

**SERVICES AGREEMENT  
FOR SCHEDULED PUBLIC SERVICES BETWEEN ORADEA AND WARSAW  
No. [●]/[●] 2023**

between:

**BIHOR COUNTY COUNCIL**

and

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This agreement (“**Agreement**”) was concluded today, [...].2023, between:

**Bihor County Council**, address 5 Parcul Traian Street, Oradea, Bihor County, Romania, represented by [...], in his/her capacity of [...] (“**Bihor County Council**” or “**Public Authority**”),

and

[...], a ... company established and existing under the laws of [...] with registration code [...], address [...], represented by [...], in his/her capacity of [...] (“**Air Operator**”),

collectively referred to as “**Parties**” and separately as “**Party**”

## **WHEREAS**

- (i) Pursuant to Article 16(1) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (“**Air Services Regulation**”), Bihor County Council decided, as per Resolution no. [...]/[...].2023, to impose a public service obligation (“**PSO**”) for scheduled Public Services between Oradea (IATA code: **OMR**) and Warsaw (IATA code: **WAW**) airports (“**Route**”);
- (ii) The Buyer has organised a tender for the award of PSO for scheduled air services on the OMR – WAW Route, as per the invitation to tender dated [...] (“**Invitation to Tender**”);
- (iii) The Air Operator has submitted an offer and all corresponding attachments in reply to the Invitation to Tender, as attached in **Appendix 1 – Tender** hereto;
- (iv) As a result of the evaluation process, the Public Authority has selected the Air Operator as the winning tenderer and provider of the public scheduled air services on the OMR – WAW Route (“**Public Services**”).

## **THE PARTIES HAVE AGREED AS FOLLOWS**

### **1. SCOPE OF THE AGREEMENT**

- 1.1.** Under this Agreement the Air Operator undertakes to provide public scheduled air services on the Route whereby the obligation to provide public scheduled air services is established, in accordance with the requirements specified in Regulation (EC) No. 1008/2008, the Bihor County Council Resolution for imposing the public service (hereinafter “**Resolution**”), Invitation to Tender and the Air Operator’s Tender, and the Public Authority, in accordance with provisions of legal acts, undertakes to pay to the Air Operator a compensation duly calculated and substantiated according to the Invitation to Tender terms and conditions and specified in the request provided by the Air Operator in accordance with the terms and conditions of the Resolution, Invitation to Tender and the Agreement, the amount of which shall not exceed the amount of compensation for each calendar year specified in Appendix 2 (Calculation Form) of the Agreement for the Public Services properly provided.
- 1.2.** This Agreement sets out the terms and conditions of cooperation between the Bihor County Council and the Air Operator applicable to the Public Authority’s imposition of the Public Services to the Air Operator.

- 1.3. This Agreement provides for the Public Services whereby the Air Operator discharges the PSO for air services on the Route. The Air Operator guarantees the continuous and uninterrupted availability of the Public Services under the Agreement for at least the Duration of the Agreement and shall make its best efforts to operate the Route in accordance with the provisions of this Agreement.

## **2. DURATION OF THE AGREEMENT**

- 2.1. This Agreement shall enter into force on the date of signature by both Parties and shall be valid until 31 May 2028 (“**Duration of the Agreement**”).
- 2.2. The Air Operator shall start providing the Public Services from 1 June 2024, but no later than from 1 July 2024, and provide them for four years. The start date of the operation can be modified if the public tender has a longer-than-expected duration.

## **3. EXCLUSIVITY**

- 3.1. The Agreement grants the Air Operator the exclusive right to operate the Route for the Duration of the Agreement. The remuneration for such exclusivity is the compensation provided in Clause 7 and shall be the sole material benefit received by the Air Operator for such exclusivity.

## **4. AIR OPERATOR’S OBLIGATIONS**

### **4.1. General responsibilities of the Air Operator**

- 4.1.1. The Air Operator undertakes to provide the Public Services in accordance with Regulation (EC) No. 1008/2008, Resolution, Invitation to tender, and the Air Operator’s tender.
- 4.1.2. The Air Operator is required to perform the Public Services as defined in this Agreement and its appendices. The Air Operator carries out the Public Services as agreed, with due care and in accordance with the industry standards, as well as in a way that fulfils all of the terms and conditions set out in this Agreement.
- 4.1.3. In carrying out the Public Services, the Air Operator must comply with all applicable legal requirements, in particular with the requirements regarding aviation safety, security, employment, passenger rights and data protection.
- 4.1.4. The Air Operator declares and warrants that the eligibility requirements mentioned in the Invitation to Tender are valid upon start of operations and shall be maintained throughout the Duration of the Agreement.

### **4.2. Operational responsibilities**

- 4.2.1. The Air Operator shall be responsible for the procurement of all services, materials and other equipment necessary for the provision of the Public Services without any separate compensation unless expressly agreed otherwise in this Agreement. The Air Operator guarantees that it has sufficient staff and resources to fulfil its obligations under this Agreement.
- 4.2.2. The Air Operator shall assign jet aircraft types suitable to the provision of Public Services. The aircraft shall have at least 75 passenger seats available.

**4.2.3.** The Air Operator shall be able to provide a replacement aircraft which meets the requirements herein within 12 hours, in case of malfunctions.

#### **4.3. Sales responsibilities**

**4.3.1.** The Air Operator shall be responsible for planning, marketing and publicity of the operations, as well as the seat bookings and ticket sales.

**4.3.2.** Ticket sales shall comply with the requirements set out in the Invitation to Tender. In particular, tickets shall be sold via at least one sales channel belonging to the Air Operator and include all applicable taxes, charges and fees to authorities and any other extra charges.

#### **4.4. Passenger compensation**

**4.4.1.** In the event that the Air Operator cancels a flight or a flight is delayed as provided for in Regulation (EC) No 261/2004 of the European Parliament and of the Council, the Air Operator shall compensate the passengers for damages according to applicable law. The Air Operator shall also ensure that the operations are executed in compliance with Regulation (EC) No 1107/2006 of the European Parliament and of the Council concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

#### **4.5. Subcontractors**

**4.5.1.** The Air Operator undertakes to regularly ensure that the subcontractors employed are sufficiently experienced and professional, as well as committed to complying with the obligations as specified in this Agreement and its appendices.

**4.5.2.** The Air Operator is not entitled to change the subcontractor during the Duration of the Agreement without Public Authority's prior written consent.

**4.5.3.** The Air Operator is obliged to monitor the subcontractor's actions regularly and is responsible for the subcontractor's actions as for its own.

### **5. BUYER'S OBLIGATIONS**

**5.1.** The Public Authority is responsible for the payment of the agreed Compensation and for the execution of the agreed tasks of the Public Authority under this Agreement.

**5.2.** Unless otherwise agreed in writing, the Public Authority has no other obligations or responsibilities than those expressly agreed in this Agreement and its appendices.

### **6. SCHEDULE AND CHANGES**

**6.1.** The schedule for the Public Services is set out as per **Appendix 1 (Tender)**.

**6.2.** Deviations from the Schedule are possible for justified reasons, including, but not limited to: strikes, airspace closure, airport or air traffic control restrictions, safety and health restrictions.

**6.2.1.** Changes to the Schedule may be agreed upon mutually by the Public Authority and the Air Operator. The introduction of additional frequencies in the Schedule shall be done on Air Operator's commercial risk, without any entitlement to Compensation.

## 7. COMPENSATION

### 7.1. General principles

- 7.1.1. The maximum financial compensation for the provision of Public Services for the Duration of the Agreement is specified in the Bid for each calendar year (“**Maximum Compensation**”).
- 7.1.2. The compensation paid by the Public Authority (“**Compensation**”) cannot exceed the Maximum Compensation, except for the cases described under Clause 7.4.
- 7.1.3. The Compensation shall be calculated based on actual costs and revenues from operating the Route as recorded by the Air Operator. To this end, the Air Operator undertakes to keep detailed separate accounting to permit the calculation of costs and revenues corresponding to the Route.
- 7.1.4. The Air Operator accounting of the Public Services shall be separate from accounting of other activities of the Air Operator. All variable and fixed costs and profits related to other activities of the Air Operator may not be attributed to the Public Service.
- 7.1.5. The amount of Compensation shall be calculated after each quarter, based on the costs and revenues included in **Appendix 2 (Calculation Form)**.
- 7.1.6. The Compensation paid shall comply with the EU State aid legislation. According to Article 17(8) of the Air Services Regulation, the Compensation paid shall not exceed the amount required to cover the net costs incurred in discharging the PSO, taking into account the revenue gained therefrom by the Air Operator and a reasonable profit. For the avoidance of doubt, the profit margin applicable for calculating the Compensation is 5% according to the Tender.

### 7.2. Operational Target

- 7.2.1. For each quarter, the Air Operator must complete at least 90% of the number of flights on the Route as specified in the Tender, except if the flight cancellations are due to force majeure or for reasons beyond the control of the Air Operator (“**Operational Target**”). If the Air Operator fails to meet the Operational Target, or the number of flights that do not meet the minimum standards (as per the Invitation to Tender) exceeds 10% of the flights scheduled for a quarter, as specified in the tender, the Public Authority shall have the right to refuse to compensate the profit margin of the Air Operator specified in the request for payment for the relevant quarter.

### 7.3. Payment mechanism

- 7.3.1. The Compensation is paid based on the request for payment issued quarterly by the Air Operator, after the following documentation has been duly submitted and accepted by the Buyer: (i) the Net Cost Calculation as per template included in **Appendix 2 (Calculation Form)**, (ii) the request for payment as per template included in **Appendix 3 (Request for Payment)**, (iii) the Quarterly Report as per template included in **Appendix 4 (Quarterly Report)**, all filled in for the relevant quarter.
- 7.3.2. The documentation mentioned under Clause 7.3.1 shall be submitted to the Public Authority within 30 (thirty) business days after the end of each reporting quarter. The Public Authority shall assess such documents within 10 (ten) business days of receipt and confirm if the Air Operator qualifies for Compensation. Any deficiencies identified in the documents or requests for clarifications shall be addressed by the Air Operator within 10 (ten) business days of Buyer’s request to this end, unless Public Authority extends the term at the request of the Air Operator.

- 7.3.3. If the eligibility for Compensation is confirmed, the Air Operator shall issue the request for payment of the Compensation to the Public Authority within 5 (five) business days. Requests for Payment shall be delivered to the Public Authority electronically to the following e-mail address: [mihaela.rosan@cjbihor.ro](mailto:mihaela.rosan@cjbihor.ro).
- 7.3.4. The Public Authority shall be entitled to withhold payment of Compensation if the Air Operator's documents justifying the Compensation are incomplete, inadequate or delayed.
- 7.3.5. The Public Authority has the right of set-off with respect to the Compensation and other possible debts owed to the Air Operator against its own claims against the Air Operator.
- 7.3.6. The Public Authority shall pay the confirmed amounts not later than 30 (thirty) calendar days.
- 7.3.7. The Public Authority shall have the right to not pay the full amount of compensation specified in the Air Operator's request for payment, if the Air Operator cannot substantiate the costs incurred by reliable documents or if the Public Authority has doubts about the allocation of a certain part of costs to the costs incurred in connection with the flight operation on the Route. If the compensation is found to be overpaid, the Public Authority shall request the Air Operator to refund the overpayment no later than within 10 (ten) business days from submission of the request to refund the overpayment to the Air Operator. When compensation overpayment does not exceed 10% the annual compensation amount, such compensation overpayment may be transferred to another year and deducted from the compensation amount payable for that year.

#### 7.4. Adjustments

- 7.4.1. The Maximum Compensation includes fuel costs. Changes to fuel prices may affect the amount of Maximum Compensation. If the average fuel price included in the Quarterly Report increases or decreases by more than 10% compared to the fuel price indicated in the Bid, the Maximum Compensation shall be adjusted using the average fuel price of the reported quarter. At the request of the Buyer, the Air Operator shall provide information substantiating the change in the average fuel price.

### 8. REPORTING AND MONITORING

#### 8.1. Reporting

- 8.1.1. The Air Operator keeps statistics on the Route, and periodically, at the Buyer's request, provides the Public Authority with financial and operational data, within reasonable limits, concerning the operations of the Public Services.
- 8.1.2. The Air Operator shall provide the Public Authority with quarterly reports ("**Quarterly Report**") as per the template in **Appendix No. 4 (Quarterly Report)**.

#### 9. Monitoring

- 9.3.1. The Public Authority is entitled to request any documents concerning the calculation of Compensation to verify if the Quarterly Reports and any information provided is correct.
- 9.3.2. Based on the Public Authority's written request for access, sent with 5 (five) business days in advance, the Air Operator agrees to grant access to the files of the separate accounting for the Route (any documents, financial statements, balance sheets, etc.). Access to such documents and accounts needs to be granted, if Public Authority is requested to do so by legally binding provisions.

## **10. LIABILITY**

- 10.1.** The Air Operator is liable for the fulfilment of its obligations as set out in the Agreement and the documents pertaining thereto with regard to start and continuity of the service, regularity, capacity, sales, calculation and adjustment of compensation, reporting and monitoring.
- 10.2.** In case the Air Operator fails to start operating flights on the Route at the agreed start date (1 July 2024), it shall be obliged to pay an indemnity of EUR 30,000 (thirty thousand euros) for each week of delay.
- 10.3.** Obligations related to aviation safety, security, employment, passenger rights and data protection shall be observed by the Air Operator and all liability in relation thereto shall be borne by the Air Operator.

## **11. TERMINATION**

- 11.1.** The Public Authority shall be entitled to cancel or suspend the Agreement with immediate effect if any of the following situation occurs:
  - a) The Air Operator loses its Air Operator certificate or operating licence;
  - b) A motion of bankruptcy is filed against the Air Operator or the Air Operator is wound up;
  - c) The Air Operator or its legal representatives has been convicted by a final court decision of a material offence related to transport operations or of a criminal offence;
  - d) The Air Operator repeatedly neglects the quality of the service or is otherwise in material breach of the Agreement and does not rectify such breach within 30 (thirty) calendar days after being notified thereof in writing by Public Authority or such negligence is repeated by the Air Operator;
  - e) The Air Operator repeatedly fails to submit the Quarterly Reports specified in Clause 8.1.2.;
  - f) The Air Operator fails to meet the Operational Target specified in Clause 7.2.1 for three (3) quarters;
  - g) The performance of the Public Services has been interrupted for at least three (3) consecutive months due to force majeure;
  - h) The termination of the Agreement is required by an order issued by public authorities or court decision.
- 11.2.** The Air Operator shall be entitled to suspend or terminate the Agreement with immediate effect if the Public Authority neglects its payment obligation or otherwise commits a major breach of the Agreement and does not rectify such breach within 30 (thirty) calendar days upon being notified thereof by the Air Operator.
- 11.3.** In case the Buyer, as a public authority, is confronted with lack of budgetary allocations or budgetary constraints, the Public Services shall cease and this Agreement shall terminate without separate measures. The Public Authority undertakes to notify the Air Operator with at least 6 (six) months in advance in case the funding is not available with a notice for termination of the Agreement.
- 11.4.** In the case the costs incurred by the Air Operator in operating the flights on the Route and eligible for compensation according to Public Services Regulation exceed the Maximum Compensation, the Air Operator shall have a right to terminate the Agreement giving a 6 (six) months advance notice.

## **12. FORCE MAJEURE**

- 12.1.** Neither Party is liable for delays or damage that arise due to reasons beyond the control of the Party, which the Parties could not reasonably be expected to have taken into account when concluding the Agreement and the consequences of which either Party could not reasonably have avoided or overcome.
- 12.2.** Force majeure is considered to be war, mobilisation, rebellion, extraordinary natural events, pandemics or other force majeure comparable in impact and beyond the control of the Parties. For avoidance of doubt, it is stated that strike, lockout, boycott or other industrial action does not release Air Operator from compensation to passengers according to Regulation (EC) No 261/2004.
- 12.3.** A force majeure of a Party's subcontractor is considered a force majeure of the Party in question only if the performance subject to subcontracting cannot without significant delay or excessive costs be performed or procured elsewhere.
- 12.4.** The Parties shall immediately notify the other Party in writing of any situation of force majeure and the cessation thereof.

## **13. ASSIGNMENT**

- 13.1.** Neither Party shall be allowed to assign the Agreement to another third party.

## **14. NOTICES**

- 16.1.** Notices between the Parties shall be sent to the following contact data:

*Buyer: [...]*

*Air Operator: [...]*

- 14.1.** Notices shall be given in Romanian and/or English. Notices sent to the email addresses of the Party's contact persons specified in the Agreement shall be deemed to have been received on the business day on which they were sent; notices sent by post or courier shall be deemed to have been received on the date of the receipt confirmation. The contact details of a Party and its contact persons shall be deemed to be valid unless that Party has notified the other Party of a change thereof.

## **15. APPLICABLE LAW AND RESOLUTION OF DISPUTES**

- 15.1.** This Agreement shall be governed by and interpreted in accordance with the laws of Romania.
- 15.2.** In case of any disputes in relation to the Agreement, they shall primarily be resolved through amicable negotiations between the Parties. In case of failure to reach an agreement, any dispute, controversy or claim arising out of or in connection with the Agreement, or the breach, termination or invalidity thereof, will be settled by the competent courts of law in Romania.

## **16. FINAL PROVISIONS**

- 16.2.** The contractual relationship between the Public Authority and the Air Operator is determined on the basis of this Agreement and the whole Invitation to Tender documents and its Appendices. The Appendices listed in the Agreement and the applicable amendments to the



Agreement shall be deemed to be integral parts of the Agreement. Should the Agreement and the other documents contain contradictory provisions, the provisions of this Agreement prevail.

- 16.3. No waiver.** Failure or delay by a Party to exercise any right under the Agreement shall not be deemed a waiver of that or any other right, nor shall any single or partial exercise of any right preclude the further exercise of that right.
- 16.4. Entire agreement.** The Agreement contains all of its terms and supersedes all prior agreements, understandings and expressions of intent of the Parties relating to the subject matter of the Agreement. The Appendices listed in the Agreement and the applicable amendments to the Agreement shall be deemed to be integral parts of the Agreement.
- 16.5. Invalid provisions.** If any provision of the Agreement is found to be invalid or unenforceable, the remainder of the Agreement shall remain valid and enforceable, and the Parties shall use good faith and reasonable efforts to replace such provision with a valid and enforceable provision.
- 16.6. Amendments.** Any amendments to the Agreement shall enter into force upon signature by the authorised representatives of both Parties, unless the Parties have agreed a different date of entry into force thereof.
- 16.7. Appendices.** At the time of signature, the Agreement has the following Appendices:
- **Appendix 1 – Tender**
  - **Appendix 2 – Calculation Form (template)**
  - **Appendix 3 – Request for Payment (template)**
  - **Appendix 4 – Quarterly Report (template)**

This Agreement has been signed today, \_\_\_\_\_ at \_\_\_\_\_ in 2 (two) original samples, one for each counterparty.

**Bihor County Council**

[name]

[title]

**[Air Operator]**

[name]

[title]