ICAO Carbon Emissions Calculator Data Supply License Agreement

CONFIDENTIAL

This ICAO CARBON EMISSIONS CALCULATOR DATA SUPPLY LICENSE AGREEMENT ("the Agreement'') is made the XX day of month, year ("the Effective Date"), between the International Civil Aviation Organization, a specialized agency of the United Nations, with its headquarters at 999 Robert-Bourassa Boulevard, Montreal, QC, Canada H3C 5H7 ("ICAO")

AND

COMPANY/ORGANIZATION,xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx;

separately "a Party", collectively "the Parties";

WHEREAS, ICAO has developed the ICAO Aviation Carbon Emissions Calculator, a reference tool for estimating CO_2 emissions from air travel;

WHEREAS the afore-mentioned calculator is regarded as an impartial, peer-reviewed methodology which applies the best publicly available industry data to account for various factors such as aircraft types, route specific data, passenger load factors and cargo carried;

WHEREAS COMPANY/ORGANIZATION seeks to obtain from ICAO output data from the ICAO Carbon Emissions Calculator for the purposes of providing its customers with the Service as described in this Agreement.

WHEREBY IT IS AGREED AS FOLLOWS:

In this Agreement except insofar as the context requires otherwise:

"Agreed Format" shall mean the format for the provision of the Database or access thereof, that is specified in this Agreement. Access to the database may be in the form of APIs, in which case the Agreement will be adapted accordingly;

"Agreed Frequency" shall mean the frequency according to which ICAO will update and provide the Database to COMPANY/ORGANIZATION in the Agreed Format;

"Database" shall mean the output data-set generated by the ICAO Carbon Emissions Calculator that is to be provided to COMPANY/ORGANIZATION by ICAO, such output data-set to include the following: origin, destination, distance, fleet covering the distance, weighted average per-flight fuel consumption, average number of seats, average CO_2 emissions per passenger in each available cabin class which will be made available to COMPANY/ORGANIZATION as file download(s) in the Agreed Format at the Agreed Frequency. The output data-set will be created by running the official ICAO Aviation Carbon Emissions Calculator for every possible city pair. For connecting flights, COMPANY/ORGANIZATION will need to look up the CO_2 emissions for each leg of travel;

"Report on Differences" shall mean that in support of developing the Database, ICAO may provide a summary of the changes between the previously delivered Database and the current Database. This Report on Differences will include a list of new city pairs supported, city pairs that are no longer supported, changes in aircraft types serving city pairs, changes to load factor data, or changes to the overall ICAO Carbon Emissions Calculator methodology;

"Term" means the period beginning from the Effective Date through twelve (12) months initial period. The Term shall automatically extend for subsequent one (1) year periods unless one party serves written notice to the other party of its intention to terminate the Agreement at least thirty (30) days prior to any scheduled renewal.

"Royalty Fee" and "Licensing Fee" shall mean the fee payable by COMPANY/ORGANIZATION to ICAO as specified in this Agreement;

"Services" shall mean the services that COMPANY/ORGANIZATION may provide to its customers, such customers may include airlines, travel agencies, corporations, or individual travellers, and other new customers that COMPANY/ORGANIZATION may have in the future;

"Permitted Purpose" shall mean the use of the Database in accordance with the terms and conditions specified in this Agreement.

1. Provision of Database

1.1. ICAO will provide to COMPANY/ORGANIZATION the access to Database in the following Agreed Format at the following Agreed Frequency in accordance with the terms and conditions of this Agreement.

Agreed Format: ICAO will provide COMPANY/ORGANIZATION with access to a password protected website where the Database can be downloaded. COMPANY/ORGANIZATION can access this website by using a standard web browser and the https protocol. The site will contain an Extensible Markup Language (XML) file (the Database) as defined in Table I. COMPANY/ORGANIZATION shall take all reasonable precaution to keep the password confidential, and shall promptly inform ICAO in the event the confidentiality of a password is compromised.

Table I. XML file of aviation CO_2 data.

FIELD	DESCRIPTION
origin	Three-letter IATA code for the origin airport [string]
destination	Three-letter IATA code for the destination airport [string]
trip_distance	Distance between the origin and destination airport to the nearest whole nautical mile [int]
fleet	List of aircraft types that currently provide service between the origin and destination airports, provided as a string of OAG aircraft types separated by commas [string]
avg_fuel	Weighted average aircraft-level fuel consumption in kg between the origin and destination based on the number of scheduled flights by aircraft type [float]
avg_Equiv_seats	Weighted average number of equivalent economy passenger seats available per flight between the origin and destination airport. Premium class passengers are assumed to occupy the space of 2 of these seats [float]
CO_2 economy	Per passenger CO_2 emissions in kg between the origin and destination airports for an economy class passenger [float]
CO_2 premium	Per passenger CO_2 emissions in kg between the origin and destination airports for a premium class passenger [float]

Agreed Frequency: ICAO will make the Database available to COMPANY/ORGANIZATION no later than 30 calendar days after the Effective Date. Subsequently, ICAO will use its best efforts to update the Database with most recent information available and will make updated versions of the Database and corresponding Report(s) on Differences available to COMPANY/ORGANIZATION at least once every 60 calendar days.

1.2.   Technical support by phone and e-mail will be provided as needed from 9:00 AM until 5:00 PM Montreal time, Monday to Friday, except on official ICAO holidays; this technical support is included in the fees specified in point 4 below.

1.3.   The Report on Differences may be provided to COMPANY/ORGANIZATION commensurate with the delivery schedule in paragraph 1.1 in the Agreement.

1.4.   COMPANY/ORGANIZATION shall on a bi-monthly basis provide to ICAO regular information on the usage of the Database within the COMPANY/ORGANIZATION's platform and will make reasonable best efforts to provide as much detailed and quantified information on the number of customers that are using the COMPANY/ORGANIZATION's products based on the Database; and eventually amount of CO_2 offset.

2.   Licence and Permitted Purpose of Services

2.1.   ICAO grants to COMPANY/ORGANIZATION a non-exclusive, non-transferable, worldwide licence to use the Database in accordance with the terms and conditions of this Agreement. To this end, COMPANY/ORGANIZATION may display the CO_2 information obtained from the database as a standalone transaction and through all of the COMPANY/ORGANIZATION's distribution channels, or integrate the CO_2 information in reporting services and offer subsequent carbon offsetting capabilities. Those services may include summing of CO_2 emissions per passenger, group of passengers, type of trip, per company or any other parameter as contained in the Database in response to requests from the COMPANY/ORGANIZATION's customers.

2.2.   COMPANY/ORGANIZATION COMPANY/ORGANIZATION may provide CO_2 emissions information from the ICAO Database through their various technological platforms to facilitate access to this information by customers as it relates to their trips. This information may be used by their customers for various purposes including:

- the elaboration of their own corporate social responsibility reports;
- understanding the amount of CO_2 from their air travel;
- offsetting the CO_2 emissions from their air travel.

2.3.   COMPANY/ORGANIZATION acknowledges that the information resulting from the use of the Database cannot be utilised to compare airlines or aircraft types and expressly undertakes not to use any Database functionalities to produce such comparisons.

2.4.   COMPANY/ORGANIZATION expressly undertakes not to:

2.4.1.   download data from the Database for the purpose of creating or contributing to a database that will be searched as a substitute for, or alternative to the Database;

2.4.2.   assert any proprietary rights to any portion of the Database, or any information contained within the Database;

2.4.3.   divulge the password for accessing the protected website to unauthorised users;

2.4.4.   sell, distribute or otherwise make available data from the Database to any external party, except in the cases where the CO_2 information is displayed, reported or used for carbon offsetting purposes, as explained in the definition of Services, and in 2.1. above.

3.   Intellectual Property and Confidentiality

3.1.   COMPANY/ORGANIZATION acknowledges that all right, title and interest in and to the Database and any or all extractions or compilations of the Database, including copyright, database and other intellectual property rights, are and will remain the sole and exclusive property of ICAO.

3.2. The publication by the ==COMPANY/ORGANIZATION== or its customers of any text that describes or refers to the ICAO Carbon Emissions Calculator or Database requires permission from ICAO. ICAO will review and approve such text only in the English language and ==COMPANY/ORGANIZATION== shall be responsible for translating the text into other languages if so desired.

3.3. ==COMPANY/ORGANIZATION== shall ensure that its customers will have access to the ICAO Carbon Emissions Calculator description explained in 3.2 in a visibly prominent fashion when displaying the results of the Database to its customers. This information will be displayed in a clear manner as possible within reasonable technology limitations of each platform where it will be used. In conformity with its internal approval policies and procedures, ICAO may permit ==COMPANY/ORGANIZATION== to use the ICAO name and/or logo in order that ==COMPANY/ORGANIZATION== may provide, at its own cost, promotional material to its customers or potential customers in relation to the Services. Any such use of the ICAO name and/or logo must be approved by ICAO in advance of such materials being made commercially available. Any such permitted use of the ICAO name and/or logo shall be restricted to the duration of this Agreement.

3.4. ==COMPANY/ORGANIZATION== shall use a hyperlink in its website to the ICAO Carbon Emissions Calculator. The use of this hyperlink shall be restricted to the duration of this Agreement.

3.5. ==COMPANY/ORGANIZATION== expressly acknowledges that all material brought into being in connection with this Agreement, including the Agreement in its entirety, and all information as to the business methods or operations of ICAO in relation to the subject matter of this Agreement, or any other information that, by its very nature, ==COMPANY/ORGANIZATION== knows or should know is confidential, including without limitation, ICAO's product plans, designs, costs, prices, marketing plans, personnel, research or know-how, shall be treated as strictly confidential. ==COMPANY/ORGANIZATION== agrees that it shall not, during or after the term of this Agreement, allow or cause to allow the disclosure of any such confidential information to any person, unless such disclosure is specifically authorized in writing by an authorized staff member of ICAO.

3.6. ==COMPANY/ORGANIZATION== may disclose the confidential information only to employees or persons on a need to know basis, in connection with the faithful consummation of this Agreement, who have been previously instructed as to the confidential nature of the information and who have agreed to maintain such information confidential.

4.   Fees

4.1. ==COMPANY/ORGANIZATION== shall pay to ICAO an annual fixed License Fee in the amount of _____ USD to be paid no later than the date of the first delivery of the Database set out in paragraph 1.1 of this Agreement (within 30 days after the effective date), and at each renewal date thereafter.

4.2. In addition to what is stated in paragraph 4.1, COMPANY/ORGANIZATION shall pay to ICAO a Royalty Fee of 10% of the revenue collected for products and/or services developed by COMPANY/ORGANIZATION to provide CO_2 information displays, reports or carbon offsetting capabilities based on ICAO CO_2 information ("CO_2 related products"). For the avoidance of doubt, the revenue subject to Royalty Fee payments will be revenue that would not have been generated in the absence of ICAO CO_2 information obtained from the Database, or through COMPANY/ORGANIZATION products existing before this Agreement becomes effective.

4.3. Once COMPANY/ORGANIZATION starts selling to its customers, for any COMPANY/ORGANIZATION products that contain CO_2 information, COMPANY/ORGANIZATION shall provide on a quarterly basis to ICAO a report on proceeds generated from the sale of these CO_2 related products (as described in paragraph 4.2 above), the Royalty Fee applicable, and a bank transfer in the sum of applicable Royalty Fee. COMPANY/ORGANIZATION and ICAO will agree on the most appropriate format of this report.

4.4. Without prejudice to the provisions of Article 5, in case of early termination of this Agreement by ICAO (before the completion of initial period of twelve (12) months from its Effective Date) the payment of the annual fixed License Fee and any applicable royalty fee thereto, shall be adjusted to the effective duration of this Agreement and any undue amount paid to ICAO shall be reimbursed to COMPANY/ORGANIZATION. Notwithstanding the early termination date, in case of early termination by COMPANY/ORGANIZATION during the initial period, the minimum payment by the COMPANY/ORGANIZATION for the use of the license shall be 50% of the fixed annual License Fee plus prorated amount for the period of time ICAO data was in use plus any applicable royalty fee. For termination within any subsequent term(s), reimbursement shall be made and adjusted in accordance with the effective duration of the agreement within that term until the termination date.

4.5. Payments under this Agreement shall include the mention COMPANY/ORGANIZATION Agreement" and be made in the following bank account:

> Royal Bank of Canada
> 1140 St. Catherine Street West
> Montreal, Quebec, Canada H3B 1H7
> ARGF USD account number: 400-416-4
> Bank code: 003
> Transit code: 05101
> SWIFT: ROYCCAT2

5. Terms and Termination

5.1. This Agreement will be for an initial period of twelve (12) months following the Effective Date ("Initial Term") unless terminated by either party by providing written notice to the other at least thirty (30) days prior to the intended termination date or to any scheduled renewal.

6. Liability and Indemnity

6.1. In no event shall ICAO, its officials or employees, be liable for any loss, direct, indirect or consequential damages, or expense incurred, including but not limited to, loss of business, profits or revenues, loss or inaccuracy of any data, regardless of the theory of liability claimed to have resulted from the use or inability to use the Database or the Services.

6.2. COMPANY/ORGANIZATION shall indemnify, defend, hold and save harmless, ICAO, its officials and employees, from and against all suits, proceedings, demands, losses and liability of any kind or nature brought by any third party against ICAO, arising from or relating to acts or omissions of COMPANY/ORGANIZATION, its employees, agents or subcontractors.

7. Warranties

7.1. Each party represents and warrants that it has full power and authority to enter into this Agreement. ICAO represents and warrants that it has and will retain all necessary rights to grant the licenses in this Agreement and deliver Licensed Materials (Database) to Company/Organization.ICAO will make the Database available as required and do as necessary to maintain the same as fully functional in order that requirements hereunder are capable of being met. Notwithstanding the foregoing, the Database and all related information pertaining thereto is provided by ICAO "AS IS" and without any warranty, express or implied, regarding its merchantability, fitness for a particular purpose, accuracy or performance;

7.2. COMPANY/ORGANIZATION hereby acknowledges that ICAO is not responsible for inaccuracies, errors or omissions contained in the Database.

8. Additional Provisions

8.1. COMPANY/ORGANIZATION may use its agents, affiliates, consultants, and contractors in connection with the performance of its obligations and exercise of its rights under this Agreement, provided COMPANY/ORGANIZATIONS makes those parties subject to the same obligations as the Licensee under this Agreement. COMPANY/ORGANIZATION shall be responsible to ICAO for the acts or omissions of such affiliates, consultants, and contractors, in breach of this Agreement.

8.2. Neither party may assign any part of this Agreement without the prior written consent of the other; otherwise, any such assignment shall be void.

8.3. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.

8.4. Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement.

8.5.   This Agreement does not create any agency, partnership, or joint venture between the parties.

8.6.   This Agreement does not confer any benefits on any third party unless it expressly states that it does.

8.7.   The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.

8.8.   Any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.

8.9.   If any term (or part of a term) of this Agreement is invalid, illegal or unenforceable, the rest of the Agreement will remain in effect.

9.   Settlement of Disputes

9.1.   The terms of this Agreement will be construed and interpreted under general principles of law, to which Article 38(1) of the Statute of the International Court of Justice refers, without application of any system of national or sub-national law.

9.2.   Any dispute, controversy, or claim arising out of this Agreement or the breach, termination or invalidity thereof, or a breach of the terms of the License set forth in Section 2 of this Agreement, unless settled amicably by direct negotiations between the parties within ninety (90) days following the request for such amicable settlement (or such longer period as may be agreed by the parties), may be referred by either party hereto to arbitration. Arbitration shall be conducted in accordance with the UNCITRAL Arbitration Rules then obtaining by a sole arbiter in Montreal and in the English language, and the parties shall be bound by any such arbitration as the final adjudication of the issue.

9.3.   The remedies provided in this Section 9 are the sole and exclusive legal remedies of the parties for disputes concerning the interpretation or the application of this Agreement.

10.   Privileges and Immunities

10.1.   Nothing in or relating to this Agreement shall be deemed to be a waiver, express or implied, of any immunity from suit or legal process or any privilege, exemption or other immunity enjoyed or which may be enjoyed by ICAO, its officers and staff, either pursuant to the Convention on the Privileges and Immunities of the Specialised Agencies or other conventions, agreements, laws or decrees of an international character.

This AGREEMENT will, on signature by both Parties, constitute a binding contract between the Parties: AS WITNESS the duly authorised representatives of the Parties:

SIGNED by:

ICAO   **COMPANY/ORGANIZATION**

Signature _____   Signature _____

Name _____   Name _____

Title _____   Title _____

Date _____   Date _____