

## **IATA CONSOLIDATED EXCHANGE RATES (ICER)**

### **DATA LICENSE AGREEMENT**

THE FOLLOWING DATA LICENSE AGREEMENT (THE “**AGREEMENT**”) IS ENTERED INTO BETWEEN YOURSELF (THE “**LICENSEE**”) AND THE INTERNATIONAL AIR TRANSPORT ASSOCIATION (“**IATA**”). THIS AGREEMENT APPLIES, WITHOUT LIMITATION, TO THE IATA CONSOLIDATED EXCHANGE RATES (ICER) DATA PROVIDED BY WAY OF SUBSCRIPTION BY IATA (THE “**DATA**”), IRRESPECTIVE OF CHANNEL OF DISTRIBUTION BY WHICH IT IS DELIVERED.

PLEASE CAREFULLY READ THE FOLLOWING TERMS BEFORE ACCESSING AND USING THE DATA IN ANY MANNER. USING THE DATA OR ANY PART THEREOF CONFIRMS YOUR ACCEPTANCE OF THESE TERMS AND FORMS A LEGAL CONTRACT WITH IATA.

LICENSEE AGREES THAT ITS ACCESS TO AND USE OF THE DATA, AS WELL AS THE ACCESS TO AND USE OF SAME BY THE LICENSEE’S EMPLOYEES, AGENTS, CONSULTANTS AND OTHER AUTHORIZED PERSONS (EACH, AN “**AUTHORIZED USER**”) SHALL BE SUBJECT TO THE FOLLOWING TERMS AND TO APPLICABLE LEGISLATION, AS THE CASE MAY BE. LICENSEE AGREES THAT AN INDIVIDUAL HAVING THE RIGHT TO BIND THE LICENSEE CONTRACTUALLY, AS WELL AS ALL OF LICENSEE’S DESIGNATED AUTHORIZED USERS MUST ACCEPT THESE TERMS BEFORE ACCESSING AND USING THE DATA.

WHERE THESE TERMS ARE BEING ACCEPTED BY AN AUTHORIZED USER, THE AUTHORIZED USER AGREES THAT HIS/HER ACCESS TO AND USE OF THE DATA SHALL ALSO BE SUBJECT TO THE FOLLOWING TERMS AND TO APPLICABLE LEGISLATION, AS APPLICABLE.

**IF YOU DO NOT AGREE TO THE FOLLOWING TERMS, YOU MAY NOT ACCESS OR USE THE DATA.**

**Otherwise, please confirm your agreement to these terms by clicking “I Agree”.**

#### **1. LICENSEE AND AUTHORIZED USERS**

- 1.1 Licensee shall be entitled to a specific number of Authorized Users, as determined by IATA in writing, each of whom shall have the right to access and use the Data for and on behalf of the Licensee. For clarity, Licensee shall be entitled to no more than the specified number of Authorized Users at any one time, but may change the individual designated as one of its permitted Authorized Users at any time. Licensee must notify IATA of any such change so that any such new individual can be appropriately registered as an Authorized User.
- 1.2 Licensee and the Authorized Users shall be entirely liable for any access to and use of the Data further to the access credentials granted for such purpose by IATA.
- 1.3 Licensee is entirely responsible for the Authorized Users.

## 2. GRANT OF LICENSE

- 2.1 IATA grants a personal, non-exclusive and non-transferable license to Licensee and its Authorized Users to access and use the Data only in accordance with the terms of this Agreement and for the limited purposes of: (i) if Licensee is an airline - internal use only, for the purpose of payment of local currency airfares; or (ii) if Licensee is a service provider - providing services for the payment of local currency airfares, subject to Section 2.2 below. For clarity, the Licensee, whether an airline or a service provider, or its Authorized Users may under no circumstances publish, sell, transfer or otherwise redistribute, the actual Data file (in whole or in part) that is made available to Licensee further to this Agreement, to any third party. Authorized Users may share the Data internally with other employees of the Licensee who may use same only in accordance with this Agreement and solely for the above-mentioned purposes, as applicable. The Data may be used for the above-specified purposes, as applicable, solely during the Term of this Agreement and only for the period during which the applicable License Fees have been paid. The Data shall remain the sole and exclusive property of IATA, and is licensed, not sold, as a single product pursuant to the terms of this Agreement.
- 2.2 The Data may not be used to provide services to third parties other than airlines, whether or not such third-parties are related companies of the Licensee, unless each such third party subscribes to its own Data license ("**Subscribed Third Parties**").
- 2.3 No use of the Data to provide any such services to Subscribed Third Parties may be made until IATA has confirmed in writing that a third party is indeed a Subscribed Third Party.

## 3. RESTRICTIONS

Except in accordance with the terms and conditions of this Agreement, the following actions are not permitted under this Agreement:

- (i) reverse engineer, de-compile or disassemble the Data;
- (ii) sub-license any rights granted hereunder to any third party, entity or person;
- (iii) publish, sell, transfer, redistribute, let or hire or otherwise provide or disclose the Data or any information or data contained in the Data or any part thereof, or any derivative product, directly or indirectly, to any third party, entity or person not an employee or consultant of the Licensee; provided that Data, information or data contained in the Data may only be provided or disclosed in such a manner to an employee or consultant where such employee or consultant needs to use it and solely for the purpose of its role as Licensee's employee or consultant in accordance with this Agreement, and further provided that that such employee or consultant complies with the obligations set out in this Agreement;
- (iv) duplicate or copy the Data and any information or data contained in the Data or any part thereof except for the purpose of this Agreement during the Term hereof;
- (v) use in any manner the Data and any information or data contained in the Data or any part thereof during the Term of this Agreement, except as set forth in this Agreement;
- (vi) directly or indirectly export or transmit the Data or related materials (or any part thereof) to any country to which such export or transmission is restricted by any applicable regulation or statute, without the prior written consent of the competent governmental authority and of IATA;

- (vii) enter into any contract on behalf of IATA or assume or create any obligation whatsoever, expressed or implied, in the name of IATA or otherwise bind IATA in any manner whatsoever, except as set forth in this Agreement;
- (viii) provide the Data to any other entity, or incorporate the Data in products or services, other than permitted under Section 2 (Grant of License) of this Agreement; and
- (ix) without limiting the generality of the foregoing subsections, allow any third party, entity or person to have access to or use the Data, directly or indirectly, without the prior written consent IATA, which consent shall be at IATA's sole discretion.

#### **4. ADDITIONAL TERMS**

You specifically acknowledge the following additional terms:

- (i) IATA reserves the right to cease provision of access to or use of the Data for any reason whatsoever, subject to notification by IATA. Upon such notification, all permissions granted further to this Agreement with respect to access and/or use of such Data in any manner shall automatically and immediately terminate.
- (ii) IATA reserves the right to modify any of the terms of this Agreement at any time, upon written notice given to the Licensee and/or any Authorized User(s), as applicable, at least thirty-five (35) days prior to such changes coming into effect. Where Licensee and/or Authorized User(s) do not agree with the changes as notified, such Licensee and/or Authorized User shall cease accessing and/or using the Data in any manner and, in the case of Licensee, shall: (a) prevent its Authorized Users from doing so, and (b) may elect not to renew the Subscription for an additional Renewal Term, further to Section 6.
- (v) Licensee shall maintain written records of the use of the Data hereunder and IATA may upon reasonable advance written notice and during business hours inspect Licensee's premises, systems and records to ensure the Data is integrated, accessed and used in accordance with the terms of this Agreement or to ensure Licensee and its Authorized Users are otherwise complying with the terms of this Agreement. Such inspection shall be at IATA's sole cost and expense, safe and except if such inspection demonstrates that Licensee and/or its Authorized Users are in breach of their obligations under this Agreement, in which case the reasonable costs of inspection shall be at Licensee's sole cost and expense.

#### **5. LICENSE FEES**

The license fee in effect at the time of subscription to the Data is payable at the time of subscription and is payable annually thereafter, on the first day of each Renewal Term (as defined below) ("**License Fees**"). IATA shall have the right to increase the License Fees applicable at each Renewal Term, provided written notice of such increase is provided to Licensee prior to the end of the then current Term.

#### **6. TERM**

This Agreement is effective as of the date of subscription and shall continue until the next April 30<sup>th</sup>. This Agreement shall thereafter renew automatically for additional successive twelve (12) month terms (each, a "**Renewal Term**"), unless either party gives the other party a written notice of its intention not to renew no later than thirty (30) days prior to the end of the then current Term.

## 7. TERMINATION

- 7.1 Termination by IATA. Notwithstanding any provision of this Agreement and without prejudice to any other rights, IATA may immediately terminate this Agreement upon written notice to Licensee if Licensee, one or more of Licensee's Authorized Users or its Processor, breach or otherwise fail to comply with any terms and conditions of this Agreement.
- 7.2 Termination by IATA or Licensee. Either IATA or Licensee may, upon a sixty (60) days written notice to the other party, terminate this Agreement without cause. In any event, termination of this Agreement by either party for any reason shall not affect Licensee's obligation to pay IATA any amount due and outstanding under this Agreement immediately upon termination.
- (a) If this Agreement is terminated by the Licensee, for any reason other than IATA's material breach of this Agreement or its gross negligence or willful misconduct, Licensee shall not be entitled to a pro-rata refund of the License Fees paid to IATA pursuant to this Agreement;
- (b) If this Agreement is terminated by IATA, for any reason other than Licensee's or its Authorized User(s)' or Processor's material breach of this Agreement or gross negligence or willful misconduct, Licensee shall be entitled to a pro-rata refund of the License Fees paid to IATA pursuant to this Agreement as of the effective date of termination.
- 7.3 Consequence of Termination. Upon any termination or expiry of this Agreement, all rights granted to Licensee's Authorized Users under this Agreement shall terminate simultaneously. Upon the expiry or termination of this Agreement for any reason, Licensee shall destroy all copies of the Data and all of its component parts, and it and its Authorized Users shall refrain from accessing or making any further use whatsoever of the Data. This requirement applies to all copies and/or versions of the Data in whatever form, partial or complete, and whether or not modified or merged into other materials and whether or not merged with the data of Licensee. In the event of expiry or termination of this Agreement for any reason whatsoever, it is strictly forbidden to use or permit the use of the Data, and/or any version thereof, in any manner.

## 8. WARRANTY

IATA has used commercially reasonable efforts in collecting, preparing and maintaining material for inclusion in the Data. However, IATA does not represent or warrant that the information contained in the Data is complete or free from errors, and does not assume, and expressly disclaims, any liability to any person(s) including, without limitation, Licensee or its Authorized Users for any loss or damage caused by errors or omissions in the Data, or delay in the provision of the Data, whether such errors, omissions or delays result from negligence, accident or any other cause (excluding IATA's gross negligence or willful misconduct). TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IATA DISCLAIMS ALL WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, CONDITION, QUALITY, PERFORMANCE AND ANY WARRANTY AGAINST INFRINGEMENT. This limited warranty gives Licensee specific legal rights. Licensee may have others, which vary from jurisdiction to jurisdiction.

## 9. LIMITATION OF LIABILITY

Notwithstanding any other provision of this Agreement, in the event of any defect in the Data or other breach of this Agreement by IATA or other claim brought by Licensee (whether in negligence or otherwise), IATA's entire liability and Licensee's exclusive remedy shall not exceed the License Fees paid by Licensee for access to and use of the Data hereunder during a period of three (3) months immediately preceding the claim. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL IATA BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, ANY OTHER PECUNIARY LOSS, OR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, THIRD PARTY OR CONSEQUENTIAL DAMAGES) ARISING OUT OF THE USE OR INABILITY TO USE THE DATA, EVEN IF IATA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 10. INDEMNIFICATION

Licensee hereby agrees to indemnify and hold harmless IATA and its officers, employees, agents and servants from and against any and all claims, demands, actions, causes of action, judgments, costs, attorneys' fees, expenses and liability of any kind or nature which they may incur, suffer or be required to pay which may result, directly or indirectly, from any use (including without limitation reliance) by Licensee, any of its Authorized Users or the Processor of the Data, or data or information thereon or from any breach by Licensee, any of its Authorized Users or Processor, of the provisions of this Agreement, unless such damages are due to IATA's gross negligence or willful misconduct.

## 11. PROPERTY AND CONFIDENTIALITY RIGHTS

The Data is the property of IATA or its licensors and all rights, titles and interests in and to the Data, including, without limitation, all intellectual property rights and any accompanying written or printed materials, are owned by IATA or its licensors. Nothing contained in this Agreement shall prevent IATA from using the Data, or any portion thereof, in any form or manner, or from making the Data, or any portion thereof, available to any other entity or person at any time and for any purpose. Licensee and any Authorized Users agree to treat the Data in the same manner as any other material protected by intellectual property laws and treaties. Licensee and any Authorized Users agree as a condition of this Agreement that they shall not, without the prior written consent of IATA, disclose the terms and conditions of this Agreement or refer to this Agreement, its content or the IATA in any manner whatsoever including, without limitation, in any material sent to any third party, entity or person.

## 12. PROCESSOR

Notwithstanding any provision to the contrary, Licensee and/or its Authorized Users may provide any information or data contained in the Data or any part thereof to another entity or person (the "**Processor**") for the purpose of processing, pursuant to a written contract between Licensee and such Processor (the "**Processing Agreement**"), provided that:

(i) Such Processor shall only use the information or data contained in the Data or any part thereof for the purpose of its role as service provider in relation to the processing of the Data in the context of the services provided by Licensee, as permitted by this Agreement;

(ii) Licensee shall provide to IATA the name of such Processor in writing, upon execution of this Agreement. Licensee shall also immediately notify IATA in writing in the event of any change of Processor;

(iii) Licensee shall ensure that the Processor and its officers, directors and employees shall comply with all obligations set out in this Agreement. Licensee shall inform the Processor of the terms and conditions hereof and shall guarantee and remain liable for the performance of the obligations of the Processor as though it was a party hereto;

(iv) Without limiting the foregoing, Licensee hereby agrees to include specific provisions in the Processing Agreement requiring the Processor to fully abide by the provisions of this Agreement, and shall ensure that the Processing Agreement shall also contain the following conditions:

a. Processor shall handle and process and otherwise use any information or data contained in the Data and any and all copies, portions, or abstracts thereof, solely for your use and benefit, as permitted by this Agreement. Processor shall not handle, process, or otherwise use any information or data contained in the Data or any portion thereof for its own benefit, or for the benefit of any entity or person other than Licensee. Processor shall not disclose or make available to any entity or person other than Licensee and/or its Authorized Users any information or data contained in the Data, or any portion thereof, in any form or manner;

b. Processor shall return to Licensee all of the Data, including information or data contained therein and any and all copies, abstracts, or portions thereof, which shall have been delivered to Processor pursuant to the provisions of their Processing Agreement, upon completion of processing of such information or data contained in the Data by Processor for Licensee's benefit; and

c. Processor shall maintain written records concerning the handling and processing of the Data, and Processor shall permit any authorized representative of IATA, upon reasonable advance written notice to Processor and during business hours to inspect the premises and records of Processor to ensure Licensee and Processor are complying with the terms of this Agreement.

d. IATA shall be provided with a copy of the Processing Agreement by Licensee within thirty (30) days of the date of execution thereof, and copies of all amendment thereto shall likewise be provided to IATA within thirty (30) days of execution thereof. It is agreed that any breach by Processor of any condition set forth in this Section as incorporated in the Processing Agreement shall be deemed to be a breach by Licensee of this Agreement and shall entitle IATA to pursue any and all remedies available.

Licensee agrees that any breach by Processor of any condition set forth in this Agreement shall be deemed to be a breach by Licensee of this Agreement and shall entitle IATA to pursue against Licensee and/or the Processor any and all remedies available to IATA.

### **13. ASSIGNABILITY**

This Agreement may not be assigned or transferred, and Licensee and/or any of its Authorized Users may not permit the assignment or transfer of this Agreement, without IATA's prior written consent.

#### **14. SEVERABILITY**

If a court of competent jurisdiction finds any provision of this Agreement to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect.

#### **15. AMENDMENTS**

No changes, modifications, amendments or variations to this Agreement shall be valid or binding upon either party unless made in writing and duly executed by both IATA and Licensee.

#### **16. WAIVER**

The failure by IATA at any time to require performance of the Licensee's obligations under this Agreement shall not affect IATA's right to require such performance at any time thereafter. A waiver by IATA of a breach or specific delay shall not be taken or held to be a waiver of any subsequent breach or delay.

#### **17. APPLICABLE LAW, DISPUTE, LANGUAGE**

This Agreement shall be governed by the laws of the Province of Quebec, Canada, and the laws of Canada applicable therein, as if this Agreement were a contract wholly entered into and wholly performed within the Province of Quebec, without reference to choice of law provisions. For the purpose of litigating any claims or disputes, the parties to this Agreement irrevocably agree to submit to the jurisdiction of the courts located within the City of Montréal, Québec, Canada, to the exclusion of all others.

You agree that this Agreement be drafted in English. *Vous acceptez que cette entente soit rédigée en anglais.*

#### **18. SURVIVAL**

Any terms and conditions of this Agreement which by their nature extend beyond the term or expiry of this Agreement shall survive the termination or expiry of this Agreement. This includes, without limitation, the following Sections 5 (License Fees), 11 (Property and Confidentiality Rights), 3 (Restrictions), 8 (Warranty), 9 (Limitation of Liability), 10 (Indemnification) and 7.3 (Consequence of Termination).

#### **19. ENTIRE AGREEMENT**

Licensee and/or its Authorized User further agrees that it is the complete and exclusive statement of the agreement between Licensee or the Authorized User and IATA with respect to the Data, which supersedes any proposal or prior agreement, oral or written, and any other communication between the Licensee or Authorized User and IATA relating to the subject of this Agreement.