

6PS-23-229

2023-09-25



ASQ SURVEYS PARTICIPATION AGREEMENT

This ASQ Surveys Participation Agreement (this "**Agreement**") is entered by and between:

AIRPORTS COUNCIL INTERNATIONAL, a non-profit association incorporated under the *Canada Not-for-profit Corporations Act* having its headquarters at 800 Place Victoria, Suite 1810, P.O. Box 302, Montreal, Quebec, H4Z 1G8, Canada ("**ACI**")

and

STATE ENTERPRISE LITHUANIAN AIRPORTS, having a place of business at Rodunios Kelias Street 10A Vilnius LT-02189 LT (the "**ACI Member**"),

(each a "**Party**", and collectively the "**Parties**").

PREAMBLE

WHEREAS ACI is an international association of airports that, among other things, promotes professional excellence in airport management and operations, including by providing passenger satisfaction surveys and the Employee Survey for Customer Experience (the "**ECE Survey**") collectively known as the "Airport Service Quality (ASQ) Program" (the "**ASQ Program**");

WHEREAS the ACI Member wishes ACI to provide certain services under the ASQ Program, and ACI agrees to perform said services to the airports identified by the ACI Member, pursuant to the terms and provisions of this Agreement;

NOW THEREFORE, the preamble being an integral part of this Agreement, in consideration for the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SERVICES

1.1. **Services.** To the extent that the ACI Member has paid the applicable annual membership fee to ACI and is considered in good standing by the ACI region it belongs to, ACI hereby agrees to provide the ACI Member with the services selected by the ACI Member, identified and described in Exhibits B and C attached hereto (collectively, the "**Services**"). ACI will provide such Services only to the airports identified in Exhibit C by their IATA codes and will provide the Services in accordance with the terms set forth in this Agreement.

2. OBLIGATIONS OF THE PARTIES

2.1. **Compliance with Rules and Guidelines.** In addition to the obligations set forth elsewhere in this Agreement, the ACI Member hereby undertakes, at its own costs, to comply fully with the obligations, rules and guidelines for the Services as established by ACI and communicated to the ACI Member during the Term, including without limitation those attached hereto as Exhibit A (collectively, the "**Rules and Guidelines**"). For the avoidance of doubt, ACI may change or update the Rules and

Guidelines from time to time to ensure that the ASQ Program and the data provided as part of the deliverables remain fair and reliable. The failure by the ACI Member to fully comply with the Rules and Guidelines may result in the exclusion of the ACI Member from the applicable rankings (e.g., if the ACI Member fails to provide the required information in accordance with the schedule and deadlines set forth in the Rules and Guidelines) and/or from participating into the ASQ Awards (as defined below) associated to the Services, when applicable, in addition to any other remedy or recourse available to ACI hereunder or at law.

- 2.2. **Download of Deliverables.** The ACI Member shall ensure to promptly download or otherwise save the deliverables supplied by ACI as part of the Services hereunder. The ACI Member acknowledges and agrees that ACI is only obligated to retain such deliverables and the information contained in such deliverables as indicated in Exhibit B.
- 2.3. **ASQ Awards.** ACI may organize and grant certain annual awards in relation to the ASQ Program (collectively, the "**ASQ Awards**"). For the avoidance of doubt, awards are not granted by ACI for all services included in the ASQ Program. Depending on the Services provided by ACI hereunder, and subject to the ACI Member's full compliance with the terms of this Agreement, including the Rules and Guidelines, the ACI Member shall be eligible to participate in the ASQ Awards associated to the Services provided hereunder as indicated in Exhibit B attached hereto. The ACI Member acknowledges and agrees that ACI shall determine in its sole discretion, but acting reasonably and fairly, the rules applicable to the ASQ Awards and that an ASQ Award will be granted by ACI only if the number of participants in the relevant award category is sufficient.
- 2.4. **Personnel and Subcontractors.** Each Party shall assign suitable qualified and competent personnel, employees, and/or subcontractors to perform their respective obligations hereunder. Each Party shall be fully responsible for the conduct, acts and omissions of its employees, personnel, and subcontractors.

3. TERM

- 3.1. This Agreement shall commence as of the first day of the first calendar quarter indicated in the Exhibit C and shall end on the last day of the last calendar quarter indicated in the Exhibit C for the Services (the "**Initial Term**"). Upon the expiration of the Initial Term, the Agreement shall renew automatically for successive periods of one (1) year each (each, a "**Renewal Term**"), unless a Party sends to the other Party a written notice of its intent not to renew the Agreement at least ninety (90) days prior to the end of the Initial Term or the then-current Renewal Term. The Initial Term, together with any Renewal Term(s), shall be referred to as the "**Term**" and the Term shall be subject to any early termination rights set forth in this Agreement.

4. FINANCIAL TERMS

- 4.1. **Fees.** In full consideration of the Services provided by ACI to the ACI Member hereunder, the ACI Member shall pay to ACI the fees for such Services as set forth in the Exhibit C (collectively, the "**Fees**").
- 4.2. **Fees Increases.** Upon the renewal of the Initial Term or any renewal of a Renewal Term, the Fees shall automatically increase by two point seventy-five percent (2.75%) and be rounded to the nearest five Canadian dollars (CAD 5.00) to account for inflation.
- 4.3. **Expenses.** Except as otherwise stated herein, or in any exhibit attached hereto, or unless otherwise agreed in advance in writing by the Parties, the costs and expenses incurred by ACI for the performance of the Services shall be the sole responsibility of ACI.
- 4.4. **Payment.** Unless otherwise agreed to by the Parties in writing, ACI shall invoice the ACI Member for the applicable Fees within thirty (30) days from the execution of this Agreement and within thirty

(30) days from the beginning of each Renewal Term, if any. Invoices shall be submitted by ACI to the contact person designated by the ACI Member upon execution of this Agreement. The ACI Member shall pay any undisputed amount of an invoice, together with any value added tax or other sales tax applicable, by electronic bank transfer to the account designated by ACI on the invoice, within thirty (30) days of receipt of such invoice. Unless otherwise indicated, all amounts under this Agreement are expressed in Canadian Dollars and all payments shall be made in Canadian Dollars. If the ACI Member in good faith disputes any amount on any invoice of ACI, the ACI Member and ACI agree to use their commercially reasonable efforts to resolve such dispute within sixty (60) days after the ACI Member provides written notification of the dispute to ACI and no interest shall accrue on the disputed amount during such period.

- 4.5. **Taxes.** Except for the payment of applicable value added tax or other sales tax as provided above, neither Party shall be liable to the other for any sales, use, excise, retail, income, corporate or similar taxes, including any fees payable to any governmental authority, which are imposed upon or assessed against the other Party including these for which taxes or fees are based upon or measured by amounts payable under this contract or services rendered hereunder. All amounts shall be payable in full, without set-off or deduction of any amounts. To the extent that the amounts payable by the ACI Member to ACI hereunder are subject to withholding taxes under applicable law, such withholding amounts shall be assumed by the ACI Member in addition to the amounts payable to ACI hereunder, so that ACI will receive the full amounts due to it hereunder as if no such deduction or withholding had been required. Upon request from the ACI Member, ACI shall provide the ACI Member with a certificate of residency from the Canada Revenue Agency confirming that ACI is resident in Canada and is liable to tax in Canada, which the ACI Member may use to benefit from any available tax treaty or tax waiver applicable, if any.

5. OWNERSHIP AND INTELLECTUAL PROPERTY

- 5.1. **ACI Member Data.** ACI acknowledges and agrees that the ACI Member owns and shall remain the sole owner of any and all raw data collected at the facilities of the ACI Member as part of the Services, except for the ECE Data (as defined below), when applicable, (collectively, the "**ACI Member Data**"). The ACI Member hereby grants to ACI an unlimited, non-exclusive, irrevocable, perpetual, worldwide, royalty-free license and right (i) to use and reproduce the ACI Member Data, or any part thereof, in connection with the Services, (ii) to use and reproduce the ACI Member Data, or any part thereof, for ACI' internal use, including without limitation, to conduct research, (iii) to use, reproduce, distribute, transmit, display, exhibit and communicate the ACI Member Data, or any part thereof, to other airports that participate into the ASQ Program (each, an "**Other Participating Airport**"), and (iv) to use, reproduce, distribute, transmit, display, exhibit and/or communicate to the public the ACI Member Data, or any part thereof, in any and all media and formats, but solely in an aggregated and anonymized format. For the avoidance of doubt, the ACI Member Data constitute Confidential Information of the ACI Member under this Agreement.
- 5.2. **Other Participating Airport Data.** The ACI Member acknowledges and agrees that as part of the Services, it may have access to raw data collected at the facilities of Other Participating Airports (the "**Other Participating Airport Data**") and that each such Other Participating Airport owns and will remain the sole owner of all rights, title and interest in and to such data. The ACI Member shall only use the Other Participating Airport Data for its internal purposes. The ACI Member shall not use, reproduce, copy, distribute, transmit, exhibit, display, disclose, allow access, or communicate publicly or to any third party, including without limitation, any of its independent contractors or subcontractors, the Other Participating Airport Data, in whole or in part, or any information contained therein, in any manner whatsoever or by any means, without the prior written consent of ACI. For the avoidance of doubt, as between the Parties, the Other Participating Airport Data constitute Confidential Information of ACI under this Agreement.
- 5.3. **ECE Data.** To the extent that the Services provided by ACI include the ECE Survey to measure employee satisfaction, the ACI Member acknowledges and agrees that ACI owns and shall remain

the sole owner of any and all raw data collected from the ACI Member's employees as part of such Services, including the responses to the survey questions and the socio-demographic information collected by ACI (collectively, the "**ECE Data**"). For the avoidance of doubt, ACI shall not provide the ECE Data to the ACI Member nor to any Other Participating Airport.

- 5.4. **ACI Analytical Data.** The ACI Member acknowledges and agrees that ACI owns and shall remain the sole owner of all rights, title and interest in and to any and all data from analyses and comparisons conducted by ACI on the ACI Member Data, the ECE Data, the Other Participating Airport Data, and/or any other third-party data, including without limitation, any results, information, rankings, benchmarking, or statistics related thereto (collectively, the "**ACI Analytical Data**"), including any and all intellectual property rights associated therewith. The ACI Member shall only use the ACI Analytical Data for its internal purposes. The ACI Member shall not use, reproduce, copy, distribute, transmit, exhibit, display, disclose, allow access, or communicate publicly or to any third party, including without limitation, any of its independent contractors or subcontractors, the ACI Analytical Data, in whole or in part, or any information contained therein (other than the ACI Member Data itself), in any manner whatsoever or by any means, without the prior written consent of ACI. For the avoidance of doubt, the ACI Analytical Data constitute Confidential Information of ACI under this Agreement. Notwithstanding the foregoing, the ACI Member shall be entitled to disclose the names and ranking order of the winning airports in each survey or ASQ Award category once ACI has released such information to the public, but only in the same manner as ACI and provided that the ACI Member clearly identifies the period and year to which the ranking pertains and whether it is a worldwide, regional or size ranking.
- 5.5. **Ownership of ACI Materials.** The ACI Member acknowledges and agrees that ACI owns and shall remain the sole owner of all rights, title and interest in and to any and all materials, content, data and methodology produced, developed, or supplied by ACI to the ACI Member or used by ACI in connection with the Services hereunder, including but not limited to, questionnaire forms, completed questionnaires, surveys, reports, records, presentations, fieldwork sample plans, methodology, rules and guidelines, including those set forth in the Rules and Guidelines (collectively, the "**ACI Materials**"), including any and all intellectual property rights associated therewith. For the avoidance of doubt, the ACI Materials constitute Confidential Information of ACI hereunder.
- 5.6. **License of ACI Materials.** ACI hereby grants to the ACI Member a non-exclusive, non-transferable, royalty-free, limited right and license during the Term to use and reproduce the ACI Materials provided by ACI to the ACI Member hereunder, but solely as necessary for the ACI Member to perform its obligations under this Agreement. For the avoidance of doubt, the ACI Member shall not in any circumstances (i) modify, edit or otherwise alter the ACI Materials provided by ACI, including without limitation, by adding or removing questions to the questionnaires, with the exception of reports provided by ACI to the ACI Member hereunder, which the ACI Member shall be entitled to edit for internal purposes, and (ii) reproduce, copy, distribute, transmit, exhibit, display, disclose, allow access or communicate to any third party or publicly, the ACI Materials provided by ACI, in whole or in part, including any information contained therein, in any manner whatsoever or by any means, without the prior written consent of ACI. The right and license granted herein by ACI is subject to the other provisions of this Agreement contained herein and any and all rights not specifically granted herein to the ACI Member are reserved to ACI.
- 5.7. **ASQ Program and ACI Marks.** The ACI Member acknowledges and agrees that ACI owns and shall remain the sole owner of all rights, title and interest in and to the ASQ Program, the ACI Marks, and any and all marketing materials used to promote the ASQ Program, and any and all intellectual property rights associated therewith. Nothing contained in this Agreement confers upon the ACI Member any right of ownership or interest in any of the foregoing. The ACI Member shall not make any claim to the contrary. ACI hereby authorizes the ACI Member to use the ACI Marks for the purposes of promoting its participation into the ASQ Program and its winning of an ASQ Award, if applicable. For the avoidance of doubt, the ACI Member shall not use any of the ACI Marks for any other purpose without the prior written consent of ACI. For the purposes of this Agreement, "**ACI**

Marks" shall mean the corporate name, trade names, trademarks and/or logos of ACI, including without limitation, those related to the ASQ Program.

- 5.8. **ACI Member Marks.** The ACI Member hereby grants to ACI a non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free, license and right during the Term to use, reproduce and display the ACI Member Marks for the following purposes: (i) as necessary to exercise its rights and obligations under this Agreement; and (ii) to identify and list the ACI Member and the airports identified in Exhibit C as a participant into the ASQ Program and/or as an ASQ Award winner, when applicable, in any and all media and formats, including without limitation, in any marketing and promotional materials for the ASQ Program, provided that ACI shall fully comply with the guidelines and requirements of which it has notice relating to such use. ACI shall not be permitted to use any of the ACI Member Marks for any other purpose without the ACI Member's prior written consent. ACI acknowledges and agrees that the ACI Member owns and shall remain the sole owner of all rights, title and interest in and to the ACI Member Marks. For the purposes of this Agreement, "**ACI Member Marks**" shall mean the corporate name, trade names, trademarks and/or logos of the ACI Member and of the airports to which the Services are provided hereunder.

6. AUDITS

- 6.1. **Remote Audits.** ACI applies quality control processes related to the compliance with the Rules and Guidelines. In the event that ACI or its subcontractor detects discrepancies and violations by the ACI Member of the Rules and Guidelines, the ACI Member may be included in the official benchmarking with a note to the effect that it has failed the audit and, when the Services include the participation of the ACI Member into ASQ Awards attributed by ACI, as indicated in Exhibit B, the ACI Member will be deemed non-eligible for such ASQ Awards.
- 6.2. **On-Site Audits.** ACI, either directly or through its subcontractor, may conduct on-site audits at the ACI Member's facilities from time to time during the Term to confirm the ACI Member's compliance with the provisions of this Agreement, including the Rules and Guidelines. Where onsite audits are conducted by ACI or its subcontractor, the ACI Member shall facilitate the auditors' access to the ACI Member's landside terminal areas and shall facilitate the grant of security clearance and passes for the auditors. The ACI Member acknowledges that it will be deemed to have failed the audit should such access be denied or restricted. As for remote audits provided above, in the event that ACI or its subcontractor detects discrepancies and violations by the ACI Member of this Agreement, including the Rules and Guidelines, the ACI Member may be included in the official benchmarking with a note to the effect that it has failed the audit and, when the Services include the participation of the ACI Member into ASQ Awards attributed by ACI, as indicated in Exhibit B, the ACI Member will be deemed non-eligible for such ASQ Awards.

7. REPRESENTATIONS AND WARRANTIES

- 7.1. **Mutual Representations and Warranties.** Each Party represents and warrants to the other that: (i) it is a corporation validly existing and organized under the laws of its jurisdiction of incorporation; (ii) it has the right and full authority to enter into this Agreement and to perform its obligations hereunder; (iii) it is under no legal obligation or contractual obligation with a third party that shall in any way interfere with its full and prompt performance hereunder; (iv) the person(s) executing this Agreement on its behalf have express authority to do so, and, in so doing, to bind it thereto; and (v) it is and will remain in full compliance with all applicable laws and regulations pertaining to the performance of its obligations hereunder.
- 7.2. **Additional Representations and Warranties by the ACI Member.** The ACI Member also represents and warrants to ACI that: (i) itself and the airports identified in Exhibit C are and will remain ACI members in good standing during the Term in the ACI region they belong to; (ii) it has the expertise, skills and resources necessary to perform its obligations hereunder; (iii) it shall comply with the Rules and Guidelines at all times during the Term; and (iv) there is no action, suit,

investigation or proceeding pending or, to the knowledge of the ACI Member, threatened against the ACI Member or any properties or rights of the ACI Member, by any third party or before any court, arbitrator or administrative or governmental body, which action, suit, investigation or proceeding could reasonably be expected to impair the ability of the ACI Member to perform its obligations under this Agreement.

- 7.3. **DISCLAIMER.** To the fullest extent allowed by applicable law, ACI provides all materials and Services hereunder on an “as is” basis and without warranty of any kind, and ACI expressly disclaims any and all representations or warranties, whether express, implied, statutory or otherwise, except as stated herein. ACI, its directors, officers and employees and any of its subcontractors shall not be liable for any losses or damages caused by any reliance on the ACI Member Data, the Other Participating Airport Data, the ACI Analytical Data and/or the ACI Materials in any manner whatsoever by the ACI Member or any third party, including without limitation any instance where such information contains errors, omissions, misprints or is misinterpreted. ACI, its directors, officers and employees, and any of its subcontractors shall not be liable also for any interpretation, opinion or conclusion formed by the ACI Member, its representatives, or its employees, as a result of their use or review of the ACI Member Data, the Other Participating Airport Data, the ACI Analytical Data and/or the ACI Materials.

8. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 8.1. **Indemnification.** The ACI Member agrees to defend, fully indemnify and hold ACI, its affiliates, successors and assigns, as well as their respective directors, officers, employees and representatives (collectively, the “**ACI Indemnified Party**”) harmless from and against any and all losses, damages, costs and expenses (including reasonable outside legal fees) due to any and all third-party claims, demands, suits, actions or causes of action (each, a “**Claim**”) to the extent resulting from or arising out of a breach or alleged breach by the ACI Member (including any breach or alleged breach by any of its employees, personnel or subcontractors or those of the airports to which the Services are provided) of any of its obligations, representations or warranties under this Agreement or at law, or its negligence or willful misconduct. The ACI Indemnified Party shall give prompt written notice to the ACI Member of a Claim to which such indemnification applies and shall cooperate in the defense of such Claim. Notwithstanding the foregoing, the ACI Indemnified Party shall have the right to participate to the defense of a Claim at its own expense with counsel of its own choosing. The ACI Member shall not agree to the settlement of any Claim without having obtained the prior written consent of ACI, whose consent shall not be unreasonably withheld or delayed.

- 8.2. **LIMITATION OF LIABILITY.** To the fullest extent allowed by applicable law, in no event shall ACI be liable to the ACI Member or any third party for any indirect, incidental, special, punitive, exemplary or consequential damages whatsoever, including but not limited to, damages for loss of profit or business or revenues, regardless of the cause or form of action, even if it was aware of the possibility of such damages. In addition to the foregoing, in no event shall ACI's total liability towards the ACI Member under this Agreement or as a result thereof exceed the total amount paid by the ACI Member to ACI hereunder.

9. CONFIDENTIALITY

- 9.1. **Use and Safeguarding Confidential Information.** Each Party shall hold in strict confidence and shall not disclose to any third party any Confidential Information (as defined below) disclosed by the other Party, or the other Party's affiliates, subsidiaries, or members (collectively, the “**Disclosing Party**”) without the prior written consent of the Disclosing Party. Each Party agrees to use the Confidential Information of the Disclosing Party only to the extent necessary to perform its obligations under this Agreement or as otherwise permitted by this Agreement. Notwithstanding the foregoing, each Party may disclose the Disclosing Party's Confidential Information to its officers, directors, employees, agents, representatives, and professional advisors who need to know the Confidential

Information and who will have undertaken to treat the Confidential Information in accordance with the provisions of this Section. Each Party agrees to use the same care and means to protect the Confidential Information of the Disclosing Party as it employs to protect the confidentiality of its own Confidential Information, but in no case less than reasonable care. For the avoidance of doubt, in no event shall the ACI Member disclose the Other Participating Airport Data, the ACI Analytical Data, or the ACI Materials to any third party, including without limitation, any independent contractors or subcontractors used by the ACI Member, without the prior written consent of ACI. Should ACI consent in writing to any such disclosure, such consent will be conditional on the relevant third party entering into a separate agreement with ACI in a form that is satisfactory to ACI.

- 9.2. **Legal Requirement.** Notwithstanding the foregoing, each Party may disclose the Confidential Information of the Disclosing Party pursuant to a request or order made pursuant to applicable law, regulation or legal process, provided that (i) such Party gives the Disclosing Party prompt notice of such request or order so that the Disclosing Party has ample opportunity to seek a protective order, confidential treatment, or other appropriate remedy to such request or order, (ii) such Party provides the Disclosing Party with all reasonable assistance (at the Disclosing Party's expense) in opposing such required disclosure or seeking a protective order or confidential treatment for all or part of such Confidential Information, and (iii) such Party discloses only such portion of the Confidential Information as is either permitted by the Disclosing Party or required by the court, tribunal, governmental agency or other authority, subject to any protective order or confidential treatment obtained by the Disclosing Party.
- 9.3. **Ownership.** Ownership of all rights, title and interest to any and all Confidential Information, copies thereof and other materials derived therefrom shall at all times vest exclusively in the Disclosing Party. Upon the expiration or termination of this Agreement, or at any time upon request from the Disclosing Party, the other Party shall promptly return to the Disclosing Party, or certify in writing as destroyed, all of the Disclosing Party's Confidential Information, any copies thereof, and any other materials provided by the Disclosing Party or developed from materials provided by the Disclosing Party.
- 9.4. **Definition.** For the purposes herein, "**Confidential Information**" means any information, in whatever form, relating to the business or operations of the Disclosing Party, including without limitation, its financial, technical, or commercial information, clients, customers, suppliers, subcontractors, existing or potential agreements or arrangements, know-how, methods, processes, operations, files, records, marketing strategies, projects, researches, services pricing, trade secrets, as well as the information of third parties to whom the Disclosing Party owes a duty of confidentiality, which information is marked confidential, is confidential in nature or is considered and treated as being confidential by the Disclosing Party. Any information relating to the subject matter of this Agreement, including without limitation, the terms and conditions of this Agreement, including any exhibits or schedules attached hereto, also constitute Confidential Information hereunder. Confidential Information shall not include however information that: (i) the Party receiving the information can show by documented and competent evidence was known by it through lawful means prior to the disclosure thereof to it, or independently developed by it without using the Confidential Information; (ii) is or becomes generally available to the public through no act or omission on the part of the Party receiving the information; or (iii) is or becomes available to the Party receiving the information on a non-confidential basis from a source other than the Disclosing Party, provided that such source is not known by the Party to be subject to any prohibition against transmitting such information.
- 9.5. **Remedies.** Each Party acknowledges and agrees that the loss, disclosure, or unauthorized use of the Confidential Information of the Disclosing Party may cause irreparable harm and prejudice to the Disclosing Party for which remedies at law may be inadequate. Each Party hereby agrees that the Disclosing Party will be entitled, in addition to any other remedies available to it at law or in equity,

to seek injunctive relief to prevent the breach or threatened breach of the other Party's obligations hereunder.

10. DATA PRIVACY

- 10.1. **Compliance with Privacy Laws.** Each Party agrees to comply with applicable laws and regulations relating to the protection of Personal Information, as well as any industry and/or professional standards, codes and practices to which each Party is required to, or has voluntarily agreed to, comply (collectively, the "**Privacy Laws**"). Each Party represents and warrants that the terms of its privacy policy comply with all applicable laws and regulations, including, but not limited to, the Privacy Laws. "**Personal Information**" shall mean information about an identified or an identifiable individual, as defined in the applicable Privacy Laws.
- 10.2. **Collection of Personal Information.** Each Party acknowledges and agrees not to collect any Personal Information from survey participants in performing their obligations under this Agreement, unless mutually agreed to in writing by the Parties in advance. Personal Information collected by the ACI Member, if any, shall be subject to the ACI Member's privacy policy as implemented by the ACI Member in its sole discretion. Personal Information collected by ACI, if any, shall be subject to the privacy policy of ACI as implemented by ACI in its sole discretion.
- 10.3. **Other Party Data.** To the extent that a Party has access to Personal Information owned or controlled by the other Party (the "**Other Party Data**") in order to fulfil its obligations under this Agreement, such Party hereby represents and warrants that it will: (i) collect, use, store, share, disclose and dispose of the Other Party Data accurately on behalf of the other Party for the purposes of and in accordance with the terms of this Agreement and in a manner in compliance with the other Party's privacy policy and the Privacy Laws; (ii) be responsible and liable for the unauthorized collection, receipt, transmission, access, storage, disposal, use and disclosure of the Other Party Data under its control or in its possession and for any breach of the obligations set forth in this Section; (iii) be responsible and liable for its actions and omissions concerning the treatment of the Other Party Data, including, for certainty, the actions and omissions of its directors, officers, employees, representatives and authorized subcontractors; and (iv) not use, sell, rent, transfer, distribute, or otherwise disclose or make available the Other Party Data for its own purposes or for the benefit of a third party, in each case, without the other Party's prior written consent.
- 10.4. **Protection Safeguards.** Each Party shall employ adequate administrative, physical and technological safeguards to protect the Other Party Data in an environment secure against loss, theft, or unauthorized access, disclosure, copying, use or modification including, without limitation, by having in place or adopting a privacy policy that is compliant with applicable Privacy Laws.
- 10.5. **Security Breaches and Requests.** Each Party shall notify the other Party promptly, and in any event within 48 hours, of any breach leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, the Other Party Data and use its commercially reasonable efforts to co-operate with the other Party to remedy such breach. Each Party shall also notify the other Party promptly of any complaints and/or access or change requests regarding the Other Party Data, and provide reasonable cooperation in respect of any investigation, complaint, order or proceeding involving the Other Party Data.
- 10.6. **Additional Documents.** In the event that the provisions set forth in this Agreement are or become insufficient or inappropriate under Privacy Laws during the Term for whatever reason, the Parties agree to modify this Agreement and/or to enter into any additional documents as may be necessary to comply with such Privacy Laws, such as a Data Processing Agreement and/or a Data Sharing Agreement.

11. TERMINATION

- 11.1. **Termination for Breach or Insolvency.** Either Party may terminate this Agreement at any time and such termination shall be effective upon receipt by the other Party of a written notice to this effect, in the event that (i) the other Party is in breach of any of its material obligations, representations or warranties pursuant to this Agreement and, where capable of remedy, has failed to cure such breach within thirty (30) days of having received written notice of such breach; (ii) the other Party is in breach of any of its material obligations, representations or warranties pursuant to this Agreement which is not capable of being remedied; (iii) the other Party enters into liquidation whether compulsory or voluntarily or a receiver is appointed on all or any part of its assets or it becomes bankrupt or insolvent or enters into any arrangement with its creditors or it takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due.
- 11.2. **Termination for Convenience.** Each Party may terminate this Agreement for convenience, in whole or in part, by giving the other Party written notice at least sixty (60) days prior to the start of the next period of data collection, and such termination shall be effective at the expiration of such termination notice.
- 11.3. **Additional Termination Right to ACI.** ACI may also terminate this Agreement, in whole or in part, at any time, effective forty-five (45) days after receipt by the ACI Member of a written notice to that effect, if ACI discontinues or ceases to own or control the ASQ Program or any or all of the Services for any reason.
- 11.4. **Effect of Termination.** Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued prior to the effective date of termination. The ACI Member agrees to pay to ACI all amounts owed to ACI hereunder for Services rendered prior to termination, and (ii) when applicable, a prorated portion of the Fees applicable to the deliverables in progress, which amount shall be calculated and based upon the value of the deliverables completed and the support provided prior to termination. If this Agreement is terminated after the Fees have already been paid by the ACI Member, ACI agrees to reimburse to the ACI Member that portion of the Fees paid for Services that have not been rendered on the effective date of termination. For the avoidance of doubt, upon expiration or termination of this Agreement for any reason, the ACI Member shall return to ACI all ACI Materials then in its possession or control.
- 11.5. **Suspension of Services.** To the extent that the Services selected by the ACI Member in the Exhibit C include a Main Survey (as defined in the Exhibit B), the ACI Member may suspend, without penalty, its participation in such Main Survey for one (1) to three (3) consecutive calendar quarters during the Initial Term or a Renewal Term, provided however that it gives ACI a sixty (60)-days written notice prior to the start of the first calendar quarter for which it wants the suspension of Services. To the extent that the Services selected by the ACI Member in the Exhibit C include a Regional Survey (as defined in the Exhibit B), the ACI Member may suspend, without penalty, its participation in the ASQ Program for one (1) season (i.e., from April 1st to September 30th, or from October 1st to March 31st) during the Initial Term or a Renewal Term, provided however that it gives ACI a sixty (60)-days written notice prior to the start of the season for which it wants the suspension of Services. For the avoidance of doubt, any suspension under this provision that continue beyond the current Initial Term or Renewal Term shall constitute a breach of this Agreement by the ACI Member.
- 11.6. **Survival.** Sections 4.5, 11.4, 11.6 and 13.4, and Articles 5, 8, 9, 10 and 12 of this Agreement shall survive the expiration or termination of this Agreement, so as any other provisions which by their meaning are intended to survive such expiration or termination

12. DISPUTE RESOLUTION

- 12.1. **Amicable Resolution.** The Parties shall attempt to amicably resolve any dispute, controversy or claim relating directly or indirectly to, or arising out of, or in connection with, this Agreement (each, a “Dispute”). In the event that the Parties fail to resolve a Dispute within twenty (20) calendar days after receipt of a notice, then the Parties shall refer such Dispute to their respective officers who shall make commercially reasonable efforts to reach an agreement on such Dispute within fifteen (15) calendar days. Should the Parties fail to do so, either Party shall be entitled to submit such Dispute to arbitration, without further notice, in accordance with the Section below.
- 12.2. **Arbitration.** If the Parties fail to amicably resolve a Dispute in accordance with the above Section, either Party may submit such Dispute to the exclusive jurisdiction of an ad hoc arbitration conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) (the “Rules”). In any such case, the arbitral tribunal shall be composed of one (1) arbitrator to be selected and appointed in accordance with the Rules. The arbitration shall take place in Montreal, Canada, and the language to be used in the proceedings shall be English. The arbitration award shall allocate between the Parties the costs of such arbitration, including reasonable attorneys’ fees, as well as the arbitrator’s fees and expenses, in such proportions as the arbitrator deems just. The arbitration award shall be final and binding upon the Parties, and the Parties hereby waive any right that they may have to appeal such arbitration award. Judgment upon the arbitration award may be entered in any court having jurisdiction thereof. Without prejudice to the foregoing, each Party shall be entitled to seek any kind of interim relief or provisional remedies in the competent courts located in the judicial district of Montréal, Canada.

13. MISCELLANEOUS

- 13.1. **Assignment.** The ACI Member may not assign or transfer this Agreement, in whole or in part, nor delegate any of its rights and obligations under this Agreement, without ACI’s prior written consent, which shall not be unreasonably withheld or delayed. ACI may, at any time, assign or transfer this Agreement, in whole or in part, or delegate any of its rights and obligations under this Agreement upon written notice to the ACI Member. Any purported assignment, transfer or delegation in breach of this Section shall be null and void. The Agreement shall enure to the benefit of and be binding upon the Parties and their respective lawful successors and assigns.
- 13.2. **Force Majeure.** Each Party shall be relieved of its obligations under this Agreement (other than payment obligations) if and for so long as it is unable or prevented from performing such obligations by circumstances beyond its reasonable control, including without limitation, acts of god, war, terrorism, riot, civil commotion or sabotage, expropriation, disease, national or state emergencies or other governmental action, flood, drought or other severe weather, fire, explosion or other catastrophe, labour dispute, failure of transmission facilities, network failures or electrical outages, provided that the Party subject to such circumstances promptly notifies the other Party.
- 13.3. **Relationship of the Parties.** The Parties are independent contractors and neither Party shall have the authority to bind the other for any purposes whatsoever. This Agreement shall not be construed to and does not create a relationship of agency, partnership, employment, trust, joint venture, or any other relationship between the Parties or with any of their employees or personnel. None of the employees or personnel of a Party shall be deemed employees or agents of the other Party. Each Party shall be responsible for the payment of any and all contributions in respect of workers’ compensation, health, accident insurance and pension plans or equivalent, applicable to its employees and personnel.
- 13.4. **Governing Law.** This Agreement shall be deemed entered into in Montreal, province of Québec, and shall be governed by and construed in accordance with the laws of the province of Québec and the laws of Canada applicable thereto, without regard to choice of law principles. The Parties hereby

- acknowledge and agree that the U.N. convention on contracts for the international sale of goods (1980) shall not apply to this Agreement.
- 13.5. **Severability.** If any provision, or portion thereof, of this Agreement is determined by a court of competent jurisdiction or by applicable law to be invalid, illegal or unenforceable, such determination shall not impair or affect the remaining provisions of this Agreement.
- 13.6. **Modifications and Waivers.** This Agreement may not be modified or amended except in a written instrument executed by both Parties. A waiver of any provision of this Agreement shall only be valid if provided in writing and signed by the Party whose rights are being waived and shall only be applicable to the specific incident and occurrence so waived. The failure by either Party at any time or times to insist upon the strict performance of any provision of this Agreement, or to exercise any term hereof, shall in no manner affect the right of such Party to enforce or exercise the same later.
- 13.7. **Entire Agreement.** This Agreement, including any exhibits and schedules attached hereto which are incorporated herein by this reference, sets forth the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements, representations, arrangements and undertakings, whether oral or written, on the subject matter. Each Party acknowledges that it is entering into this Agreement solely on the basis of the agreements and representations contained in this Agreement and that it has not relied upon any representations, warranties, promises, or inducements of any kind, whether oral or written, and from any source, other than those that are expressly contained in this Agreement.
- 13.8. **Interpretation.** This Agreement shall not be construed for or against either Party regardless of which Party drafted this Agreement or any portion thereof. Each Party acknowledges and agrees that it has had the time and opportunity to consult with counsel of its own choosing. The division of this Agreement into separate Articles, Sections and subsections, and the insertion of headings in this Agreement are for convenience of reference only and shall not affect its construction or interpretation.
- 13.9. **Cumulative Remedies.** Except as expressly provided in this Agreement to the contrary, the exercise of any right, remedy or relief by a Party in connection with this Agreement, including the exercise of a right of termination, shall be without prejudice to any other right, remedy or relief vested in or to which such Party may be entitled at law, in equity or under this Agreement.
- 13.10. **Notices.** Any notice, communication, request, consent or approval required or permitted to be given by one Party to the other hereunder shall be in writing and sent by e-mail to such Party's email address(es) set forth below its signature to this Agreement or to any other email address(es) that the Party may have substituted by notice (given in accordance with this Section) to the other Party. Notice will be deemed given when received.
- 13.11. **Language.** The Parties acknowledge that they have required that this Agreement be drafted in English. Les deux parties reconnaissent avoir exigé la rédaction en anglais de la présente convention.
- 13.12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The electronic transmission of the signed Agreement, including in "PDF" format, as well as the electronic signatures of the Agreement, shall have the same legal effect, validity and enforceability as an original document and a handwritten signature.

(Signatures are on the following page)

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated below their respective signature.

AIRPORTS COUNCIL INTERNATIONAL


Airport Council International
ACI
PO Box 302, Suite 1810
1300 Rue du Square Victoria
Montreal, Quebec H4Z 1G8
Canada

Name: Dimiteri Col
Title: SVP Airport Experience
Date: and training
OCT 05 2023

Contact Information for Notices:

Attention: ACI World ASQ
Email: aciasq@aci.aero

ACI MEMBER

Chief Commercial Officer
Ginane Norvilaitė Kautėnė

Name: _____
Title: _____
Date: 2023-09-25

Contact Information for Notices:

Attention:
Email:

EXHIBIT A

RULES AND GUIDELINES

General Fieldwork and Sample Plan Rules and Guidelines for ASQ Departures, ASQ Arrivals and ASQ Commercial Survey

1. General Fieldwork rules and conditions:

- 1.1. The schedule, location, and details of the fieldwork shall be kept confidential, in order to ensure that behavioral bias from airport staff is not introduced.
- 1.2. Fieldwork shall be distributed evenly over all the months of a given quarter (Main & Unique) / season (Regional) and shall cover every day of the week (from Monday to Sunday) and all Airport operating hours. At the end of each period, data are cleaned and weighted to ensure a good representation of the entire airport's traffic. The weighting factor is determined by the distribution of key variables such as the distribution of traffic, am/pm and weekday/weekend.
- 1.3. The number of questionnaires collected for each selected flight at the boarding area shall not exceed ten (10) questionnaires per gate (for Departures, Commercial), or per concourse visit (for Arrivals).
- 1.4. At least 95% completion rate need to be achieved for total questionnaires and total questionnaires per traffic.
- 1.5. At least 30 questionnaires have to be collected per weekday in a period.
- 1.6. A minimum of two days of fieldwork per month are required. Distribution of questionnaires per month are min. 30% in month 1, min. 30% in month 2, and min. 10% in month 3 for Departures. For Arrivals and Commercial programs, a minimum of 30% distribution in month 1 and 2 and a minimum of 25% distribution needs to be achieved in month 3
- 1.7. The difference between Weekday/weekend distribution calculated for an airport based on sample and distribution achieved through data collection shall be less than 10%.
- 1.8. The difference between AM/PM distribution calculated for an airport based on sample and distribution achieved through data collection shall be less than 10%.
- 1.9. Participating Airports shall ensure that ACI (or its Authorized Subcontractor) receives all completed questionnaires before the quarterly deadlines published by ACI at the beginning of every year. Only completed questionnaires that are received before the quarterly deadlines will be included in the reports, official ranking and data sets.
- 1.10. Fieldwork agents shall:
 - 1.10.1. Have previous experience in questionnaire collection and management
 - 1.10.2. Be fluent in the main local language and have upper-intermediate knowledge of English
 - 1.10.3. Complete Field Agent Certification (for ASQ Departures only). This certification is valid for 2 years. Every agent collecting for the ASQ Departures survey must have a valid certification to be compliant.
- 1.11. Fieldwork agents shall not:
 - 1.11.1. Provide incentives to encourage passengers to participate in the surveys;
 - 1.11.2. Complete survey on behalf of passenger;
 - 1.11.3. Influence passengers' responses and scores in any way;
 - 1.11.4. Complete any unanswered question by the passenger (or any "I don't know" answers); and
 - 1.11.5. Insist if the passenger refuses to answer the questionnaire.

2. Sample Plan and Compliance

- 2.1. ACI provides the Sample Plan before the beginning of each survey period. It is based on direct flights data and ensures representativity of all theoretical number of seats for each "origin / time of

- day” pair (for Arrivals) and each “destination-airline” pair (for Departures and Commercial); and traffic type when applicable: Domestic, International, Charter or Trans border.
- 2.2. The Participating Airport shall aim for 100% compliance with the theoretical Sample plan provided by ACI.
 - 2.3. Questionnaires can be allocated to other combinations following ASQ reallocation guidelines.
 - 2.4. If a Participating Airport fails to fulfill this requirement without any valid reason, this airport will be flagged in the official benchmark. In addition, the defaulting Participating Airport will not be eligible for an annual award.
 - 2.5. For quality control purposes and to ensure Airport’s compliance with the Theoretical Sample Plan, the completion rate will be calculated by dividing the actual number of the completed questionnaires by the number of questionnaires from the Theoretical Sample Plan.
 - 2.5.1. The completion rate is the proportion of completed questionnaires against the original sample plan target; all airports should aim for completion rates of 100%.
 - 2.5.2. Completion rates for all airlines, destination/origin, and airline-destination/origin shall be equal or be greater than 85% per quarter except for the combinations and totals with less than four (4) questionnaires. In that case 85% completion rate not achieved for all targets with 4 or more questionnaires, questionnaires missing should be less than 10% for airline, destination and airline-destination.;
 - 2.5.3. Assessment of the Completion Rate of a Participating Airport will be shared with other Participating Airports at the end of each quarter.

3. Fluctuations in scores

- 3.1. Participating Airports shall provide, when requested by ACI, clear evidence that would explain fluctuations in average scores higher than the ones that could be explained by the Confidence Interval (CI) analysis, when compared to scores from the previous quarter and from the same quarter of the previous year (when the data is available).
- 3.2. **If a Participating Airport fails to fulfill this requirement without any valid reason, this airport will be flagged in the official benchmark. In addition, the defaulting Participating Airport will not be eligible for an annual award.**
- 3.3. When the evidence provided by a Participating Airport is not clear or would not explain the occurred deviations, ACI may conduct an on-site independent fieldwork audit at that Participating Airport.

4. Quality Control and Independent fieldwork audits

- 4.1. Data collected at all Participating Airports are subject to remote and on-site quality control checks from ACI including verification of adherence to the General Fieldwork Rules and compliance with Sample Plan.
- 4.2. All Participating Airports are subject to receive independent fieldwork audits from ACI (or its Authorized Subcontractor).
- 4.3. ACI (or its Authorized Subcontractor) will conduct independent annual audits with special focus on airports that are eligible for an award and for the airports that have shown significant unexplained fluctuations in scores, or other results deviations.
- 4.4. If a Participating Airport fails a fieldwork audit, this airport will be flagged in the official benchmark. In addition, the defaulting Participating Airport will not be eligible for an annual award.
- 4.5. Additional details will be communicated by the ASQ programme operations team.

EXHIBIT B

DESCRIPTION OF SERVICES

The ACI Member has selected the following Services to be provided by ACI under this Agreement:

1. ASQ DEPARTURES SURVEY

ASQ Departures Survey is a customer satisfaction measurement and benchmarking service offered by ACI on a subscription basis that provides subscribers with data, management information and insights into the passenger's experience and satisfaction at an airport upon departure. Subscribers may use this information to measure their performance, to identify opportunities for improvement and to compare their results with those of other airports subscribers.

Main Survey (Quarterly): Each calendar quarter of the Term constitutes one (1) survey period. The survey runs during the four calendar quarters of the year (Q1 – Q4). When renewal applies, If an airport starts its subscription after Q1, fees are prorated and following year runs from Q1. The Main Survey subscription usually attracts the largest number of airport subscribers and therefore provides the main benchmark between airports subscribers. Under the Main Survey subscription, each airport subscriber may compare their performance with any other airport and/or group of airports that are Main Survey subscribers. Please note however that ACI does not provide any warranty nor make any representation as to the number of Main Survey subscribers.

ACI will provide the ACI Member with the following deliverables and services:

- (i) A Survey Sample Plan (on a quarterly basis);
- (ii) Access to the ASQ Reporting Portal;
- (iii) A Performance Report (on a quarterly basis);
- (iv) A Benchmarking Report (on a quarterly basis);
- (v) The Survey Raw Data (on a quarterly basis);
- (vi) Access to the ACI's app and for the ASQ Program as tools for data collection;
- (vii) A Survey Annual Report (on an annual basis);
- (viii) The Field Agent Certification; and
- (ix) Eligibility to participate in the applicable ASQ Awards if complying with eligibility criteria to be published each year.

As per Clause 2.2, ACI is only obligated to retain the deliverables produced under the Main frequency and the information contained in them for the latest five survey periods.

2. DEFINITIONS

When used in this Exhibit B, the following terms shall have the meaning ascribed to them below:

"ASQ Reporting Portal" means the online reporting portal for the ASQ Program that allows access to the survey data and to the reports provided by ACI.

"Benchmarking Report" means a report depicting each airport subscriber's average score and rank for the attributes included in the applicable survey questionnaire. When applicable, the results are shown by demographic and by passenger category (i.e., all passengers, international or domestic).

“Field Agent Certification” means the specialized self-paced online training offered to fieldwork agents of the ACI Member, which requires the completion of all training components applicable to ASQ Departures Survey.

“Performance Report” means a report that illustrates the ACI Member's average score for each attribute included in the applicable survey questionnaire compared to the industry average score for the same attribute. When applicable, the results are shown by demographic and by passenger category (i.e., all passengers, international or domestic).

“Survey Annual Report” means an annual report prepared by ACI for the ACI Member following the completion of a calendar year, which purpose is to inform the ACI Member's executive team of the opportunities for improvement and of which improvements would have the most beneficial impact on passengers' overall satisfaction.

“Survey Raw Data” means the raw data collected by the ASQ Subscribers under the applicable survey.

“Survey Sample Plan” means a plan for each airport that outlines exactly which airline-destination/origin pairs at your airport to collect surveys for and how many surveys (target). The sample plan covers all the months of data collection and all operating day and hours at the airport. It is split per traffic type (Domestic, International (incl. Charters/Transborders)).

EXHIBIT C

SERVICES

The ACI Member has selected the following Services to be provided by ACI under this Agreement:

All amounts are in CAD

Airport	Period	Description	Product Price	Unit/ Qty	QTRS	Total
VNO	Q1- Q2- Q3-Q4 2024	Passenger Survey Departures - Main Subscription	\$6,625.00	1	4	\$26,500.00

Summary	
Year	Total
2024	\$26,500.00