



Council of the  
ISLES OF SCILLY

## **St. MARY'S AIRPORT**

ICAO: **EGHE** IATA: **ISC**

High Cross Lane  
St. Mary's  
Isles of Scilly  
TR21 0NG  
United Kingdom

T: +44 (0)1720 424335 E: [atc@scilly.gov.uk](mailto:atc@scilly.gov.uk)

# **TERMS AND CONDITIONS OF USE**

### **IMPORTANT NOTE**

The Unfair Contract Terms Act 1977 affects terms or notices which exclude or restrict liability for negligence. Your attention is drawn to the clauses (particularly clause 10) in these Conditions of Use which exclude or limit the Council's liability.

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## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions of Use the following words and expressions shall have the meanings assigned to them below:

**"Additional Airside Services"** means the Services referred to in paragraph 2 of the Schedule of Services, (Appendix 1);

**"Agreement for Use"** means the Terms and Conditions of Use of St. Mary's Airport entered into by the Council and the Operator;

**"Aircraft"** means fixed-wing Aircraft and helicopters including integral parts and accessories, equipment and stores;

**"Airfield"** means the airfield (including the runway) within the Airport;

**"Airport"** means St. Mary's Airport situated at St. Mary's, Isles of Scilly, TR21 0NG which is operated by the Council of the Isles of Scilly;

**"Airport Aerodrome Manual"** means the aerodrome manual produced and amended by the Council pursuant to regulation 211 (7) of the Air Navigation Order 2009 as amended;

**"Airside Services"** means the General Airside Services and the Additional Airside Services;

**"Certificate of Air Worthiness"** means a certification of airworthiness pursuant to regulation 16 of the Air Navigation Order 2009 as amended, and shall include any validations thereof and any flight manual or performance schedule relating to the Aircraft;

**"Charges"** means the charges detailed in the Schedule of Charges;

**"Conditions of Use"** means these Terms and Conditions of Use including the Appendices;

**"Council"** means the Council of the Isles of Scilly, Town Hall, St. Mary's, Isles of Scilly , TR1 0LW;

**"Council's Representative"** means that person specified in Schedule 1 of the Agreement for Use;

**"Environment"** means any and all living organisms (including man), ecosystems, property and the media of air (including air in buildings, natural or man-made structures, below or above ground), water (including water as defined in section 104(1) of the Water Resources Act 1991 and within drains and sewers) and land (including any under any water as described above and whether above or below surface);

**"Environmental Laws"** means any or all applicable EU, national or local statutes, regulations, bylaws, orders, regulations or other law or subordinate legislation or common law, all orders, ordinances, decrees or regulatory codes of practice, circulars, guidance notes and equivalent controls, and any byelaw, order, notice, demand, decision, decree, injunction, resolution or judgment of or agreement with any competent authority concerning the protection of human health or which have as a purpose or effect the protection of or prevention of harm to the Environment or health and safety, including without limitation in relation to any Hazardous Substance, packaging or interference with the use or enjoyment of land or the erection, occupation or use of man-made or natural structures above or below ground;

**"Flight"** shall have the same meaning as in regulation 256 of the Air Navigation Order 2009 as amended;

**"Freight"** means any cargo including mail;

**"General Airside Services"** means the Services referred to in paragraph 1 of the Schedule of Services; (Appendix 1)

**"Hazardous Substance"** means any natural or artificial substance, matter or movement (whether solid, liquid, gas, noise, ion, vapour, vibration, electromagnetic or radiation, and whether alone or in combination with any other substance) which is capable of causing harm to or having a deleterious effect on the Environment or being a nuisance or which restricts or makes more costly

the use, development, ownership or occupation of any property (including without limitation the Airport and properties in its vicinity);

**"Insolvency Event"** means each of the following events occurring in relation to the Operator:

- (a) the issue of a petition for winding-up (or in the case of an individual, for bankruptcy) which petition is not dismissed within 28 days of its issue;
- (b) the making of an order or an effective resolution being passed for winding-up except for the purpose of a solvent reconstruction or amalgamation on a basis previously approved by the Council in writing (such approval not to be unreasonably withheld);
- (c) the appointment of or the making of an order for the appointment of an administrative receiver, administrator, trustee or similar officer;
- (d) an encumbrance, receiver (including an administrative receiver) or other similar officer taking possession of the whole or any part (which is material in the context of the performance of the obligations of the Operator (as appropriate) under these Conditions of Use) of the undertaking, property or assets of the Operator (as appropriate);
- (e) being subject to proceedings analogous to any of the above in any jurisdiction in which the Operator is incorporated or carries on business;
- (f) the making of a composition with creditors generally; or
- (g) being unable to pay debts as they fall due;

**"Movement"** means in relation to an Aircraft either the taking off or the landing of that Aircraft and in relation to baggage or Freight handling one complete operation of either loading or unloading an Aircraft, as the case may be;

**"MTOW"** means in respect of an Aircraft the maximum total weight at which the Aircraft may take off in the United Kingdom in the most favourable circumstances in accordance with the Certificate of Air Worthiness for the time being in force, and if the Certificate of Air Worthiness indicates a maximum total weight at which the Aircraft may taxi, that weight shall be taken to be the MTOW;

**"Opening Hours"** means Monday to Saturday As published in the UK AIP or as amended from time to time and notified by NOTAM.

**"Operator"** means the person or organisation for the time being having the management or possession of the Aircraft whether owner, user, pilot or otherwise and shall include that person's or organisation's respective servants, agents and contractors using, attempting to make use of or having used the facilities offered by the Council at the Airport or elsewhere;

**"Passenger"** means any person joining or leaving an Aircraft at the Airport with the exception of the flight crew and cabin staff operating that Aircraft;

**"Rate"** means the rate at which a Charge is charged to the Operator;

**"Remedial Action"** means any steps reasonably necessary for limiting, removing, remedying, cleaning up, abating, containing, preventing or ameliorating damage to the Environment or carrying out such investigative or monitoring work as is reasonably required in relation thereto;

**"Schedule"** means the Schedule of Charges or the Schedule of Services and "Schedules" means either or both of them;

**"Scheme of Charges"** means the fees and charges as advertised from time to time by the Council (in accordance with Appendix 2);

**"Schedule of Services"** means Appendix 1 to these Conditions of Use as amended from time to time by the Council;

**"Scheduled Services"** means a service operated according to a published timetable (as amended from time to time) and available for use by members of the public; **"Special Condition"** means the conditions agreed between the Council and the Operator in an airline agreement which are expressed to vary or qualify these Conditions of Use;

**"United Kingdom"** means the United Kingdom of Great Britain and Northern Ireland;

**"Value Added Tax"** means value added tax as provided for in the Value Added Tax Act 1994 and legislation supplemental thereto or in any primary or secondary legislation promulgated by the European Community or any official body or agency thereof to the extent it has effect in the United Kingdom and any similar or turnover tax replacing or introduced in addition to any of the same.

- 1.2 In these Conditions of Use except where expressly stated to the contrary or the context otherwise requires:
- (a) **"includes"** and **"including"** shall be construed without limitation;
  - (b) references to a **"Party"** means the Operator or the Council and includes its permitted assignees (if any) and/or the successors in title to that part of its undertaking which includes these Conditions of Use;
  - (c) references to a **"Person"** includes any person, individual, Council, firm corporation, government, state or agency of a state or any undertaking (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
  - (d) reference to a statutory provision shall include a reference to:
    - (i) the statutory provision as modified or re-enacted or consolidated from time to time whether before or after the date of publishing these Conditions of Use; and
    - (ii) any subordinate legislation made under the statutory provision before or after the date of publishing these Conditions of Use;
  - (e) references to **"clauses"** or **"appendices"** are to clauses or appendices of these Conditions of Use;
  - (f) where a party is required by these Conditions of Use to act **"reasonably"** it shall act having regard to the interests of both the Council and the Operator;
  - (g) words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
  - (h) references to these Conditions of Use or any other agreement or document includes these Conditions of Use or as the case may be, such other agreement or document in each case as the same may from time to time be amended, supplemented or notated;
  - (i) any references to agents, officers, employees, servants, contractors and/or subcontractors of any tier of either Party (or any combination thereof) shall be deemed to exclude the other of the Council and the Operator and any of its agents, officers, employees, servants and subcontractors; and
  - (j) any obligation on the Council and the Operator to do or not to do any thing shall be deemed to include an obligation to procure or not to permit or suffer such things to be done by such Person's agents, officers, employees, servants, contractors and subcontractors of any tier and acts or omissions of either the Council's or the Operator's agents, officers, employees, servants and contractors or subcontractors of any tier shall be deemed to be acts or omissions of such party for the purposes of these Conditions of Use.
- 1.3 The Appendices form part of the operative provisions of these Conditions of Use and references to these Conditions of Use shall, unless the context otherwise requires, include references to the Appendices.
- 1.4 The index to and the headings in these Conditions of Use are for information only and are to be ignored in construing the same.

## **2. GENERAL CONDITIONS**

- 2.1 The use of the Airport by the Operator or on its behalf is subject to:
- (a) these Conditions of Use;
  - (b) compliance with the local traffic regulations (including local flying restrictions and remarks) published from time to time in the AGA Section of the United Kingdom Aeronautical Information Publication (UK AIP) and by NOTAM;
  - (c) compliance with the byelaws, instructions, orders, rules, regulations or directions published from time to time by the Council (including such of the Airport Aerodrome Manual as the Council may advise the Operator), the Civil Aviation Authority or the Department for Transport; and
  - (d) oral instructions, orders or directions given by any duly authorised employee or agent of the Council.
- 2.2 The Council reserves the right at any time by notice given to the Operator to vary, amend or discharge any of the terms set out in these Conditions of Use and the Schedules.
- 2.3 The Council shall not be liable to the Operator in respect of any loss suffered by the Operator by reason of any variation, amendment or discharge as referred to in clause 2.2 unless specifically agreed between the Council and the Operator as a Special Condition.
- 2.4 A copy of this Agreement for use will be available on request from the Airport Manager, but shall be deemed to bind the operator whether or not a copy has been requested. All operators with Aircraft based at the Airport will be provided with a copy of this Agreement for Use for which they will be required to sign an acknowledgement of receipt.
- 2.5 In the event of inconsistency and so far as permitted by law these conditions shall take precedence over any other conditions or terms.

## **3. PARKING**

- 3.1 The Council's Representative may at any time order an Operator to:
- (a) move a parked Aircraft to another position; or
  - (b) remove it from the Airport.

If the Operator fails to comply with such an order within the period specified, the Council shall be entitled to charge the Operator a surcharge of such amount as the Council considers to be fair and reasonable in the circumstances.

- 3.2 The Operator shall not park, hangar, or house an Aircraft at the Airport for periods in excess of one month without the prior written agreement of the Council's Representative.
- 3.3 Aircraft parked, or housed at the Airport on any grass, or other areas, outside of the Opening Hours will be deemed to be parked at the Operators own risk. The Council will not accept any responsibility for loss or damage, in accordance with clause 10.2 below.

## **4. SERVICES**

- 4.1 The Council may at its sole discretion provide all or any of the Services requested by the Operator. The Council will consider, in determining whether or not to provide Services requested by the Operator:
- (a) the availability of equipment and services to the Council;
  - (b) the order of priority reasonably given by the Council to the requirements of the various Operators; and
  - (c) the public service obligations which are imposed on the Council or its shareholder.

- 4.2 The Council reserves the right at its sole discretion to modify, suspend or terminate the provision of the Services at any time.
- 4.3 The Council shall not be liable to the Operator in respect of any loss suffered by the Operator by reason of any Service not being available to it unless specifically agreed between the Council and the Operator as a Special Condition.
- 4.4 If an Operator chooses to use any of the Services provided by the Council under clause 4.1 the Operator shall:
- (a) be responsible for safe custody at all times of diplomatic mail and precious goods;
  - (b) ensure that its staff are adequately trained and co-operate fully with those of the Airport to ensure the safe, efficient and economical operation of the Services.

## **5. CHARGES**

- 5.1 The Operator shall pay the appropriate Charges for the Landing, parking or housing of Aircraft as approved from time to time by the Council, and as set out in the Schedule of Charges.
- 5.2 In addition to paragraph 5.1 the Operator shall pay in respect of the Services requested or used by it:
- (a) the Charges in respect of the Services listed in the Schedule of Services;
  - (b) a reasonable amount determined by the Council in respect of all other supplies, services, facilities or equipment provided to the Operator or any Aircraft under the Operator's control at the Airport.
- 5.3 The Council reserves the right at any time to vary, amend or discharge any of the Charges or Rates. Any variation to the Charges or Rates shall only be effective on 30 days notice being given by the Council to the Operator of such variation. The Council shall not be liable to the Operator in respect of any loss suffered by the Operator by reason of any variation of the Charges or Rates.
- 5.4 No reduction of the Rates or exemption from Charges will be allowed by reason of the temporary unavailability of any Services, assistance, supplies or other facilities. The Council accepts no liability for payment of any additional charges which the Operator may incur in the event of a diversion or requirement to land at another landing site.
- 5.5 The Council shall be entitled at its sole discretion to reduce any Rate or waive any of the Charges but such reduction or waiver shall be of no effect unless it is in writing and signed by the Council's Representative. In particular, the Council may reduce Rates or waive Charges for specific categories of Aircraft or for Scheduled Services if the Council's Representative considers that it is in the interests of the Council to encourage the development of traffic.

## **6. LOAD AND WEIGHT DETAILS**

- 6.1 The Operator shall furnish to the Council, in such form as the Council may from time to time determine, information relating to the Movements of its Aircraft at the Airport within 24 hours of each of those Movements, including information about the number of all Passengers and the volume of baggage and Freight embarked and disembarked at the Airport, and such other information as the Council may reasonably require.
- 6.2 The Operator shall also furnish to the Council on demand, in such form as the Council may from time to time determine, details of the MTOW in respect of each Aircraft owned or operated by the Operator or any changes to such MTOW.
- 6.3 The Operator shall furnish to the Council within 7 days of a written request made by the Council copies of Aircraft load sheets to enable verification of all details with respect to the Passengers, baggage and Freight carried on any flights landing at or departing from the Airport during a specified period. This clause shall also apply to the furnishing of copies of extracts from Aircraft flight manuals to enable verification of Aircraft weight and noise characteristics. The Operator shall, following a request in writing made by the Council, produce for inspection by any person duly authorised in writing by the Council the original or copies of such documents.

- 6.4 Without prejudice to its other remedies and actions at law, where the Operator fails to provide (or fails to provide within the time required) the information required under this clause 6, the Council shall be entitled to assess the Charges payable by the Operator by reference to the MTOW and the maximum Passenger capacity of the Aircraft type.

## **7. PAYMENT**

- 7.1 If the Council has agreed credit facilities with the Operator, payment shall be due within 30 days of the date of the Council's invoice (or within such other credit period as may be agreed in writing). Any queries relating to the invoice must be raised in writing by the Operator within that 30 day period or credit period as applicable.
- 7.2 If the Council has not agreed credit facilities with the Operator or the credit facilities have been withdrawn, payment shall be due on demand and, in any event, before the Aircraft in relation to which the Charges have been incurred departs from the Airport.
- 7.3 Any credit or discount facilities granted by the Council may be immediately withdrawn by the Council following default in payment on the due date for payment or breach of any of the provisions of these Conditions of Use or on the occurrence of any Insolvency Event or otherwise on 28 days notice.
- 7.4 All payments shall be made in Pound Sterling or, at the sole discretion of the Council, in any other currency and in such manner or to such account as the Council may determine.
- 7.5 If the Operator fails to make payment on the due date for payment, the Council shall be entitled to charge interest from the due date of payment until payment is made in full, calculated on a daily basis on the amount unpaid at the rate of 4 per cent per annum above the base rate of Lloyds TSB Bank Plc.
- 7.6 For Scheduled Services and any programmed charter services, the Council may require security to be provided for the payment of the Charges estimated to be payable for a period of up to three months in respect of such Services prior to such Services commencing.

## **8. VALUE ADDED TAX**

- 8.1 All amounts expressed to be payable by either Party pursuant to these Conditions of Use are exclusive of Value Added Tax which may be properly chargeable thereon. Each Party shall pay to the other Party any Value Added Tax properly chargeable in respect of any supply made to it pursuant to these Conditions of Use provided that it shall first have received from the other Party a valid VAT invoice in respect of that supply which complies with the requirements of Part III of the Value Added Tax Regulations 1995. Without prejudice to and save as mentioned earlier in this clause 8.1 where any supply is made pursuant to these Conditions of Use the recipient of the supply shall pay to the supplier the amount of any Value Added Tax chargeable in respect thereof upon production of a valid VAT invoice.
- 8.2 Where any amount is payable pursuant to these Conditions of Use to reimburse or indemnify a Party for any expenditure which that Party may have incurred, such expenditure shall be taken to include an amount equal to any Value Added Tax comprised therein which is not recoverable by that Party as input tax under section 25 of the Value Added Tax Act 1994.
- 8.3 Where these Conditions of Use permit either Party to withhold or deduct, whether by way of set-off or otherwise, an amount from any payment to the other Party and the amount which may be withheld or deducted is on account of a cost or expense, the amount of that cost or expense shall be calculated exclusive of Value Added Tax (if any) except Value Added Tax which is not recoverable as input tax or otherwise under section 25 of the Value Added Tax Act 1994.

## **9. LIEN**

- 9.1 So long as an Aircraft, its parts and accessories or any vehicle shall be upon the Airport or upon any land under the control of the Council or its shareholder, if Charges, costs or other liabilities of whatever nature and whenever incurred are not paid by the due date, the Council shall have a continual contractual lien both particular and general over such Aircraft, its parts and accessories and any vehicle until payment in full is made. The Council shall be entitled to prevent the Operator (or any Person acting on the Operator's behalf) from removing the Aircraft, its parts and accessories or any vehicle from the Airport or any land under the control of the Council or its



shareholder. If an Aircraft is removed from the Airport or any land under the control of the Council or its shareholder the said lien shall not be lost by reason of such removal but shall continue and shall be exercisable at any time when the Aircraft has returned to and is upon the Airport or any land under the control of the Council or its shareholder (so long as any Charges, costs or other liabilities shall remain unpaid, whether incurred before or after such departure). For the avoidance of doubt the lien shall be exercisable inter alia, in respect of:

- (a) interest payable pursuant to clause 7.5; and
- (b) all Charges, costs or other liabilities in respect of the relevant Aircraft, whether incurred by the Operator or by a third party; and
- (c) all Charges, costs or other liabilities owed by the Operator to the Council whether in respect of the relevant Aircraft, any other Aircraft or otherwise.

9.2 If payment of any Charges, costs or liabilities as referred to in clause 9.1 is not made to the Council within 28 days after a letter demanding payment has been sent by post addressed to the Operator or to the registered owner of the Aircraft at its last known address, the Council shall be at liberty from time to time and in such manner as it shall think fit to sell, remove, destroy or otherwise dispose of the Aircraft and/or any of its parts and accessories or any vehicle. In such event, the Council shall be under no duty to obtain the best possible price. The Council may apply the sale proceeds in discharging any Charges, costs or other liabilities due to the Council and any fees, expenses or costs incurred in connection with such sale, removal, destruction or disposal of the Aircraft, before accounting for any balance to any party entitled to it.

9.3 The Council's contractual rights under clauses 9.1 and 9.2 shall be in addition to and without prejudice to any right of detention or any other remedy which the Council may have whether under the Civil Aviation Act 1982 or any other statutory provision.

9.4 If an Aircraft is detained pursuant to section 88 of the Civil Aviation Act 1982 and Charges are not paid within 56 days of the date when detention began, the Council may sell any detained Aircraft, its parts and accessories or any vehicle (subject to the provisions of the said section 88) in order to satisfy any such Charges.

9.5 Neither the Council nor its servants or agents shall be liable for loss of or damage to the Aircraft, its parts and accessories or any vehicle occurring while the Aircraft is being removed or dealt with in accordance with this clause 9, whether or not arising or resulting directly or indirectly from any act, omission, neglect or default on the part of the Council, its servants or agents.

## **10. LIABILITY OF THE COUNCIL AND THE OPERATOR**

10.1 Nothing contained in this clause 10 shall limit or restrict the Council's liability for death or personal injury resulting from its negligence.

10.2 Neither the Council nor any agents, officers, employees, servants, contractors and/or subcontractors of the Council shall be liable for any loss or damage (including consequential loss or damage) to the Aircraft, its parts or accessories, or any property contained in the Aircraft, or any other property of the Operator or under its control occurring while the Aircraft is:

- (a) at the Airport, including any damage whatsoever caused by adverse weather conditions; or
- (b) in the course of taking off or landing at the Airport;
- (c) in the course of being removed or dealt with pursuant to clause 9; or
- (d) in the course of parking, manoeuvring or taxiing;

arising or resulting directly or indirectly from any act, omission, neglect or default on the part of the Council, its agents, officers, employees, servants, contractors and/or subcontractors unless done by the Council or any of its agents, officers, employees, servants, contractors and/or subcontractors with intent to cause damage or recklessly and with the knowledge that damage would probably result, provided that if an Aircraft is causing an obstruction to the normal operation of the Airport and is moved to remove that obstruction, such knowledge shall not result in the Council's liabilities as aforesaid.

- 10.3 Neither the Council nor any of its agents, officers, employees, servants, contractors and/or subcontractors shall be liable for any loss or damage (including consequential loss or damage), costs or expenses arising from or relating to acts or omissions of third parties at the Airport, whether such third parties are users of the Airport, members of the public, intruders or otherwise, and whether contributed to by any act, omission, neglect or default on the part of the Council, its agents, officers, employees, servants, contractors and/or subcontractors .
- 10.4 The Operator shall at all times fully and promptly indemnify and keep indemnified the Council, its agents, officers, employees, servants, contractors and/or subcontractors against any liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of any death, personal injury or loss or damage (whether to property or otherwise) whether direct, indirect or consequential and of any kind and however such loss, damage or injury may be caused including, without prejudice to the generality of the foregoing, any claim arising or resulting directly or indirectly from any act, omission, neglect or default on the part of the Operator, its agents, officers, employees, servants, contractors and/or subcontractors or any other person connected to the Operator in any way, relating to or arising out of the Operator's use of the Airport.
- 10.5 The Operator shall be responsible for taking all steps necessary to secure their Aircraft if it is parked or housed at the Airport and shall indemnify the Council against all or any loss, damage or liability which the Council may suffer or incur as a result of the failure to do so by the Operator.
- 10.6 When an Aircraft is involved in an incident which prevents use of any part of the Airport the Operator will, as soon as practicable and after obtaining permission from the Air Accident Investigation branch, (AAIB), commence removal/rescue or salvage of the Aircraft and in default the Council may remove/rescue or salvage the aircraft at its discretion and the Operator shall:
- (a) fully and promptly indemnify the Council and its agents against all damage, claims, costs, demands, acts or omissions whatsoever arising while the Council or its agents remove or rescue or salvage the Aircraft;
  - (b) fully and promptly pay to the Council any resultant costs, damages or losses (consequential or otherwise) relating thereto.

## **11. INSURANCE**

- 11.1 The Operator shall effect and maintain Passenger and third party liability insurance in respect of any Aircraft operated or used by the Operator at the Airport in such amounts not being less than £25Million USD as the Council may agree in its reasonable discretion, taking into account the size and type of Aircraft operated. Evidence of such insurance shall be produced to the Council on demand.
- 11.2 The Operator shall at all times fully indemnify and keep indemnified the Council against any breach of this clause 11 (but without prejudice to any other rights of the Council under these Conditions of Use).

## **12. ENVIRONMENTAL LAWS**

- 12.1 The Operator shall comply fully with all Environmental Laws and, without limitation to the foregoing, shall not cause a nuisance (common law or statutory) to any owner of property in the vicinity of the Airport.
- 12.2 The Operator shall be liable for and shall promptly indemnify and keep indemnified the Council and its agents, officers, employees, servants, contractors and/or subcontractors against any or all losses, costs, expenses, demands, claims, liabilities or damages (including without limitation fines, penalties, the reasonable cost of Remedial Action regarding any spillages of Hazardous Substances (including without limitation aviation fuels) and legal and other professional fees) incurred or suffered by the Council or its agents, officers, employees, servants, contractors and/or subcontractors (including without limitation any direct or indirect loss of profits, revenue, or business, or any indirect or consequential loss or damage of any kind) arising from or relating to any Hazardous Substances at, on, in, within, under or migrating to or from the Airport to the extent resulting from or relating to (whether directly or indirectly) any act or omission of the Operator or third parties acting on its behalf.

### **13. OUT OF HOURS OPERATION**

Where an Operator requires use of the Airport outside of the published operating hours, the Operator will be required to apply for and agree to additional terms and conditions as set out in the Out of Hours Indemnity Agreement; available on request from the Airport Manager.

### **14. FORCE MAJEURE**

The Council shall not be in breach of contract by reason of any delay in performing or providing, or any failure to perform or provide, any Services, facilities or supplies, if the delay or failure is beyond the reasonable control of the Council including, without limitation, delay or failure caused by explosion, adverse weather conditions, fire or accident, sabotage, terrorist act, bombings or threats of bombings, strikes or other industrial action, security alerts, acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any government or other authority, air traffic control delays or restrictions, shortage or unavailability of temporary or permanent labour, power failure or breakdown in machinery or equipment or the failure or obstruction of any runway or taxiway.

### **15. INSOLVENCY**

Without prejudice to any other right or remedy available to it, the Council shall be entitled to withhold all Services, facilities or supplies from the Operator without being under any liability to the Operator and all Charges and other indebtedness in respect of Services, facilities or supplies already provided to the Operator shall become immediately due and payable if:

- (a) the Operator breaches any provisions of the Conditions of Use or ceases (or threatens to cease) use of the Airport; or
- (b) if an Insolvency Event occurs with regard to the Operator.

### **16. AUTHORITY TO BOARD AIRCRAFT**

The Council and its servants or agents shall have the authority to board any Aircraft at the Airport for any purpose connected with the operation of the Airport and may require an Operator to pay the costs so incurred by it.

### **17. GENERAL**

#### **17.1 Unfair Contract Terms**

Insofar as any provision of these Conditions of Use is affected by the Unfair Contract Terms Act 1977, such provisions are considered by the Council to be fair and reasonable.

#### **17.2 Assignment**

The Operator shall not without the prior written consent of the Council assign, transfer, charge or declare a trust of the benefit of all or any of the Council's obligations nor any benefit arising under these Conditions of Use nor shall the Operator delegate any of its obligations under these Conditions of Use or subcontract their provision to any third party or agent whatsoever.

#### **17.3 Third Parties**

The Contracts (Rights or Third Parties) Act 1999 shall not apply to these Conditions of Use and no rights or benefits expressly or impliedly conferred by it shall be enforceable under that Act against the Parties by any other Person.

#### **17.4 No Set-off**

- (a) The Operator shall not be entitled to any set-off against, or deduction from, the Charges as against the Council. All Charges must be paid in full pending resolution of any such claim.
- (b) The Council shall be entitled to set-off against any payment due by the Council to the Operator any sums that the Operator owes to the Council under these Conditions of Use (including the Charges).

### 17.5 Notices

- (a) Any notice, demand or other communication given or made under or in connection with the matters contemplated by this agreement shall be in writing and shall be delivered personally or sent by fax or by e-mail or prepaid first class post (air mail if posted to or from a place outside the United Kingdom) to such address as may be notified by one Party to the other, and in default of such notice by a Party, then to that Party's registered office.
- (b) The Council does not accept service of any legal proceedings or process via e-mail or other electronic device.

### 16.6 Governing Law

These Conditions of Use (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to these Conditions of Use or their acceptance) shall be governed by and construed in accordance with English law.

### 16.7 Jurisdiction

Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to these Conditions of Use or their acceptance and, for these purposes, each Party irrevocably submits to the jurisdiction of the courts of England.

**APPENDIX 1 - AIRPORT STANDARD SCHEDULE OF SERVICES****1. GENERAL AIRSIDE SERVICES**

1.1 "General Airside Services" shall mean the following:

- (a) air traffic control services with associated Airfield services and navigational and landing aids;
- (b) rescue and fire fighting services up to and including CAA Category 3;
- (c) meteorological and flight briefing services (including gale and thunderstorm warnings from the [Met. Office], the provision of routine meteorological reports and responding to reasonable, specific requests for information);
- (d) access to the Airfield's movement, manoeuvring and parking areas;
- (e) personnel to load and unload aircraft;
- (f) Airfield services but excluding the security of civil Aircraft and their Passengers, equipment and Freight.

**2. ADDITIONAL AIRSIDE SERVICES**

2.1 The provision of Additional Airside Services shall be at the absolute discretion of the Council.

2.2 "Additional Airside Services" shall mean the following:

- (a) the provision of Services outside Opening Hours which would, but for the fact of them being provided outside Opening Hours, be General Airside Services;
- (b) the provision of air traffic services for training flights involving periods of circuit or instrument consolidation;
- (c) the provision of air ground communication services (AGCS) for SAR and emergency flights.