

**APPENDIX 2 TO TERMS OF REFERENCE**

**CONTRACT ESSENTIAL PROVISIONS**

**CONTRACT NO. ....**

concluded on ..... in Warsaw, hereinafter referred to as the Contract, by and between:

**Lotnicze Pogotowie Ratunkowe**, with its registered office in Warsaw, at ul. Księżycowa 5, postal code 01-934 Warsaw; entered to the National Court Register of Associations, Other Social and Professional Organisations, Funds and Public Healthcare Establishments under KRS no. 0000144355, maintained by the District Court for the capital city of Warsaw, XIII Commercial Department of the National Court Register, REGON 016321074, NIP 522-25-48-391, hereinafter referred to as the **Contracting Authority**, represented by:

**Robert Gałązkowski, Director,**

and

.....  
.....

hereinafter referred to as the **Contractor**,

represented by .....

hereinafter referred to also as the Parties,

As a result of a public contract award procedure conducted as an open tendering procedure no. ZP/.../III/2020 titled **“Supply of a brand new component: STRETCHER PLATFORM ASSY PN: 002104-501 (1 pc.)”**, pursuant to Article 39 of the Act of 29 January 2004 Public Procurement Law, the Parties hereto conclude a Contract with the following content:

**§ 1**

1. The subject-matter of the Contract shall be supply of a brand new component: STRETCHER PLATFORM ASSY PN: 002104-501 - 1 pc., hereinafter referred to also as the part.

**§ 2**

1. The Parties agree that the Contract value shall be up to the amount of ..... net/gross on the basis of the Contractor’s tender of ..... (hereinafter referred to as the Tender), being an Appendix hereto.
2. The payment for the supply of the part shall be made within 30 days from the day of receiving a correctly issued VAT invoice by the Contracting Authority and signing the Handing-Over Report referred to in § 4 par. 8.
3. The payment for the VAT invoice referred to in par. 2 shall be made to the following bank account of the Contractor: .....
4. Each of the Parties shall bear the banking costs at its respective bank.
5. The Parties shall deem the day of debiting of the Contracting Authority’s bank account as the date of payment.
6. If the time-limit for payment is not complied with, the Contractor shall have the right to charge the Contracting Authority with statutory interest.

**§ 3**

1. The part shall be supplied within 30 days from the day of the Contracting Authority’s sending the written order referred to in § 4 par. 1 to the Contractor. The order referred to

in the previous sentence shall be sent to the Contractor within 2 days from the Contract conclusion date.

2. The date of giving a written notice to the Contracting Authority of the Contractor's readiness for handing over the ordered part shall be deemed as the order completion date, subject to § 4 par. 9.
3. The Contract value specified in § 2 par. 1 does not include the costs of delivery of the part from the Contractor to the Contracting Authority (Incoterms 2010, FCA). The part delivery shall be carried out in the manner indicated in par. 4 and 5.
4. The Contractor undertakes to provide the part for collection and arrange its shipment only from the European Union or from Switzerland on condition that the Contractor is an entity registered and based in the said country.
5. The supplied part shall be transported at the Contracting Authority's expense and risk by a carrier designated by the Contracting Authority, save as referred to in par. 6.

Part delivery address: Lotnicze Pogotowie Ratunkowe, Magazyn Techniczny i Narzędziownia w Organizacji Obsługowej PART 145, ul. Książycowa 5, 01-934 Warszawa.

6. In an emergency, e.g. force majeure, as referred to in § 7, the Contractor, upon a mutual agreement of the Parties, may arrange transport to the Contracting Authority on its own and at its own expense and risk. Such transport shall be payable based on a separate order, in accordance with the regulations applicable at the Contracting Authority's. The Contractor shall issue a separate VAT invoice to the Contracting Authority. Any change of the method of arranging the transport shall not constitute an amendment hereto as defined in § 9 par. 2 hereof, and shall require merely a written agreement (declaration) between the Parties. The person authorised for submitting such a declaration on behalf of the Contracting Authority shall be the Technical Logistics Department Manager or his or her substitute.
7. The persons responsible for the proper performance hereof shall be:

**on behalf of the Contracting Authority:**

Technical Logistics Department Manager or his or her substitute.

Any and all notices and other communications regarding the performance hereof shall be sent to the Contracting Authority by e-mail to the address: [dlt@lpr.com.pl](mailto:dlt@lpr.com.pl)

**on behalf of the Contractor:**

....., phone: ....., e-mail: .....

Any and all notices and other communications regarding the performance hereof shall be sent to the Contractor by e-mail to the address: .....

8. The Parties represent that the persons referred to in par. 7 are authorised by the Party for performing activities related to performance of the subject-matter hereof, but are not authorised for amending the Contract.

#### § 4

1. The part shall be supplied based on a written order sent to the Contractor via e-mail to the address ....., in accordance with the conditions specified in § 3.
2. The Contracting Authority shall specify the following in the order:
  - order number;
  - part number;
  - manner of collecting the part from the Contractor and all necessary data of the carrier designated for the transport.
3. In an exceptional situation, the Contracting Authority permits the Contractor to supply a part with an alternative part number, other than the one specified in the Tender. The Contractor shall substantiate the impossibility to supply the part with the number

indicated in the Tender. The supply of a part with an alternative part number shall require a written agreement between the Parties. The Contracting Authority understands a part with an alternative number as a part with the same properties and intended use. The price offered for the part with an alternative part number may not be higher than the price of the part originally described and priced in the Tender. A change of the price to a lower one shall not require an annex hereto. The supply of a part with an alternative number shall not constitute an amendment hereto as defined in § 9 par. 1 hereof, and shall require merely a written agreement (declaration) between the Parties. The person authorised for submitting such a declaration on behalf of the Contracting Authority shall be the Technical Logistics Department Manager or his or her substitute.

4. Upon receiving the order, the Contractor shall, within 2 days, confirm the acceptance thereof for processing by e-mail to the address [dlt@lpr.com.pl](mailto:dlt@lpr.com.pl). In the confirmation, the Contractor shall provide the address for collecting the part and the expected order lead time.
5. The order lead time confirmed in writing by the Contractor may be extended where the Contracting Authority introduces significant changes to the content of the order. A change of the order lead time in the situation described in the previous sentence shall not constitute an amendment hereto as defined in § 9 par. 1 hereof, and shall require merely a written agreement (declaration) between the Parties. The person authorised for submitting such a declaration on behalf of the Contracting Authority shall be the Technical Logistics Department Manager or his or her substitute.
6. In the case of force majeure, as referred to in § 7, or other circumstances independent of the Contractor, of which the Contracting Authority is notified by the Contractor in writing, the Parties shall agree an individual order lead time, other than that specified in par. 1, in the form of a written agreement, and shall make efforts to accelerate the order lead time as much as possible. Situations where the time-limits for part supply are not complied with by the Contractor's suppliers shall not be deemed as circumstances independent of the Contractor. A change of the order lead time in the situation described in the previous sentence shall not constitute an amendment hereto as defined in § 9 par. 1 hereof, and shall require merely a written agreement (declaration) between the Parties. The person authorised for submitting such a declaration on behalf of the Contracting Authority shall be the Technical Logistics Department Manager or his or her substitute.
7. The Contractor shall immediately launch the transport of the part confirmed for shipment provided that the Contracting Authority has earlier specified the manner of transport and all necessary data of the carrier designated for the transport.
8. The part shall be handed over based on a Hand-Over Report, signed by both Parties, which shall include the following:
  - a) part name with identification numbers provided (p/n – part number, s/n – serial number);
  - b) identification numbers of the documents referred to in § 5 par. 1;
  - c) delivery date;
  - d) place for comments.
9. Where the Contractor fails to include the information referred to in par. 8 in the Hand-Over Report or to hand over the documents referred to in § 5 par. 1, the Contracting Authority and the Contractor shall agree on the conditions for collecting the part provided that the time-limit for remedying the inconsistencies does not exceed 7 days counted from the date of notifying the inconsistencies.
10. In each case, the Contractor shall provide, free of charge, such packaging for the part that is required to protect the part against damage during transport to the Contracting Authority.

11. Where it is found that the Contract has not been performed in terms of shortage in the quantity of the supplied parts, the Contractor shall replenish the shortage in the quantity within the order supply time-limit and arrange transport at its own expense and risk.
12. The Contractor shall immediately notify the Contracting Authority in writing of the following situations independent of the Contractor:
  - a) impossibility to comply with the contractual obligations in whole or in part;
  - b) impossibility to comply with the time-limits arising herefrom.Situations for which the Contractor's suppliers are responsible shall not be deemed as circumstances independent of the Contractor.

#### § 5

1. The Contractor shall supply the following documentation with the part:
  - a) an up-to-date EASA Form 1 confirming the completion of the subject-matter hereof;
  - b) Log Card (if applicable).
2. The Contractor shall supply the part which holds all AD (Airworthiness Directives), service bulletins, modifications (if applicable) in force as at the day of its shipment to the Contracting Authority.

#### § 6

1. The Contractor shall furnish warranty to the Contracting Authority for the period of: ... (at least 24) months counted from the date of incorporating the part in the helicopter or 36 months counted from the date of handing over the part to the Contracting Authority by the Contractor, whichever occurs earlier.
2. The Contractor shall be fully liable for legal or physical defects of the part, in particular where the part:
  - a) is owned by a third party or is encumbered by third party rights;
  - b) has a defect reducing its value or usability arising from the intended use;
  - c) fails to meet the requirements specified by the Contracting Authority in § 5.
3. The Contracting Authority shall notify the Contractor in the form of written warranty claims sent by e-mail or by fax of any unserviceability of the part during the warranty period.
4. The notice referred to in par. 3 shall be sent by the Contracting Authority within 14 days counted from the date of occurrence of a fault in the part being the object of the warranty claim.
5. The Contractor shall from time to time confirm the receipt of the warranty claim in writing to the e-mail address [dlt@lpr.com.pl](mailto:dlt@lpr.com.pl). The Contractor shall notify the Contracting Authority of further conduct concerning the processing of the warranty claim in the same manner within 2 days counted from the date of receiving the warranty claim.
6. The Contractor shall, within 30 days, replace the part being the object of the warranty claim for a brand new part or repair the damaged part. The period of the warranty furnished for the part being the object of the warranty claim shall be extended by the time during which the Contracting Authority was unable to use the part.
7. If the part being the object of the warranty claim is replaced for a part free from defects, the Contracting Authority shall return the part to the Contractor within 14 days counted from the date of the Contracting Authority's receiving a part free from defects.
8. In the case of force majeure, as referred to in § 7, or the occurrence of other circumstances independent of the Contractor, of which the Contracting Authority is notified by the Contractor in writing, the Parties shall set an individual completion time of the warranty claim in the form of a written agreement – a different one than that specified in par. 6 or based thereon, and shall make efforts to accelerate the completion

time of the warranty claim as much as possible. Situations where the part supply or repair time-limits are not complied with by the Contractor's suppliers shall not be deemed as circumstances independent of the Contractor. A single change of the completion time of the warranty claim in the situation described in the previous sentence shall not constitute an amendment hereto as defined in § 9 par. 1 hereof, and shall require merely a written agreement (declaration) between the Parties. The person authorised for submitting such a declaration on behalf of the Contracting Authority shall be the Technical Logistics Department Manager or his or her substitute.

9. The Contracting Authority's representatives shall have the right to participate in the processing of the warranty claim.
10. The Contractor shall, at the Contracting Authority's request, notify it of the commencement date of processing the warranty claim at least five days in advance in order to enable the participation of the Contracting Authority's representative in the said processing of the warranty claim.
11. As part of the processed warranty claim, the Contractor shall cover all costs of transporting the unserviceable part from the Contracting Authority's registered office to the maintenance facility and the transport costs of its return to the Contracting Authority's registered office. The Contractor shall also ensure, free of charge, a proper packaging for the part protecting it from damage during the transport. The Contractor shall be also liable for any damage arisen during the transport.
12. Where a warranty claim is rejected:
  - a) the Contracting Authority shall pay the Contractor for the supplied brand new part the price indicated in the Price Form (applicable to a supply of a brand new part under the processed warranty claim),
  - b) the Contracting Authority shall pay the Contractor for the repaired part (applicable to a repair of the part performed under the processed warranty claim),
  - c) the Contracting Authority shall reimburse the Contractor for all costs related to verification and transport of the part which was sent for repair in the maintenance organisation referred to in par. 13 under the warranty claim.
13. Warranty claim rejection by the Contractor shall be substantiated in a written report prepared by a relevant maintenance organisation holding a valid approval for providing maintenance under the processed warranty claim and holding a formal approval by the aviation authority: EASA (European Aviation Safety Agency), or FAA (Federal Aviation Administration), or TC (Transport Canada).
14. The Contractor shall return the part being the object of the warranty claim to the Contracting Authority within 14 days counted from the day of notifying the Contracting Authority of the warranty claim rejection.
15. The warranty shall not apply if the part was exposed or subjected to:
  - a) any maintenance, repair, incorporation, transport, storage, or use, which is incorrect; or
  - b) any alteration, modification or repair by anyone other than the Contracting Authority's Part 145 Organisation (exclusively within the scope of approval of this organisation), the Contractor or an entity authorised by the Contractor; or
  - c) any accident, contamination, damage caused by foreign objects or misuse after delivery to the Contracting Authority.
16. This warranty shall be an exclusive warranty and supersede any and all other written and verbal warranties expressed directly, implied and specified by law, including (but not limited to) any implied warranties of merchantability or fitness for primary use, which are hereby excluded.

## § 7

1. The Parties shall not be liable for delays arising from the emergence of force majeure. The Parties shall understand force majeure as circumstances impossible to foresee at the time of concluding the Contract, regardless of the Parties' will, on which neither Party had influence and which neither Party could prevent. The following shall be deemed in particular as force majeure: natural disasters, catastrophes, military mobilisation, embargo, closing of borders, which prevent the performance hereof in whole or in part.
2. The Party afflicted by such a force majeure event shall immediately notify the other Party thereof in writing and of the anticipated duration of the obstacle in the performance hereof, or otherwise that Party shall forfeit the right to invoke a force majeure event. The Parties agree to take immediate actions aimed at specifying the method of resolving the situation and performing the provisions hereof.
3. Situations where the part supply or repair time-limits are not complied with by the Contractor's suppliers shall not be deemed as circumstances independent of the Contractor.

## § 8

1. The Contracting Authority shall have the right to terminate the Contract with immediate effect during the whole term hereof if one of the following cases occurs:
  - a) failure to observe the order lead times agreed upon by the Parties, reasons for which the Contractor is responsible;
  - b) failure to process the order and/or warranty claims received from the Contracting Authority hereunder for reasons for which the Contractor is responsible;
  - c) the Contractor's forfeiting the powers necessary for performing the Contract;
  - d) the Contractor's declaration of bankruptcy.
2. Should the Contract be terminated for the reasons specified in par. 1 or due to other flagrant violations of the Contractor's obligations arising herefrom, the Contractor shall pay an amount of 1% of the gross non-performed Contract value.
3. Where the Contract is terminated:
  - a) The Contractor shall pay the Contracting Authority a contractual penalty of 1% of the gross non-performed Contract value specified in § 2 par. 1 where the Contractor terminates the Contract due to reasons for which the Contracting Authority is not responsible;
  - b) The Contracting Authority shall pay the Contractor a contractual penalty of 1% of the gross non-performed Contract value specified in § 2 par. 1 where the Contracting Authority terminates the Contract due to reasons for which the Contractor is not responsible.
4. Where the Contracting Authority terminates the Contract, the Contractor shall not claim damages exceeding the amount of the contractual penalty specified in par. 3(b) hereof.
5. The Contract shall be terminated in writing or otherwise it shall be invalid, and it shall contain substantiation.
6. In the case of delays in complying with the time-limits for fulfilling the obligations arising herefrom when processing the order, the Contractor shall pay the Contracting Authority a contractual penalty of 0.1% of the gross value of the order for each started day of the delay over the time-limit set pursuant hereto, not more, however, than 1% of the total gross value of the order the lead time of which has not been complied with.
7. In the case of untimely completion of a warranty claim hereunder, the Contractor shall pay the Contracting Authority the contractual penalty of EUR 20.00 gross for each day of the delay over the warranty claim completion time-limits specified hereunder.
8. Where a significant circumstance changes resulting in the Contract performance not being in public interest, which could not have been foreseen on conclusion hereof, the Contracting Authority may revoke the Contract within 30 days of becoming aware of

such circumstances. In connection with this situation the Contractor may demand only remuneration due in respect of the completed part hereof.

9. The contractual penalties referred to in par. 2, par. 3(a), par. 6–7 shall be deducted first of all from the remuneration due to the Contractor, to which the Contractor consents and authorises the Contracting Authority without the need to obtain confirmation.
10. Where such damage occurs that exceeds the amounts of the contractual penalties referred to in par. 2, par. 3(a), par. 6–7, the Contracting Authority shall have the right to claim damages on general principles.
11. The Contractor shall be liable for the acts performed by its suppliers, which affect the part supply date, as if they were its own acts.

## **§ 9**

1. Pursuant to Article 144 of the Public Procurement Law, the Parties agree that significant amendments hereto may be made in the following situations:
  - a) amendment to the current laws applicable to awarding public procurement contracts – the wording of the Contract shall be amended accordingly to the implemented legal regulations;
  - b) change of the VAT rate – the net price shall not change, only the gross price shall change;
  - c) change of the trade name of the part specified in the Contractor’s Tender where the trade name of the part changes on the market;
  - d) permanent changes of completion times of warranty claims and manner of processing warranty claims due to circumstances which the Parties hereto could not have foreseen despite acting with due diligence;
  - e) permanent changes of order lead times due to circumstances or events preventing completion of the order within the set time-limit which were beyond the control of the Parties hereto despite acting with due diligence;
  - f) change in the manner of settling the Contract or making payments for the Contractor, where the change is beneficial to the Contracting Authority or justified by its payment capacity;
  - g) change of the part transport method referred to in § 3 par. 4 where the transport is carried out at the Contractor’s expense and risk;
  - h) change of the manner of performing the contractual obligations if such a change is beneficial to the Contracting Authority or required for the proper performance hereof;
  - i) permanent reduction of the price for the part by the Contractor, which may be done by the Contractor at any time;
2. Any amendments to the provisions hereof shall be only valid if in writing.

## **§ 10**

1. Any matters not regulated herein shall be governed by the provisions of the Polish Civil Code and the Public Procurement Law.
2. This Contract shall be governed by, construed and interpreted in accordance with the Polish law, and any provisions which invoke the application of the law of another jurisdiction are hereby expressly excluded.
3. The Contractor declares that it is aware of the fact that the content hereof, and in particular the subject-matter hereof and the remuneration amount, constitutes public information as defined in Article 1 par. 1 of the Act of 6 September 2001 on Access to Public Information (i.e. Dz. U. of 2019, item 1429, as amended), which is subject to being made available under the procedure specified in the relevant Act, subject to par. 5.

- 4. When processing personal data, the Contractor shall apply the provisions of the Act of 10 May 2018 on the Protection of Personal Data (Dz. U. of 2019, item 1781, as amended) to the processing thereof.
- 5. The Contractor gives its consent to making available, under the procedure specified in the Act of 10 May 2018 on the Protection of Personal Data (Dz. U. of 2019, item 1781, as amended), its personal data contained herein, being full name and, if it pursues an economic activity, also business name.
- 6. Any disputes related to the performance hereof shall be resolved by a court competent for the Contracting Authority's registered office.
- 7. This Contract has been drawn up in four (4) counterparts, including three (3) for the Contracting Authority.
- 8. The Contractor's Tender (Tender Form) is an Appendix hereto and an integral part hereof.

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***Contracting Authority***

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***Contractor***