This Agreement (the “Agreement”) is made as of [dd Month yyyy] (“Date of Conclusion”) by and between

City of Tartu
(City of Tartu, City Government, address Raekoja plats 1a (Raekoda) 50089 Tartu, and email tartupso@tartu.ee)
(the “Buyer” or a “Party”)

and

[Air Operator’s name]
(a private limited company) established and existing under the laws of [add a country] with registration code [code], address [address], and email [email])
(the “Air Operator” or a “Party”)
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PUBLIC SERVICES AGREEMENT FOR SCHEDULED AIR SERVICES ON THE ROUTE BETWEEN TARTU AND HELSINKI

This Agreement (the “Agreement”) is made as of [dd Month yyyy] (“Date of Conclusion”) by and between

(1) City Government of City of Tartu (City of Tartu, City Government, address Raekoja plats 1a (Raekoda) 50089 Tartu, and email tartupso@tartu.ee) (the “Buyer” or a “Party”), represented by [basis of the power of representation] by [name], and 

(2) [Air Operator’s name] (a [private limited company] established and existing under the laws [...], with registration code [code], address [address], and registration code [code], address [address], e-mail [e-mail]) (the “Air Operator” or a “Party”), represented by [basis of the power of representation and/or the business title] by [name].

WHEREAS


(B) The Buyer has put out to tender the Air Services on the Tartu-Helsinki route with an invitation to tender dated 29 September 2023 (“Invitation to Tender”).

(C) The Air Operator has responded to the Invitation to Tender by making a Tender offer on Air Services delivery for Tartu-Helsinki route dated [DATE MONTH 2023] (“Tender”).

(D) As a result of the tendering procedure, the Buyer has chosen the Air Operator as the responsible provider of the Air Services.

(E) This Agreement provides for the terms and conditions of cooperation between the Parties, which are applicable to the Buyer’s purchase of the Air Services from the Air Operator and to the offering of the Air Services by the Air Operator to the Buyer as specifically agreed by the Parties in this Agreement and its Annexes.

THE PARTIES HAVE AGREED AS FOLLOWS.

1. GENERAL RIGHTS AND RESPONSIBILITIES OF THE PARTIES

1.1 This Agreement provides for the services with which the Air Operator implements the public service obligation for Air Services on the Tartu - Helsinki route. The Air Operator guarantees the availability of the Air Services under the Agreement for at least the Agreement Period.

1.2 Each Party has an obligation to contribute to the implementation of the services where matters are under the influence or control of the respective Party. Regardless of this, the Air Operator has an obligation under all circumstances and by all reasonable means to contribute to the fulfilment of the Air Services in accordance with the Agreement in the appropriate content and to attain the objectives agreed upon the Air Services in the Agreement.

2. RIGHTS AND OBLIGATIONS OF THE AIR OPERATOR

2.1 Air service obligation. The Air Operator is obliged to provide the Air Services defined in this Agreement and its Annexes. The Air Operator carries out the Air Services as agreed, with due care and in accordance with the professional skills required by the tasks, as well as in a way that fulfils all of the terms and conditions set out in this Agreement and its Annexes.
2.2 The season of the scheduled Air Services runs from [1 January 2024 – 31 December 2027]1 ("Operating Period").

2.3 The financing for the Air Services is annually decided by the City of Tartu. Because the Agreement in question has a duration of several years, the local municipality budget must contain the appropriations intended for buying the scheduled Air Services and, correspondingly, the Tartu City Council must approve the annual funding for the management of the Air Services. If the City of Tartu does not reserve the required appropriations, the Air Services shall cease without separate measures at the beginning of the following year and the operating compensation will no longer be paid.

2.4 Service schedule. 12 weekly return service from Tartu to Helsinki.

2.4.1 6 flights leaving Tartu on Monday to Saturday from Tartu between 5.30am and 7am

2.4.2 6 flights leaving Tartu on Monday to Friday and Sundays between 2pm and 3.45pm

2.4.3 6 flights leaving Helsinki on Monday to Friday and Sundays between 12.45am and 2.30pm

2.4.4 6 flights leaving Helsinki on Monday to Friday and Sundays between 11pm and 11.59pm

2.5 Use of subcontractors

2.5.1 During the term of the Agreement, the Air Operator may by the consent of the Buyer permanently subcontract the Service to another Air Operator. However, the Buyer may prohibit the use of a subcontractor if the proposed subcontractor does not meet the requirements imposed in the Agreement and the documents pertaining thereto.

2.5.2 Subcontracted service shall meet the requirements determined in the Agreement and the documents pertaining thereto.

2.5.3 The Air Operator is liable for the actions of its subcontractor as for its own. Consent given by the Buyer to the use of a subcontractor does not reduce the Air Operator's liability.

2.6 Requirements for the aircraft

2.6.1 Seat capacity of aircraft used in service. Aircraft on this service must be with at least 60 seats without upper limitation.

2.6.2 Aircraft should be younger than 20 years of age at the time of the service.

2.6.3 Aircraft Air Operator has to be EU registered and IOSA compliant, however wet-lease is allowed.

2.7 Air Operator must have a code of an IATA member on the route.

2.8 All flights must be published in Amadeus GDS display and must be bookable globally.

2.9 Planning of Service, information provision and tickets.

2.9.1 The Air Operator is responsible for planning and marketing the Air Services, for providing information on it and for reservations and ticket sales. The Air Operator shall inform the public of the Air Services in an effective manner, particularly of the commencement of the Air Services and any changes in it.

2.9.2 The Air Operator is free to determine the ticket prices.

2.9.3 The Air Operator must have access to an international reservation and ticketing system and have an IATA interline agreement with through-pricing and luggage-handling arrangements. Information concerning ticket prices and service timetables must be included in the international reservations and ticketing system.

2.9.4 When selling tickets, the Air Operator undertakes to present air fares as required in Article 23 of the Regulation (EC) No 1008/2008 of the European Parliament and of the Council.

2.9.5 Passenger compensation. 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. The Air

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1 To be amended in case the start date is extended in accordance with the Invitation to Tender
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.

2.10 **Person responsible for execution of Service.** The Air Operator shall notify the Buyer if during the term of the Agreement the person responsible for execution of the Air Services mentioned in the Agreement changes. In the beginning of the term of the Agreement the person responsible for execution of the Air Services is [Mr/Ms N.N.].

3. **Compensation and rights and obligations of the Buyer**

3.1 The Buyer is responsible for the payment of the agreed Operating Compensation and for the execution of the agreed tasks of the Buyer under this Agreement.

3.2 **General principles of Compensation**

3.2.1 The financial compensation ("Compensation") shall be paid on quarterly basis in equal instalments (meaning that quarterly compensation shall equal 1/16 of the total Compensation) by the date and in accordance with the procedures set forth in Clause 3.4. The initial payment which shall cover the first two quarters of the service, shall be paid within 3 (three) business days from entering into the Agreement.

3.2.2 The Compensation shall only be paid for the actual operating of Air Services and for those costs incurred at the airports of Tartu and Helsinki that specifically apply to operations on this particular route.

3.2.3 The Compensation shall cover any and all obligations imposed on the Air Operator under this Agreement, and the compensation may only be adjusted in the cases described below in this Agreement.

3.2.4 The costs which may be included in the Compensation are defined in the net cost calculation model (Annex 3 to the Invitation to Tender).

3.2.5 Air Operator should note that the Compensation paid must comply with the EU state aid legislation. According to Article 17(8) of the Air Services Regulation, the Compensation paid may not exceed the amount required to cover the net costs incurred in discharging each public service obligation, taking into account the revenue gained therefrom by the Air Operator and a reasonable profit as set forth in Invitation to Tender.

3.2.6 In addition to the Compensation paid by the Buyer, the Air Operator shall be entitled to retain revenue from ticket prices, revenue from products sold on board, cargo fees charged from third parties, advertising revenue and any other revenue gained from executing the Air Services.

3.3 **Regularity and punctuality of Air Services.**

3.3.1 The Air Operator is entitled to a full Compensation when the regularity of the Air Services is at least 90% per calendar quarter ("Target"). The Compensation shall be reduced when the Air Operator does not meet the Target, except if the flight cancellations are due to force majeure or for reasons beyond the control of the Air Operator (eg. airport or ATC restrictions, safety reasons, etc.). In case the Target is not met during any of the first two quarters for which the pre-payment set forth in Clause 3.2.1 has been made, then the payment for the third quarter shall be reduced accordingly.

3.3.2 Service schedule and timetables shall be observed punctually. Punctuality is calculated quarterly from departure time from Tartu and Helsinki recorded in the Flight Order & Journey Log (of the Air Operator) of each flight according to the IATA Delay Code System.

3.3.3 IATA Delay Codes shall be used as a rule of thumb when considering whether the delay is in beyond Air Operators control or not. All delays shall be assessed jointly, and the Buyer will decide whether the reasoning for delay entitles the Air Operator to Compensation or not.

3.4 **Paying the Compensation.**
3.4.1 The Compensation is paid by the invoice of the Air Operator. Before submitting the invoice, Air Operator shall submit to the Buyer the Quarterly Report specified in clause 4.2 in this Agreement, which must be then confirmed by the Buyer.

3.4.2 Upon receiving the Quarterly Report, the Buyer shall assess whether the Target has been achieved and if the Air Operator qualifies for Compensation. The Buyer’s decision on Compensation shall be provided within 5 business days after receipt of the Quarterly Report.

3.4.3 If the Buyer confirms the Air Operator’s Quarterly Report and eligibility for Compensation, the Air Operator shall have a period of up to 10 days to submit the invoice for the Air Services to the Buyer.

3.4.4 The Compensation is to be paid quarterly not later than 15 calendar days after submitting the invoice for the Air Services.

3.5 Sanctions. If the Target requirement specified in clause 3.3.1 is not achieved, a sum equivalent to 1200 (one thousand) euros shall be deducted from the Compensation for every flight that is below the Target. If the regularity is below 80% for any calendar quarter, the Buyer has the right to cancel the Agreement according to clause 6.2.1(h).

3.6 Changing, withholding and setting off Compensation

3.6.1 The Compensation is paid in full only for Air Services operated in accordance with this Agreement.

3.6.2 The Buyer shall, due to a justified reason be entitled to withhold payment of a Compensation instalment which it considers to be subject to a dispute. In such a situation, the Air Operator shall reimburse the invoices relating to the disputed Operating Compensation in so far as they have been disputed.

3.6.3 The Buyer must pay the undisputed Compensation (subject to the right of set-off agreed in section 3.6.4) upon receipt of the abovementioned invoices, and the disputed Compensation will be resolved in negotiations between the Parties in the first place and, if an amicable settlement is not reached in the negotiations, in accordance with the formal dispute settlement procedure agreed in this Agreement.

3.6.4 The Buyer has the right of set-off with respect to the Compensation and other possible debts owed to the Air Operator for all of its own claims against the Air Operator for receivables including any due liquidated damages, discounts and damages.

3.7 Authoritative costs and changes in fuel costs

3.7.1 Authoritative costs like landing, route navigation, terminal navigation and other such costs are covered by the Air Operator.

3.7.2 The tender price includes fuel costs. The fluctuations in fuel costs are not considered in the Compensation and the increase in fuel costs is not compensated by the Buyer.

3.8 Changes in Air Services. The Parties are entitled to change the timetables of the Air Services, provided that the other Party consents in writing to the change.

3.9 Modifications of the Compensation. The Compensation paid by the Buyer to the Air Operator may also be modified when there has been a change in the Air Services. Modification may mean an increase or a reduction in the Operating Compensation payable. A change in the flight schedule, required by one Party and accepted in writing by the other Party, may change the amount of Compensation to be paid for the Air Services. If the change in the flight schedule increases costs, the Air Operator is solely liable for them. If the change in the flight schedule decreases costs, the decrease will be considered in the Compensation by the Buyer.

3.10 Invoicing information. Invoices shall be delivered to the Buyer electronically. The Air Operator will send the e-invoices to the Buyer through his e-invoicing service provider (N.N) to the e-mail addresses specified by the Buyer. All invoices must include following sentence as reference: [XXX] and include in addition to the statutory data also refer to the invoicing quarter in question.
4. MONITORING OF SERVICE
4.1 Reporting, supervision and monitoring
4.1.1 The Buyer is entitled to review any documents concerning the revenue of the Air Services and to gain access to any information on these contained in databases and to take copies and extracts from these. The Buyer is also entitled to examine the Air Operator’s aircraft.
4.1.2 The Buyer is entitled to verify that the information provided to it is correct.
4.1.3 When requested by the Buyer, the Air Operator must provide an itemised statement on the service falling under the Agreement and an auditor’s statement for the Agreement Period for the purpose of verifying that the Compensation is within the parameters of the profitability set forth in Invitation to Tender. The Buyer may for this reason request an extraordinary audit of the Air Operator’s operations and accounts to the extent it pertains to this Agreement and the Buyer is entitled to use the assistance of an external specialist on his cost recovery basis. The Air Operator agrees to help with such an audit and to deliver all documents requested, within reason, and access to the accounts.
4.1.4 Evaluation of the profitability will be made on an annual basis.
4.1.5 The Air Operator shall deliver the Buyer its financial statements within two (2) months of the adoption of each of them.
4.1.6 The Air Operator keeps statistics on the routes and the number of passengers route by route in the form requested by the Buyer, and periodically, at the Buyer’s request, provides the Buyer with financial and operational data, within reasonable limits, concerning the operations of the routes.
4.2 Quarterly reports
4.2.1 The Air Operator shall provide the Buyer with quarterly report not later than 5 business days after the end of respective calendar quarter on the regularity and punctuality of the Air Services (“Quarterly Report”).
4.2.2 The Quarterly Report shall include information on the number of planned flights, number of actual flights, number of delayed flights, punctuality percentage and number of cancelled flights.
4.3 Surveys and passenger information. The Buyer may at its own expense conduct surveys of the Air Services and its standard. The Air Operator’s staff shall assist in such surveys as necessary and provide the required information. No extra compensation will be paid for such assistance.

5. LIABILITY
5.1 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 continuity of the service, regularity, capacity, pricing of passenger seats and for the correctness of the follow-up information provided.
5.2 Obligations related to air safety, terms of employment, occupational health and safety, and working time and rest periods shall be observed in the Air Service. The Air Operator as an employer is liable both towards the Buyer and towards third parties for the work and actions of its employees serving the Air Service.
5.3 A cancelled flight will be compensated to passengers in accordance with the Regulation (EC) No 261/2004 of the European Parliament and Council (so-called air passenger rights regulation) and the Air Operator must ensure that the provision of Air Services complies 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.
6. **Validity and Termination of the Agreement**

6.1 **Validity**. This Agreement shall enter into force when it is signed by the Parties. The Agreement shall be valid for a fixed period and it shall terminate on 31 December 2027 ("Agreement Period"). The Operating Period of the scheduled Air Services runs from 1 January 2024 to 31 December 2027 (see clause 2.2).

6.2 **Termination of the Agreement**

6.2.1 The Buyer shall be entitled to cancel the Agreement with immediate effect if:

(a) The Air Operator loses its Air Operator certificate or operating licence;
(b) A motion of bankruptcy is filed against the Air Operator;
(c) The Air Operator is placed in liquidation;
(d) The Air Operator has been convicted by a final court decision of a material offence related to transport operations;
(e) The Air Operator has neglected the payment of taxes and statutory social security and insurance contributions to a material amount;
(f) 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 immediately after being notified thereof in writing or such negligence is repeated by the Air Operator;
(g) The Air Operator fails to submit the reports specified in section 4.2 to the Buyer;
(h) The regularity of the Air Services as specified in section 3.3.1 is below 80% in any calendar quarter or the Target is not met in any two calendar quarters during any calendar year;
(i) The performance of the Air Services has been interrupted for at least two (2) months due to force majeure;
(j) The cancellation of the Agreement is required by an order issued by public authorities.

6.2.2 The Air Operator shall be entitled to cancel the Agreement with immediate effect if the Buyer neglects its payment obligation as specified above or otherwise commits a major breach of the Agreement and does not rectify such breach within fourteen (14) days upon being notified thereof by the Air Operator.

6.2.3 In case the City of Tartu does not provide necessary funding in its budget, the Air Services shall cease and this Agreement shall terminate without separate measures at the beginning of the following year. City of Tartu undertakes to notify the Air Operator by latest 30 June of any calendar year in case the funding is not available and the Agreement would terminate.

7. **Force Majeure**

7.1 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.

7.2 Force majeure is considered to be war, mobilisation, rebellion, prohibition executed by public authorities (which is not due to the activities of a Party), extraordinary natural events or other force majeure comparable in impact and beyond the control of the Parties. A strike, lockout, boycott or other industrial action is considered to be force majeure also when a Party itself is subject or a party to it. 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.

7.3 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.

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2 To be amended in case the start date is extended in accordance with the Invitation to Tender
7.4 The Parties shall immediately notify the other Party in writing of any force majeure. The Parties shall also immediately notify the other Party in writing of the cessation of force majeure.

8. **ASSIGNMENT OF AGREEMENT AND RESOLUTION OF DISPUTES**

8.1 **Assignment of Agreement.** Neither Party is entitled to assign this Agreement to a third party without the consent of the other Party.

8.2 **Applicable law.** The Agreement shall be governed by the law in force in the Republic of Estonia.

8.3 **Dispute resolution.** The parties will try to resolve their disagreements by way of bona fide negotiations. 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 in Harju County Court as a court of first instance.

9. **FINAL PROVISIONS**

9.1 The contractual relationship between the Buyer and the Air Operator is determined on the basis of this Agreement and the whole Tender documents and its Annexes. The Annexes 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.

9.2 **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.

9.3 **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 Annexes listed in the Agreement and the applicable amendments to the Agreement shall be deemed to be integral parts of the Agreement.

9.4 **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.

9.5 **Written communication.** Other communication except the invoicing between the Parties shall be done and will be accepted sufficient through following e-mail addresses:

9.5.1 Buyer: [...]  
9.5.2 Air Operator: [...]  

9.6 **Notices.** Notices provided for in or relating to the Agreement shall be given in a form that can be reproduced in writing or in electronic form in English or in any other language agreed between the Parties, unless a different form is provided for in the Agreement or the applicable law for a particular notice. 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 following the day on which they were sent; notices sent by post or courier shall be deemed to have been received on the 5th calendar day following the day on which they were sent. 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.

9.7 **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.

9.8 **Interpretation.** In the Agreement and any Annexes thereto: (i) “including” shall always be read as “including, without limitation”; (ii) capitalized terms shall have the meanings defined in the Agreement or the applicable Annex; and (iii) the headings of the Sections of the Agreement shall have the function of improving readability only. In the event of a conflict between the provisions of any of the documents constituting the Agreement, such conflict
shall be resolved on the basis of the following priorities: (i) separately agreed provisions shall prevail over standard terms; and (ii) subsequently agreed provisions shall prevail over earlier provisions.

10. **ANNEXES**

At the time of signature, the Agreement has [number of annexes] Annexes.

1. Net cost calculation model
2. ...

11. **SIGNATURES**

City Government of City of Tartu

[name], [title]

/ date in electronic signature /

[Air Operator]

[name], [title]

/ date in electronic signature /