

# Non-Disclosure Agreement

---

**International Air Transport Association**, an association incorporated by a Special Act of the Parliament of Canada, with its with head office located at 800 Place Victoria, PO Box 113, Montreal, Quebec, Canada H4Z1M1 and its executive office located at Route de l'Aéroport 33, P.O. Box 416, CH – 1215 Geneva 15 Airport, Switzerland (together with its Affiliates (as defined below), (**IATA**),

and

**[name of other party]** whose registered address is at **[address of other party]** (together with its Affiliates, the **Company**).



International Air Transport Association

## 1. DISCLOSURE

- 1.1 Either party to this Agreement (each a **Party** and together the **Parties**), along with the parties listed in Annex A (the **Additional Parties**), may provide certain Confidential Information (as such term is defined below) to a Party hereto or an Additional Party for the purpose of using the ONE Record data sharing standard (the **Purpose**). ONE Record aims to enrich and modernize traditional (i.e. paper) forms of data sharing by sharing data hosted by individual companies, as owners of data, with such data being retrieved by authorized parties (i) for purposes related to cargo operations, or (ii) to re-create traditional paper documents if necessary for legal purposes, including but not limited to providing government import declarations as per country requirements.
- 1.2 In consideration for and as a condition of receiving such access to the Confidential Information, each Party acknowledges the confidential and proprietary nature of such Confidential Information and agrees to hold and keep the same in accordance with the provisions of this Agreement.
- 1.3 The Parties acknowledge that Annex A may be continually updated from time to time to protect the Confidential Information of other parties participating in projects connected to the Purpose who have signed or will sign non-disclosure agreements containing provisions substantially similar to those contained herein. The updated version of Annex A containing any additions or modifications shall be posted to IATA's ONE Record website (<https://www.iata.org/one-record/#tab-8>) and such updated Annex A shall be binding upon the Parties once posted to the website.

## 2. DEFINITIONS

### 2.1 **Confidential Information** means:

- (a) any and all strategic information, projections, data, customer lists, policies and procedures, information relating to processes, technologies, or theory, and any and all other information that may be disclosed by a Party or an Additional Party (the **Discloser**) to a Party hereto (the **Recipient**) of any kind, character or nature, whether disclosed orally, in writing, or in any other form or medium including, without limitation, electronic, and computer-based information; without restricting the meaning or application of the foregoing, Confidential Information shall also include the information defined in items (i) to (iv) of this sub-Section 2.1(a):
- (i) **Other Proprietary Data:** Information relating to the Discloser's proprietary rights prior to any public disclosure thereof, including but not limited to the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets);
- (ii) **Business Operations:** Information relating to the Discloser's personnel or financial information, vendor names or other vendor information (including vendor characteristics, services or agreements), purchasing and internal cost information, internal services and operational manuals, and the manner and methods of conducting the Discloser's business;
- (iii) **Marketing and Development Operations:** Information relating to marketing and development plans, price and cost data, price and fee amounts,

pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the Discloser which have been or are being discussed; and

(iv) **Customers:** Information relating to Discloser's customers and their representatives, contracts and their contents and parties, customer services, data provided by customers and the type, quantity and specifications of products and services purchased, leased, licensed, or received by clients of the Discloser.

- (b) the fact that the Recipient has requested or received any information covered by this Agreement;
- (c) the fact that discussions or negotiations may take place, are taking place, or have taken place concerning this Agreement and/or any related transaction between IATA, Company and/or the Additional Parties;
- (d) the existence of, and any term, condition, or other fact with respect to, this Agreement and/or any potential transaction between IATA, Company and/or Additional Parties;
- (e) any and all information that is otherwise protected by applicable law governing trade secrets, intellectual property, confidentiality or similar subject matters (such law, **Applicable Confidentiality Law**); and
- (f) any and all other information that:
  - (i) relates to the assets, information, business or affairs of IATA, Company and/or Additional Parties;
  - (ii) is made available by or on behalf of the Discloser to the Recipient, or is otherwise obtained by or on behalf of the Recipient; and
  - (iii) is, marked as confidential, is by its nature confidential or is of the sort the Recipient knows, or ought to know, is confidential.

2.2 Information shall be considered Confidential Information under this Agreement regardless of whether such information was made available or obtained directly or indirectly (including, without limitation, by reverse engineering), before, on or after the date of this Agreement.

2.3 Unless otherwise protected by Applicable Confidentiality Law, Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the Recipient or any of its Representatives;
- (b) is or was made available to the Recipient by a Person who is not or was not then under an obligation of confidence in relation to such information; or
- (c) is independently developed by the Recipient without use or reference to the Discloser's Confidential Information.

2.4 **Affiliates** means, with respect to a Party, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common

control with, such Person, and for the purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

2.5 **Person** means an individual, partnership, limited liability company, corporation, joint stock company, trust, estate, joint venture, association or unincorporated organization, or any other form of business or professional entity.

2.6 **Representatives** means, with respect to a Party, the directors, officers, employees, agents, advisers or other representatives (including, without limitation, attorneys, accountants, consultants, bankers and financial advisers) of such Party.

### 3. **DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION**

3.1 The Recipient:

- (a) may not disclose any Confidential Information to any third Person in any manner whatsoever;
- (b) may only use the Confidential Information for the Purpose; and
- (c) shall maintain the confidentiality of all Confidential Information using the same degree of care it uses to protect its own confidential or sensitive information, which in any event must be with at least a reasonable degree of care.

3.2 The Recipient may only disclose Confidential Information to its Representatives who need to know such information for the Purpose and have agreed to be bound either by all the terms of this Agreement or to terms at least as protective of Confidential Information as the terms of this Agreement. In any event, the Recipient shall be responsible for any breach of this Agreement by any of its Representatives as if the Recipient had committed such breach.

3.3 If the Recipient, or any of its Representatives, is legally compelled to disclose any Confidential Information, the Recipient shall provide the Discloser with immediate written notice. In this case, the Discloser may:

- (a) seek a protective order or other appropriate remedy; or
- (b) waive compliance with any applicable provisions of this Agreement.

3.4 If the Discloser seeks a protective order or other remedy pursuant to clause 3.3(a), the Recipient shall cooperate with the Discloser in such effort but is not required to abandon or waive any claim or subject itself to any liability. The Recipient or its Representative may only disclose the subject Confidential Information if:

- (a) the protective order or other remedy is not obtained; or
- (b) the Discloser waives compliance with the applicable provisions of this Agreement.

3.5 If Confidential Information is to be disclosed pursuant to clause 3.4, the Recipient shall notify the Discloser in advance of the disclosure and provide a copy of the proposed disclosure.

#### 4. OWNERSHIP

Each Party acknowledges and agrees that this Agreement shall not create or grant any license, express or implied, to either Party's or any Additional Party's Confidential Information. Each Party's and any Additional Party's Confidential Information is now and shall remain the property of that Party or Additional Party, as the case may be, in all respects.

#### 5. RETURN OR DESTRUCTION OF MEDIA

- 5.1 Upon the Discloser's request for any reason, the Recipient shall promptly deliver to the Discloser all documents and other media (and all copies thereof) containing or related to any Confidential Information furnished to or obtained by the Recipient under this Agreement, whether in the possession of the Recipient, its Representatives or a third Person.
- 5.2 Promptly upon request by the Discloser, or at the expiration or earlier mutually agreed termination of this Agreement, the Recipient shall destroy all documents and other media (and all copies thereof) containing or related to any Confidential Information furnished to or obtained by the Recipient under this Agreement, whether in the possession of the Recipient, its Representatives or a third Person. An executive officer of the Recipient shall sign a written certification confirming such destruction and deliver it to the Discloser within five (5) business days of such destruction.
- 5.3 Notwithstanding the foregoing, the Recipient shall not be required to return or destroy, (a) any Confidential Information or copies thereof which it is required to retain by law, regulation, rules of a stock exchange or internal policy (**Legal Information**), or (b) any Confidential Information that is stored in any automatic electronic archiving or back-up system (**Electronic Information**) where it is not reasonably practicable to retrieve or delete the same, provided that the Recipient maintains the confidentiality of such Legal Information and Electronic Information in accordance with the terms of this Agreement and it is used for archival purposes only and no longer for the Purpose.

#### 6. DISCLAIMER

- 6.1 Neither Party nor any of its Representatives:
- (a) makes any representation or warranty:
    - (i) as to the accuracy or completeness of any Confidential Information; or
    - (ii) that any Confidential Information has been audited, verified or prepared with reasonable care;
  - (b) accepts any responsibility for any interpretation, opinion or conclusion that the Recipient or any of its Representatives may form as result of examining any Confidential Information; and
  - (c) to the extent permitted by applicable law, is liable for any loss of any kind (including, without limitation, damages, costs, interest, loss of profits, or special loss or damage) arising from any:
    - (i) error, inaccuracy, incompleteness or similar defect in any Confidential Information;

- (ii) default, negligence or lack of care in relation to the preparation or provision of any Confidential Information; or
- (iii) opinions or conclusions that a Party or its Representatives may communicate to the other Party or its Representatives as a result of examining any Confidential Information.

6.2 The Parties acknowledge and accept that the disclaimers recited in the preceding section 6.1 shall also apply to any Confidential Information received from Additional Parties.

## 7. **EFFECT OF APPLICABLE CONFIDENTIALITY LAW**

Each Party acknowledges and agrees that this Agreement is intended to provide protection in addition to that already provided by Applicable Confidentiality Law, and that nothing herein shall be deemed a waiver of any protection or rights granted to either Party under such Applicable Confidentiality Law.

## 8. **BUSINESS RELATIONSHIP**

8.1 Each Party acknowledges and agrees that this Agreement is not intended to and does not obligate any Party to enter into any discussions, negotiations or agreements with any other Party, or to otherwise proceed with any transaction or business relationship with any other Party or any third Person for any purpose, including, without limitation, the Purpose.

8.2 Nothing in this Agreement shall imply or create any exclusive relationship between the Parties or between a Party and any Additional Party, and, unless and until the Parties enter into a written agreement establishing such a relationship, the Parties are free to pursue discussions, negotiations, potential business or financial relationships and/or agreements with any other third Person(s).

8.3 Each Party acknowledges and agrees that this Agreement pertains only to the confidentiality of Confidential Information and the related matters expressly stated herein, and that no contract or agreement or any possible transaction or business relationship shall be deemed to exist between the Parties unless and until a definitive agreement has been executed and delivered by each of IATA and Company.

## 9. **WAIVER**

9.1 Each Party acknowledges and agrees that no failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege under this Agreement or any other agreement between the Parties.

9.2 Each Party acknowledges and agrees that damages resulting from a breach of this Agreement by either Party may well be impossible to measure accurately, and injuries sustained by the other Party may be irreparable. In addition, then, to claiming damages in respect thereof, each Party shall be entitled to seek an injunction and specific performance or other equitable relief to prevent a breach of the agreements, covenants and obligations provided for in this Agreement, and such right shall be cumulative and in addition to any other remedies which may be available under applicable law.

10. **TERM**

10.1 This Agreement shall be effective on the execution by the second of the Parties to so execute (the **Effective Date**) and shall remain in effect until the later of:

- (a) a period of five (5) years following the Effective Date; or
- (b) a period of five (5) years following termination or expiration of any business relationship or transaction entered into by the Parties, if any.

10.2 Either Party may terminate this Agreement with immediate effect upon written notice to the other Party. Notwithstanding any such termination, the terms of this Agreement shall survive such termination with regard to any Confidential Information disclosed prior to the termination date.

11. **APPLICABLE LAW; JURISDICTION; DISPUTES; LANGUAGE**

11.1 This Agreement shall be governed by and construed in accordance with the laws of Quebec, Canada (excluding conflict of law principles that might call for the application of the law of another jurisdiction) as to all matters, including, without limitation, matters of validity, construction, effect, performance and remedies.

11.2 Each Party irrevocably submits to the exclusive jurisdiction of the Province of Quebec for the purposes of any action or other proceeding brought by the other Party arising out of, under or in connection with this Agreement or the subject matter hereof.

11.3 To the extent permitted by applicable laws, rules or regulations, each Party waives and agrees not to assert, by way of motion, as a defence or otherwise, in any such action or proceeding, any claim:

- (a) that is not subject to the jurisdiction of the above-named courts;
- (b) that the action or proceeding is brought in an inconvenient forum; or
- (c) that the venue of the action or proceeding is improper.

11.4 The Parties have mutually agreed that this Agreement be drafted in the English language. *Les Parties ont mutuellement convenu que ce Contrat soit rédigé en langue anglaise.*

12. **ASSIGNMENT**

A Party shall not assign this Agreement or any of its respective rights or obligations under this Agreement without the prior written consent of the other Party.

13. **ENTIRE AGREEMENT; AMENDMENT**

13.1 This Agreement (including its Annex) constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof.

13.2 This Agreement terminates and supersedes all prior or contemporaneous agreements, discussions, representations, undertakings and understandings between the Parties, whether written or oral, express or implied, concerning the subject matter.

13.3 This Agreement may not be changed or modified except by mutual agreement in writing, executed by both Parties.

14. **COUNTERPARTS**

This Agreement may be executed by the Parties in any number of counterparts, each of which when executed and delivered shall constitute an original, but all of which shall together constitute one and the same instrument. This Agreement (including its Annex) shall only be legally binding upon execution by both Parties.

15. **SURVIVORSHIP**

Any rights arising on termination or expiration of this Agreement, including, without limitation, confidentiality provisions, shall survive the termination or expiration of this Agreement, as shall any other provision of this Agreement which, expressly or by implication from its nature, is intended to survive the expiration or earlier termination of this Agreement.

*[Signature page follows.]*

SAMPLE



**SIGNED AS AN AGREEMENT**

**The International Air Transport Association**

Per \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

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

**[name of other party]**

Per \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

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

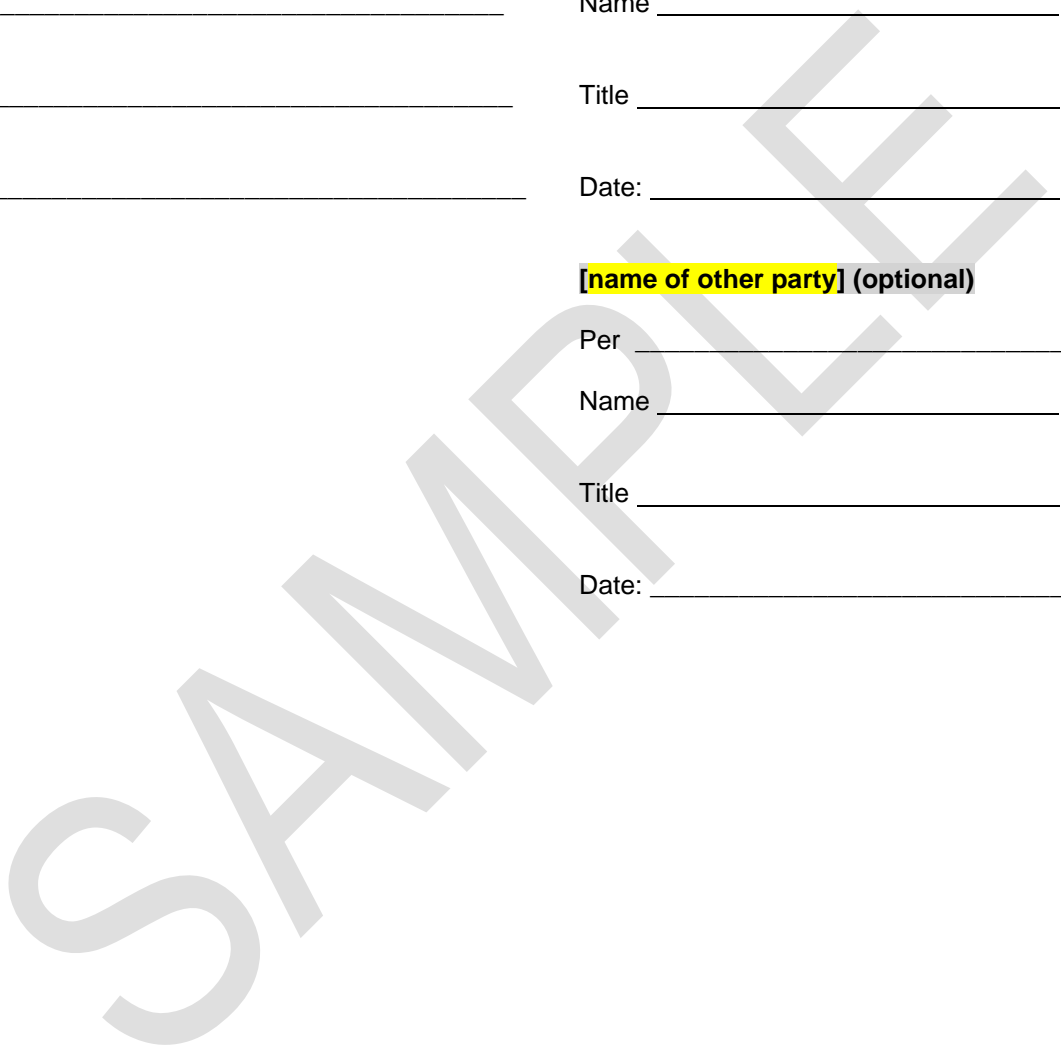
**[name of other party] (optional)**

Per \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

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



**ANNEX A**

**Additional Parties**

1. [Insert names of Additional Parties]
2. [Insert names of Additional Parties]
3. [Insert names of Additional Parties]

SAMPLE