



Norwegian Ministry  
of Transport and Communications

Invitation

# Invitation to Tender Procedure

Operation of scheduled regional air services (helicopter) Værøy – Bodø v.v.  
1 August 2019 – 31 July 2024



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## **RULES FOR THE TENDER PROCEDURE**

### **1. The assignment**

#### **1.1 Principal**

The Ministry of Transport and Communications is the principal for this procurement and will be the contracting party in relation to the tenderer who wins the competition. The winner will be awarded exclusive rights, see further details below.

The Norwegian Civil Aviation Authority is the licensing and supervising authority for Norwegian Operators and will be acting as an adviser to the Ministry of Transport and Communications during the tendering phase for this procurement.

#### **1.2 Background**

The Ministry of Transport and Communications invites operators to participate in a tender procedure for regional scheduled air services on the helicopter route Værøy – Bodø v.v. for the period 1 August 2019 – 31 July 2024.

As a rule, there is an unrestricted right to establish scheduled air services within the EEA. As set out below, the tender procedure is therefore conducted on the assumption that no operator will choose to operate the route area without a tender contract and exclusive rights.

The tender procedure is announced according to the Rules 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, (hereafter referred to as the 'Regulation'), cf. Annex 7 and the Norwegian regulations of 12 August 2011 No 833 on air transport services in the EEA (hereafter referred to as the 'Air Transport Regulations'), cf. Annex 6.

#### **1.3 Objective**

The purpose of this invitation is to attract tenders that can be used as the basis for awarding exclusive rights to operate a scheduled service in accordance with Section 11 of the Air Transport Regulations, cf. Article 16 No 9 and 10 and Article 17 of the Regulation.

If no operator has commenced or documented to the Ministry of Transport and Communications that from 1 August 2019, it will commence sustainable scheduled air services in accordance with the imposed public service obligations for the route area as specified in Annex 1, the Ministry of Transport and Communications will award exclusive rights to operate the route area in question.

The route area included in the tender shall, as a minimum, be operated in accordance with the requirements set out in Annex 1. These obligations are hereafter referred to as Public Service Obligations (PSO).

#### **1.4 The route area and the contract period**

The invitation applies to scheduled air services on Værøy – Bodø v.v. in the period 1 August 2019 – 31 July 2024.

Tenderers may not reserve their position regarding the start-up time, cf. Section 5.5.4 below.

#### **1.5 Publication**

The invitation to tender is published in the Official Journal of the European Union no. C 46 and the EEA supplement no. 8, published on 8 February 2018.

#### **1.6 The Ministry of Transport and Communications – address and contact persons**

The Ministry's address is:  
The Ministry of Transport and Communications  
P.O. Box 8010 Dep  
NO-0030 OSLO  
Norway

Office address: Akersgt. 59, Oslo

Contact persons in the Ministry of Transport and Communications are:

Senior Adviser Astrid Kirkebø Elde, (+47) 22 24 82 64, [astrid-kirkebo.elde@sd.dep.no](mailto:astrid-kirkebo.elde@sd.dep.no)  
Legal Director Morten Foss, (+47) 22 24 82 50, [morten.foss@sd.dep.no](mailto:morten.foss@sd.dep.no)



## **2. General rules for implementation of the tender procedure**

### **2.1 Rules for the tender procedure**

The tender procedure will be implemented in accordance with the provisions of the Regulation, the Air Transport Regulations and the supplementary requirements included in these conditions of tender. The Ministry wishes to emphasize that the Air Transport Regulations in some respects contain more specific provisions on the tender procedure than these conditions of tender, and that the rules in the Regulations also apply to the procedure.

### **2.2 Choice of procurement procedure**

The procurement will be effected by means of a «competitive procedure with negotiation» as defined in Section 4 no. 3 of the Air Transport Regulations. This has implications for the procurement procedure mentioned in several other sections in the Air Transport Regulation, for instance Section 20, 23 and 24.

### **2.3 Conditions of tender**

#### **2.3.1 General**

The conditions of tender consist of the following documents:

- These rules for the tender procedure
- PSO (Annex 1)
- Terms of Contract (Annex 2)
- Tender form (Annex 3)
- Tender budget form (Annex 4)
- Traffic information (Guidance only) (Annex 5)
- The Air Transport Regulations (Annex 6)
- The Regulation (Annex 7)

The Terms of Contract will regulate the agreement that the Ministry of Transport and Communications will enter into with the winning tenderer.

Before a tender is submitted, the tenderer is expected to have familiarised itself with the complete Terms of Contract, not just the parts of the Terms of Contract that are referred to in the procedural rules in the conditions of tender.

#### **2.3.2 Supplementary information**

Tenderers are encouraged to contact the Ministry of Transport and Communications if they have questions about the conditions of tender, including the conditions for providing the service to be procured.



If the tenderer finds that the conditions of tender do not provide sufficient guidance, it should write to the Ministry of Transport and Communications at the address given in Section 1.6 and request supplementary information.

If a request for supplementary information about the conditions of tender is submitted in sufficient time before the deadline for submission of tenders (cf. Section 5.2), the Ministry of Transport and Communications shall send the question and its reply to all tenderers who have registered with the Ministry of Transport and Communications (cf. Sections 1.6 and 2.4) no later than six days before the deadline expires.

Requests for supplementary information shall be marked "Supplementary information on Værøy – Bodø v.v. 1 August 2019".

### **2.3.3 Corrections, supplements or changes to the conditions of tender**

Up until the deadline for submission of tenders, the Ministry of Transport and Communications may make minor corrections, supplements and changes to the conditions of tender.

Corrections, supplements or changes shall be sent immediately to all tenderers who have registered with the Ministry in accordance with Sections 1.6 and 2.4. The information will also be made available on the Ministry's website:

<https://www.regjeringen.no/en/find-document/id2000006/?documenttype=dokumenter/anbud>

If corrections, supplements or changes are made at such a late stage that it is difficult for tenderers to take them into account in their tenders, a reasonable extension of the deadline for submission of tenders shall be granted. All tenderers registered with the Ministry (cf. Sections 1.6 and 2.4) shall be notified of the extension.

### **2.4 Registration of tenderers**

Potential tenderers must register with the Ministry of Transport and Communications in order to ensure that they receive any supplementary information distributed by the Ministry and the electronic template containing the tender budget, cf. Annex 4. Supplementary information will be published on the Ministry's website (regjeringen.no), unless otherwise explicitly stated in these rules for the tender procedure.

### **2.5 Freedom of information**

The Act of 19 May 2006 No 16 relating to the right of access to documents held by public authorities and public undertakings (the Freedom of Information Act) applies to right of access to tenders and registers of tenders. Access may be restricted pursuant to the Freedom of Information Act Section 13 or Section 27, cf. especially Section 9,

second paragraph, of Regulations No 1119 to the Freedom of Information Act dated 17 October 2008.

## **2.6 Duty of secrecy**

The employees of the Ministry of Transport and Communications are obliged to prevent others from gaining access to, or obtaining knowledge of, technical devices and procedures, or operational or business matters which, in the best interests of the party that the information concerns, should be kept secret for competition reasons.

The tenderer shall submit a censored version of its tender in which information the tenderer considers to be subject to a duty of secrecy may be blanked out. The principal has an independent duty to consider which information in the tender may be subject to a duty of secrecy. The tenderer's censored version of the tender is only for guidance. If the tenderer does not consider that any information in its tender is secret, this shall be confirmed in the tender letter.

## **2.7 Impartiality**

The rules relating to impartiality set out in the Public Administration Act Sections 6 to 10 apply to the tender procedure.

### **3. Requirements for tenderers and documentation**

#### **3.1 Introduction**

In order to be awarded a contract, the tenderer must be able to document that it has the technical and operational qualifications necessary to operate the route area in question.

The following section sets out the qualification requirements for tenderers. The qualifications must be documented in the tender.

#### **3.2. Operating licence**

All tenderers must have a valid operating licence in accordance with Regulation (EC) 1008/2008 of 24 September 2008 on common rules for the operation of air services in the Community. This requirement also appears in the Air Transport Regulations, Section 12.

If the tenderer is applying for an operating licence for the first time, the licence application must be enclosed with the tender. The Ministry of Transport and Communications is not the licensing authority, and the tenderer bears the risk of the operating licence not being granted.

Tenderers who do not have a valid operating licence, or who cannot provide written evidence that they will have a valid licence by the time the decision to award the contract is made, will be rejected.

#### **3.3 Certificate of tax and value added tax (VAT)**

All Norwegian tenderers must enclose with their tender a certificate confirming that their tax and value added tax (VAT) affairs are in order. The certification shall be submitted no later than the deadline for submission of tenders. The certificate must be no more than six months old, reckoned from the deadline for submission of tenders.

#### **3.4 Requirement for separation for accounting purposes**

If the tenderer receives grants in connection with the operation of other routes, it shall separate such grant-aided activity from the tender activity for accounting purposes. The tenderer shall provide a detailed explanation of this in the tender.

#### **3.5 Extension of deadline for documentation requirements**

If one or more tenderers have failed to submit a tax certificate or VAT certificate before the deadline for submission of tenders, the Ministry of Transport and Communications may grant a short extension for submission in arrears. The same applies if a tenderer has submitted a tax certificate or VAT certificate that is more than six months old, reckoned from the deadline for submission of tenders. The tenderer cannot demand that the Ministry exercise its right to grant such an extension.

The extension of deadline applies to all tenderers. The Ministry of Transport and Communications shall not start assessing the tenders received until the extended deadline has expired.

## **4. Matters which tenderers are obliged to familiarise themselves**

### **4.1 Traffic information**

An overview of the historical traffic figures for the route area covered by the tender procedure is enclosed as Annex 5. Tenderers are obliged to familiarise themselves with this information and cannot later claim that they did not know about or understand the information. Please note that the traffic figures are intended for guidance only, and that the tenderers are themselves fully responsible for the traffic assumptions on which their tenders are based.

### **4.2 Technical and operational requirements**

Tenderers are obliged to familiarise themselves with the technical and operational requirements that apply at the relevant airports. More detailed information on this subject can be obtained from:

- The Norwegian Civil Aviation Authority ([postmottak@caa.no](mailto:postmottak@caa.no), (+47) 75 58 50 00, contact person Ørnulf Lien)
- Avinor ([post@avinor.no](mailto:post@avinor.no), (+47) 67 03 00 00, contact person Alexander Løvar)

### **4.3 Restrictions on the use of airspace**

Tenderers are required to thoroughly familiarise themselves with the specific conditions prevailing at the airports involved. Tenderers must also comply with the restrictions relating to military use of airspace that apply on submission of their tenders, cf. Regulations No 266 of 13 March 2007 relating to the flexible use of airspace:

<http://www.lovdatab.no/cgi-wift/ldles?doc=/sf/sf/sf-20070313-0266.html>

The extent of and activation dates for the training areas are published in AIP Norway. More detailed information about agreements entered into between the Royal Norwegian Air force and Avinor AS in connection with the above-mentioned regulations is available on request from Avinor AS's head office, P.O. Box 150, NO-2061 Gardermoen.

### **4.4 Laws, regulations and decisions**

The tenderer shall familiarise itself with all relevant laws, regulations and decisions. The tender shall be based on the legal rules that apply on the deadline for submission, and on any forthcoming statutory or regulatory changes and new decisions expected on the deadline for submission of tenders.

While the contract is running, the operator is obliged at all times to operate in compliance with all relevant legal rules, including the Norwegian Aviation Act with pertaining regulations, other rules in the field of civil aviation and any instructions from public authorities. See also Section 5.9 in the Terms of Contract (Annex 2).

## **5. Requirements for tenders**

### **5.1 Form and delivery of tenders**

1. The tender must be in writing and contain a completed tender form (see Annex 3) that is dated, signed and marked with the airline's name.
2. The tender must be sent in a sealed delivery.
3. The tender must be marked: 'Tender PSO route'.
4. The tender must be in a Scandinavian language or in English.
5. The tender must be delivered to the address of the Ministry of Transport and Communications (see Section 1.6).
6. The tender must be submitted in triplicate.
7. The tender must be delivered as paper documents with an electronic copy.

The tender may either be delivered to the address of the Ministry of Transport and Communications (see Section 1.6) or sent by registered post. See also the Air Transport Regulations, Section 17.

### **5.2 Deadline for submission of tenders**

The deadline for submission of tenders is 25 April 2018 at 12:00 local time.

The tender must be received by the Ministry of Transport and Communications at the office address stated in Section 1.6 by the deadline for the submission of tenders.

Tenders that arrive after the deadline may be rejected, cf. Section 18 of the Air Transport Regulations.

### **5.3 Changes to and withdrawal of tenders**

A tender can be withdrawn or changed prior to the deadline for the submission of tenders. Withdrawals must be made in writing. A modified tender is deemed to constitute a new tender, and must be prepared in accordance with the requirements in these rules for the tender procedure.

### **5.4 Binding period**

Tenderers are legally bound by their tenders for 120 days, reckoned from the deadline for submission of tenders.

The Ministry of Transport and Communications may ask all tenderers to make a declaration extending the binding period.

## **5.5 The substantive content of the tender**

### **5.5.1 The services tendered and prerequisites for delivery of service**

#### **5.5.1.1 Tender**

The tenderer shall bid on the operation of scheduled regional air services on the helicopter route Værøy – Bodø v.v.

#### **5.5.1.2 Requirements beyond those following laws, rules and decisions**

##### *Execution of flights*

The flights shall normally be performed according to the instrument flight rules.

##### *Requirements for instrument approaches*

The tenderer shall be able to conduct LNAV, LNAV / VNAV and LPV approaches (ref. CAT.OP.MPA.126) and make use of all published instrument approach procedures except GLS procedures at Værøy Heliport, Bodø Airport and relevant alternative airports to the lowest published minima, cf. AIP AD. The tenderer must have or obtain an approval to use the Airborne Radar Approach procedures (ARA) to the lowest minima before the contract period begins. The purpose is to ensure that the flights can be carried out in darkness or bad weather throughout the year, even in the dark period.

[https://www.ippc.no/norway\\_aip/current/AIP/AD/ENVR/envr\\_no.html](https://www.ippc.no/norway_aip/current/AIP/AD/ENVR/envr_no.html)

##### *Equipment*

The helicopter must be equipped to comply with applicable rules so that it can carry out flights over a hostile sea area where the distance to land is more than 10 minutes flight time.

The helicopter must be equipped, in addition to the crew being trained and the company organized, to use:

- VHM (equivalent to BSL D 1-16, SPA.HOFO.155)
- Surveillance/ADS-B (equivalent to FOR-2016-04-19-400, SPA.HOFO.150)
- FDM (equivalent to SPA.HOFO.145)
- ACAS II
- HTAWS (equivalent to SPA.HOFO.160(c))

##### *Training programme*

Simulator training must be established and conducted with at least 8 hours per crew every six months. The simulator shall replicate the helicopter used and have the operating area in the database, including current approach procedures and visual presentation



### **5.5.1.3 Minimum tender specification of the service offered**

The services which are offered shall as a minimum be specified as follows:

- i. Traffic programme and route structure
  - i. number of departures each day and timetables
  - ii. seating capacity offered per year, c.f. the obligations in Annex 1

Within the limits set by the public service obligations (Annex 1), the tenderer must develop the necessary traffic programme for the route area, cf. Section 5 in the Terms of Contract (Annex 2). The traffic programme must be enclosed with the tenders submitted and must specify how many seats are being offered on the route area that is included. This will be emphasised during the evaluation as explained in Section 7.2, but only if all tenders contain identical claims for compensation.

- ii. Ticket prices
  - i. structure, level, conditions and discounts
- iii. Aircraft
  - i. Aircraft type
  - ii. Size (seating capacity)
  - iii. Loading capacity

The services included in the procurement shall be provided by the tenderer itself. Leasing of aircraft including crews ('wet lease') is only permitted in exceptional cases, and only if the principal accepts this in advance (see section 5.14 in the Terms of Contract). The principal can nevertheless accept wet lease in a limited period of time. If the tender is based on wet lease, this will be regarded as a major deviation that will result in rejection in accordance with the Air Transport Regulation Section 20.

### **5.5.2 Tender form, tender budget, requirement for financial compensation and fares**

Tenders shall be calculated in accordance with the tender budget form presented in Annex 4 and must state the compensation in Norwegian kroner required for operation of the route area in question, from start-up until expiry of the contract period.

All budget items shall be specified per operating year and for the entire operating period. The total compensation shall be evenly divided between the five years. Realistic budgeting is a requirement.

The total amount of compensation for the route area is thereafter to be entered in the tender form that is included as Annex 3 to this invitation to tender and placed at the front of the tender.

The tender shall be based on the price level for the first year of operation (1 August 2019 – 31 July 2020). For the second to fifth years of operation, the amount of compensation in item 26 in the tender budget shall be adjusted in accordance with the

Statistics Norway's consumer price index for the 12-month period that ends in June the same year.

Tenderers must base their tenders on retaining all the revenues from the activity covered by the tender and being fully responsible for the costs. Clarifications and exceptions from this principle are described in the Terms of Contract (Annex 2) sections 7, 9, 10 and 11.

Tenders shall specify the fares and pertaining terms and conditions. Reference is made to the provisions on fares in the Terms of Contract (Annex 2) Section 6 and in the public service obligations (Annex 1).

If an operator submits a tender where the claim for compensation is set at nil ('nil tender'), this will be understood to mean that the Operator wishes to operate the route area with exclusive rights, but without compensation from the state.

### **5.5.3 Statement on start-up and ability to implement the contract**

All tenderers shall document that they will be able to start the operation 1 August 2019 and fulfil the contractual obligations, including the required regularity. The tender shall contain a statement to this effect.

The statement will be referred to when the principal considers whether there are grounds for rejection as mentioned in the Air Transport Regulations and in Section 6.

The matters that should be included in the statement are listed below. It is stressed that there is no absolute requirement for the tenderer to enclose all the documentation listed. It is also possible to submit other documentation. The critical issue is that the tenderer must show that it will be in a position to start operations within the start-up deadline and fulfil its contractual obligations. The tenderer bears the risk of the documentation and statement in the tender not being deemed adequate.

The Ministry of Transport and Communications makes an independent assessment of the likelihood of the tenderer being able to start operations by the deadline and fulfil the other contractual obligations.

As well as evaluating the documentation the tenderer includes in the tender, the ministry reserves the right to obtain information to clarify, verify or supplement the information supplied in the tender. See the Air Transport Regulation Section 23, cf. Section 20.

The statement should include the following information:

#### *Organisation:*

- a) A valid Air Operator's Certificate (AOC) with pertaining operations specifications, valid approval certificate with the maintenance specifications (Part

- M) and the maintenance facility to be used (Part-145) and contract with the maintenance facility if the maintenance facility is not part of its own organization
- b) Organisational chart containing functions and names
- c) Number of full-time equivalents broken down into:
  - i. Administrative personnel
  - ii. Flight operations personnel
  - iii. Maintenance personnel
  - iv. Other personnel

*Aircraft:*

- d) A brief description of the relevant type.
  - i. A full description of the type/version
  - ii. PBN capability
  - iii. Limitations for flight in icing conditions
  - iv. Number of seats
  - v. Fuel consumption during cruise and in a 1500 ft. holding pattern
- e) Documentation of performance for the actual helicopter(s) to be used, including performance data on landing locations included in the tender. It must be documented that the operation is performed in performance class 1 (PC 1) in all flight phases. Basic performance data for the helicopter, including:
  - i. Dry operating mass (DOM) in the relevant configuration
  - ii. Maximum Take-off mass (MTOM)
  - iii. Maximum PC1 Take-off and landing masses under relevant temperature conditions at relevant airports and consequences for the number of passengers and range
  - iv. Description of how the helicopter meets the required climb gradient on published SIDs, including contingency procedures in case of engine failure.
  - v. Description of relevant alternative airports and the consequence for passenger capacity, PC 1 considered.
- f) The number of aircraft of this type/version at the carrier's disposal, or a description of plans for the leasing of such aircraft.

*Operational aspects:*

- g) A description of how the tenderer plans to deal with operational aspects at each heliport (base) to be served by the tender route area. Examples include planning facilities, access to computers, printers and the operator's own software, etc.
- h) A description of how substitute aircraft can be put into operation at short notice
- i) Availability of necessary services required for mass and balance calculations, refuelling, loading and unloading
- j) Availability of qualified personnel (crew), or plans for employing and qualifying such personnel
- k) Airport qualifications; how will the required competence/qualifications be achieved at airports in categories B and C (where relevant).

- l) Documentation of aircraft requirements for the operation of the tender route area(s) where this is specified in the tender or published in the AIP for the airport in question. See requirements on use of instrument approach in Section 5.5.1.2
- m) Risk assessment for the route area for which a tender is submitted
- n) Training programme that shows how the Operator will ensure that requirements for route and aerodrome knowledge are satisfied. See requirements in Section 5.5.1.2.
- o) Description of how the Operator will ensure that any hired operators or aircraft crews have sufficient route and aerodrome competence qualifications. Note particularly that the tenderer has restricted scope for leasing, as set out in Section 5.14 of the Terms of Contract (Annex 2).

*Technical aspects:*

- p) A description of how the performance of maintenance is planned in connection with the route area(s) to be operated under the tender, including access to qualified maintenance personnel and specification of requirements for personnel qualifications
- q) Overnight parking of aircraft at the airport(s) in question with respect to security, necessary maintenance and protection against critical weather conditions
- r) Access to necessary services in terms of de-icing, towing and servicing of aircraft

*Progress Schedule:*

- s) A progress schedule, including a time schedule for all relevant tasks that must be attended to by the start-up date. The tenderer is encouraged to explain how the aspects at letters a) – r) will be dealt with, among other things.

#### **5.5.4 Reservations and deviations from the conditions of tender**

Reservations and deviations from the conditions of tender must be clearly stated in the tender and described in detail in a separate appendix to the tender letter. One possible solution is to refer to exactly where in the tender the reservation or deviation is described. This description must be precise and unambiguous and its wording such that it enables the Ministry of Transport and Communications to assess the deviation or reservation without contacting the tenderer.

Inclusion of reservations or deviations from the minimum requirements in the conditions of tender may lead to rejection of the tender. However, it is emphasised that the minimum requirements in the conditions of tender are not to be regarded as invariable in a public procurement law sense (which would mean that any deviation whatsoever would result in rejection).

Nevertheless, reservations or deviations as described below will not be accepted and will result in the tender being rejected.

The tenderer:

- Cannot reserve itself against the rules for this tender procedure.
- Cannot make reservations about the duration of the contract, cf. Section 1.4.
- Cannot make reservations that involve balancing items in the tender budget, and no reservation may be made in respect of Section 7 in the Terms of Contract (see Annex 2).
- Are obliged at all times to operate in compliance with all applicable laws, regulations and decisions (see Section 5.9 in the Terms of Contract). Among other things, this means that the tenderer cannot reserve itself against an airport, or an installation or service used to support operational activity, being operated in a way that is different from its approved use at the deadline for submission of tenders, or against such an airport, installation or service being utilised or exercised in a manner that entails extra costs for third parties.

### **5.5.5 Complete tender**

A complete tender shall as a minimum consist of:

1. A completed tender form, cf. Section 5.5.2 third paragraph.
2. A completed tender budget the route area, cf. Section 5.5.2 first and second paragraph.
3. All required information as specified in Section 5.5.1.
4. Documentation of qualifications, cf. Chapter 3:
  - a) copy of operating licence
  - b) tax and VAT certificate
5. Statement and documentation on start-up and ability to implement the contract, cf. Section 5.5.3.

## **6. The Ministry of Transport and Communications' processing of tenders**

### **6.1 Registration of tenders**

On request, the Ministry of Transport and Communications shall confirm in writing when a tender was received.

### **6.2 Opening of tenders and protocol**

The opening of tenders will not be public. The opening of the tenders will be carried out in accordance with Section 19 of the Air Transport Regulations. A protocol will be generated.

### **6.3 Forwarding information, documentation and negotiation**

Deviations or incompleteness in the tender, or missing documentation, can be corrected in accordance with Section 23 of the Air Transport Regulations.

The Ministry of Transport and Communications has the right to negotiate with tenderers in accordance with Section 24 in the Air Transport Regulations. It is not possible to negotiate on the requirements set forth in the tender documents. All tenderers will be given equal opportunity to reassess the offer. The rules on confidentiality in paragraph 2.6 also apply during negotiations.

### **6.4 Rejection**

The Ministry of Transport and Communication has the right and/or the obligation to reject a tender as it follows from Section 18, 20, 21 and 22 in the Air Transport Regulations.

### **6.5 Return of received tenders**

Received tenders will not be returned.

## **7. Deciding the outcome of the tender procedure**

### **7.1 Cancellation of the tender procedure and rejection of all tenders**

The Ministry of Transport and Communications reserves the right to cancel the tender procedure, or parts thereof, if there are reasonable grounds for doing so, cf. the Air Transport Regulation Section 25. This also comprise rejection of all tenders.

The Ministry of Transport and Communications may cancel the tender procedure if an EEA Operator that can be granted permission to exercise traffic rights in the announced area documents that it will start sustainable flights without having been granted an exclusive right as described in Regulation (EC) No 1008/2008, before a final contract has been signed with one of the tenderers. See Section 1.3 second paragraph.

The deadline for announcing commercial service is the day before it is made public which tenderer the contract is awarded to, cf. Section 7.3.

If a tender procedure is cancelled, or if all tenders are refused, the Ministry of Transport and Communications shall notify all who have submitted tenders of the cancellation in accordance with Section 7.4.

### **7.2 Award criteria**

As a rule, the contract shall be awarded to the tender that has the lowest claim for compensation for the whole contract period from 1 August 2019 until 31 July 2024.

If the contract cannot be awarded according to the main rule because there are more tenders with identical claims for compensation, the award shall be made to the tender offering the highest number of seats for the whole contract period.

### **7.3 Recommendation concerning award of contract and reversion**

All participants shall be informed in writing about the Ministry of Transport and Communications' decision about which operator or operators will be awarded contracts in reasonable time before the contract is entered into. The decision can be reversed in accordance to the Air Transport Regulation Section 27.

The contract is deemed to have been entered into when both parties have signed it. The notification shall state the grounds for the award.

The decision on award of contract(s) will be published on the Ministry of Transport and Communications' website (regjeringen.no).

### **7.4 Obligation to provide information**

The Ministry of Transport and Communications shall inform the affected tenderer(s) in writing, giving a short explanation:

- if a tender is rejected



- if all tenders are rejected
- if the tender procedure is cancelled,

A tenderer may request in writing more detailed grounds for rejection of its tender or why the tender was not chosen.

The Ministry of Transport and Communications is obliged to answer such requests no later than 15 days after receipt.

## **ANNEX 1. PUBLIC SERVICE OBLIGATIONS (PSO)**

### **1. Introduction**

With effect from 1 August 2019, Norway impose new public service obligations on regional scheduled air services on the following route area:

1. Værøy – Bodø v.v.

### **2. Obligations (PSO)**

#### **2.1 Minimum frequencies, seating capacity, routing and timetables**

##### **Capacity**

The seat capacity offered shall be at least 7500 seats per year in each direction.

##### **Routing**

###### *Monday-Friday*

- A minimum of two daily services shall be offered in each direction.

###### *Saturday-Sunday*

- A minimum of two services shall be offered in each direction Saturday and Sunday combined.

##### **Timetables**

###### *Monday-Friday*

From Værøy:

- The first arrival in Bodø shall be no later than 10.00

To Værøy:

- The last departure from Bodø shall be no earlier than 16.00

## 2.2 Fares

The maximum basic fully flexible one-way fare (maximum fare) in the operating year beginning 1 August 2019, must not exceed the following amounts in NOK:

Route	Maximum fares
Værøy – Bodø	1080 NOK

For each subsequent operating year the maximum fare shall be adjusted on 1 August within the limit of the consumer price index (CPI) for the 12-month period in June the same year. Statistics Norway publishes the relevant CPI in July (<http://www.ssb.no>).

The Operator shall offer tickets through at least one sales channel belonging to the Operator. The Operator is responsible for making tickets available at a price not exceeding the maximum fare through all sales channels belonging to the Operator.

Maximum fare applies also to tickets offered by other companies controlled by the Operator. The Operator is responsible for the compliance of the maximum fare by such companies.

The maximum fare shall include all taxes and fees to the authorities, and all other extra charges (service fees etc.) the Operator adds on when issuing the tickets.

## 2.3 Provisions on social discounts

### 2.3.1

On routes where the Norwegian Ministry of Transport and Communication purchases air services in accordance with the public service obligations, the following groups of people are entitled to social discounts:

- a) Persons aged from 67 years at the day of departure.
- b) Blind persons aged from 16 years.
- c) Disabled persons aged from 16 years who receive disability pension according to the Norwegian act of 28 February 1997 No. 19 on National insurance 'Folketrygdloven' chapter 12, or similar law in any EEA country.
- d) Students aged from 16 years attending special schools for people with hearing problems.
- e) Accompany spouse/partner irrespective of age, or a person who has to accompany persons included in a) – d). The person entitled to discount decides the need for escort.
- f) Travellers aged under 16 years at the day of departure.

### **2.3.2**

The discount for people included in section 1 shall be 50 percent of the maximum fare.

### **2.3.3.**

The discount is not applicable when the travel is paid for by the government and/or social security office.

### **2.3.4**

An adult (aged from 16 years) may carry a child aged under 2 years for free, provided that the child does not occupy its own seat and when travelling together on the entire journey.

### **2.3.5**

Following documents may be required by the passenger:

- a. Persons mentioned in section 1 letter a) must show an official document with picture and day of birth.
- b. Persons mentioned in section 1 letter b and c) must provide proof of eligibility by means of official documentation from the Norwegian National insurance or 'Norges Blindeforbund'. Persons from other EEA countries must provide similar documentation from their home country.
- c. Persons mentioned in section 1 letter d) must present a student certificate and a letter from the social security office stating that the student is receiving pension according to the Norwegian act of National insurance. Persons from other EEA countries must provide similar documentation from their home country.

## **2.4 Route operations**

### **2.4.1 Timetables**

The Operator shall take into account public demand for air travel.

### **2.4.2 Holidays**

There is no service obligation on Christmas Day and Good Friday.

On the following days, the route programme may be reduced and adjusted to the demand for air travel: New Year's Eve, New Year's Day, Easter Sunday, Maundy Thursday, May 1, Ascension Day, Whitsunday, Whit Monday, May 17, Christmas Eve, Boxing Day, and two optional days.

There shall be a minimum of one service in each direction on these days.

The normal requirements concerning timetables and intermediate stops do not apply on these days.

### **2.4.3 Intermediate stops**

The required services must be non-stop.

## **3. Additional conditions when awarded exclusive rights**

Following a tender procedure, which limits access to the route area to one operator, these conditions apply in addition:

### **3.1 Fares**

- If the operator participates in legal cooperation with other companies regarding discounts, overall fares, passenger transit times or through check-in of tickets and luggage, the operator is obliged to do what is practically and legally possible to offer similar terms to passengers on routes covered by the contract that have transition to or from other routes that are not initially covered by such schemes. The same applies if the operator unilaterally offers such terms, without being part of a collaboration with other companies.
- Bonus points from frequent flyer programmes can neither be earned nor redeemed on the flights.
- Social discounts shall be granted in accordance with the guidelines published in the public service obligations.

### **3.2 Transfer conditions**

All conditions set out by the Operator for the transfer of passengers to and from other operators' route area, including connecting times and through check-in of tickets and baggage, shall be objective and non-discriminatory.

## **4. Replacement and repeal of previous public service obligations**

These public service obligations replace those previous published in the Official Journal of the European Union no. C 256 and the EEA supplement no. 50 of 5 September 2013.

## **ANNEX 2. CONTRACT FOR SCHEDULED AIR SERVICES**

Pursuant to Article 16 of European Parliament and Council Regulation (EC) no. 1008/2008 on common rules for the operation of air services in the Community, and the supplementary provisions set out in Regulation on EEA Air Services, a contract has been entered between [ ] (hereafter the Operator) and the Ministry of Transport and Communications (hereafter the Ministry) for the operation of the scheduled air services listed in Section 2 below.

See section 13 about the transfer of the Ministry of Transport and Communication's rights and obligations to another authority under the contract.

### **1. List of the documents that comprise the contract**

The contract comprises of the following documents:

1. These general contractual terms and conditions
2. The public service obligations (Annex 1 to the rules for the tender procedure) relating to the route area(s) listed in Section 2.
3. The Operator's tender

Possible amendments to the contract shall be made in writing.

### **2. The contract applies to the following route area(s):**

Værøy – Bodø v.v. (helicopter route)

### **3. The contract period**

The contract is for the period from 1 August 2019 until 31 July 2024. Cf., however, Section 7.7 second sentence and Section 8.8.

### **4. Exclusive right to operate**

The contract gives the Operator an exclusive right to operate the route area mentioned in Section 2 during the contract period.

### **5. Operational requirements**

5.1 As a main rule, the Operator is obliged to conduct operations in the manner and with the production volume stated in its tender throughout the contract period.

The Operator is nevertheless entitled to adjust the seating capacity downwards if the average load factor on a route area falls below 35 percent. The Operator may reduce the capacity up to 25 percent on the route area from the first day after the measuring period is over.

Every operating year – from 1 August to 31 July – are measuring periods.

Even if the Operator reduces the seating capacity, the requirements concerning the number of flights and intermediary stops applies.

- 5.2 The required regularity is 97,5 percent. The Ministry may sanction the Operator for breaches of this requirement, cf. Section 7.5.
- 5.3 The Operator is responsible for having a traffic programme that satisfies, at all times, the requirements of the public service obligations. The traffic programme shall contain the following information about the route area covered by the agreement:
  - a) Days with scheduled flights.
  - b) The number of return journeys per day.
  - c) The capacity in the route area.
- 5.4 The Operator shall send the prevailing route program to the Ministry for information.
- 5.5 The Operator may apply to the Ministry for permission to make changes from the agreed production volume, cf. Section 5.1. The Ministry will emphasize if the change will give an equal or better overall service to the passengers.
- 5.6 The Operator may apply to the Ministry for permission to make minor deviating changes from the public service obligations. When treating the application, The Ministry may, among other things, emphasize if the conditions have changed since the contract was signed.
- 5.7 Operations shall be conducted using the aircraft type specified by the Operator in its tender. Other aircraft types may nevertheless be used if the agreed production volume allows it, or it is in accordance with changes made due to reasons in Sections 5.1, 5.5 or 5.6. Changes requires consent from the Ministry.
- 5.8 The Operator shall comply with the operational and technical requirements in the tender procedures Section 5.5.1.2 underlying this procurement.
- 5.9 The Operator shall conduct operations in compliance with the Aviation Act, pertaining regulations, other rules governing the area and any orders issued by official authorities pursuant to such rules.
- 5.10 The Operator may be required to carry mailbags in return for compensation pursuant to the provisions of the Postal Services Act Section 16. The determination of compensation for such imposed services shall not affect the compensation entitlement that follows from this agreement, cf. Section 7
- 5.11 The Operator is at all times responsible for performance of the traffic service that follows from the provisions in Section 5.

This includes an obligation on the Operator to procure, at his own expense, substitute aircraft and/or substitute personnel in the event of interruptions to



operations. If transport cannot be carried out by air transport, the Operator shall organize alternate transport where this is possible and expedient for the passengers.

In the event of material non-conformance with the agreed service, the Operator shall immediately notify the Ministry, stating the reasons in writing. The Operator shall also provide information about measures that have been instigated to remedy the situation.

- 5.12 Flights covered by the contract cannot carry any other airline codes than the tenderer's own and cannot be part of any code-sharing agreement.
- 5.13 Flights covered by the contract shall be performed by the tenderer. Leasing aircraft with crew ("wet-lease") is only exceptionally accepted, and only if the Ministry accepts it beforehand. The Ministry can nevertheless accept wet-lease within a limited period of time.

## **6. Fares, discounts, sales channels and terms**

- 6.1 The maximum basic fully flexible one-way fare (the maximum fare) shall, during the period 1 August 2019 to 31 July 2020 not exceed the amount stipulated for the relevant route area in section 2.2 of the public service obligations.

For each subsequent operating year the maximum fares shall be adjusted on 1 August within the limit of the consumer price index (CPI) for the 12-month period in June the same year. Statistics Norway publishes the relevant CPI in July (<http://www.ssb.no>).

- 6.2 The Operator shall offer tickets through at least one sales channel belonging to the Operator. The Operator is responsible for making tickets available at a price not exceeding the maximum fare through all sales channels belonging to the Operator.

The maximum fare applies also to tickets offered by other companies controlled by the Operator. The Operator is responsible for the compliance of the maximum fare by such companies.

The maximum fare shall include all taxes, charges and fees to the authorities, and all other extra charges the Operator adds on when issuing the tickets.

- 6.3 If the operator participates in legal cooperation with other companies regarding discounts, overall fares, passenger transit times or through check-in of tickets and luggage, the operator is obliged to do what is practically and legally possible to offer similar terms to passengers on routes covered by the contract that have transition to or from other routes that are not initially covered by such schemes.

The same applies if the operator unilaterally offers such terms, without being part of a collaboration with other companies.

6.4 Bonus points from frequent flier programmes may neither be earned nor redeemed on flights covered by this agreement.

6.5 The Operator is obliged to grant social discounts in accordance with section 2.3 in the public service obligations.

## **7. Payment of compensation, risk sharing etc.**

7.1 The Operator is entitled to compensation from the Ministry for the following route area(s):

Værøy – Bodø v.v.

The compensation amounts to:

- For the first operating year:	_____	NOK
- For the second operating year:	_____	NOK
- For the third operating year:	_____	NOK
- For the fourth operating year:	_____	NOK
- For the fifth operating year:	_____	NOK

No adjustment of the compensation shall be made for the first operating year.

For the second to fifth operating years the final compensation (budget item 26 in the tender budget) will be recalculated in accordance to the consumer price index (CPI) for the 12-month period ending in June the same year.

No change shall be made in the compensation as a result of the production volume being adjusted downwards pursuant to Section 5.1 second to fourth paragraph.

7.2 It is subject to the proviso that the Storting (the Norwegian Parliament), when adopting its annual budget, makes the necessary funds available to the Ministry to cover the compensation requirements.

7.3 The Operator shall retain all revenues generated by the service. If the revenues are greater or the expenditure smaller than the figures on which the tender budget that accompanied the tender is based, the Operator may retain the balance. Correspondingly, the Ministry is not obliged to cover any negative balance in relation to the tender budget.

7.4 All public charges, including aviation charges, are payable by the Operator.

- 7.5 If the number of cancellations, for reasons that the Operator could have avoided by taking all reasonable measures, exceeds 2.5 per cent of the scheduled number of flights in the traffic program, the Operator will receive no compensation for the cancelled flights exceeding 2.5 percent. See section 5.2.
- 7.6 If the number of seats offered per route area in an operating year is lower than the agreed number of seats, the compensation for the route area may be reduced accordingly.
- 7.7 The Ministry shall pay compensation in arrears in twelve monthly pro rata amounts per operating year. With the aim to assess eventual reductions in compensation, the final payment may be withheld pending the Operator's report pursuant to Section 8.2 and discussions according to Section 8.8, so that any reductions in the compensation can be made.

## **8. The Ministry's right of access to information and the Operator's duty to report**

- 8.1 By 15 September 2020, 2021, 2022, 2023 and 2024, the Operator shall on its own initiative send audited accounts for the preceding financial year, for both the tender area and for the Operator's total business, to the Ministry.
- 8.2 Every quarter (August – October, November – January, February – April and May – July), the Operator shall send a report to the Ministry containing information about:
1. Accounts for the route area (similar to the form in Annex 4).
  2. Interruptions to operations during the period and an account of the cause(s).
  3. Punctuality (the proportion of departures within 15 minutes of planned departure times).
  4. Regularity (the proportion of cancelled flights and reasons). It shall be clearly stated which flights have been cancelled for reasons mentioned in Section 7.5.
  5. Amount of traffic for each route area (number of passengers and load factor).
  6. Passenger revenues, proportion of passengers in C class, the proportion of passengers in transfer to/from other air routes, freight and mail revenues.
  7. Actual production for the route area (the number of seat and tonne kilometres, number of landings and number of flying hours).
  8. Average fare per route.
  9. Number of seats offered per route area.

The Ministry is also entitled to instruct the Operator to provide other information in the reports.

The reports must be received by the Ministry at the latest by the 15<sup>th</sup> of the second month following the last of the three months covered by the report – the first report being due by 15 December 2019.

- 8.3 The Operator shall, without unnecessary delay, inform the Ministry if substantial deviations arise between the traffic volume on which the tender was based and the actual traffic volume.
- 8.4 Pursuant to Section 6.1 second paragraph the Operator shall notify the Ministry of changes to fares at the latest at the same time as they enter into force.
- 8.5 Traffic information received pursuant to Section 8.2 no. 2 through 9 are considered to be public information at any given time.
- 8.6 The Ministry may at any time request the Operator to provide information relating to the contractual relationship. If it is deemed necessary, the Ministry can require the information to be confirmed by an auditor. A deadline can be stipulated for the submission of such information.
- 8.7 If the Operator's reporting is inadequate or is submitted after the deadlines stipulated according to the above provisions of Section 8, the Ministry is entitled to withhold compensation.
- 8.8 The Ministry shall, together with the Operator, be entitled to discuss the work performed under the contract during the first twelve weeks following the end of the contract period. In such case, the Ministry may withhold compensation in accordance with Section 7.7 second sentence.

## **9. Renegotiation**

- 9.1 If, during the contract period, material or unforeseen changes occur in the assumptions on which this contract is based, each of the parties may request negotiations for revision of the contract. Such request must be made three months at the latest after the change has occurred. The right to request negotiations does not entail restrictions in the right to apply sanctions in case of breach of the contract or general rules of contract law.
- 9.2 Material changes in the public tax and charges always constitute grounds for renegotiation, as mentioned in Section 9.1.
- 9.3 If new statutory or regulatory requirements, or orders issued by the Civil Aviation Authority result in an airfield having to be used in a different manner than originally assumed by the Operator, the parties shall endeavour to negotiate changes in the contract that allow the Operator to continue operations for the rest of the contract

period. If the parties fail to reach agreement, the Operator is entitled to compensation pursuant to the rules relating to shutting down or closure in Section 11.4, insofar as they are applicable.

9.4 If the Ministry presumes that demands for renegotiations would be ineffective, the Ministry may decide instead to put the route area up for a new tender procedure.

## **10. Suspension of contractual obligations**

10.1 The Ministry is entitled to suspend the contract if the Operator does not fulfil its reporting duty or prevents access pursuant to Section 8, provided he has received written notice with a time-limit of a minimum of two weeks to rectify the situation. Such suspension may remain in effect until the situation is rectified.

10.2 Similarly, the Ministry may suspend the contract if the Operator's aircraft is/are involved in an aviation accident or serious aviation incident. Suspension pursuant to this provision may last until the investigating authority have completed its investigation of the accident or occurrence, and the Civil Aviation Authority has had an opportunity to assess whether the aircraft involved is/are in safe working order.

10.3 Suspension does not entail restrictions in the right to apply sanctions in case of breach of contract.

## **11. Termination, cancellation and other grounds for discontinuation**

11.1 Subject to the restrictions following from insolvency law, the Ministry may terminate the contract with immediate effect if the Operator becomes insolvent, initiate debt settlement proceedings or goes bankrupt. Equally, the Ministry may cancel the contract with immediate effect in the other cases dealt with in Section 21 in Regulation on air transport services in the EEA.

11.2 The Ministry can terminate the contract with immediate effect if the Operator loses its licence or fails to have it renewed.

11.3 If, due to *force majeure* or other circumstances beyond the Operator's control, the Operator has been unable to fulfil its contractual obligations for more than four of the last six months, the contract can be terminated by both parties by giving one month's written notice. Failure to fulfil contractual obligations as a result of the shutting down or closure of airfields is regulated in Section 11.4.

11.4 If the Storting decides to close an airfield, or if an airfield is closed as a result of an order issued by the Civil Aviation Authority, the parties' ordinary contractual obligations lapse from such time as the airfield is actually shut down or closed.

If the period of time between the Operator first being informed about the shutting down or closure and the actual shutting down or closure is greater than one year,

the Operator is not entitled to compensation for any financial loss it incurs as a result of the termination of the contract. If the period mentioned is less than one year, the Operator is entitled to be restored to the financial situation it would have been in had operations been continued for one year from the date it was notified of the shutting down or closure, or alternatively until 31 July 2024 if this date is earlier.

11.5 In the event of material breach of contract, the contract may be cancelled with immediate effect by the other party.

## **12. Disputes**

The parties shall endeavour to resolve any disputes concerning interpretation of the contract through negotiation. If these fail to resolve the matter, the case may be brought before the ordinary courts for a decision, unless the parties agree to resolve the matter by arbitration.

Unless the parties agree otherwise, Oslo District Court is the legal venue for all disputes concerning this contract.

## **13. Transfer of contractual responsibility**

The Ministry of Transport and Communications's rights and obligations under this contract may in the contract period be transferred to another authority, which will then enter the contract for the remaining period on the same terms as the Ministry of Transport and Communications. The operator will in this case be informed in writing.

## **14. Issue of contract**

Two – 2 – originals of this contract have been drawn up, one to be retained by the Ministry and one by the Operator.

## **15. Contract signing**

Place: \_\_\_\_\_

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

The Ministry of Transport  
and Communications:

The Operator:

\_\_\_\_\_

\_\_\_\_\_

## ANNEX 3. TENDER FORM

### Invitation to Tender Procedure

**Operation of scheduled regional air services (helicopter) Værøy – Bodø v.v.**

**1 August 2019 – 31 July 2024**

The amount of compensation that are entered into the form shall be for the entire contract period based on the price level of the first operating year (1 August 2019 – 31 July 2020).

#### 1. Identification of the tenderer

Name of tenderer	
Address	
Telephone	
E-mail	
Contact person (s)	

#### 2. Specification of the tender(s) submitted by stating the need for compensation for the entire contract period based on the price level of the first operating year (1 August 2019 – 31 July 2020)

Number	Subject to tender	<i>Compensation required, c.f. post 26 in the tender budget (in NOK 1000)</i>
1	Værøy – Bodø v.v.	



**3. Signature**

Place	Date	Binding signature

## **ANNEX 4. TENDER BUDGET**

This chapter contains the tender budgets to be completed for each tender, c.f. Rules for the Tender Procedure section 5.5.2. The tender budgets shall be drawn up for the entire tender period as well as per operating year. The compensation in each operating year shall be the same, when defined by the price level of the first operating year. The tender budget shall be completed for the route area where tender is submitted.

In addition to the completion of the budget sheets, the tender budget shall also be enclosed electronically. The Ministry of Transport and Communications may on request provide a computer file with framework for the tender budgets in Microsoft Excel format, c.f. Rules for the Tender Procedure section 2.4.

**All figures shall be given in NOK 1000 and in the price level for the first operating year, defined to be 1 August 2019 – 31 July 2020.**

For the second through the fifth operating year, the required compensation in budgetary post 26, shall be adjusted according to the twelve-month change in the consumer price index (CPI) from Statistics Norway in June the same year, cf Rules for the Tender Procedure section 5.5.2 and Annex 2 section 7.1.

The second operating year is 1 August 2020 – 31 July 2021, the third operating year is 1 August 2021 – 31 July 2022, the fourth operating year is 1 August 2022 – 31 July 2023 and the fifth operating year is 1 August 2023 – 31 July 2024.

All figures in the tender budget shall be specified with amounts. This also applies when the figure is NOK 0, e.g. when the tender is based on marginal cost or in case the revenue or cost concerned is irrelevant for the operations offered.

## TENDER BUDGET

Route area: \_\_\_\_\_

**Overall period: 1 August 2019 – 31 July 2024**

Based on the price level for the operating year 1 August 2019 – 31 July 2020

1	Passenger revenues	
2	Freight and post revenues	_____
3	Other operating revenues	_____
4	<b>Total operating revenues (1...3)</b>	_____
5	Passenger charges	
6	Take-off charges	_____
7	Terminal navigation charges (TNC)	_____
8	En route charges	_____
9	Security charges	_____
10	Fuel expenses	_____
11	Crew expenses	_____
12	Maintenance expenses	_____
13	Handling/station services	_____
14	De-icing	_____
15	Leasing of aircraft	_____
16	Ticket and distribution expenses	_____
17	Irregular passenger service	_____
18	Fixed administrative expenses	_____
19	Depreciation	_____

20 Other operating costs

\_\_\_\_\_  
\_\_\_\_\_

**21 Total operating costs (5...20)**

\_\_\_\_\_

22 Financial revenues

23 Financial expenses

\_\_\_\_\_  
\_\_\_\_\_

**24 Financial items (-22+23)**

\_\_\_\_\_

**25 Profit margin**

\_\_\_\_\_

**26 Compensation required**

**(-4+22+24+25)**

\_\_\_\_\_

## TENDER BUDGET

Route area: \_\_\_\_\_

### Per operating year

Based on the price level for the operating year 1 August 2019 – 31 July 2020

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Other operating revenues	_____
<b>4</b>	<b>Total operating revenues (1...3)</b>	_____
5	Passenger charges	
6	Take-off charges	_____
7	Terminal navigation charges (TNC)	_____
8	En route charges	_____
9	Security charges	_____
10	Fuel expenses	_____
11	Crew expenses	_____
12	Maintenance expenses	_____
13	Handling/station services	_____
14	De-icing	_____
15	Leasing of aircraft	_____
16	Ticket and distribution expenses	_____
17	Irregular passenger service	_____
18	Fixed administrative expenses	_____
19	Depreciation	_____

20	Other operating costs	_____	
		_____	
<b>21</b>	<b>Total operating costs (5...20)</b>		_____
22	Financial revenues		
23	Financial expenses	_____	
<b>24</b>	<b>Financial items (-22+23)</b>	_____	_____
<b>25</b>	<b>Profit margin</b>		_____
<b>26</b>	<b>Compensation required</b>		
	<b>(-4+22+24+25)</b>		_____

## **ANNEX 5. TRAFFIC INFORMATION (GUIDANCE ONLY)**

In this chapter certain traffic and revenue information for the route area encompassed by the public service obligations is offered.

This information is based on reports from the operating airline to the Ministry of Transport and Communications. The information includes such data that was available considering the number of passengers, passenger revenues, and also freight- and post revenues.

The figures relate to the periods specified for all tables and have to be seen in accordance with the traffic programmes and interline agreements, as well as the amounts of post and freight, actual for the said periods.

Freight and post are not encompassed by the public service obligations and the tenderers themselves are responsible for the budgeting of such revenues and for concluding possible contracts with post and freight customers.

The tenderers themselves are responsible for calculating the revenues generated from the route area encompassed by the public service obligations, taking into account the revenue reductions related to transfer discounts.

**The tenderers attention is especially drawn to the fact that this traffic information is offered for guidance purposes only, and that the tenderers themselves are fully responsible for the tender budgeting, cf. Rules for the tender procedure, section 4.1 and 5.5.2. Tenderers may not make reservations as to the traffic information.**

**Tenderers are fully responsible for developing traffic programmes in accordance with the public service obligations at all times.**

Operators may also find traffic information for all airports concerned on the web pages of Avinor: (<http://www.avinor.no>).

### **August 2014 – July 2015**

Number of passengers:

9 392

Load factor:

52.5 percent

C class passengers:

75 percent

Passenger revenues:

6 293 585 NOK

Freight and post revenues:

155 929 NOK

Regularity:

98.7 percent

### **August 2015 – July 2016**

Number of passengers:

9 009

Load factor:

50.5 percent

C class passengers:

75 percent

Passenger revenues:

6 067 886 NOK

Freight and post revenues:

116 003 NOK

Regularity:

98.2 percent

### **August 2016 – July 2017**

Number of passengers:



8837

Load factor:

49.7 percent

C class passengers:

75 percent

Passenger revenues:

7 310 926 NOK

Freight and post revenues:

83 770 NOK

Regularity:

98.7 percent

## **ANNEX 6. REGULATION NO. 833 OF 12 AUGUST 2011 ON AIR TRANSPORT SERVICES IN THE EEA**

Translated by the Ministry of Transport and Communications

**Legal basis:** Laid down by the Ministry of Transport and Communications on 12 August 2011 pursuant to Act No. 101 of 11 June 1993 on Aviation, Sections 9(1), 10(42), 10(43), 15(4) and 16(1), cf. Delegation Enactment No. 321 of 6 April 2001.

**EEA Reference:** EEA Agreement, Annex XIII, Article 64a, 65 and 66b, cf. the EEA-committee decision 90/2011

### **1. Miscellaneous**

#### *§ 1 Implementation of Regulation (EC) No 1008/2008*

Annex XIII No 64a of the EEA Agreement, (Regulation (EC) No1008/2008) on common rules for the operation of air services in the Community (hereinafter referred to as the Air Services Regulation), as amended by Annex XIII, Protocol 1 to the Agreement and otherwise by the Agreement, applies as a regulation.

#### *§ 2 Scope of Application*

The regulation applies nationally, with the exception of Svalbard.

#### *§ 3 Competent authorities responsible for each section of the regulation*

Luftfartstilsynet (the Norwegian Civil Aviation Authority) is responsible for supervision of the provisions in Chapter II of the Air Services Regulation, and of chapter 3 of this regulation. This includes the imposition of sanctions by Luftfartstilsynet in accordance with the provisions in Chapter II of the Air Services Regulation.

Forbrukerombudet (the Norwegian Consumer Ombudsman), as Aviation Authority, is responsible for supervision pursuant to the provisions in Article 23 of the Air Services Regulation, cf. the provisions relating to sanctions in Section 26 in this Regulation.

Samferdselsdepartementet (the Norwegian Ministry of Transport and Communications) is responsible for the administration of all the provisions in the Air Services Regulation and in this Regulation that are not covered by subsection 1 and 2.

## § 4 *Definitions*

For the purposes of this Regulation:

1. *Tenderer* shall mean an Operator that submits a tender;
2. *Dry lease* shall mean the lease of an aircraft where the lessee/Operator assumes the technical and operational responsibility during the lease period;
3. *Competitive procedure with negotiations*: A procedure where the principal is allowed to negotiate with one or more tenderers.
4. *Commercial responsibility* shall mean that the lessee assumes all financial liability, i.e. the lessor's compensation shall be tied to a fixed time period and not to the aircraft's revenue;
5. *Operator* shall mean any company which holds a valid licence or equivalent authorisation;
6. *Principal* shall mean Samferdselsdepartementet (the Norwegian Ministry of Transport and Communications), the executive agency, or local authority or county appointed by Samferdselsdepartementet;
7. *Wet lease* shall mean the lease of aircraft including crew, where the aircraft is operated by the lessor, and the lessor assumes technical and operational responsibility during the lease period;
8. *Competitive procedure without negotiations*. A procedure where negotiations are not allowed.

## **2. Supplementary provisions regarding the award of an operating licence**

### § 5 *The relationship to other provisions regarding operating licence*

Operators to which the licensing provisions in Chapter II of the Air Services Regulation do not apply are governed by regulation No. 4166 of 25 April 1974 on commercial aviation, as far as it follows from the scope of application of this regulation.

## **3. Supplementary provisions regarding the lease of aircraft**

### § 6 *Approval of dry lease*

An agreement for dry lease shall be submitted to Luftfartstilsynet for approval, cf. Article 13 (1)–(2) of the Air Services Regulation. The agreement must be approved before the lease comes into effect.

The lease agreement, along with a certificate of insurance, shall be attached to the application. The agreement shall be dated, signed by both parties, and shall as a minimum contain the following information:

- a) Name of the owner/lessor and lessee/operator;
- b) Aircraft model, serial number and registration mark;
- c) MTOW in the event that the aircraft is leased from abroad;

- d) Lease period (from date to date);
- e) Lessee's/operator's commercial responsibility/risk for operation of the aircraft during the lease period;
- f) Lessee's/operator's responsibility as regards insurance; and
- g) Any valid sub-leasing agreement between the owner and lessor, in the event that the lessor is not the owner of the aircraft.

In addition to the items set out in subsection (2), the following conditions shall apply, which must also be evident from the application:

- a) Operative conditions:
  1. Operational responsibility must clearly rest with the lessee;
  2. The aircraft shall be operated entirely by crews employed by the lessee;
  3. Required type checking/ rating of the lessee's crew;
  4. Required "Difference list" – training;
  5. Type of operation, IFR/VFR (or both);
  6. Possible validation of the crew's certificates;
  7. The Lessee's Operational Handbook sufficient for the planned operation;
  8. Transfer/training programme for the crew;
  9. Available and qualified instructors;
  10. The lessee's organisation should be of sufficient size to handle the expansion;  
and
  11. The base/stationing location must be settled.
  
- b) Technical condition: The lessee shall be approved for the model of aircraft concerned.

## § 7 *Approval of wet lease*

An agreement for wet lease shall be submitted to Luftfartstilsynet for approval, cf. Article 13(1)–(2) of the Air Services Regulation. The agreement must be approved before the lease comes into effect.

In order for the application to be approved it is required that:

- (a) the lessor has a valid licence and AOC,

- (b) the lessee operates aircraft of the same category,
- (c) the operational and technical responsibility rest with the lessor, and
- (d) the lessee has the commercial responsibility.

Both the operational and technical responsibility rest with the lessor, but the lessee has the commercial responsibility.

#### § 8 *Registration*

Aircraft leased for more than 6 months shall be registered in Norway. Luftfartstilsynet may, in special circumstances, grant an exemption from this requirement for up to 6 months.

#### § 9 *Leasing*

Luftfartstilsynet shall be notified when a Norwegian registered aircraft is dry leased to a foreign operator, as well as when the lease ends and the aircraft is returned to its owner. The lease agreement shall be attached to the notification.

The lessor shall request that Luftfartstilsynet asks the foreign authority to assume supervisory responsibility.

### **4. Supplementary provisions regarding the imposition of public service obligations and completion of procurement procedure**

#### § 10 *Authority responsible for imposing public service obligations*

Samferdselsdepartementet has exclusive authority to impose public service obligations for routes within, into or out of Norway in accordance with Article 16 of the Air Services Regulation. Anyone who desires new or altered public service obligations must direct their request to the Ministry.

#### § 11 *Award of exclusive rights to operate a route under procurement procedure*

According to Article 16 (10) of the Air Services Regulation, exclusive rights to operate a flight route shall be awarded after competition in accordance with the provisions of Article 17 of the same regulation. The provisions of this Chapter supplements those provision on choice and completion of the procedure following from the Regulation.

#### § 12 *Requirements for tenderers*

To be awarded an exclusive right an airline must have a valid licence issued by a competent authority in accordance with the requirements of Chapter II of the Air Services Regulation. If the license is not awarded at the closing date for submission of tenders, the principal is allowed to request the tenderer to submit the licence within a brief additional time limit, in accordance with Section 23.

#### § 13 *Choice of procurement procedure*

The procurement shall be conducted by competitive procedure with negotiation or competitive procedure without negotiations. Under both procedures, the principal may choose to conduct a prequalification of suppliers, where only those suppliers considered qualified and being invited by the principal, is allowed to submit a tender.

#### § 14 *Publication*

The principal shall publish a notice of the procurement in the Official Journal of the European Communities.

The notice in the Official Journal of the European Communities shall be worded, and published in its entirety, in one of the official languages of the European Union.

If a previous competitive procedure without negotiations is not successful, a competitive procedure with negotiations may be conducted without any prior publication of a notice, provided that no essential amendments are made in the procurement documents. A competitive procedure without negotiations shall be considered not successful when no tender is submitted, when only one tender is submitted, or when only one or no tenders remains after rejection of the other tenders.

Procurement without prior publication of a notice may also be used in emergency situations mentioned in Article 16 (12) of the Air Services Regulation.

#### § 15 *Content of the notice of procurement*

The notice of procurement shall contain:

- a) the principal's name, postal address, telephone number and e-mail address,
- b) the name and address of the agency to which suppliers may direct requests to obtain access to the procurement documents with all relevant documentation, provided that this is not made available through the published notice,
- c) the geographical location of the route or route area,
- d) the closing date and place for submission of tender, hereunder the postal address to which the tender shall be submitted,
- e) the contract period and the start-up date for the contracted serviced.

## § 16 *Content of the procurement documents*

The procurement documents shall at least contain:

- a) the requirements contained in the public service obligation
- b) provisions related to amendment and termination of the contract, particularly regarding unforeseen changes
- c) the period of validity of the contract and the start-up date for the contracted services
- d) penalties in the event of failure to comply with the contract
- e) objective and transparent parameters in the basis of which compensation, if any, for the discharging of the public service obligations shall be calculated.

## § 17 *Formulation of the tender*

The tender shall be in writing and submitted either directly or by post. The tender may also be submitted by electronic means, provided that this is permitted in the procurement documents and:

- a) the tender contains all the required information;
- b) the confidentiality of the tender is maintained until evaluation takes place;
- c) the tender is, for reasons of proof, confirmed in writing or by submitting a confirmed copy as soon as possible if this is necessary; and
- d) the tender is not opened until after the closing date for submission of tenders.

## § 18 *Rejection of overdue tenders*

Tenders arriving after the closing date for submission of tender may be rejected.

However, this does not apply to tenders arriving after the closing date, but before the opening of the tenders, provided it is clear from the postmark that, given normal postal service schedules, the tender was mailed early enough for it to have arrived before the closing date, or the tender in question is able to substantiate this by means of a receipt from the postal carrier to which the tender was delivered, before the opening of the tender.

## § 19 *Procedure for opening of tenders*

Tenders received in due time shall be opened after the closing date for submission of tenders by two representatives for the principal. The tenderer is not entitled to be present at the opening.

The principal shall make a record from the opening of the tenders, where the following information is included:

- a) date and hour of the opening,

- b) who is present at the opening,
- c) the name of the tenderer,
- d) which route area or routes are covered by the tender,
- e) the claim for compensation in the tender,
- f) possible rejection of tenderers or tenders.

#### § 20 *Rejection due to features of the tender*

A tender shall be rejected if:

- a) it is not submitted in compliance with Section 17;
- b) it contains essential deviations from the procurement documents, also after possible negotiations have been conducted, or
- c) doubt arises due to reservations, errors, lack of clarity, lack of information or similar as to whether the tender can be compared with the other tenders, also after possible negotiations have been conducted.

A tender may be rejected if:

- a) the tender does not contain all the information prescribed,
- b) the tender contains deviations from the procurement documents, or
- c) the tender states a compensation requirement which is unreasonably low in relation to the service to be provided. Before a tender is rejected on this ground, the principal shall in writing request an account regarding the individual parts of the tender and evaluate it based on the information provided. The principal shall take account of information regarding inter alia savings related to the delivery of the service, technical solutions or unusually favourable conditions available for the tenderer, or innovation.

#### § 21 *Rejection due to features of the tenderer*

The principal shall reject tenders from any tenderer which:

- a) do not have a valid licence, cf. Section 12, or
- b) do not satisfy the requirements prescribed for the tenderers in the procurement documents.

The principal may reject any tenderer who:

- a) is bankrupt, is engaged in debt settlement proceedings or under liquidation, or which has suspended its business activities or which is in any analogous situation arising from a similar procedure pursuant to national laws or regulations;
- b) is the subject of proceeding for a declaration of bankruptcy, for debt settlement, for an order for compulsory liquidation or is the subject of any other similar proceedings pursuant to national laws or regulations;



- c) has been convicted by final judgement of an offence concerning its professional conduct;
- d) has been guilty of grave breaches of professional and ethical standards in its line of business;
- e) has not fulfilled its obligations relating to the payment of taxes and levies in accordance with national laws of the state in which it is established; or
- f) has provided seriously misleading or wrongful information, or has failed to provide information in accordance with the requirements of the procurement documents, in accordance with this Section, or Section 12.

Where the principal requires proof that the tenderer is not in a situation mentioned in No. 2 letter a), b), c), e) or f), the following documents may be accepted as sufficient evidence:

- a) for the cases mentioned in letter a), b) or c): an extract from the Criminal Records Bureau or the National Register of Insolvencies. Failing this, an equivalent document issued by a judicial or administrative authority in the tenderer's home state or state where it is currently resident showing that none of these cases applies to the tenderer, or
- b) for the cases mentioned in letter e) or f): a certificate issued by the competent authority in the state concerned.

#### *§ 22 Rejection due to anticipatory breach*

The principal is entitled to reject tenders from tenderers who cannot be expected to perform their contractual obligations in a satisfactory manner.

#### *§ 23 Submittal of additional information and documents*

The principal may request tenderer(s) to provide further, supplemental, elucidating or elaborating information and documents within a brief time limit provided the information or documents contain, or appears to contain errors or deficiencies, or if specific documents are missing. This applies both to competitive procedures with negotiations and to competitive procedure without negotiations.

#### *§ 24 Conduct of competitive procedure with negotiations*

During competitive procedure with negotiations, the principal is entitled, but not obliged, to negotiate with the tenderers. If negotiations are conducted, the principal is entitled to reduce the number of tenders to be negotiated. The reduction shall be based on the criteria for selection of tenders. The principal shall, during negotiations, not without consent, provide the other tenderers with information which is of competitive importance to keep secret. Moreover, the principal shall conduct the negotiations based on the principle of equal treatment.

#### *§ 25 Cancellation of the procurement procedure and total rejection*

The principal may cancel the procurement procedure or parts of the procedure, with immediate effect if justifiable grounds exist.

The principal may reject all tenders if the result of the procedure provides justifiable grounds for so doing.

Justifiable grounds shall inter alia be considered to exist in cases where none or only one tender exist, possibly after rejection of other tenders, in cases where all tenders exceed the budget for the procurement and in cases where specific reservations have been made regarding cancellation in the procurement documents.

The principal shall inform all participants in the procurement procedure of decisions made according to this Section, and whether a new procurement will be conducted.

#### *§ 26 Criteria for selection of tender*

The principal shall base the award of a contract either solely on the lowest required compensation, or on the overall economically most advantageous tender. If the principal is basing the award on the economically most advantageous tender, such criteria as claim for compensation, ticket prices, capacity, quality of services, ticket systems, and environmental friendliness may be applied. The criteria for selection of tender shall be stated in the procurement documents.

#### *§ 27 Reversal of award decision*

An award decision may be reversed provided that the principal considers it to have been made in violation of the provisions of this regulation or the Air Services Regulation.

#### *§ 28 Entry of contract*

A contract is considered to be finalised when both parties have signed the contract document.

### **5. Sanctions**

#### *§ 29 Violation of rules concerning information for and non-discriminatory treatment of passengers*

Persons or companies not complying with the obligations to provide information regarding prices, taxes, levies, supplements, fees and other terms in Article 23(1) of the

Air Services Regulation may be subject to a fine or charges as set out in Section 10-42 fourth paragraph and Section 10-43 of the Aviation Act. The same applies to persons or undertakings which do not comply with the prohibition against discriminatory practices in Article 23(2) of the same regulation.

## **6. Final provisions**

### *§ 30 Repeal and amendments to other regulations*

Regulation No 256 of 15 April 1994 on implementation of tender procedures in connection with public service obligations shall be repealed.

The following amendments shall be made to Regulation No 691 of 15 July 1994 on implementation and enforcement of the EEA Agreement regarding civil aviation:

Section 1, subsections (4), (6) and (8) shall be repealed, without any alteration of the numbering of remaining subsections.

Section 2 shall have the following wording:

Samferdselsdepartementet shall enforce the provisions in Section 1, subsections (1), (3), (5) and (7).

Section 3 shall be repealed.

### *§ 31 Entry into force*

The Regulation takes immediate effect.

The Regulation also applies to contracts which are entered into before the Regulation has entered into force and for licences which have been issued in accordance with the regulations which are replaced by the Air Services Regulation.

## **ANNEX 7. REGULATION NO 1008/2008**

### **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 (Recast)**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,

Whereas:

- (1) A number of substantial changes are to be made to Council Regulations (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers<sup>4</sup>, (EEC) No 2408/92 of 23 July 1992 on access of Community air carriers to intra-Community air routes<sup>5</sup>, and (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services<sup>6</sup>. In the interests of clarity, these Regulations should be recast and consolidated into one single Regulation.
- (2) In order to ensure a more efficient and consistent application of Community legislation for the internal aviation market a series of adjustments to the current legal framework is required.

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<sup>1</sup> OJ C 175, 27.7.2007, p. 85.

<sup>2</sup> OJ C 305, 15.12.2007, p. 11.

<sup>3</sup> Opinion of European Parliament of 11 July 2007 (OJ C 175 E, 10.7.2008, p. 371), Council Common Position of 18 April 2008 (OJ C 129 E, 27.5.2008, p. 1) and Position of the European Parliament of 9 July 2008 (not yet published in the Official Journal).

<sup>4</sup> OJ L 240, 24.8.1992, p. 1.

<sup>5</sup> OJ L 240, 24.8.1992, p. 8.

<sup>6</sup> OJ L 240, 24.8.1992, p. 15.

- (3) Recognising the potential link between the financial health of an air carrier and safety, more stringent monitoring of the financial situation of air carriers should be established.
- (4) Given the growing importance of air carriers with operational bases in several Member States and the need to ensure the efficient supervision of these air carriers, the same Member State should be responsible for the oversight of the air operator certificate and of the operating licence.
- (5) To ensure consistent monitoring of the compliance with the requirements of the operating licences of all Community air carriers, licensing authorities should carry out regular assessments of the air carriers' financial situation. Therefore, the latter should provide sufficient information on their financial situation, especially in the first two years of their existence as these are particularly critical for the survival of an air carrier on the market. In order to avoid a distortion of competition arising from the different application of the rules at national level, it is necessary to reinforce the financial oversight of all Community air carriers by Member States.
- (6) To reduce risks to passengers, Community air carriers failing to fulfil the requirements for maintaining a valid operating licence should not be allowed to continue operations. In such cases, the competent licensing authority should revoke or suspend the operating licence.
- (7) According to Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators<sup>7</sup> an air carrier should be insured to cover liability in case of accidents with respect to passengers, cargo and third parties. Obligations should also be placed upon air carriers for insurance to cover liability in case of accidents with respect to mail.
- (8) In order to avoid excessive recourse to lease agreements of aircraft registered in third countries, especially wet lease, these possibilities should only be allowed in exceptional circumstances, such as a lack of adequate aircraft on the Community market, and they should be strictly limited in time and fulfil safety standards equivalent to the safety rules of Community and national legislation.
- (9) With respect to employees of a Community air carrier operating air services from an operational base outside the territory of the Member State where that Community air carrier has its principal place of business, Member States should ensure the proper application of Community and national social legislation.
- (10) In order to complete the internal aviation market, still existing restrictions applied between Member States, such as restrictions on the code sharing on routes to third countries or on the price setting on routes to third countries with an intermediate stop in another Member State (sixth freedom flights) should be lifted.

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<sup>7</sup> OJ L 138, 30.4.2004, p. 1.

- (11) To take into account the special characteristics and constraints of the outermost regions, in particular their remoteness, insularity and small size, and the need to properly link them with the central regions of the Community, special arrangements may be justified regarding the rules on the period of validity of the contracts for public service obligations covering routes to such regions.
- (12) The conditions under which public service obligations may be imposed should be defined clearly in an unambiguous way, while the associated tender procedures should allow a sufficient number of competitors to take part in the tenders. The Commission should be able to obtain as much information as necessary to be able to assess the economic justifications for public service obligations in individual cases.
- (13) The rules in force with regard to traffic distribution between airports serving the same city or conurbation should be clarified and simplified.
- (14) It is appropriate to ensure that Member States have the possibility to react to sudden problems resulting from unforeseeable and unavoidable circumstances, which make it technically or practically very difficult to carry out air services.
- (15) Customers should have access to all air fares and air rates irrespective of their place of residence within the Community or their nationality and irrespective of the place of establishment of the travel agents within the Community.
- (16) Customers should be able to compare effectively the prices for air services of different airlines. Therefore the final price to be paid by the customer for air services originating in the Community should at all times be indicated, inclusive of all taxes, charges and fees. Community air carriers are also encouraged to indicate the final price for their air services from third countries to the Community.
- (17) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>8</sup>.
- (18) Since the objective of this Regulation, namely more homogeneous application of Community legislation with regard to the internal aviation market cannot be sufficiently achieved by the Member States because of the international character of air transport, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (19) The Ministerial Statement on Gibraltar Airport, agreed in Cordoba on 18 September 2006, during the first ministerial meeting of the Forum of Dialogue on

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<sup>8</sup> OJ L 184, 17.7.1999, p. 23.

Gibraltar, will replace the Joint Declaration on the airport made in London on 2 December 1987, and full compliance with it will be deemed to constitute compliance with the 1987 declaration.

- (20) It is therefore necessary to repeal Regulations (EEC) No 2407/92, (EEC) No 2408/92 and (EEC) No 2409/92,

HAVE ADOPTED THIS REGULATION:

CHAPTER I  
GENERAL PROVISIONS

*Article 1*

**Subject matter**

1. This Regulation regulates the licensing of Community air carriers, the right of Community air carriers to operate intra-Community air services and the pricing of intra-Community air services.
2. The application of Chapter III of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

*Article 2*

**Definitions**

For the purposes of this Regulation:

1. "operating licence" means an authorisation granted by the competent licensing authority to an undertaking, permitting it to provide air services as stated in the operating licence;
2. "competent licensing authority" means an authority of a Member State entitled to grant, refuse, revoke or suspend an operating licence in accordance with Chapter II;
3. "undertaking" means any natural or legal person, whether profit-making or not, or any official body whether having its own legal personality or not;
4. "air service" means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;
5. "flight" means a departure from a specified airport towards a specified destination airport;
6. "local flight" means a flight not involving carriage of passengers, mail and/or cargo between different airports or other authorised landing points;
7. "airport" means any area in a Member State especially adapted for air services;
8. "air operator certificate (AOC)" means a certificate delivered to an undertaking confirming that the operator has the professional ability and organisation to ensure the safety of operations specified in the certificate, as provided in the relevant provisions of Community or national law, as applicable;



9. "effective control" means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:
  - (a) the right to use all or part of the assets of an undertaking;
  - (b) rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking;
10. "air carrier" means an undertaking with a valid operating licence or equivalent;
11. "Community air carrier" means an air carrier with a valid operating licence granted by a competent licensing authority in accordance with Chapter II;
12. "business plan" means a detailed description of the air carrier's intended commercial activities for the period in question, in particular in relation to the expected market development and the investments to be carried out, including the financial and economic implications of these activities;
13. "intra-Community air service" means an air service operated within the Community;
14. "traffic right" means the right to operate an air service between two Community airports;
15. "seat-only sales" means the sale of seats, without any other service bundled, such as accommodation, directly to the public by the air carrier or its authorised agent or a charterer;
16. "scheduled air service" means a series of flights possessing all the following characteristics:
  - (a) on each flight seats and/or capacity to transport cargo and/or mail are available for individual purchase by the public (either directly from the air carrier or from its authorised agents);
  - (b) it is operated so as to serve traffic between the same two or more airports, either:
    - according to a published timetable, or
    - with flights so regular or frequent that they constitute a recognisably systematic series;
17. "capacity" means the number of seats or the payload offered to the general public on a scheduled air service over a given period;
18. "air fares" means the prices expressed in euro or in local currency to be paid to air carriers or their agents or other ticket sellers for the carriage of passengers on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;

19. "air rates" means the prices expressed in euro or in local currency to be paid for the carriage of cargo and the conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
20. "Member State(s) concerned" means the Member State(s) between or within which an air service is operated;
21. "Member State(s) involved" means the Member State(s) concerned and the Member State(s) where the air carrier(s) operating the air service is (are) licensed;
22. "conurbation" means an urban area comprising a number of cities or towns which, through population growth and expansion, have physically merged to form one continuous built up area;
23. "management account" means a detailed statement of income and costs of an air carrier for the period in question including a breakdown between air-transport-related and other activities as well as between pecuniary and non-pecuniary elements;
24. "dry lease agreement" means an agreement between undertakings pursuant to which the aircraft is operated under the AOC of the lessee;
25. "wet lease agreement" means an agreement between air carriers pursuant to which the aircraft is operated under the AOC of the lessor;
26. "principal place of business" means the head office or registered office of a Community air carrier in the Member State within which the principal financial functions and operational control, including continued airworthiness management, of the Community air carrier are exercised.

## CHAPTER II

### OPERATING LICENCE

#### *Article 3*

#### **Operating licence**

1. No undertaking established in the Community shall be permitted to carry by air passengers, mail and/or cargo for remuneration and/or hire unless it has been granted the appropriate operating licence.

An undertaking meeting the requirements of this Chapter shall be entitled to receive an operating licence.

2. The competent licensing authority shall not grant operating licences or maintain them in force where any of the requirements of this Chapter are not complied with.

3. Without prejudice to any other applicable provisions of Community, national, or international law, the following categories of air services shall not be subject to the requirement to hold a valid operating licence:
  - (a) air services performed by non-power-driven aircraft and/or ultralight power-driven aircraft; and
  - (b) local flights.

#### *Article 4*

#### **Conditions for granting an operating licence**

An undertaking shall be granted an operating licence by the competent licensing authority of a Member State provided that:

- (a) its principal place of business is located in that Member State;
- (b) it holds a valid AOC issued by a national authority of the same Member State whose competent licensing authority is responsible for granting, refusing, revoking or suspending the operating licence of the Community air carrier;
- (c) it has one or more aircraft at its disposal through ownership or a dry lease agreement;
- (d) its main occupation is to operate air services in isolation or combined with any other commercial operation of aircraft or the repair and maintenance of aircraft;
- (e) its company structure allows the competent licensing authority to implement the provisions of this Chapter;
- (f) Member States and/or nationals of Member States own more than 50 % of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Community is a party;
- (g) it meets the financial conditions specified in Article 5;
- (h) it complies with the insurance requirements specified in Article 11 and in Regulation (EC) No 785/2004; and
- (i) it complies with the provisions on good repute as specified in Article 7.

#### *Article 5*

#### **Financial conditions for granting an operating licence**

1. The competent licensing authority shall closely assess whether an undertaking applying for the first time for an operating licence can demonstrate that:
  - (a) it can meet at any time its actual and potential obligations established under realistic assumptions, for a period of 24 months from the start of operations; and

- (b) it can meet its fixed and operational costs incurred by operations according to its business plan and established under realistic assumptions, for a period of three months from the start of operations, without taking into account any income from its operations.
2. For the purposes of the assessment referred to in paragraph 1, each applicant shall submit a business plan for, at least, the first three years of operation. The business plan shall also detail the applicant's financial links with any other commercial activities in which the applicant is engaged either directly or through related undertakings. The applicant shall also provide all relevant information, in particular the data referred to in point 1 of Annex I.
  3. Paragraphs 1 and 2 shall not apply to an undertaking applying for an operating licence intended to cover operations with aircraft of less than 10 tonnes maximum take-off mass (MTOM) and/or less than 20 seats. Such undertakings shall demonstrate that their net capital is at least EUR 100000 or provide, when required by the competent licensing authority, all relevant information for the purposes of the assessment referred to in paragraph 1, in particular the data referred to in point 1 of Annex I.

The competent licensing authority may nevertheless apply paragraphs 1 and 2 to an undertaking applying for an operating licence under the provisions of the previous subparagraph that intends to operate scheduled air services or whose turnover exceeds EUR 3 million per year.

#### *Article 6*

##### **Air operator certificate**

1. The granting and validity of an operating licence shall at any time be dependent upon the possession of a valid AOC specifying the activities covered by the operating licence.
2. Any modification in the AOC of a Community air carrier shall be reflected, where appropriate, in its operating licence.

#### *Article 7*

##### **Proof of good repute**

1. Where, for the purpose of issuing an operating licence, proof is required that the persons who will continuously and effectively manage the operations of the undertaking are of good repute or that they have not been declared bankrupt, the competent licensing authority shall accept as sufficient evidence in respect of nationals of Member States the production of documents issued by the competent authorities in the Member State of origin or the Member State where the person has his/her permanent residence showing that those requirements are met.

2. Where the Member State of origin or the Member State where the person has his/her permanent residence does not issue the documents referred to in paragraph 1, such documents shall be replaced by a declaration on oath or — in Member States where there is no provision for declaration on oath — by a solemn declaration made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary or qualified professional body of the Member State of origin or the Member State where the person has his/her permanent residence. Such authority, notary or qualified professional body shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.
3. The competent licensing authority may require that the documents and certificates referred to in paragraphs 1 and 2 be presented no more than three months after their date of issue.

### *Article 8*

#### **Validity of an operating licence**

1. An operating licence shall be valid as long as the Community air carrier complies with the requirements of this Chapter.  

A Community air carrier shall at all times be able on request to demonstrate to the competent licensing authority that it meets all the requirements of this Chapter.
2. The competent licensing authority shall closely monitor compliance with the requirements of this Chapter. It shall in any case review compliance with these requirements in the following cases:
  - (a) two years after a new operating licence has been granted;
  - (b) when a potential problem has been suspected; or
  - (c) at the request of the Commission.

In case the competent licensing authority suspects that financial problems of a Community air carrier might affect the safety of its operations, it shall immediately inform the authority competent for the AOC.
3. The operating licence shall be resubmitted for approval when a Community air carrier:
  - (a) has not started operations within six months of the granting of an operating licence;
  - (b) has ceased its operations for more than six months; or
  - (c) which has been licensed on the basis of the first subparagraph of Article 5(3) intends to engage in operations with aircraft above the size threshold specified in Article 5(3) or no longer complies with the financial conditions set out therein.

4. A Community air carrier shall provide to the competent licensing authority its audited accounts no later than six months following the last day of the respective financial year, unless otherwise provided for in national law. During the first two years of operation of a Community air carrier, the data as referred to in point 3 of Annex I shall be made available to the competent licensing authority upon request.

The competent licensing authority may at any time assess the financial performance of a Community air carrier to which it has granted an operating licence by requesting the relevant information. As part of such an assessment, the Community air carrier in question shall update the data referred to in point 3 of Annex I and provide it to the competent licensing authority upon request.

5. A Community air carrier shall notify the competent licensing authority:
  - (a) in advance of any plans for the operation of a new air service to a continent or a world region not previously served, or any other substantial change in the scale of its activities, including, but not limited to, changes in the type or number of aircraft used;
  - (b) in advance of any intended mergers or acquisitions; and
  - (c) within 14 days of any change in the ownership of any single shareholding which represents 10 % or more of the total shareholding of the Community air carrier or of its parent or ultimate holding company.
6. If the competent licensing authority deems the changes notified under paragraph 5 to have a significant bearing on the finances of the Community air carrier, it shall require the submission of a revised business plan incorporating the changes in question and covering, at least, a period of 12 months from its date of implementation as well as the data referred to in point 2 of Annex I, in addition to the information to be provided under paragraph 4.

The competent licensing authority shall take a decision on the revised business plan as to whether the Community air carrier can meet its existing and potential obligations during that period of 12 months. Such a decision shall be taken not later than three months after all the necessary information has been submitted to it.

7. In relation to Community air carriers licensed by it the competent licensing authority shall decide whether the operating licence shall be resubmitted for approval in case of change in one or more elements affecting the legal situation of a Community air carrier and, in particular, in the case of a merger or takeover.
8. Paragraphs 4, 5 and 6 shall not apply to Community air carriers exclusively engaged in operations with aircraft of less than 10 tonnes MTOM and/or less than 20 seats. Such Community air carriers shall at all times be able to demonstrate that their net capital is at least EUR 100000 or to provide when required by the competent licensing authority the information relevant for the purposes of the assessment referred to in Article 9(2).

The competent licensing authority may nevertheless apply paragraphs 4, 5 and 6 to Community air carriers licensed by it that operate scheduled air services or whose turnover exceeds EUR 3 million per year.

### *Article 9*

#### **Suspension and revocation of an operating licence**

1. The competent licensing authority may at any time assess the financial performance of a Community air carrier which it has licensed. Based upon its assessment, the authority shall suspend or revoke the operating licence if it is no longer satisfied that this Community air carrier can meet its actual and potential obligations for a 12-month period. Nevertheless, the competent licensing authority may grant a temporary licence, not exceeding 12 months pending financial reorganisation of a Community air carrier provided that safety is not at risk, that this temporary licence reflects, when appropriate, any changes to the AOC, and that there is a realistic prospect of a satisfactory financial reconstruction within that time period.
2. Whenever there are clear indications that financial problems exist or when insolvency or similar proceedings are opened against a Community air carrier licensed by it the competent licensing authority shall without delay make an in-depth assessment of the financial situation and on the basis of its findings review the status of the operating licence in compliance with this Article within a time period of three months.

The competent licensing authority shall inform the Commission of its decisions, relating to the status of the operating licence.

3. When the audited accounts referred to in Article 8(4) have not been communicated within the deadline indicated in that Article, the competent licensing authority shall, without undue delay, request the Community air carrier to communicate these audited accounts.

If the audited accounts are not communicated within one month, the operating licence may be revoked or suspended.

4. The competent licensing authority shall suspend or revoke the operating licence if the Community air carrier knowingly or recklessly furnishes the competent licensing authority with false information on an important point.
5. In case a Community air carrier's AOC is suspended or withdrawn, the competent licensing authority shall immediately suspend or revoke that air carrier's operating licence.
6. The competent licensing authority may suspend or revoke the operating licence of a Community air carrier if such a carrier no longer satisfies the requirements relating to good repute set out in Article 7.

## *Article 10*

### **Decisions on operating licences**

1. The competent licensing authority shall take a decision on an application as soon as possible, and not later than three months after all the necessary information has been submitted, taking into account all available evidence. The decision shall be communicated to the applicant. A refusal shall indicate the reasons therefor.
2. Procedures for granting, suspending and revoking operating licences shall be made public by the competent licensing authorities, which shall inform the Commission thereof.
3. A list of decisions of the competent licensing authorities to grant, suspend or revoke operating licences shall be published annually in the Official Journal of the European Union.

## *Article 11*

### **Insurance requirements**

Notwithstanding Regulation (EC) No 785/2004, an air carrier shall be insured to cover liability in case of accidents with respect to mail.

## *Article 12*

### **Registration**

1. Without prejudice to Article 13(3), aircraft used by a Community air carrier shall be registered, at the option of the Member State whose competent authority issues the operating licence, in its national register or within the Community.
2. In accordance with paragraph 1, the competent authority shall, subject to applicable laws and regulations, accept on its national register, without any discriminatory fee and without delay, aircraft owned by nationals of other Member States and transfers from aircraft registers of other Member States. No fee shall be applied to transfers of aircraft in addition to the normal registration fee.

## *Article 13*

### **Leasing**

1. Without prejudice to Article 4(c), a Community air carrier may have one or more aircraft at its disposal through dry or wet lease agreement. Community air carriers may freely operate wet-leased aircraft registered within the Community except where this would lead to endangering safety. The Commission shall ensure that



the implementation of such a provision is reasonable and proportionate and based on safety considerations.

2. A dry lease agreement to which a Community air carrier is a party or a wet lease agreement under which the Community air carrier is the lessee of the wet-leased aircraft shall be subject to prior approval in accordance with applicable Community or national law on aviation safety.
3. A Community air carrier wet leasing aircraft registered in a third country from another undertaking shall obtain prior approval for the operation from the competent licensing authority. The competent authority may grant an approval if:
  - (a) the Community air carrier demonstrates to the satisfaction of the competent authority that all safety standards equivalent to those imposed by Community or national law are met; and
  - (b) one of the following conditions is fulfilled:
    - (i) the Community air carrier justifies such leasing on the basis of exceptional needs, in which case an approval may be granted for a period of up to seven months that may be renewed once for a further period of up to seven months;
    - (ii) the Community air carrier demonstrates that the leasing is necessary to satisfy seasonal capacity needs, which cannot reasonably be satisfied through leasing aircraft registered within the Community, in which case the approval may be renewed; or
    - (iii) the Community air carrier demonstrates that the leasing is necessary to overcome operational difficulties and it is not possible or reasonable to lease aircraft registered within the Community, in which case the approval shall be of limited duration strictly necessary for overcoming the difficulties.
4. The competent authority may attach conditions to the approval. Such conditions shall form part of the wet lease agreement.

The competent authority may refuse to grant an approval if there is no reciprocity as regards wet leasing between the Member State concerned or the Community and the third country where the wet-leased aircraft is registered.

The competent authority shall inform the Member States concerned about an approval it has granted for wet leasing aircraft registered in a third country.

#### *Article 14*

#### **Right to be heard**

The competent licensing authority shall ensure that, when adopting a decision to suspend or revoke the operating licence of a Community air carrier, the Community air

carrier concerned is given the opportunity of being heard, taking into account the need, in some cases, for an urgency procedure.

## CHAPTER III ACCESS TO ROUTES

### *Article 15*

#### **Provision of intra-Community air services**

1. Community air carriers shall be entitled to operate intra-Community air services.
2. Member States shall not subject the operation of intra-Community air services by a Community air carrier to any permit or authorisation. Member States shall not require Community air carriers to provide any documents or information which they have already supplied to the competent licensing authority, provided that the relevant information may be obtained from the competent licensing authority in due time.
3. If the Commission, on the basis of information obtained under Article 26(2), finds that the operating licence granted to a Community air carrier is not in compliance with the requirements of this Regulation it shall forward its findings to the competent licensing authority which shall send its comments to the Commission within 15 working days.

If the Commission, after examining the comments of the competent licensing authority, maintains that the operating licence is not compliant, or no comments have been received from the competent licensing authority it shall, in accordance with the procedure referred to in Article 25(2), take a decision to request the competent licensing authority to take the appropriate corrective measures or to suspend or revoke the operating licence.

The decision shall set a date by which the corrective measures or actions by the competent licensing authority shall be implemented. If the corrective measures or actions have not been implemented by that date the Community air carrier shall not be entitled to exercise its rights under paragraph 1.

The Community air carrier may resume exercising its rights under paragraph 1 upon notification to the Commission by the competent licensing authority that the corrective measures have been implemented and that the competent licensing authority has verified the implementation.

4. When operating intra-Community air services, a Community air carrier shall be permitted to combine air services and to enter into code share arrangements, without prejudice to the Community competition rules applicable to undertakings.

Any restrictions on the freedom of Community air carriers to operate intra-Community air services arising from bilateral agreements between Member States are hereby superseded.

5. Notwithstanding the provisions of bilateral agreements between Member States, and subject to the Community competition rules applicable to undertakings, Community air carriers shall be permitted by the Member State(s) concerned to combine air services and to enter into code share arrangements with any air carrier on air services to, from or via any airport in their territory from or to any point(s) in third countries.

A Member State may, in the framework of the bilateral air service agreement with the third country concerned, impose restrictions on code share arrangements between Community air carriers and air carriers of a third country, in particular if the third country concerned does not allow similar commercial opportunities to Community air carriers operating from the Member State concerned. In doing so, Member States shall ensure that restrictions imposed under such agreements do not restrict competition and are non-discriminatory between Community air carriers and that they are not more restrictive than necessary.

#### *Article 16*

#### **General principles for public service obligations**

1. A Member State, following consultations with the other Member States concerned and after having informed the Commission, the airports concerned and air carriers operating on the route, may impose a public service obligation in respect of scheduled air services between an airport in the Community and an airport serving a peripheral or development region in its territory or on a thin route to any airport on its territory any such route being considered vital for the economic and social development of the region which the airport serves. That obligation shall be imposed only to the extent necessary to ensure on that route the minimum provision of scheduled air services satisfying fixed standards of continuity, regularity, pricing or minimum capacity, which air carriers would not assume if they were solely considering their commercial interest.

The fixed standards imposed on the route subject to that public service obligation shall be set in a transparent and non-discriminatory way.

2. In instances where other modes of transport cannot ensure an uninterrupted service with at least two daily frequencies, the Member States concerned may include in the public service obligation the requirement that any Community air carrier intending to operate the route gives a guarantee that it will operate the route for a certain period, to be specified, in accordance with the other terms of the public service obligation.
3. The necessity and the adequacy of an envisaged public service obligation shall be assessed by the Member State(s) having regard to:
  - (a) the proportionality between the envisaged obligation and the economic development needs of the region concerned;

- (b) the possibility of having recourse to other modes of transport and the ability of such modes to meet the transport needs under consideration, in particular when existing rail services serve the envisaged route with a travel time of less than three hours and with sufficient frequencies, connections and suitable timings;
  - (c) the air fares and conditions which can be quoted to users;
  - (d) the combined effect of all air carriers operating or intending to operate on the route.
4. When a Member State wishes to impose a public service obligation, it shall communicate the text of the envisaged imposition of the public service obligation to the Commission, to the other Member States concerned, to the airports concerned and to the air carriers operating the route in question.

The Commission shall publish an information notice in the Official Journal of the European Union:

- (a) identifying the two airports connected by the route concerned and possible intermediate stop-over point(s);
  - (b) mentioning the date of entry into force of the public service obligation; and
  - (c) indicating the complete address where the text and any relevant information and/or documentation related to the public service obligation shall be made available without delay and free of charge by the Member State concerned.
5. Notwithstanding the provisions of paragraph 4, with respect to routes where the number of passengers expected to use the air service is less than 10000 per annum, the information notice on a public service obligation shall be published either in the Official Journal of the European Union or in the national official journal of the Member State concerned.
6. The date of entry into force of a public service obligation shall not be earlier than the date of publication of the information notice referred to in the second subparagraph of paragraph 4.
7. When a public service obligation has been imposed in accordance with paragraphs 1 and 2 the Community air carrier shall be able to offer seat-only sales provided that the air service in question meets all the requirements of the public service obligation. Consequently that air service shall be considered as a scheduled air service.
8. When a public service obligation has been imposed in accordance with paragraphs 1 and 2, any other Community air carrier shall at any time be allowed to commence scheduled air services meeting all the requirements of the public service obligation, including the period of operation that may be required in accordance with paragraph 2.
9. Notwithstanding paragraph 8, if no Community air carrier has commenced or can demonstrate that it is about to commence sustainable scheduled air services on a

route in accordance with the public service obligation which has been imposed on that route, the Member State concerned may limit access to the scheduled air services on that route to only one Community air carrier for a period of up to four years, after which the situation shall be reviewed.

This period may be up to five years if the public service obligation is imposed on a route to an airport serving an outermost region, referred to in Article 299(2) of the Treaty.

10. The right to operate the services referred to in paragraph 9 shall be offered by public tender in accordance with Article 17, either singly or, in cases where justified for reasons of operational efficiency, for a group of such routes to any Community air carrier entitled to operate such air services. For reasons of administrative efficiency, a Member State may issue a single invitation to tender covering different routes.
11. A public service obligation shall be deemed to have expired if no scheduled air service has been operated during a period of 12 months on the route subject to such obligation.
12. In case of sudden interruption of service by the Community air carrier selected in accordance with Article 17, the Member State concerned may, in case of emergency, select by mutual agreement a different Community air carrier to operate the public service obligation for a period up to seven months, not renewable, under the following conditions:
  - (a) any compensation paid by the Member State shall be made in compliance with Article 17(8);
  - (b) the selection shall be made among Community air carriers in compliance with the principles of transparency and non-discrimination;
  - (c) a new call for tender shall be launched.

The Commission and the Member State(s) concerned shall be informed without delay of the emergency procedure and of its reasons. At the request of a Member State, or on its own initiative, the Commission may, in accordance with the procedure referred to in Article 25(2) suspend the procedure if it considers after its assessment that it does not meet the requirements of this paragraph or is otherwise contrary to Community law.

### *Article 17*

#### **Public tender procedure for public service obligation**

1. The public tender required in Article 16(10) shall be conducted according to the procedure set out in paragraphs 2 to 10 of this Article.
2. The Member State concerned shall communicate the entire text of the invitation to tender to the Commission except where, in accordance with Article 16(5), it has

made the public service obligation known through the publication of a notice in its national official journal. In such case the tender shall also be published in the national official journal.

3. The invitation to tender and the subsequent contract shall cover, inter alia, the following points:
  - (a) the standards required by the public service obligation;
  - (b) rules concerning amendment and termination of the contract, in particular to take account of unforeseeable changes;
  - (c) the period of validity of the contract;
  - (d) penalties in the event of failure to comply with the contract;
  - (e) objective and transparent parameters on the basis of which compensation, if any, for the discharging of the public service obligations shall be calculated.
4. The Commission shall make the invitation to tender known through an information notice published in the Official Journal of the European Union. The deadline for submission of tenders shall not be earlier than two months after the day of publication of such an information notice. In case the tender concerns a route to which the access had already been limited to one carrier in accordance with Article 16(9), the invitation to tender will be published at least six months before the start of the new concession in order to assess the continued necessity of the restricted access.
5. The information notice shall provide the following information:
  - (a) Member State(s) concerned;
  - (b) air route concerned;
  - (c) period of validity of the contract;
  - (d) complete address where the text of the invitation to tender and any relevant information and/or documentation related to the public tender and the public service obligation shall be made available by the Member State concerned;
  - (e) deadline for submission of tenders.
6. The Member State(s) concerned shall communicate without delay and free of charge any relevant information and documents requested by a party interested in the public tender.
7. The selection among the submissions shall be made as soon as possible taking into consideration the adequacy of the service, including the prices and conditions which can be quoted to users, and the cost of the compensation required from the Member State(s) concerned, if any.
8. The Member State concerned may compensate an air carrier, which has been selected under paragraph 7, for adhering to the standards required by a public

service obligation imposed under Article 16. Such compensation may not exceed the amount required to cover the net costs incurred in discharging each public service obligation, taking account of revenue relating thereto kept by the air carrier and a reasonable profit.

9. The Commission shall be informed in writing and without delay of the results of the public tender and of the selection by the Member State including the following information:
  - (a) numbers, names and corporate information of tenderers;
  - (b) operational elements contained in the offers;
  - (c) compensation requested in the offers;
  - (d) name of the selected tenderer.
10. At a request of a Member State or on its own initiative, the Commission may request Member States to communicate, within one month, all relevant documents relating to the selection of an air carrier for the operation of a public service obligation. In case the requested documents are not communicated within the deadline, the Commission may decide to suspend the invitation to tender in accordance with the procedure referred to in Article 25(2).

### *Article 18*

#### **Examination of public service obligations**

1. Member States shall take all necessary measures to ensure that any decision taken under Articles 16 and 17 can be reviewed effectively and, in particular, as soon as possible on the grounds that such decisions have infringed Community law or national rules implementing Community law.

In particular, at a request of a Member State or on its own initiative, the Commission may request Member States to communicate, within two months:

  - (a) a document justifying the need for the public service obligation and its compliance with the criteria mentioned in Article 16;
  - (b) an analysis of the economy of the region;
  - (c) an analysis of the proportionality between the envisaged obligations and the economic development objectives;
  - (d) an analysis of the existing air services, if any, and of the other modes of transport available which could be considered a substitute for the envisaged imposition.
2. At the request of a Member State which considers that the development of a route is being unduly restricted by the terms of Articles 16 and 17, or on its own initiative, the Commission shall carry out an investigation and, within six months

of receipt of the request and in accordance with the procedure referred to in Article 25(2), shall take a decision on the basis of all relevant factors on whether Articles 16 and 17 shall continue to apply in respect of the route concerned.

### *Article 19*

#### **Traffic distribution between airports and exercise of traffic rights**

1. The exercise of traffic rights shall be subject to published Community, national, regional and local operational rules relating to safety, security, the protection of the environment and the allocation of slots.
2. A Member State, after consultation with interested parties including the air carriers and airports concerned, may regulate, without discrimination among destinations inside the Community or on grounds of nationality or identity of air carriers, the distribution of air traffic between airports satisfying the following conditions:
  - (a) the airports serve the same city or conurbation;
  - (b) the airports are served by adequate transport infrastructure providing, to the extent possible, a direct connection making it possible to arrive at the airport within 90 minutes including, where necessary, on a cross-border basis;
  - (c) the airports are linked to one another and to the city or conurbation they serve by frequent, reliable and efficient public transport services; and
  - (d) the airports offer necessary services to air carriers, and do not unduly prejudice their commercial opportunities.

Any decision to regulate the distribution of air traffic between the airports concerned shall respect the principles of proportionality and transparency, and shall be based on objective criteria.

3. A Member State concerned shall inform the Commission of its intention to regulate the distribution of air traffic or to change an existing traffic distribution rule.

The Commission shall examine the application of paragraphs 1 and 2 of this Article and, within six months of receipt of the information from the Member State, and in accordance with the procedure referred to in Article 25(2), shall decide whether the Member State may apply the measures.

The Commission shall publish its decision in the Official Journal of the European Union and the measures shall not be applied before the publication of the Commission's approval.

4. With respect to traffic distribution rules existing at the time of the entry into force of this Regulation, the Commission shall at the request of a Member State and may on its own initiative examine the application of paragraphs 1 and 2 and, in



accordance with the procedure referred to in Article 25(2), shall decide whether the Member State may continue to apply the measure.

5. The Commission shall publish its decisions made under this Article in the Official Journal of the European Union.

#### *Article 20*

##### **Environmental measures**

1. When serious environmental problems exist, the Member State responsible may limit or refuse the exercise of traffic rights, in particular when other modes of transport provide appropriate levels of service. The measure shall be non-discriminatory, shall not distort competition between air carriers, shall not be more restrictive than necessary to relieve the problems, and shall have a limited period of validity, not exceeding three years, after which it shall be reviewed.
2. When a Member State considers that action under paragraph 1 is necessary it shall, at least three months before the entry into force of the action, inform the other Member States and the Commission, providing adequate justification for the action. The action may be implemented unless within one month of receipt of the information a Member State concerned contests the action or the Commission, in accordance with paragraph 3, takes it up for further examination.
3. At the request of another Member State or on its own initiative, the Commission may, in accordance with the procedure referred to in Article 25(2), suspend the measures if they do not meet the requirements of paragraph 1 or are otherwise contrary to Community law.

#### *Article 21*

##### **Emergency measures**

1. A Member State may refuse, limit or impose conditions on the exercise of traffic rights to deal with sudden problems of short duration resulting from unforeseeable and unavoidable circumstances. Such action shall respect the principles of proportionality and transparency and shall be based on objective and non-discriminatory criteria.

The Commission and the other Member States shall be informed without delay of such action with its adequate justification. If the problems necessitating such action continue to exist for more than 14 days, the Member State shall inform the Commission and the other Member States accordingly and may, with the agreement of the Commission, prolong the action for further periods of up to 14 days.

2. At the request of the Member State(s) involved or on its own initiative, the Commission may suspend this action if it does not meet the requirements of paragraph 1 or is otherwise contrary to Community law.

CHAPTER IV  
**PROVISIONS ON PRICING**

*Article 22*

**Pricing freedom**

1. Without prejudice to Article 16(1), Community air carriers and, on the basis of reciprocity, air carriers of third countries shall freely set air fares and air rates for intra-Community air services.
2. Notwithstanding the provisions of bilateral agreements between Member States, Member States may not discriminate on grounds of nationality or identity of air carriers in allowing Community air carriers to set fares and rates for air services between their territory and a third country. Any remaining restrictions on pricing, including with respect to routes to third countries, arising from bilateral agreements between Member States are hereby superseded.

*Article 23*

**Information and non-discrimination**

1. Air fares and air rates available to the general public shall include the applicable conditions when offered or published in any form, including on the Internet, for air services from an airport located in the territory of a Member State to which the Treaty applies. The final price to be paid shall at all times be indicated and shall include the applicable air fare or air rate as well as all applicable taxes, and charges, surcharges and fees which are unavoidable and foreseeable at the time of publication. In addition to the indication of the final price, at least the following shall be specified:
  - (a) air fare or air rate;
  - (b) taxes;
  - (c) airport charges; and
  - (d) other charges, surcharges or fees, such as those related to security or fuel;where the items listed under (b), (c) and (d) have been added to the air fare or air rate. Optional price supplements shall be communicated in a clear, transparent and unambiguous way at the start of any booking process and their acceptance by the customer shall be on an "opt-in" basis.
2. Without prejudice to Article 16(1), access to air fares and air rates for air services from an airport located in the territory of a Member State to which the Treaty applies, available to the general public shall be granted without any discrimination based on the nationality or the place of residence of the customer or on the place

of establishment of the air carrier's agent or other ticket seller within the Community.

*Article 24*

**Penalties**

Member States shall ensure compliance with the rules set out in this Chapter and shall lay down penalties for infringements thereof. Those penalties shall be effective, proportionate and dissuasive.

CHAPTER V

**FINAL PROVISIONS**

*Article 25*

**Committee**

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

*Article 26*

**Cooperation and right to obtain information**

1. Member States and the Commission shall cooperate in applying and in monitoring the application of this Regulation.
2. In order to carry out its duties under this Regulation the Commission may obtain all necessary information from Member States, which shall also facilitate the provision of information by air carriers licensed by their competent licensing authorities.
3. Member States shall, according to their national legislation, take the necessary measures to ensure appropriate confidentiality of the information received by them pursuant to this Regulation.

*Article 27*

**Repeal**

Regulations (EEC) No 2407/92, (EEC) No 2408/92 and (EEC) No 2409/92 shall be repealed.

References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

*Article 28*

**Entry into force**

This Regulation shall enter into force on the day following its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 24 September 2008.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

J.-P. JOUYET

The Annexes to Regulation 1008/2008 can be found in the official version

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