

Services Contract

The Secretary of State for Transport

and

Aer Lingus Limited

in relation to essential aviation services between Belfast City Airport and London

Dated 30 April 2020

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THIS AGREEMENT is made on 30 April 2020

BETWEEN:

- (1) **SECRETARY OF STATE FOR TRANSPORT**, whose principal place of business is at Great Minster House, 33 Horseferry Road, London SW1P 4DR (the "**Authority**"); and
 - (2) **AER LINGUS LIMITED**, a private limited company incorporated in Ireland with company number 9215 and its registered address at Head Office Building, Dublin Airport (the "**Company**"),
- each being a "**Party**" and together the "**Parties**".

RECITALS

- (A) The Company has stated to the Authority that in the absence of this Agreement it would significantly curtail (to a negligible level of operation) or withdraw the provision of passenger services between the Airport and London.
- (B) The Authority requires the Minimum Service to be provided and given the extreme urgency brought about by the unforeseeable circumstances created by the Covid-19 pandemic, it has issued a direct award to the Company in accordance with regulation 32(2)(c) of the Public Contracts Regulations, transposing Article 32 of Directive 2014/24/EU on public procurement.
- (C) The Company has agreed to provide the Minimum Service for the Period in accordance with the terms of this Agreement.
- (D) The Northern Ireland Department for Infrastructure has agreed with the Authority to repay to the Authority [REDACTED] of the Compensation Payments payable by the Authority to the Company under this Agreement.
- (E) It is expected that this Agreement will commence on or around the date which a related agreement between the Northern Ireland Department for Infrastructure and the Airport is concluded.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

- 1.1 The following terms in this Agreement shall have the following meanings:

"2000 Act" means the Freedom of Information Act 2000;

"2004 Regulations" means the Environmental Information Regulations 2004;

"Affiliate" means, in relation to any company:

- (a) a company which is either a holding company or a subsidiary of such company; or
- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

and for these purposes "holding company" and "subsidiary" have the meanings ascribed to them in section 1159 of the Companies Act 2006;

"Airport" means Belfast City Airport;

"Commencement Date" has the meaning given to that term in Clause 2;

"Compensation Payments" has the meaning given in Clause 4.1;

"Compensation Payment Cap" has the meaning given in Schedule 4;

"Confidential Information" means information relating to the affairs of a Party to this Agreement or any of its Affiliates which has been provided by any such person to the other Party under or for the purposes of this Agreement, or any matter or thing contemplated by this Agreement or to which this Agreement relates, the disclosure of which is likely materially to compromise or otherwise prejudice the interests of any such person;

"Designated Costs" means the costs of the provision of the Minimum Service as set out in Schedule 2;

"Designated Revenue" means the revenues derived from the provision of the Minimum Service, as set out in Schedule 3;

"Force Majeure Event" means, in respect of each Party, any material adverse change in circumstances (from those at the date of this Agreement) which is beyond the reasonable control of that Party and has not arisen as a result of any default of that Party, which directly causes that Party to be unable to comply with all or a material part of its obligations under this Agreement;

"Information" means all information of any nature and in any form, including in writing or orally or in a visual or an electronic form or in a magnetic or digital form;

"Insolvency Event" means each of the following events in relation to the Company:

- (a) the Company passes a resolution that it be wound up, or a court makes an order that the Company be wound up, in either case otherwise than for the purposes of reconstruction or amalgamation, or circumstances arise which would enable a court to make such an order;
- (b) an administrator, manager, administrative receiver or receiver is appointed to the Company, or over all or any part of the property which may from time to time be comprised in the property and undertaking of it, or circumstances arise which would entitle a court or a creditor to appoint such an administrator, manager, administrative receiver or receiver;
- (c) the Company is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the Company makes a voluntary arrangement for a composition in satisfaction of its debts or a scheme of arrangement of its affairs; or
- (e) any of the events specified under limbs (a) to (d) above occurs under the law of any other jurisdiction to which the Company is subject;

"Minimum Service" means the air passenger services set out in Schedule 1;

"Month" means a calendar month, but with the first Month of the Period commencing on the Commencement Date and ending at the end of April and the last Month of the Period starting at the beginning of July and ending at the end of the Period;

"Northern Ireland Department for Infrastructure" means the Northern Ireland Department for Infrastructure of Clarence Court, 10-18 Adelaide Street, Belfast BT2 8GB;

"Period" means the period of three (3) months beginning with the Commencement Date;

"Request" means a request for information made to the Authority purporting to conform with the description in either or both section 8 of the 2000 Act or regulation 5 of the 2004 Regulations; and

"Working Day" means each of Monday to Friday (inclusive) excluding common law and statutory public holidays on which banks in the City of London are not open for business.

1.2 Throughout this Agreement:

- (a) words denoting the singular shall include the plural and vice versa;
- (b) words denoting any gender shall include all genders; and
- (c) the headings are for convenience only and shall not be construed as forming part of this Agreement or be taken into account in the interpretation thereof.

2. **TERM**

This Agreement shall come into effect on the day that this Agreement is dated (the **"Commencement Date"**) and shall continue until the end of the Period, unless terminated earlier in accordance with the terms of this Agreement.

3. **PROVISION OF THE MINIMUM SERVICE**

3.1 The Company shall provide the Minimum Service.

3.2 The Company shall make no change to the capacity, frequency, nature or any other attribute or characteristic of the Minimum Service, without the prior written consent of the Authority (such consent not to be unreasonably withheld).

3.3 The Company shall operate the Minimum Service in accordance with:

- (a) the terms of this Agreement;
- (b) all applicable legislation (including statutory instruments, orders, rules and regulations) and all applicable byelaws;
- (c) all applicable requirements of the Civil Aviation Authority;
- (d) any other applicable requirements of any other regulatory or local authority or body; and
- (e) any conditions which may be attached to any other approvals, consents, licences or permissions which are required for the lawful operation of the Minimum Service. The Company shall obtain all such approvals, consents, licences and permissions prior to the commencement of the Minimum Service and maintain, such approvals, consents, licences and permissions in force for the Period.

4. **COMPENSATION PAYMENT**

4.1 Subject to the provisions of this Agreement, the amount of compensation payable by the Authority to the Company each Month shall be equal to the Designated Costs to the Company of providing the Minimum Service during the relevant Month minus any Designated Revenue of the Company during such Month (the **"Compensation Payments"**) and in no circumstances shall the Compensation Payment payable by the Authority exceed the Compensation Payment Cap.

4.2 Within fifteen (15) Working Days of the end of each Month, the Company shall submit a valid invoice (in accordance with Clause 4.5) for the Compensation Payment.

- 4.3 Within ten (10) Working Days of receipt of the invoice issued pursuant to Clause 4.2, the Authority shall pay the Compensation Payment detailed in such invoice to the Company, subject to the Authority's right to dispute the invoice pursuant to Clause 4.7 and the Authority's right of set-off pursuant to Clause 4.8.
- 4.4
- (a) Notwithstanding Clause 4.4(b) if, at the end of any Month, the amount of the Compensation Payment calculated under Clause 4.1 is negative, the Company shall pay that amount to the Authority within ten (10) Working Days of the end of that Month.
 - (b) If, at the end of any Month, the amount of the Compensation Payment calculated under Clause 4.1 is negative, the Company may elect to terminate this Agreement by giving fourteen (14) days' notice in writing to the Authority and upon expiry of such notice, the Authority shall cease to pay the Company for the Minimum Service.
- 4.5 Any invoice provided by the Company to the Authority under this Clause 4 in relation to the Compensation Payment paid in respect of the relevant Month, shall include the following:
- (a) evidence of Designated Costs (containing the information detailed in Schedule 5) incurred by the Company during that Month; and
 - (b) evidence of Designated Revenue (containing the information detailed in Schedule 5) received by the Company during that Month.
- 4.6 The Company shall use reasonable endeavours to minimise the Designated Costs and maximise the Designated Revenue.
- 4.7 If the Authority disputes in good faith an invoice, it may withhold payments of any amount claimed by the Company in any invoice issued under Clause 4.5. If the Authority disputes part of an invoice, the Authority may withhold payment only in respect of the part of the invoice which is disputed.
- 4.8 The Authority may retain or set off any amount owed to it by the Company under this Agreement which has fallen due and payable against any amount due from the Authority to the Company under this Agreement. Save as provided in this Clause 4.8, neither Party may retain or set off any amounts owed to it by the other Party.
- 4.9 All payments under this Agreement shall be calculated in pounds sterling and are exclusive of any VAT chargeable on such payment.
- 4.10 Any payments to the Company under this Agreement shall be made in pounds sterling in cleared funds to:
- Account name: [REDACTED]
- Sort code: [REDACTED]
- Account number: [REDACTED]
- Bank: [REDACTED]
- BIC: [REDACTED]
- IBAN [REDACTED]

or such other account as the Company may notify to the Authority in writing from time to time.

- 4.11 Any payments to the Authority under this Agreement shall be made in pounds sterling in cleared funds to:

Account name: [REDACTED]

Sort code: [REDACTED]

Account number: [REDACTED]

BIC: [REDACTED]

IBAN: [REDACTED]

Bank: [REDACTED]
[REDACTED]

or such other account as the Authority may notify to the Company in writing from time to time.

- 4.12 To the extent that either Party fails to make any payment due in accordance with this Clause 4 or Clause 8.5 then the amount due and not paid shall bear interest of [REDACTED] [REDACTED] above the base rate of the Bank of England per annum calculated on a daily basis from and including the due date until such amount has been paid in full to the Company which shall be the sole remedy for failure to make any payment due under this Agreement.

5. **INFORMATION TO BE PROVIDED BY THE COMPANY**

- 5.1 The Company shall provide the following information to the Authority:

- (a) at the end of each week, a weekly report of the load factor in respect of the Minimum Service;
- (b) within fifteen (15) Working Days of the end of each Month, a report of the Designated Costs incurred and Designated Revenue made by the Company pursuant to Clause 4.5 together with such other information as the Authority may reasonably require, in respect of the Minimum Service during the Month to which the report relates. Such information shall be prepared in accordance with the methods and principles, and in the form and containing the information, detailed in Schedule 5.
- (c) within five (5) Working Days of the end of each Month, the Company shall provide a statement to the Authority in relation to its performance of the Minimum Service during that Month. The Company shall specify in such statement, any instances where the Company has failed to provide the Minimum Service in accordance with this Agreement, together with an explanation of the reasons for such failure.

- 5.2 In addition to the information at Clause 5.1, the Company shall provide such further information to the Authority, where the Company (or its Affiliates) holds such information, as the Authority may reasonably require in relation to the operation of the Minimum Service from time to time.

- 5.3 At the reasonable request of the Authority, the Company shall:

- (a) make all accounts, books and documents relating to the information to be provided under Clause 5.1 available, on an open book basis, for review by the Authority; and

- (b) provide the Authority with electronic copies of such information and shall do everything necessary to assist with such review of the Authority,

subject to the redaction by the Company of such information as is required to comply with data protection laws.

- 5.4 Any access to or provision of information by the Company to the Authority under this Agreement shall be at the expense of the Company.
- 5.5 The Company covenants that any information provided to the Authority by the Company or any of its Affiliates before this Agreement was entered into, including any benchmarking information provided to the Authority in respect of the period to 31 December 2019, was true and accurate in all respects to the best of the Company or the Affiliate's knowledge having made reasonable enquiries and remains so as the date of entering into this Agreement (or else that the Company or any of its Affiliates has provided the Authority with true and accurate updated information).
- 5.6 The Company covenants that the information provided by the Company or any of its Affiliates pursuant to Clauses 5.1, 5.2 and 5.3 shall be true and accurate in all respects, to the best of the Company's or the Affiliate's knowledge having made reasonable enquiries.
- 5.7 To the extent that any information provided by the Company to the Authority is not true and accurate then the Authority shall be entitled to dispute the amount of any Compensation Payment (whether or not already paid) and claim back any overpayment from the Company.

6. **ASSIGNMENT AND SUB-CONTRACTING**

- 6.1 The Company shall not assign, transfer, novate or create any encumbrance or other security interest over the whole or any part of its rights and obligations under this Agreement without the prior written consent of the Authority.
- 6.2 Subject to Clause 6.3, the Company shall not sub-contract the performance of the Minimum Service, or any part thereof, to a third party without the prior written consent of the Authority. Copies of any sub-contract in respect of the performance of the Minimum Service shall be provided by the Company to the Authority as the Authority may reasonably request for the purposes of its review of the information provided under Clause 5.
- 6.3 The Parties agree that the Company may engage sub-contractors in respect of those services that are incidental to the provision of the Minimum Service.
- 6.4 The Parties agree that sub-contracting the performance of the Minimum Service, or any part thereof, shall not relieve the Company of the performance of any of its obligations or duties under this Agreement notwithstanding that the Authority has consented to such sub-contracting.

7. **FORCE MAJEURE**

- 7.1 Clause 7.2 shall apply if the performance by any Party (the "**Claiming Party**") of its obligations under this Agreement is prevented, hindered or delayed in whole or in part by reason of a Force Majeure Event.
- 7.2 The Claiming Party shall not be deemed to be in breach of this Agreement or otherwise liable to the other Party (the "**Non-Claiming Party**") for any delay in performance or any non-performance of any obligations under this Agreement (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to a Force Majeure Event.

- 7.3 The Claiming Party shall promptly notify the Non-Claiming Party of the nature and extent of the circumstances giving rise to the Force Majeure Event.

8. **TERMINATION**

- 8.1 This Agreement may be terminated by the Authority on at least fourteen (14) days' written notice of termination and this Agreement will expire on the expiry of such notice.

- 8.2 Notwithstanding Clause 8.1, this Agreement may be terminated with immediate effect by the Authority upon written notice to the Company in the event that an Insolvency Event in respect of the Company occurs. In the event that the Authority gives such notice, this Agreement shall be deemed to have terminated on the date on which the Insolvency Event occurred notwithstanding the date on which the Authority served such notice.

- 8.3 In the event that the Company has failed to comply with any of its obligations under this Agreement and has not demonstrated to the reasonable satisfaction of the Authority that such failure arises from a Force Majeure Event or is otherwise a minor failure which is unlikely to be repeated:

- (a) where the failure is remediable, and the Company has failed to remedy such failure within five (5) days of such failure being duly notified in writing to it by the Authority, the Authority may, without prejudice to any other right or remedy which it may have:

- (i) withhold any payments which may be due to the Company under this Agreement until such obligations have been complied with; or

- (ii) terminate this Agreement with immediate effect by giving written notice of termination to the Company; or

- (b) where the failure is irremediable, the Authority may terminate this Agreement with immediate effect by giving written notice of termination to the Company.

- 8.4 In the event of termination by the Authority, the Company shall within five (5) Working Days of receiving notice to terminate from the Authority pursuant to this Clause 8, issue a final invoice (in accordance with Clause 4.5) in respect of the Compensation Payment payable by the Authority in relation to the Minimum Service provided to the Authority in respect of:

- (a) the relevant Month until the date of notification by the Authority to the Company under Clause 8.3 of the Company's failure to comply with its obligations under this Agreement; or

- (b) the relevant Month until the date of termination, where this Agreement is terminated other than in the circumstances referred to in Clause 8.4(a).

- 8.5 The Authority shall pay the amount in the invoice issued pursuant to Clause 8.4 within ten (10) Working Days of receipt of such invoice, subject to the Authority's right to dispute the invoice pursuant to Clause 4.7 and the Authority's right of set-off pursuant to Clause 4.8.

- 8.6 Subject to Clause 8.5, in the event of termination the Authority shall not be liable to the Company (or any of its Affiliates) for any costs, damage or loss incurred or suffered by the Company (or any of its Affiliates) as a result of such termination.

9. **DISPUTE RESOLUTION**

- 9.1 If a dispute, difference or question between the Parties has arisen with regard to any matter or thing arising out of or connected with this Agreement (a "**Dispute**"), then

either Party may notify the other Party and senior representatives of both Parties shall meet to discuss to seek to resolve such dispute, difference or question. The Parties agree that either Party may also invite senior representatives of the Airport to attend such meeting.

- 9.2 Notwithstanding any other provision of this Agreement, either Party may at any time commence proceedings against the other Party in the courts of England.

10. **NOTICES**

- 10.1 Any document, notice, statement or other thing required to be given or served in accordance with this Agreement shall be:

- (a) in writing; and
- (b) by email to the relevant email address as follows:
 - (i) in the case of the Authority: [REDACTED]@dft.gov.uk; and
 - (ii) in the case of the Company: [REDACTED]@aerlingus.com

Marked "For the attention of: The Company Secretary"

- 10.2 A notice shall be deemed to have been given and received before 17:00 hours on a Working Day, on the day of transmission and, in any other case at 09:00 hours on the next Working Day.

11. **GOVERNING LAW AND JURISDICTION**

- 11.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.
- 11.2 In so far as not already subject thereto, the Parties irrevocably submit to the jurisdiction of the courts of England.

12. **VARIATIONS**

- 12.1 The Authority and the Company may mutually agree amendments to this Agreement.
- 12.2 Amendments made pursuant to this Clause 12 shall only be effective if agreed in writing, and shall be effective from the date stipulated in such written agreement.

13. **CONFIDENTIALITY**

- 13.1 Subject to Clause 13.2, all Confidential Information shall be held confidential during and after the continuance of this Agreement and shall not be divulged in any way to any third party without the prior written approval of the other Party.
- 13.2 The Parties agree that either Party may disclose information which would otherwise be confidential:
- (a) if, and to the extent, required by law, regulation or for the purpose of any judicial inquiry or proceedings or pursuant to Clause 14;
 - (b) if, and to the extent required by any securities exchange or regulatory, Parliamentary or government body to which that Party is subject, wherever situated and including the London Stock Exchange, the European Commission, any Parliamentary Committee and the Comptroller and Auditor General and whether or not the requirement has the force of law;

- (c) if, and to the extent, necessary or desirable to enable a determination to be made under Clause 9;
 - (d) to its professional advisers, auditors and bankers;
 - (e) if, and to the extent, the information has come into the public domain through no fault of that Party; and
 - (f) to the Northern Ireland Department for Infrastructure (or its officials).
- 13.3 Each Party shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information save as permitted pursuant to Clause 13.2.
- 13.4 Each Party shall promptly return any Confidential Information requested by another Party if such request:
- (a) is made on or within two (2) months after the end of the Period;
 - (b) is reasonable; and
 - (c) contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located,
- provided that no Party shall be obliged to return Confidential Information in accordance with this Clause 13.4 to the extent such Party reasonably requires such Confidential Information to be retained for legal or accounting purposes or to evidence any payments made or received pursuant to this Agreement.
- 13.5 Any Party to this Agreement who has not received a request from another Party to return any Confidential Information under and within the time limits specified in Clause 13.4 may destroy or retain such Confidential Information.
- 13.6 Subject to Clause 13.5, all Confidential Information shall be and shall remain the property of the Party which supplied it to the other Party.

14. **FREEDOM OF INFORMATION**

- 14.1 The Company acknowledges that the Authority is subject to the requirements of the 2000 Act and the 2004 Regulations in relation to this Agreement and the Company shall use reasonable endeavours (and procure that its Affiliates use reasonable endeavours) to assist and cooperate with the Authority to enable the Authority to comply with any Request arising out of or in relation to this Agreement.
- 14.2 The Authority shall be responsible for determining:
- (a) whether a Request is properly made; and
 - (b) in its absolute discretion whether Information, including commercially sensitive information, is exempt from disclosure under the 2000 Act or the 2004 Regulations,

provided that the Authority shall:

- (c) promptly upon receipt of any Request give notice to the Company of such Request and in such notice shall confirm whether the Authority considers it a proper Request and whether or not any Information is exempt from disclosure under the 2000 Act or the 2004 Regulations; and

(d) consult with and obtain the Company's views in respect of any Request, in particular any Request that could require the disclosure of commercially sensitive information, (giving due regard to such views) before the Authority:

(i) makes any determination pursuant to this Clause 14; or

(ii) discloses any Information,

in respect of such Request provided that the Authority shall be entitled to respond within the statutory timescale if no response is received in time from the Company.

15. **ANTI-BRIBERY**

The Company shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including, but not limited, to the Bribery Act 2010.

16. **ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the Parties in relation to its subject matter.

17. **COUNTERPARTS**

This Agreement may be executed in a number of counterparts which, taken together, shall constitute one and the same document.

18. **SURVIVAL**

Clauses 1, 2, 4, 5, 8, 9, 10, 11, 13, 14, 18 and 19 shall continue to bind the Parties notwithstanding expiry of the Period or early termination of this Agreement.

19. **THIRD PARTIES**

No person who is not a Party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

IN WITNESS WHEREOF this Agreement has been duly executed the day and year first before written.

SIGNATURES

Executed by **THE SECRETARY OF STATE**)
FOR TRANSPORT:)
)
)

Signature of authorised signatory

Name of authorised signatory

DocuSigned by:
[REDACTED]

Executed by **AER LINGUS LIMITED**:

)
)
)
)

DocuSigned by:

Signature of director

Name of director

[REDACTED]

SCHEDULE 1

Minimum Service

1. The Company shall operate air passenger services on a daily rotation between the Airport and London for five (5) days per week.
2. The Minimum Service shall be provided by the Company on an A320 aircraft.
3. The Company shall utilise the Company's Northern Ireland based staff and aircraft in providing the Minimum Service.
4. In providing the Minimum Service, ticket sales shall be via www.aerlingus.com and any other applicable Company sales channels, including call centres and online travel agents.
5. It is expected that the aircraft shall remain grounded in between the operation of the Minimum Service, but the Parties acknowledge that this may change during the Period.
6. The Company does not need the approval of the Authority to amend the scheduled operating time of the Minimum Service (within the parameters set out in paragraph 1 above) or make changes where appropriate to staff rostering or employee agreements.

SCHEDULE 2

Designated Costs

1. Subject to paragraph 2 below, Designated Costs shall include costs in respect of the following categories of cost required to be incurred in order to provide the Minimum Service:
 - (a) fuel;
 - (b) airports & enroutes;
 - (c) handling, catering and other;
 - (d) maintenance;
 - (e) staffing and expenses;
 - (f) selling costs; and/or
 - (g) aircraft ownership costs.
2. Where any of the costs falling into the above categories is incurred by the Company in also carrying out activities other than the Minimum Service, a corresponding proportion of those costs shall be deducted from the amount recoverable by the Company.

SCHEDULE 3

Designated Revenue

1. Designated Revenue shall include the following revenue arising from the Minimum Service:
 - (a) all fare/ticket revenue;
 - (b) ancillary passenger revenue;
 - (c) cargo revenue; and
 - (d) other revenue.

SCHEDULE 4

Compensation Payment Cap

Month	Compensation Payment Cap (excluding VAT)
April (part month)	██████████
May	██████████
June	██████████
July (part month)	██████████
TOTAL	£1,152,156

SCHEDULE 5

Provision of information by the Company

1. Designated Costs

- (a) The Designated Costs shall be presented to the Authority in a Microsoft Excel document, with amounts in pounds sterling, with a breakdown of the cost categories listed in Schedule 2.
- (b) The Company's Monthly cashflow in relation to the Designated Cost shall also be presented in the level of detail normally reported within the Company's management accounts, and shall be accompanied by a statement explaining the basis of preparation and any key assumptions.
- (c) Any material discrepancies in relation to the Designated Cost from the figure applicable to that Month in the table in Schedule 4 shall require additional explanation from the Company.

2. Designated Revenue

- (a) The Designated Revenue shall be presented to the Authority in a Microsoft Excel, with amounts in pounds sterling, with a breakdown of the following:



- (b) The Company's Monthly cashflow in relation to the Designated Revenue shall also be presented in the level of detail normally reported within the Company's management accounts, and be accompanied by a statement explaining the basis of preparation and any key assumptions.