exist or fails to respond to any requests for consultation then at the discretion of the Council) for the purposes of environmental improvements for the public good in the vicinity of the Airport (but outside the perimeter of the Airport). In the event that no expenditure within the vicinity of the Airport is considered appropriate any balance of funds may be expended on similar environmental improvements elsewhere. In the event that the said Consultative Committee or any trust formed ceases to exist the Council shall consult with the Owner instead

13. To use such controls rights or other measure available to the Owner (whether arising by way of contract statutory power or otherwise) to ensure so far as reasonably possible that no person (whether having a legal interest in the Property or any part thereof or not) shall use any part of the Airport in any way which would involve contravention or breach of the terms of this Agreement

IN WITNESS whereof the Parties have executed this Agreement as a Deed in the manner hereinafter appearing

THE COMMON SEAL of THANET)
DISTRICT COUNCIL was hereunto)
affixed in the presence of:)

EXECUTED AS A DEED by KENT)
INTERNATIONAL AIRPORT plc)
acting by:)

Director:

Director/Secretary: