

## AGREEMENT FOR AIR AMBULANCE SERVICES

DATED 30 November 2020

### PARTIES

- (1) The **Department of Health and Social Care** (a Department of the Isle of Man Government) of Crookall House, Demesne Road, Douglas, Isle of Man, IM1 3QA (the "**Department**"); and
- (2) The **Department of Infrastructure** (a Department of the Isle of Man Government) of Sea Terminal Building, Douglas, Isle of Man, IM1 2RF (the "**DOI**"); and
- (3) **Ann Reynolds** of Isle of Man (Ronaldsway) Airport, Ballasalla, Isle of Man, IM9 2AS (the "**Licensee**"); and
- (4) **IAS Medical Limited** (a company registered in England with company registration number 5914453) whose registered office is situate at 20-22 Wenlock Road, London, England N1 7GU (the "**Contractor**").

### RECITALS

- (A) The Department wishes to implement arrangements with the Contractor for them to provide air ambulance services (more particularly defined below as the "**Services**").
- (B) DOI is the operator of Ronaldsway (Isle of Man) Airport ("**Ronaldsway**") one of the Locations set out in the Specification. DOI is a Party to this Agreement solely on the basis to enable the Contractor to have access to Ronaldsway to supply and deliver the Services.
- (C) The Licensee has responsibility for the management of Ronaldsway and has absolute discretion in respect of the day-to-day operation of Ronaldsway. The Licensee is a party to this Agreement on the basis of her position as Licensee.
- (D) The Contractor is a provider of air ambulance services.
- (E) The Department issued the Invitation to Tender ("**ITT**") to the Contractor on 31 July 2020 describing its requirements for the Services and the Contractor duly responded to the Department with a duly completed form of tender, methodology and schedule of prices and responded to the further clarification questions raised by the Department (the "**Tender Response**").
- (F) The Department and the Contractor wish to enter into this Agreement to lay down the basis upon which the Contractor will provide the Services.

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1. Definitions**

The following expressions shall have the meanings set opposite them below and cognate expressions shall bear corresponding meanings:

#### **“Agreement”**

means this agreement and all schedules and appendices hereto;

#### **“Aircraft”**

means the Principal Aircraft, the Second Aircraft or any other aircraft used by the Contractor to provide the Services under this Agreement (as applicable);

#### **“Applicable Rate”**

means the base rate of interest quoted publicly from time to time by the Isle of Man Bank plus two percent (2%) which for all purposes under this Agreement shall be evidenced by a certificate signed by a manager of such bank whose appointment or designation it shall not be necessary to prove;

#### **“Approved Hotels”**

means (i)for Liverpool the following Hampton by Hilton Liverpool/John Lennon Airport, Crowne Plaza Liverpool-John Lennon Airport, Premier Inn Liverpool John Lennon Airport (ii)for Manchester the following Crowne Plaza Manchester Airport and the Premier Inn Manchester Airport or any other hotel that may be approved in writing by the Department;

#### **“Charges”**

means the prices for the Services as set out in Schedule 4 to this Agreement.

#### **“Commercially Sensitive Information”**

has the same meaning as is defined or described in the FOIA;

#### **“Confidential Information”**

means the Contract Documents, all financial, commercial, technical, operational, organisational, staff, legal, management and other information, data and know-how relating, respectively, to the disclosing Party including details of the disclosing Party’s products, assets, networks and data-networks, stakeholders, customers, suppliers and employees which may be supplied orally or in writing or in any other form by the disclosing Party and is subject to the provisions of Clause 16 (TRANSPARENCY) and Clause 17 (FREEDOM OF INFORMATION);

**“Contract Documents”**

means this Agreement, the ITT and the Tender Response, the DPA Agreement, the change management notes and any other documents that may be agreed between the Parties from time to time;

**“Contractor Affiliate”**

means:

- (i) the Contractor and any entity which, from time to time, is the Contractor’s ultimate holding company or a subsidiary of such ultimate holding company; and/or
- (ii) any entity over which, from time to time, any of the entities defined in sub-paragraph (i) of this definition either directly or indirectly exercises management control, even though it may own less than fifty percent (50%) of the shares and is prevented by law from owning a greater shareholding;

**“Control”**

means the power (directly or indirectly) whether by holding of securities, voting control, contract or otherwise, to appoint or remove a majority of the directors of a company and includes the power to appoint or remove a majority of the directors of a company if exercisable through any number of intermediate bodies corporate prior to its possible exercise over the company in question;

**“Deliverable”**

means a deliverable of the Services: the Deliverables of the Services being identified in the Specification;

**“Department Material”**

means any data, content, software or other materials which are created by or on behalf of the Contractor specifically to fulfil the Contractor’s obligations under this Agreement;

**“Department Retained Responsibilities”**

means those set out in the Specification;

**“DPA Agreement”**

means the data processor contract entitled “Memorandum of Agreement” entered into between the Department and the Contractor on or around the date hereof;

**“FOIA”**

means the Freedom of Information Act 2015;

**“Hangars”**

means the hangars referred to in the Specification;

**“Hull All Risk Insurance”**

means the Hull All Risk Insurance referred to in Clause 22 (INSURANCE);

**“Hull Wall and Allied Perils Insurance”**

means such Hull Wall and Allied Perils Insurance referred to in Clause 22 (INSURANCE);

**“Information”**

has the same meaning as is defined or described in the FOIA;

**“Intellectual Property Rights”**

means any rights subsisting in any patent, petty patent, trade mark, service mark, design right, registered or unregistered design including any applications for the foregoing, present and future copyrights, moral rights, databases, know-how and other trade secret rights, rights of confidence, trade or business names and other industrial or intellectual property rights subsisting anywhere in the world;

**“ITT”**

has the meaning given to it in Recital (C) above;

**“Location”**

means the location(s) set out in the Specification;

**“Minimum Aircraft Requirements”**

means the minimum requirements for the Principal Aircraft and the Second Aircraft as set out in Schedule 2 to this Agreement;

**“Other Perils Exclusion Clause AVN48B”**

means the Other Perils Exclusion Clause AVN48B referred to in Clause 22 (INSURANCE);

**“Parties”**

means the Department and the Contractor and **“Party”** means either one of them as appropriate;

**“Pricing Schedule”**

means the completed schedule of pricing set out at the Appendix to this Agreement;

### **“Principal Aircraft”**

means the Aircraft used by the Contractor for the provision of the Service as set out in the Specification;

### **“Priority Designation”**

means:

- **PRIORITY 1** Time critical. Patients with a life or limb threatening conditions that will undergo immediate treatment on arrival at the receiving hospital.

#### **Examples:**

Extradural haematoma; Pelvic fracture with ongoing haemorrhage; ST elevation; Myocardial infarction without reperfusion after thrombolysis.

- **PRIORITY 2** All other urgent patients including all HDU and ICU transfers.

#### **Examples:**

Open fracture; Malignant spinal cord compression; All high dependency and intensive care patients; Cardiac arrhythmias causing compromise.

- **PRIORITY 3** All other inpatient transfers

#### **Example:**

Completed myocardial infarction with no arrhythmias and no signs of heart failure.

- **PRIORITY 4** Outpatient and other planned transfers.

#### **Examples:**

Radiotherapy planning visit; Outpatient appointment for a systemically well patient with a full leg external fixator.

### **“Requests for Information”**

means requests for Information received by the Department pursuant to the FOIA;

### **“Routine Hours”**

means Isle of Man Airport normal hours of operation. All other times will be considered ‘Out of Hours’;

**“Second Aircraft”**

means the Second Aircraft made available by the Contractor to provide the Services at times of peak demand when the Principal Aircraft is providing Services or is unavailable for technical/operational reasons;

**“Service Levels”**

means the service levels set out in the Specification;

**“Services”**

means the services, supply of goods, functions and responsibilities to be provided by the Contractor as set out in the Specification;

**“Specification”**

means the Specification contained within Schedule 1 to this Agreement;

**“Standard Rate”**

means the Contractor’s standard rate(s) set out in the Pricing Schedule;

**“Supplier Documentation”**

has the meaning given to it in Clause 13 (SUPPLIER DOCUMENTATION);

**“Tender Response”**

has the meaning given to it in Recital (C) above;

**“Term”**

has the meaning given to it in Clause 2 (COMMENCEMENT AND DURATION);

**“Working Days”**

has the same meaning as is defined or described in the FOIA.

**1.2. Interpretation**

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The clause headings in this Agreement are for reference purposes only and shall not be used in the interpretation thereof.
- (b) Expressions which denote any reference to one gender shall include the other and any reference to the singular includes the plural and vice versa.
- (c) References to a **“person”** shall be construed as including references to an individual, firm, company, corporation, partnership, association, unincorporated body of persons, trust, a state or any governmental authority or any other entity whether acting in an individual, financing or other capacity and to such person’s permitted successors.

- (d) References to a "**business day**" shall mean any day which is not a Saturday or a Sunday or any public holiday or bank holiday recognised in the Isle of Man.
- (e) References to clause(s), schedule(s) or appendix/appendices shall refer to clauses, schedules or the appendices of and to this Agreement.
- (f) All references to this Agreement shall include references to all schedules and appendices to this Agreement which schedules and appendices shall form an integral part of this Agreement.
- (g) An expression defined in this Agreement shall bear the same meaning in the appendices.

## **2. COMMENCEMENT AND DURATION**

- 2.1. Subject to sub-Clause 2.2 and Clause 25 (TERMINATION), this Agreement shall be effective from and including the 30<sup>th</sup> November 2020 and shall continue until and including the 29<sup>th</sup> November 2023 (the "**Term**").
- 2.2. The Department shall have the option, at its sole discretion, to extend the Term by up to an additional twenty four (24) months, provided that the Department shall notify the Contractor in writing of its decision to exercise the said option, informing the Contractor of the period of the extension at least three (3) months prior to the expiry of the original period referred to in sub-Clause 2.1.

## **3. SERVICES**

- 3.1. Throughout the Term, the Contractor shall provide the Services in accordance with the terms of this Agreement PROVIDED THAT this Agreement is not intended to be exclusive.
- 3.2. The Contractor shall not, and shall procure that no Contractor Affiliate shall, enter or attempt or purport to enter any arrangement or provide services or deliverables capable of being ordered under this Agreement to the Department or any Department or Statutory Board of the Isle of Man Government.

## **4. SERVICE LEVELS**

The Contractor shall provide the Services in accordance with the Service Levels and all other appropriate qualitative and quantitative service levels of performance as defined in the Contract Documents.

## **5. DEPARTMENT'S OBLIGATIONS**

- 5.1. In consideration for the provision by the Contractor of the Services, the Department shall:
  - (a) pay the Contractor the Charges in accordance with the terms of this Agreement; and

(b) be solely responsible for and shall provide (or procure the provision of) all the Department Retained Responsibilities.

5.2. If the Department fails to provide any of the Department Retained Responsibilities in the form and at the time agreed between the Parties (a "**Department Failure**") and, as a direct result thereof, the provision by the Contractor of any Services (including but not only the implementation in accordance with the Timetable) are adversely affected, the Contractor shall not be held to be in breach of any obligation under this Agreement to the extent that the Department Failure directly affects the performance of such obligation, on condition that the Contractor notifies the Department of the nature of the Department Failure as soon as practicable but, in any event, within ten (10) business days of the Contractor becoming aware of such a Department Failure.

## **6. PARTY REPRESENTATIVES**

6.1. Throughout the Term, the Parties shall each nominate and maintain a representative, as the single point of contact between the Parties, to regulate and control the implementation and performance of the Services under this Agreement. Such a representative may be changed by the Party appointing him or her by giving written notice to the other Party. The representatives shall meet as regularly as may be agreed between the Parties.

6.2. Throughout the Term the Parties shall attend such meetings at such frequency and location as the Department shall reasonably require.

## **7. VARIATION**

The terms of this Agreement may only be varied by agreement in writing between and signed by the Parties.

## **8. CHARGES AND PAYMENT MILESTONES**

8.1. The Contractor agrees to charge the Department the Charges for the provision of the Services.

8.2. A percentage of the Charges will be payable at the payment milestones as set out in Schedule 2 to this Agreement (the "**Payment Milestones**").

8.3. The Charges are exclusive of any VAT or other taxes or duties levied on such sums and subject to receipt of a valid VAT invoice the Department undertakes to pay and indemnify the Contractor in respect of any such VAT or other tax or duty properly chargeable to the Department by the Contractor.

8.4. The Contractor shall ensure that if at any time during the Term of this Agreement the Contractor or any Contractor Affiliate offers to any other customer or prospective customer anywhere in the world (in relation to the supply of services and/or deliverables which are the same as or similar to Services and/or Deliverables that have been or could be ordered under this Agreement) any price, discount,



warranties, benefits and/or other terms which (assessed on a like for like comparison, including the nature and volume of the deliverables and services supplied to the other customer and any agreed service levels) are more favourable to such other customer or prospective customer than the price, discount, warranties, benefits or other terms set out in, or otherwise made available to the Department in connection with this Agreement (or any part of this Agreement, including any constituent element of the rates or the Charges), the Contractor shall promptly notify the Department of the more favourable terms and shall offer to amend the terms of this Agreement so that the Department may also receive Services and/or Deliverables on the more favourable terms. If the Department accepts such offer to amend the terms, the terms of this Agreement shall be amended accordingly with effect from the date when the Department accepts such offer or, if earlier, the date when the Contractor or any Contractor Affiliate contracts with any other customer on such more favourable terms.

## **9. PAYMENT**

- 9.1. Following each Payment Milestone, the Contractor will issue itemised invoices to the Department and the Department will pay the sums due in accordance with the provisions of this Agreement.
- 9.2. All invoices shall be issued by the Contractor to the Department within sixty (60) days of a Payment Milestone or such other date(s) agreed between the Parties for the issuing of an invoice.
- 9.3. All invoices properly due shall be payable within thirty (30) days of receipt.
- 9.4. Where an invoice relates to the delivery of documentation, the Department shall be entitled to withhold payment of the same pending the delivery and acceptance of that documentation, acceptance of that documentation shall be deemed to have occurred unless the Department, acting reasonably, shall have notified the Contractor in writing within ten (10) days of delivery that the Department rejects such documentation.
- 9.5. The Contractor may claim interest on any amount overdue at the Applicable Rate from due date until date of payment, both days inclusive, which interest shall be equal to the Applicable Rate and calculated on a daily basis.
- 9.6. Notwithstanding the terms of this Clause 9 (PAYMENT), the Department shall not be penalised in any way (or be deemed to be in breach of any provisions of this Agreement) in respect of a delay by the Department in fulfilling a payment obligation under this Agreement where the Department has reasonable grounds for disputing the accuracy or validity of any Charges, and provided that it shall have paid any undisputed part of any Contractor invoice. Any dispute which cannot be resolved satisfactorily between the Parties shall be resolved in accordance with Clause 29 (DISPUTE RESOLUTION).

- 9.7. Notwithstanding the terms of this Clause 9 (PAYMENT), whenever any sum of money shall be due and payable by the Contractor to the Department, such sum may at the Department's discretion be deducted from or applied to reduce the amount of any sum then due, or which at any time afterwards may become due, to the Contractor from the Department under this Agreement.
- 9.8. With regard to sub-Clause 9.2 above time shall be of the essence.

## **10. LIQUIDATED ASCERTAINABLE DAMAGES**

- 10.1. If the Services have not been provided in accordance with the terms of this Agreement for reasons solely due to an act or omission of the Contractor or the Contractor's subcontractor, the Contractor shall indemnify the Department on demand by way of liquidated damages reflecting the losses of the Department in respect of the non-provision of the Services in accordance with this Clause 10.
- 10.2. The Contractor and the Department agree and intend that the liquidated damages amounts which the Contractor may become liable to pay pursuant to this Clause 10 are not a penalty but rather a genuine pre-estimate of the loss which the Department will suffer as a result of a failure by the Contractor to provide the Services in accordance with the terms of this Agreement.
- 10.3 The rate of liquidated damages referred to in sub-Clause 10.1 shall be the costs incurred by the Department in sourcing any part of the Services which the Contractor is unable or fails to provide, from an alternative provider over and above the Charges which would have been payable to the Contractor for the provision of the equivalent Services.
- 10.4 The total sum of liquidated damages shall be limited to the sum of Twelve Thousand Pounds (£12,000) excluding VAT which shall be paid by the Contractor to the Department on each separate occasion that the Services have not been provided in accordance with the Terms of this Agreement solely due to an act or omission of the Contractor or the Contractor's subcontractor
- 10.5 The liquidated damages constitute a discharge in respect of all other damages or compensation which might be due in respect of the above mentioned acts or omissions.

## **11. TRADEMARKS AND TRADE NAMES**

- 11.1. The Contractor may not, without the prior written consent of the Department, use the names, service marks, trademarks, logos or other corporate identifications of any Isle of Man Government department, statutory board or other Isle of Man Government body.
- 11.2. The Department may not, without the prior written consent of the Contractor, use the names, service marks, trademarks, logos or other corporate identifications of the Contractor.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1. Except as expressly provided in this Clause 12 (INTELLECTUAL PROPERTY RIGHTS), Intellectual Property Rights shall remain the property of the Party devising, creating, first recording or owning the same and nothing in this Agreement shall be deemed to confer any assignment, right, title or licence of the Intellectual Property Rights of one Party to the other Party and nothing in this Agreement shall be deemed to restrict the rights of either Party to own, use, enjoy, licence, assign or transfer its own Intellectual Property Rights.
- 12.2. Nothing in this Agreement or the Contract Documents shall prevent the Department from permitting contractors or other temporary staff engaged by the Department from using the data, content, software or other material supplied by the Contractor to the Department pursuant to this Agreement as part of the engagement of those contractors or other temporary staff.

## **13. SUPPLIER DOCUMENTATION**

- 13.1. The Contractor shall provide the Department with detailed documentation and user manuals for the Services rendered pursuant to the terms of this Agreement (the "**Supplier Documentation**"). The Supplier Documentation shall be at a standard sufficient to enable an experienced user to use the same or to such other standards as the Parties may agree from time to time. The Contractor shall supply the Supplier Documentation to the Department at the same time as the supply to the Department of the relevant Services. The Parties acknowledge that in respect of Third Party Material, the Supplier Documentation shall be the documentation provided to the Contractor by the third party owner of the Third Party Material.
- 13.2. For the avoidance of doubt, the Department shall be free to photocopy or otherwise duplicate the Supplier Documentation and to use such only for the purpose of the Services and subject to any limitations detailed in the Supplier Documentation relating to Third Party Material.

## **14. COMPLIANCE**

The Parties shall, in the performance of their obligations under the Contract Documents, comply with all applicable statutes, regulations and orders and, in particular, shall comply with the requirements of the UK Official Secrets Acts as they are extended and applied to the Isle of Man by Order in Council, the FOIA and the Data Protection Act 2002 and all regulations and orders made thereunder and the Isle of Man Government policies on confidentiality and security and shall obtain and maintain in force all applicable notifications and licences under such legislation.

## **15. CONFIDENTIALITY AND NON-DISCLOSURE**

- 15.1. For the purpose of this Clause 15 (CONFIDENTIALITY AND NON-DISCLOSURE) "**receiving party**" shall mean each of the Parties receiving the other's

Confidential Information and "**disclosing party**" shall mean that Party disclosing its Confidential Information to the other.

- 15.2. The receiving party may disclose Confidential Information of the disclosing party only to its officers and employees which for the avoidance of doubt shall include contractors and temporary staff and then only such officers and employees to whom such disclosure is reasonably necessary, provided that such officers and employees agree in writing or through their contracts of employment or of appointment as the case may be to be bound by the terms and conditions of this Clause 15 (CONFIDENTIALITY AND NON-DISCLOSURE) prior to such disclosure.
- 15.3. The receiving party may disclose Confidential Information of the disclosing party to a subcontractor where such disclosure is reasonably necessary for the purposes of the Services provided that the subcontractor has first agreed in writing to be bound by the terms and conditions of this Clause 15 (CONFIDENTIALITY AND NON-DISCLOSURE) (or similar terms and conditions) prior to such disclosure.
- 15.4. The receiving party agrees:
  - (a) not to disclose Confidential Information of the disclosing party to any third party for any reason or purpose whatsoever without the prior written consent of the disclosing party, save in accordance with the provisions of this Clause 15 (CONFIDENTIALITY AND NON-DISCLOSURE);
  - (b) not to utilise, employ, exploit or in any other manner whatsoever use Confidential Information of the disclosing party for any purpose whatsoever other than strictly in relation to this Agreement; and
  - (c) that the unauthorised or unlawful use or disclosure of Confidential Information of the disclosing party may cause irreparable loss, harm and damage to the disclosing party.
- 15.5. The receiving party agrees to protect the Confidential Information by using at least the same standard of care used to safeguard its own information of a confidential nature and by taking all reasonable steps to prevent any unauthorised disclosure of Confidential Information of the disclosing party.
- 15.6. The obligations of the receiving party pursuant to this Clause 15 (CONFIDENTIALITY AND NON-DISCLOSURE) shall not apply to any information that is:
  - (a) known to or in the possession of the receiving party prior to disclosure thereof by the disclosing party from another source and which the disclosing party is otherwise free to disclose;
  - (b) or becomes publicly known, otherwise than pursuant to a breach of this Agreement by the receiving party;

- (c) acquired or developed independently of the disclosing party by the receiving party in circumstances that do not amount to a breach of the provisions of this Agreement;
  - (d) disclosed by the receiving party to satisfy the order of a court in the Isle of Man or another country or to comply with provisions of any law or regulation in force from time to time, provided that in these circumstances, the receiving party shall advise the disclosing party in writing prior to such disclosure to enable the disclosing party to take whatever steps it deems necessary to protect its interest in this regard: Provided further that the receiving party will disclose only that portion of the information which it is legally required to disclose and the receiving party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances; or
  - (e) disclosed to a third party pursuant to the prior written authorisation from the disclosing party.
- 15.7. The Contractor will not include any reference to any of the Services nor to any connection with the Isle of Man Government in any sales, promotional or other advertising material without the prior written consent of the Department such consent to be given or withheld at the absolute discretion of the Department.
- 15.8. Notwithstanding sub-Clause 15.2, where any part of the Services are being re-tendered the Department shall be entitled to provide to potential tenderers such information as is in its reasonable opinion necessary to enable a competitive tender process to be conducted.

## **16. TRANSPARENCY**

- 16.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Department shall determine whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Department may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 16.2. Notwithstanding any other provision of this Agreement, the Contractor hereby gives its consent for the Department to publish to the general public this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Agreement agreed from time to time.
- 16.3. The Contractor shall assist and co-operate with the Department to enable the Department to publish this Agreement.

## **17. FREEDOM OF INFORMATION**

- 17.1. The Contractor acknowledges that the Department (in whole or in part) is (or may become during the Term) subject to the requirements of the FOIA. The Contractor shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Department to enable the Department to comply with its obligations under the FOIA;
  - (b) transfer to the Department all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (c) provide the Department with a copy of all Information belonging to the Department requested in the Request For Information which is in its possession or control in the form that the Department requires within five (5) Working Days (or such other period as the Department may reasonably specify) of the Department's request for such Information; and
  - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Department.
- 17.2. The Contractor acknowledges that the Department may be required under the FOIA to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Department shall take reasonable steps to notify the Contractor of a Request For Information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Department shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA.

## **18. ASSIGNMENT, NOVATION AND SUBCONTRACTORS**

- 18.1. The Contractor may not assign or novate this Agreement or any part of it **SAVE** that the Contractor may with the prior written consent of the Department such consent not to be unreasonably withheld or delayed assign the benefit of this Agreement in its entirety to an assignee first approved by the Department and the Department may in giving such approval require the provision of such references as may be reasonably necessary to ensure the assignee's ability to comply with the Contractor's obligations under this Agreement.
- 18.2. The Contractor may not subcontract the whole or part of its obligations in respect of the provision of Services to a third party subject to the prior written consent of the Department, such consent not to be unreasonably withheld.

## **19. PERSONNEL**

- 19.1. Subject to this Clause 19 (PERSONNEL) and subject to the consent of the Licensee, the DOI shall, where necessary to enable the Contractor to supply and deliver the Services at Ronaldsway, use all reasonable endeavours to afford to the authorised personnel of the Contractor or its permitted subcontractors access to Ronaldsway within the hours referred to in the Specification.
- 19.2. The Contractor shall take reasonable care to ensure that, in carrying out the Services, it minimises interference with the operations of the DOI, the Licensee or the Department (or other Isle of Man Government department or statutory board or other Isle of Man Government body), its employees or any other third parties employed at Ronaldsway or any other Location.
- 19.3. The Contractor agrees to comply and to ensure that its subcontractors comply with the Health and Safety at Work Act 1974; the Management of Health and Safety at Work Regulations (1992); and the Electricity at Work Regulations (1989) and the Department's (or other Isle of Man Government department's or statutory board's or other Isle of Man Government body's) health and safety policy, the Civil Aviation Act 2012 (an Act of Parliament) and all current and appropriate legal or statutory regulations including CAP371, "Avoidance of Fatigue in Air Crews" which specifies limits on Flight Duty Periods for these operations, and the circumstances under which they can be increased, and any other policy (where such policies are notified to the Contractor) and reasonable direction of the Department in relation to the security of the Department's (or other Isle of Man Government department's or statutory board's or other Isle of Man Government body's) personnel, computer and communications system and premises. The Department (and DOI so far as it relates to Ronaldsway) shall, for so long as work is being carried out by the Contractor at Ronaldsway or any other Location under this Agreement, take all reasonable steps to notify the Contractor as soon as practicable of any special health and safety hazards that it is aware may exist or arise at Ronaldsway or any other Location and which may affect the Contractor. The Contractor undertakes to draw any such hazards to the attention of its employees and subcontractors or any other persons engaged by the Contractor on work being performed at the Location.
- 19.4. DOI and the Licensee reserve the right to refuse to admit to Ronaldsway any person employed or engaged by the Contractor whose admission would, in the absolute discretion of the DOI and the Licensee, be undesirable.
- 19.5. If and when directed by the DOI and the Licensee and/or the Department from time to time, the Contractor shall provide a list of the names of all persons who it is expected may require admission in connection with the performance of the Services at Ronaldsway or any other Location, specifying the capacities in which they are concerned with the Services and giving such other particulars as the DOI and the Licensee and/or the Department may reasonably require.

- 19.6. Without prejudice to the provisions of sub-Clause 19.4, failure by the Contractor to comply with sub-Clause 19.5 above within a reasonable time of being directed so to do by the Department, the Licensee or DOI, will entitle the Department, the Licensee or DOI to refuse admission to Ronaldsway or any other Location to any person who has not been notified to the Department or DOI in accordance with the provisions of sub-Clause 19.5 above.
- 19.7. The Contractor shall ensure that any person employed or engaged by the Contractor shall have Disclosure and Barring Service Clearance during the Term.
- 19.8. For the avoidance of doubt, the Contractor shall be responsible for ensuring that any personnel or subcontractors of the Contractor carrying out any of the Services on the Isle of Man holds a valid Isle of Man work permit (unless such personnel or subcontractors are exempt from requiring such a work permit) under the Control of Employment Act 2015 and any regulations made under such Act.

## **20. REPRESENTATIONS AND WARRANTIES**

20.1. The Contractor represents and warrants that:

- (a) it is a corporation validly organised and existing under the laws of the jurisdiction in which it is registered;
- (b) it has full power and authority under its constitutional documents and the laws of the jurisdiction in which it is registered to execute and deliver this Agreement and to perform its obligations hereunder;
- (c) it has by proper action duly authorised the execution and delivery of this Agreement and when validly executed and delivered this Agreement shall constitute a legal, valid and binding agreement of the Contractor enforceable in accordance with its terms; and
- (d) the execution and delivery of the Agreement and the consummation of the transaction herein contemplated does not conflict in any material respect with or constitute a material breach or material default under its constitutional documents or under the terms and conditions of any documents, agreements or other writings to which it is a party.

20.2. The Contractor represents and warrants that it shall at all relevant times:

- (a) use staff with suitable security accreditation, training, education, experience and skill to perform the Services;
- (b) provide the Services with promptness and diligence and in a professional manner in accordance with the terms of the relevant Contract Documents;
- (c) have all the necessary licences, certificates, authorisations and consents required under the laws of the Isle of Man, for the provision of the Services;



- (d) comply with the terms and conditions of all licences, certificates, authorisations and consents required for the provision of the Services;
- (e) immediately notify the Department of any change of Control that it is, or will become, subject to during the Term where and when permitted to do so;
- (f) use staff that shall have Disclosure and Barring Service Clearance.

20.3. The Contractor represents and warrants that the Tender Response is correct and that the ITT (as qualified by the Tender Response) and the Tender Response form part of this Agreement.

20.4. The Department represents and warrants that:

- (a) it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
- (b) it has by proper action duly authorised the execution and delivery of this Agreement and when validly executed and delivered this Agreement shall constitute a legal, valid and binding agreement of the Department enforceable in accordance with its terms; and
- (c) the execution and delivery of the Agreement and the consummation of the transaction herein contemplated does not conflict in any material respect with or constitute a material breach or material default under the terms and conditions of any documents, agreements of other writings to which it is a party.

## **21. LIABILITY AND INDEMNITY**

21.1. The Contractor shall be liable for any delay, injury or death of any passenger or other person or any loss, damage, destruction or delay of or to any cargo, baggage, personal effects or mail, carried or to be carried by the Contractor's Aircraft as well as for any loss of or damage to property or any injury or death of any person not carried by the Contractor's Aircraft, caused by an occurrence arising out of or incidental to the possession, use, maintenance and operation of the Aircraft during the Term and the Contractor shall indemnify and hold Department its officers, servants, employees and agents harmless accordingly in respect of all liability, costs, claims, demands, suits, judgements or actions including all costs and expenses of any defence.

21.2. The Contractor shall be liable for and shall bear all risks of loss of or damage to the Contractor's Aircraft (including loss of use thereof), however caused during the Term and the Contractor waives all rights of recourse against Department, its officers, servants, employees and agents in respect thereof.

## **22. INSURANCE**

- 22.1. The Contractor shall at its own cost and expense maintain in full force and effect during the Term the following insurances with respect to the Aircraft with insurers and through such insurance brokers as are acceptable to the Department. This will include:
- (a) Hull All Risks Insurance covering loss of or damage to any Aircraft providing the Services of not less than ten million five hundred thousand pounds sterling (£10,500,000) or a sum equivalent to that required under the relevant category band of EU Regulation EC785/2004 (or any equivalent regulation after brexit), whichever is the higher.
  - (b) Hull War and Allied Perils insurance covering the Aircraft to the fullest extent available against those perils excluded by War, Hijacking and Other Perils Exclusion Clause AVN48B or any modification or substitution thereof for the time being in force on an Agreed Value basis. Such insurance shall exclude confiscation by the government of registration of the Aircraft.
  - (c) Aircraft Third Party, Passenger, Passenger Baggage, Cargo, Mail and Airline General Third Party Legal Liability for a combined single limit (bodily injury/property damage) of not less than ten million five hundred thousand pounds sterling (£10,500,000) or a sum equivalent to that required under the relevant category band of EU Regulation EC785/2004 (or any equivalent regulation after brexit), whichever is the higher per each occurrence and for each Aircraft providing the Services. Such insurance shall include to the fullest extent available, war and allied perils coverage for those perils excluded by War, Hijacking and Other Perils Exclusion Clause AVN48B or any modification or substitution thereof for the time being in force.
  - (d) public and products legal liability insurance of not less an amount of than five million pounds sterling (£5,000,000).
  - (e) employer's legal liability insurance of not less an amount than five million pounds sterling (£5,000,000).
- 22.2. All insurances to be maintained by the Contractor in accordance with the requirements of sub-Clause 22.1(a) shall provide for coverage of the operational area, i.e. the whole of the geographic British Isles (including Ireland and the Channel Islands), subject only to such exceptions as the Department may agree in writing.
- 22.3. Any deductibles contained in the Contractor's insurances shall be the responsibility of the Contractor.
- 22.4. The Contractor shall comply with all legal requirements as to the insurance of the Aircraft which may from time to time be imposed by the laws of the State of Registration of the Aircraft or of any state to, from or over which the Aircraft shall be flown insofar as they affect or concern the operation of the Aircraft.

22.5. The Contractor shall prior to the first flight hereunder and prior to each renewal of the insurances thereafter, furnish or caused to be furnished to the Department in a form satisfactory to the Department a certificate of insurance evidencing compliance with the foregoing requirements.

### **23. INTELLECTUAL PROPERTY RIGHTS INDEMNIFICATION**

23.1. The Parties agree to indemnify each other from and against any and all claims, liabilities (both joint and several), losses, damages, costs and expenses (including any fines, legal expenses on an indemnity basis, expert witness fees, expenses and costs of settlement) arising out of or in connection with any assertion by any person that the data, content, software or other material (to include Supplier Documentation) provided or supplied by the indemnifying Party to the other Party or the Confidential Information provided by the indemnifying Party to the other Party infringes the Intellectual Property Rights of that person (an "IPR Claim").

23.2. The provisions of sub-Clause 23.1 above shall not extend to the extent that an IPR Claim arises because any Intellectual Property Rights or Confidential Information has been modified or has been used incorrectly (namely not for its intended use, outside the scope of the Services or otherwise outside the scope for which it was supplied) by the indemnitee Party or has been used by the indemnitee Party in conjunction with any other Intellectual Property Rights or Confidential Information not approved by the indemnifying Party.

23.3. If any material or Confidential Information becomes the subject of an IPR Claim under this Clause 23 (INTELLECTUAL PROPERTY RIGHTS INDEMNIFICATION), or in the indemnifying Party's opinion is likely to become the subject of such a claim, then the indemnifying Party shall use its reasonable endeavours to, at its own expense, either:

- (a) modify the material or Confidential Information to make it non-infringing or cure any claimed misuse of the third party's trade secrets, provided such modification does not adversely affect the functionality of the material;
- (b) procure for the indemnitee Party the right to continue using the material or Confidential Information; or
- (c) replace the material or Confidential Information with substantially equivalent material or Confidential Information that is non-infringing or that is free of an IPR Claim.

### **24. LIMITATION OF LIABILITY**

24.1. The Department's aggregate liability to the Contractor for any and all claims, losses, damages or expenses from any cause whatsoever shall be limited to one hundred thousand pounds sterling (£100,000).

- 24.2. This Clause 24 (LIMITATION OF LIABILITY) shall not, however, apply to: (a) any claims made by the Department pursuant to Clause 23 (INTELLECTUAL PROPERTY RIGHTS INDEMNIFICATION); or (b) claims made by the Contractor for payment of the Charges due under the terms of this Agreement.
- 24.3. The provisions of this Clause 24 (LIMITATION OF LIABILITY) shall not apply in respect of any claims based on the death or injuries suffered by any individual or in respect of any obligations implied by the Supply of Goods and Services Act 1996.
- 24.4. For the avoidance of doubt, in the context of any indemnity under this Agreement, the Party making a claim under any indemnity shall have a duty, so far as is practical, to mitigate its losses and to seek to recover only what is reasonable.

## **25. TERMINATION**

- 25.1. All of the following shall be a "**Contractor Event of Default**":
- (a) any compromise or attempt to compromise the debts owing by the Contractor to creditors generally;
  - (b) an order placing the Contractor under judicial management or for its final or provisional liquidation is granted or the proposing of any resolution for voluntary winding-up, other than for reasons of a bona fide restructuring;
  - (c) the material failure by the Contractor to provide the Services in accordance with the Contract Documents, and which failure is not remedied or rectified to the reasonable satisfaction of the Department within ten (10) days of receipt of written notice requiring the Contractor to do so;
  - (d) a breach by the Contractor of Clause 15 (CONFIDENTIALITY AND NON-DISCLOSURE) and/or Clause 31 (BRIBERY) and/or the DPA Agreement;
  - (e) any other material breach of any term of the Contract Documents which is not remedied to the Department's reasonable satisfaction within thirty (30) days of receipt of written notice from the Department requiring the Contractor to do so; or
  - (f) save where the Department has otherwise agreed beforehand to such a change, such agreement not to be unreasonably withheld or delayed, the Contractor is subject to a change of Control.
- 25.2. If the Contractor commits a Contractor Event of Default the Department may serve notice (the "**Notice**") on the Contractor terminating this Agreement immediately or within such further period, not exceeding thirty (30) days, as the Department provides for in the Notice.

- 25.3. The Department may terminate this Agreement at any time by giving one hundred and eighty (180) days' notice.
- 25.4. For the purposes of this Clause 25 (TERMINATION), a "**Department Event of Default**" means a wilful failure by the Department to make timely payment to the Contractor of any undisputed amount due to it under the terms of this Agreement and which failure is not rectified (save in the case of a bona fide dispute regarding the same) within thirty (30) days of receipt of written notice by the Contractor so to do.
- 25.5. If a Department Event of Default occurs, the Contractor shall be entitled to terminate this Agreement, to retain all monies already paid by the Department and, subject to Clause 24 (LIMITATION OF LIABILITY) and Clause 26 (EFFECT OF TERMINATION), to claim compensation from the Department for all and any loss and damage suffered by the Contractor, together with all reasonable legal costs incurred, as a result of the Department Event of Default.
- 25.6. If a Contractor Event of Default occurs, the Department shall be entitled, in addition to any other remedy that the Department may be entitled, to recover all monies already paid by the Department for any Services not yet delivered and subject to Clause 24 (LIMITATION OF LIABILITY) claim compensation from the Contractor for all and any direct loss and damage suffered by the Department, together with all reasonable legal costs incurred, as a result of a Contractor Event of Default.
- 25.7. The termination of this Agreement for any cause whatsoever shall be without prejudice to the antecedent rights and remedies of the Parties against one another.

## **26. EFFECT OF TERMINATION**

- 26.1. Subject to any exercise by the Department of its rights to perform, or to procure a third party to perform, the obligations of the Contractor, the Parties shall continue to perform their obligations under the Contract Documents, notwithstanding the giving of any notice of default or notice of termination, until the termination of this Agreement becomes effective in accordance with Clause 25 (TERMINATION) or sub-Clauses 30.3 (FORCE MAJEURE) or 31.2 (BRIBERY).
- 26.2. Save as otherwise expressly provided to the contrary (or agreed in writing between the Parties), upon the expiry of the Term or upon termination of this Agreement by either the Department or the Contractor, any and all Services that have not yet been provided or completed by the Contractor shall terminate.
- 26.3. In the event of termination of this Agreement, or upon the expiry of the Term, the Contractor shall:
- (a) cease to have access to the Location;
  - (b) comply with its obligations under Clause 27 (EXIT MANAGEMENT) below.

26.4. In the event of termination of this Agreement, or upon the expiry of the Term, both Parties shall return any Confidential Information of the other Party to the other Party forthwith.

## **27. EXIT MANAGEMENT**

27.1. Concurrently with the termination, cancellation or expiration of this Agreement for any reason whatsoever, and at the reasonable request of and at the time indicated by the Department, the Contractor shall provide the termination assistance provided for in any exit management plan agreed between the Parties.

27.2. The fee payable by the Department to the Contractor for receipt of any termination assistance shall, unless otherwise expressly agreed between the Parties, be based on the Standard Rate (save that it is expressly agreed that no fee shall be payable by the Department where termination is pursuant to sub-Clause 25.1 "**Contractor Default**").

27.3. In the event of any dispute regarding the terms and conditions relating to or the sums payable by the Department pursuant to the said exit management plan, the same shall be determined pursuant to Clause 29 (DISPUTE RESOLUTION).

## **28. SURVIVAL**

28.1. The following clauses of this Agreement shall survive the termination of this Agreement for whatsoever reason:

- (a) Clause 1 – Definitions and Interpretation;
- (b) Clause 7 – Variation;
- (c) Clause 9 – Payment;
- (d) Clause 10 – Trademarks and Trade Names;
- (e) Clause 12 – Intellectual Property Rights;
- (f) Clause 14 – Compliance;
- (g) Clause 15 – Confidentiality and Non-Disclosure;
- (h) Clause 22 – Insurance;
- (i) Clause 23 – Intellectual Property Rights Indemnification;
- (j) Clause 24 – Limitation of Liability;
- (k) Clause 29 – Dispute Resolution;
- (l) Clause 32 – Notices;
- (m) Clause 39 – Third Party Rights; and
- (n) Clause 40 – Governing Law.

28.2. This Agreement shall continue in full force and effect to the extent that the Parties agree pursuant to sub-Clause 26.2 that some or all of the Services that

have not been provided or completed by the Contractor at the termination or expiry of this Agreement shall be so provided or completed.

## **29. DISPUTE RESOLUTION**

- 29.1. Should any dispute, disagreement or claim arise between the Parties (hereinafter referred to as the "**dispute**") concerning the Contract Documents or the interpretation of this Agreement or its termination, the Parties shall attempt to resolve the dispute by negotiation. In such event and as and when the dispute arises, one Party may invite the other in writing to meet and to attempt to resolve the dispute within seven (7) days from date of the written invitation.
- 29.2. Should the procedure as described as in sub-Clause 29.1 above fail and the dispute remains unresolved within seven (7) days of the date of either Party's written invitation to meet pursuant to sub-Clause 29.1 above, then in such event the matter shall be referred to the Contractor's Managing Director and the Department's Chief Executive Officer (or other suitable senior executives) and a meeting shall take place between such persons with a view to resolving same. Each of the Parties shall use their best endeavours to arrange such a meeting within five (5) days after the expiry of the aforementioned seven (7) day period.
- 29.3. Should the procedure as described in sub-Clause 29.2 above fail or should for any reason the dispute remain unresolved after the period of five (5) days after the said written invitation, the Parties may agree to submit the dispute for determination to the President of the Isle of Man Law Society. The determination shall be held in the Isle of Man and the arbitrator shall act as an expert and not an arbitrator. Where the Parties do not agree to arbitration, the dispute shall be resolved in accordance with Clause 40 (GOVERNING LAW) below.
- 29.4. Each Party shall bear its own costs in respect of dispute resolution and arbitration save that where arbitration takes place, the arbitrator may order otherwise.

## **30. FORCE MAJEURE**

- 30.1. Notwithstanding any other provisions of this Agreement, if due performance of this Agreement by a Party is affected in whole or in part by reason of any event, omission, accident or other matter beyond the reasonable control of the Party claiming the benefit of this Clause 30 (FORCE MAJEURE), the Party claiming the benefit of this Clause 30 (FORCE MAJEURE) shall give prompt notice to the other Party and thereafter shall be under no liability for any loss, damage, injury or expense of whatever kind and howsoever caused, suffered by the other Party to the extent due to the said event, omission, accident or other matter. The Party claiming the benefit of this Clause 30 (FORCE MAJEURE) shall use all reasonable efforts to avoid or overcome the causes affecting performance as soon as it is able to do so. The force majeure events shall not include events, omissions, accidents or other matters caused by the act, neglect or omission of the Party claiming the benefit of this Clause 30 (FORCE MAJEURE) or its representatives,

employees, subcontractors, partners or agents. The force majeure events shall not include pandemics or similar health events. Furthermore, for the purposes of this Clause 30 (FORCE MAJEURE), force majeure events shall include but not be limited to an act of God, war, fire, flood, explosion, failure of public utilities or civil commotion, or other circumstances beyond a Party's reasonable control.

- 30.2. The Party otherwise in default shall take and continue to take all reasonable steps to circumvent and mitigate the effect of such event and to reduce any delay in the performance of such obligation.
- 30.3. If performance of the obligations under this Agreement is substantially prevented for a continuous period of one (1) month by virtue of a force majeure event referred to in sub-Clause 30.1, then either Party may terminate this Agreement with immediate effect by written notice.

### **31. BRIBERY**

- 31.1. The Contractor warrants that it has not offered or given, or agreed to give, to any employee, agent, servant or representative of the Department (or of any other Isle of Man Government department, statutory board or other Isle of Man Government body) any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or any other agreement with the Department, or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such agreement. Attention is drawn to the criminal offences under the Bribery Act 2013 and the Contractor's obligations thereunder, including as described in the guidelines issued by the Department of Home Affairs (a department of the Isle of Man Government).
- 31.2. Where the Contractor or its employees, servants, subcontractors, suppliers, agents or anyone acting on the Contractor's behalf, has breached sub-Clause 31.1 or is convicted of any offence whatsoever under the Bribery Act 2013 (or equivalent legislation elsewhere including the Bribery Act 2010 (of Parliament)), the Department shall have the right to:
  - (a) terminate this Agreement and, as appropriate, recover from the Contractor the amount of any loss suffered by the Department resulting from the termination;
  - (b) recover from the Contractor the amount or value of any such gift, consideration or commission; and
  - (c) recover in full from the Contractor any other loss sustained by the Department in consequence of any breach of this Clause 31 (BRIBERY), whether or not this Agreement has been terminated.



## **32. NOTICES**

32.1. Any notice or other communication to be given under this Agreement shall be in writing, in English and signed by or on behalf of the Party giving it (or its representative) and shall be delivered by hand, sent by prepaid recorded delivery or registered post to the address, given in sub-Clause 32.2 below (or such other address as the receiving Party has specified to the sending Party on at least ten (10) business days' notice).

32.2. The addresses and numbers of the Parties for the purposes of sub-Clause 32.1 are:

(a) The Department:

Address: Crookall House,  
Demesne Road,  
Douglas,  
Isle of Man,  
IM1 3QA

Tel: 01624 651383

Attention: Interim Head of Commissioning

(b) The DOI:

Address: Sea Terminal Building,  
Douglas,  
Isle of Man,  
IM1 2RF

Tel: 01624 686603

Attention: Chief Executive Officer

(c) The Licensee:

Address: Isle of Man (Ronaldsway) Airport,  
Ballasalla,  
Isle of Man,  
IM9 2AS

Tel: 01624 821601

Attention: Ann Reynolds, Director of Ports

(d) The Contractor:

Address: 8 Pioneer Court  
Darlington  
Co. Durham  
DL1 4WD

Tel: 0800 7 999 900

Email: george.ditchburn@iasmedical.com

Attention: George Ditchburn, Accountable Manager & Operations Director

32.3. Any notice or other communication given or made under this Agreement shall, in the absence of earlier receipt, be deemed to have been received as follows:

- (a) if delivered by hand, at the time of actual delivery; or
- (b) if posted, on the second clear business day or, in the case of airmail, the fifth clear business day following the day on which it was despatched by pre-paid first class post or, as the case may be, registered airmail;

provided that a notice given in accordance with the above but received on a day which is not a business day, or after normal business hours in the place of receipt, shall be deemed to have been received on the next business day at the commencement of normal business hours in the place of receipt.

### **33. NON WAIVER**

No waiver or abandonment by either Party of any of its rights imposed by this Agreement or the other Contract Documents, shall be binding on that Party, unless such waiver or abandonment is in writing and signed by the waiving Party, and any such waiver or abandonment shall be effective only in the specific instance and for the purpose given. Subject to the foregoing sentence, any failure or delay by either Party hereto in exercising any right, power or privilege hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

### **34. ORDER OF PRECEDENCE**

In the event of any conflict or inconsistency between this Agreement and the ITT (as qualified and/or amended by the Tender Response), then the provisions of this Agreement shall prevail.

### **35. WHOLE AGREEMENT**

This Agreement, together with the other Contract Documents, constitutes the whole and entire agreement between the Parties with regard to the subject matter hereof and there has not been and there are no agreements, representations or warranties between the Parties other than those specifically set forth in those documents.

### **36. INDEPENDENT CONTRACTORS**

The Parties shall act as independent contractors for all purposes under this Agreement. Nothing contained herein shall be deemed to constitute either Party as an agent or representative of the other Party, or the Parties as joint venturers or partners for any purpose. Save as expressly stated herein to the contrary, neither Party shall be responsible for the acts or omissions of the other Party, and neither Party will have authority to speak for, represent or obligate the other Party in any way without the prior written approval of the other Party.

### **37. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart of this Agreement shall constitute an original of the relevant document, but together the counterparts shall constitute one document.

### **38. SEVERABILITY**

If any provision of this Agreement shall be held illegal or unenforceable, such provision shall be deemed separate and divisible from and shall in no way affect or impair the validity or enforceability of, the remaining provisions.

### **39. THIRD PARTY RIGHTS**

Unless otherwise expressly provided, this Agreement does not, by virtue of the Contracts (Rights of Third Parties) Act 2001 or otherwise, confer any rights or benefits on any person or class of persons existing now or in the future, who is not a party to this Agreement except that a Party's assignee or successor will be deemed to be a Party to this Agreement. In any event, this Agreement may be varied or rescinded by agreement of the Parties without the consent of any third parties.

### **40. GOVERNING LAW**

This Agreement will be governed and construed in accordance with the laws of the Isle of Man and each Party irrevocably agrees to submit to the non-exclusive jurisdiction of the courts of the Isle of Man.

**AS WITNESS** the hands of the Parties or their duly authorised representatives on the date first stated above.

## **SCHEDULE 1**

### **SPECIFICATION**

#### **1. Availability**

- 1.1. The Contractor shall provide a 24 hour, 365 days a year, call out and Service to provide air ambulance services to hospital patients as set out in this Specification. The Contractor may also be required to transport medical or other equipment, blood or donated organs and/or Department staff by means of combined or additional flights.
- 1.2. The Contractor must ensure that the Aircraft is appropriately fitted out for the Service provision to include the provision of the equipment as set out in paragraph 5 below.
- 1.3. The Contractor must be able to provide a Second Aircraft and crew available at Ronaldsway to meet 'ready to take off' requirements at times of the planned or unplanned unavailability of the Principal Aircraft and/or peak demand.

#### **2. Response Times**

The Contractor shall:

- 2.1. Provide response times from first request by the Department to take off from Ronaldsway 24 hours a day, 365 days a year, as follows:

Priority Designation 1	90 minutes
Priority Designation 2	Between 90 and 180 minutes
Priorities Designation 3 and 4	Within 90 minutes of the departure time agreed.

The time will be calculated from the later of:

- (i) the time of the call from the Department to the Contractor; or
  - (ii) the time that the Aircraft touches down in the Isle of Man in circumstances where both the Principal Aircraft and the Second Aircraft are in use providing the Services (the time being from touchdown of the first Aircraft to return to the Island following the call from the Department to the Contractor).
- 2.2. Exclude from the requirement times identified in paragraph 2.1:
    - 2.2.1. Those periods when it is not legal to fly the Aircraft due to adverse weather conditions, 'acts of God' (e.g. volcanic ash clouds) or acts of terrorism/criminality. The Contractor must inform the Department of this situation at the first opportunity when it is known that a transfer will be required.
    - 2.2.2. Instances where the Department has requested the Aircraft is delayed, e.g. to wait for a second patient then the time for which the Aircraft is held is also excluded.

- 2.2.3. Other situations outside the Contractor's control, including Air Traffic delays and delayed road ambulances.
- 2.3. The Department will assist the Contractor in planning flights by sharing information on when the busiest periods are likely to occur. The Department will give the Contractor as much warning as possible prior to the request for transfer. However, this is an emergency service so it is not entirely predictable.
- 2.4. The Contractor will be required to guarantee that the time from receiving a telephone call requesting an air ambulance to the time when the Aircraft is ready to take-off will not exceed the requested call out period under normal circumstances.

### 3. **Crew**

The Contractor must:

- 3.1. Achieve the call to take off time even if there have been a number of flights already that day. The Contractor must provide sufficient crew and Aircraft to operate a continuous 24 hour service when the Department requires it. Additional crew must be provided if the duty crew have exceeded their hours under the approved flight time limitations of scheme. Additional crew must be available to cover holiday and sickness absence.
- 3.2. Provide two pilots to act as the flight crew for each Aircraft flight who each hold either an Air Transport Pilot's Licence (ATPL), or a Commercial Pilot's Licence (CPL), including Instrument Rating, depending on the maximum take-off weight of the Aircraft. Details of aircrew experience should be provided to the Department by the Contractor immediately on request.
- 3.3. Ensure flight crew have sufficient available operating hours to carry out the Services and, when and where these have expired, provide additional crew to take over.
- 3.4. Notwithstanding the provisions of paragraph 3.2, ensure that timings are co-ordinated with the Department to avoid fatigue in aircrew.
- 3.5. Ensure the pilot in command has overall responsibility for ensuring that all equipment and persons are safely secured for flight.
- 3.6. Ensure all crew members attend basic life support training annually (training provided free of charge by the Department).
- 3.7. Ensure all crew members take part in training for clinical emergencies annually (training provided free of charge by the Department).
- 3.8. Agree to abide by the Standard Operating Procedure (SOP) for their pilots to be trained and be the sole operators in the use of the lifting trolleys for loading and unloading the patients in the IOM and UK airports.
- 3.9. Arrange overnight accommodation at Approved Hotels for clinical staff if an overnight stop off-Island is necessary. Other hotels can only be used if all the Approved Hotels on the list are fully booked. Criteria for suitable alternative hotels are:

- 3.9.1. Within 20 minutes' drive of the airport;
  - 3.9.2. All clinical staff have separate rooms with en-suite toilet and shower or bath;
  - 3.9.3. Breakfast is included;
  - 3.9.4. Transport to and from the airport is provided;
  - 3.9.5. There is suitable secure storage for medical equipment.
- 3.10. The Contractor shall reimburse all expenses associated with its personnel including but without limitation, all wages, taxes, benefits, allowances, social security contributions and (save as expressly provided for) the cost of accommodation travelling and subsistence.

#### 4. **Hangars**

The Contractor must provide any hangarage in the IOM and Liverpool (LPL) or other base as reasonably required by the Department at no additional charge. The Contractor is responsible for maintaining and cleaning such hangarage or paying for this to be done. Criteria for suitable facilities are:

##### 4.1. Isle of Man

Such facilities as are agreed with the Department, the DoI and the Contractor depending on the location of the base of operations of the Aircraft allocated by the Contractor for the provision of the Service. Consideration needs, however, to be given to the following:

- 4.1.1. Undercover transfer of patients between road transport and Aircraft for all flights.
  - 4.1.2. A toilet with hand washing facilities that is accessible for a wheelchair user.
- 4.2. Comfortable seating in a heated area, adequate for a minimum of 3 people, that is accessible to people with limited mobility, to use in event of a delay.

##### 4.3. Liverpool

- 4.3.1. Storage facility for small quantity of equipment that cannot be flown back to IOM the same day e.g. spare aerosols for up to 2 days.
  - 4.3.2. Storage and charging for stretcher lifting trolley.
  - 4.3.3. Access to a hangar on request for undercover transfers during poor weather.
  - 4.3.4. Toilet with hand washing facilities which are accessible for a wheelchair user.
- 4.4. The Department accepts it is not possible to provide consistent access to hangars at airports outside of the Isle of Man. The Contractor must make every effort to provide access to hangars at other airport when requested to do so to ensure patient care

and confidentiality. However, a system of direct transfer between the ambulances on the tarmac would also be acceptable on occasions when it is deemed in the patient's best interest and expedites the transfer.

## **5. Equipment**

- 5.1. It is the responsibility of the Contractor to ensure that any equipment provided by the Department for the provision of the Services will be appropriately located and secured within the Aircraft (or in a suitable location when not in use within the Aircraft) and that any necessary services are provided. The Contractor will be responsible for the costs of repair or replacement of any Department equipment that is damaged through the acts or omissions of the contracted supplier, its employees, agents or other parties commissioned by the Contractor to provide any part of the Services.
- 5.2. The Contractor shall be responsible for the safe return of the Department equipment if used in the provision of the Services within an agreed period of time as directed by the Department.
- 5.3. The Contractor shall not use any of the Department equipment provided or purchased by the Department for any tasks outside of this Agreement.

## **6. Operation and Maintenance of Service**

The Contractor must:

- 6.1. Provide and maintain equipment and operate the Aircraft for the performance of the Services in accordance with this Specification. The Contractor will be required to manage all their contractual relationships, including the requirement to pay any annual charges with all relevant Airports' handling agents.
- 6.2. Operate the Aircraft in accordance with an Air Operators Certificate issued by the CAA/EASA and the associated Company Operations Manual.
- 6.3. Maintain, repair and overhaul the Aircraft in accordance with the manufacturer's specification and in accordance with CAA/EASA regulations throughout the Term period as necessary and shall thereby ensure that all Aircraft are in a fully serviceable condition and available for the provision of the Services as and when required. Such work to be carried out by qualified, type-approved and suitable engineers.
- 6.4. Meet the departure targets identified in paragraph 2.1 on an annual basis for 100% of flights assigned Priority Designation 1 and 95% of flights assigned each Priority Designation 2-4.
- 6.5. Arrange appropriate extensions or opening of the airport out of normal working hours for air ambulance flights. The availability for opening Ronaldsway out of normal working hours will be subject to the consent of the Licensee and the ability of the Licensee to open Ronaldsway outside such normal working hours. The Department will reimburse the costs of extensions.

- 6.6. Have contingency arrangements in place to cover planned and unplanned servicing of the Aircraft in order to maintain the 24 hour service. A replacement Aircraft must be of the same or better standard and supplied for the same fixed cost.
- 6.7. Ensure that all passengers are given a full passenger safety briefing.
- 6.8. Be responsible for securing the Aircraft and its contents, including the Department's medical equipment, when the Aircraft is left unattended.
- 6.9. When the destination airport is not Liverpool or Hawarden, the Contractor should organize road-based ambulance transport from the airport to the destination hospital for patients and clinical staff, as well as organize transport for clinical staff and equipment from the destination hospital to the airport. These costs will be met by the Department provided the Contractor has obtained prior approval from the Department.
- 6.10. Be responsible for returning the staff and equipment to the Isle of Man at the time the Aircraft returns. Should the Department determine that Department staff need to return before the pilot have legal hours to fly then the Department is responsible for costs of scheduled flights and ground transport for their journey.
- 6.11. Be responsible for checking the level of the ZX oxygen cylinder in the life port system (or equivalent) and replacing when required (the Department shall ensure delivery of the oxygen cylinders to Isle of Man Ronaldsway Airport).
- 6.12. Be responsible for cleaning the interior of the Aircraft on a daily basis when in use and ensuring any deep cleans are undertaken in the event of an infectious patient or spillage of body fluids. The Air Ambulance Coordinator will notify when a deep clean is necessary.
- 6.13. Rectify any issues raised by the Department within 24 hours regarding standards of cleanliness to the interior of the Aircraft.
- 6.14. Maintain the interior of the Aircraft in good condition and repair any rips/tears or damage to fabric or metal work.

## **7. Compliance with Statutory and Other Requirements**

The Contractor must

- 7.1. At all times perform the Services in a good and safe manner in accordance with public transport criteria as laid down by the CAA/EASA and the Isle of Man Civil Aviation Administration, including The Fees and Charges including Conditions of Use for Isle of Man Airport and all other airports utilised as part of this Service.
- 7.2. Ensure that a valid Certificate of Airworthiness in the Public Transport Category is maintained for all the Aircraft used to provide the service. All Aircraft and equipment provided and used by the Contractor shall conform to all relevant public transport regulations and all other applicable Statutes and Regulations pertaining to the transport of patients and passengers by Aircraft.



- 7.3. Obtain all licences and permits necessary for the operation of the Aircraft in the Operational Area.
- 7.4. Confirm (and provide evidence to the Department when required) that its organisation complies with CAA/EASA regulations. The Contractor shall provide copies of CAA/EASA safety audit and inspection reports of the Aircraft operator and the specific Aircraft utilised on request.
- 7.5. Confirm that the Aircraft is serviced according to the manufacturer's recommendations and CAA/EASA regulations. Where there is in force an appropriate EU standard (or British standard where there is no equivalent EU standard) all goods used or supplied and all work undertaken shall as a minimum requirement be in accordance with that standard but compliance with such standard shall be without prejudice to any higher standard required by the Tender.
- 7.6. Ensure that, in accordance with CAA/EASA regulations, the Contractor has overall responsibility as to whether or not a flight should be undertaken, and as to the manner of performing operations hereunder including without limitation Aircraft serviceability, acceptable load limits, routes, flying and landing site conditions prevailing at the time.
- 7.7. Ensure that only authorised persons approved by the Department or crew approved by the Contractor are permitted to travel in the Aircraft.
- 7.8. Provide safety training to Department staff annually. Agreed costs incurred for consumable items will be reimbursed by the Department.

## **8. Contractor's Additional Responsibilities**

The Contractor must:

- 8.1. Comply and adhere to instructions and directions of the Department relating to the provision of the Services except where this would conflict with the requirements laid down by Clause 7.1.
- 8.2. Not refuse to transport any patient (regardless of illness or injury, including (inter alia) Covid-19) that the Department has certified is appropriate to be transferred.
- 8.3. Where necessary, make available an Aircraft for all air transfer training courses and provide appropriate training for Department staff in connection with air ambulance transfers or any other aspect of the service provision that training or familiarisation is required.
- 8.4. Provide appropriate uniforms and safety equipment for its pilots.
- 8.5. Have a policy for reporting matters regarding concerns in the provision of the Service.
- 8.6. Provide detailed information on a quarterly basis on the maintenance schedule of the Aircraft.

- 8.7. Keep logs of technical issues and provide the Department with a full report within 48 hours of the fault being identified.
- 8.8. Provide the Department with quarterly performance monitoring information, the contents of which will be agreed by the Contractor and Department prior to commencement of this Agreement.
- 8.9. Ensure that its staff report to it all matters which occur in the provision of the Service which are of an irregular or questionable nature or which may cause civil or criminal legal proceedings to be taken against the Contractor, the Department, the Aircraft operator (if relevant) or any members of their respective staff.
- 8.10. Inform the Department immediately verbally of any such matter arising under paragraph 8.9 and shall also complete a full written report to the Department as soon as reasonably practical.
- 8.11. At no additional charge, assist the Department in any enquiry or action subsequent and pursuant to any matter arising under paragraph 8.9.
- 8.12. Notify the Department of all serious incidents, or accidents or occurrences involving the Aircraft, any personal injury or death or significant risk of personal injury to, or death of any person arising out of the provision of the Service immediately or as soon as is reasonably practicable after the incident or accident occurs. A report detailing the following information as a minimum shall be provided within 24 hours of the incident or accident occurring:
  - 8.12.1. the member of staff or other person reporting the incident or accident.
  - 8.12.2. the name and address (if known) of each person involved in the incident or accident.
  - 8.12.3. the nature and extent of the incident or accident including details of any personal injury or death actually suffered.
  - 8.12.4. the date and time of the incident or accident.
  - 8.12.5. the date and time of the incident or accident was reported to a body required by law, e.g. Civil Aviation Authority (CAA).
- 8.13. The notification of any incident or accident by the Contractor to the Department in no way relieves or excuses the Contractor or its staff from any liability incurred by reason of such incident or accident.
- 8.14. The record of serious incidents, accidents and occurrences shall be open to inspection by the Department at all reasonable times.
- 8.15. The Contractor shall record information on each flight in the format agreed with the Department.
- 8.16. The Contractor shall be fully responsible for ensuring that any aircraft operator which it uses to provide the Services complies in all respects with the Form of Tender, this Specification and the Further Terms and Conditions of Tender.

- 8.17. The Contractor shall ensure its staff or agents report to it all matters which affect or impair their ability to provide any of the Services including but not limited to matters affecting their health or the inability to meet the requirements of the appropriate licensing bodies or Authority such as CAA.

## 9. **Department Retained Responsibilities**

The Department shall:

- 9.1. Take responsibility for the clinical care of the patient at all times, including during loading and unloading.
- 9.2. Provide clinical staff for each flight, with the occasional exception where an air taxi is required to send a well patient to the UK i.e. organ transplant. All clinical staff will have undertaken the Department's air ambulance transfer practitioner course or an alternative accredited air ambulance course, such as the Clinical Considerations in Aeromedical Transport (CCAT) course.
- 9.3. Ensure that clinical staff not employed by the Department (such staff employed by the North West and North Wales Paediatric Transport Service (NWTS) and other specialist aeromedical transport providers) adhere to the same safety standards and have received equivalent training as departmental clinical staff.
- 9.4. Provide a member of staff to act as an Air Ambulance Coordinator who manages the transfer of patients from the IOM to the UK and/or Republic of Ireland, liaising with the Contractor, arranging the transfer of the patient from the hospital to Ronaldsway, ensuring that an appropriate clinical team is available to support the patient on the flight and overseeing arrangements for their return to the IOM.
- 9.5. Supply all necessary medical equipment for the care of the patient during the flight. See Schedule 3 for list of the essential medical equipment along with weights.
- 9.6. Supply all necessary protective clothing for the Department personnel to be transported in the Aircraft.
- 9.7. Determine how many patients travel on each flight sector.
- 9.8. Be responsible for maintaining and servicing of all medical equipment used in flight as per manufacturer's recommendations.
- 9.9. Be responsible for the supply and safe storage of all medications used in flight.
- 9.10. Inform the Contractor of any infectious patient or spillage of bodily fluid that would warrant a deep clean of the Aircraft and lifeport.
- 9.11. Arrange road-based ambulance transport to transport patients and staff from Noble's Hospital to Ronaldsway airport and from Liverpool/Hawarden airports to the destination hospital. The Department will also organise transport of clinical staff and equipment from the destination hospital to Liverpool/Hawarden airports and from Ronaldsway Airport to Noble's Hospital.

- 9.12. Provide a list of all authorised personnel designated to escort patients, providing full name and address, nationality, place of birth and date of birth, passport number and expiry date (or other photo ID reference number and expiry date such as driving licence) for security purposes. The Department will update this list when staff commence employment or leave.
- 9.13. Provide the Contractor with any information required under CAA/EASA Regulations for the safe operation of the flight, passenger details i.e. prisoner, mental health.
- 9.14. Have the right to cancel a transfer if the responsible clinician determines it is not safe for that patient to travel due to clinical deterioration or other external circumstances.
- 9.15. Be responsible for clinical staff meals/drinks when overnight accommodation away from the Isle of Man is required.

## **SCHEDULE 2**

### **MINIMUM AIRCRAFT REQUIREMENTS**

1. The Contractor must provide the Principal Aircraft and the Second Aircraft – fixed wing, rotary wing or a combination of the two types to meet the requirements of the Service – that is capable of flying direct to any airport within the United Kingdom and the Republic of Ireland.
2. The Aircraft must:
  - 2.1.1. Be able to facilitate the easy loading/unloading of an aerosled with patient and bridge and monitor and ventilator attached, an isolation pod or incubator with adequate door openings etc.
  - 2.1.2. Be fitted with CAA/EASA-approved fixings and electrical connections for two lifeport systems (or equivalent), at least one isolation pod (EpiShuttle or similar), an incubator and appropriate medical equipment.
  - 2.1.3. Be supplied with two lifeport systems (or equivalent) that hold a ZX oxygen cylinder each and connected to the ZX oxygen supply. The system must provide power supply for additional medical equipment. It must also be fitted with a loading system and include suction and oxygen and DC power connections.

The equipment and procedures provided must comply with the current Intensive Care Society guidelines and any changes that may take place in these guidelines.
  - 2.1.4. Have attachments to secure two additional CD oxygen cylinders as emergency back-up.
  - 2.1.5. Be equipped with a cargo net or similar method of securing bags and equipment within the Aircraft.
  - 2.1.6. Be able to accommodate two appropriate lifeport systems (or equivalent) or at least one isolation pod and at least four (4) sitting passengers.
  - 2.1.7. Be capable of being converted back into a passenger aircraft to accommodate a minimum of five (5) passengers.
  - 2.1.8. Have cabin heating available at all times when Aircraft is in use, including loading and unloading.
- 2.2. The Aircraft must have been viewed by the Department prior to contract acceptance.
- 2.3. The use of identifiable markings or livery on the Aircraft provided by the Contractor shall be subject to mutual agreement between the Contractor and the Department and shall not be changed during the Term unless first mutually agreed between the Contractor and the Department.

### SCHEDULE 3

## Air Ambulance Medical Equipment List (with Weights)

<b>Item</b>	<b>Weight in kg</b>
Zoll cardiac monitor	10
Oxygen cylinder	3.4
Arch over aerosled	3
Aerosled	19.2
Clip deck	10.2
Epishuttle isolation pod	58
Alaris GH Syringe driver	2.6
Linen	3
Intensive care kit bag	12.5
Hamilton T1 ventilator	8
FR2 Defibrillator	3.2
Pegasus	60
Vacuum Mattress	7.5
Incubator and deck	134
Blood for transfusion	13



Item	Standard Rate	£
4.1	Routine Service Cost per flying hour	██████████
4.2	Out of hours Service Cost per flying hour	██████████
4.3	Combined Routine and Out of hours Service Cost per flying hour	██████████

**Payment Milestones**

Weekly in arrears during the Term.



**SIGNED** by the Minister or a person duly authorised by the Minister for Department of Health and Social Care in the presence of:- : .....

Witness Signature: ..... : *Print name:*

Witness Full Name: ..... : *Position:*

Witness Address: ..... :

..... :

Witness Occupation: ..... :

**SIGNED** by the Minister or a person duly authorised by the Minister for Department of Infrastructure in the presence of:- : .....

Witness Signature: ..... : *Print name:*

Witness Full Name: ..... : *Position:*

Witness Address: ..... :

..... :

Witness Occupation: ..... :

**SIGNED** by the Licensee in the presence of:- : .....

Witness Signature: ..... : Ann Reynolds  
Director of Ports

Witness Full Name: ..... :

Witness Address: ..... :

..... :

Witness Occupation: ..... :

**SIGNED** by the Contractor  
acting by:-

: .....

Director

: *Print name:*

:

:

: .....

Director/Company Secretary

: *Print name:*



**Isle of Man**  
**Government**

*Reiltys Ellan Vannin*

DATED

2020

**Department of Health and Social Care**

and

**Department of Infrastructure**

and

**Ann Reynolds**

and

**IAS Medical Limited**

**AGREEMENT FOR  
AIR AMBULANCE SERVICES**

**IN COMMERCIAL CONFIDENCE**



Attorney General's Chambers  
Douglas



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