**CORE PRINCIPLES FOR THROUGHPUT LOCATIONS**

1. Operator hereby undertakes to hold strictly confidential all Sensitive Information (see definition in Appendix 1) which it acquires directly or indirectly within the scope of but not limited to contractual negotiations, implementation, management or amendment or termination of the governing Throughput and/or Operating Agreement and the subject operations as applicable.
2. The operator / manager of the operation require access to all information that is strictly necessary to ensure the safe and efficient management of the operation. Such information will, in particular, include the individual volume of fuel supplied (or planned to be supplied) by each of the throughputters. In addition, the identity of all customers to be fuelled is required by the operator / manager (including, in circumstances where there is a shared customer, such information from the operator / manager of another into-plane operation that services the relevant shared customer(s)).
3. On account of its access to potentially Sensitive Information (the operator / manager needs to pay particular attention to situations where there is a risk of passing such information to actual or potential competitors ("competitors") of the correct recipient and restrict flow of such information to that which is strictly necessary. In particular, the operator / manager undertakes to hold in confidence and shall ensure that Sensitive Information of:
   * a fuel supplier is not passed to third parties and other competing fuel suppliers; and
   * a fuel supplier is not passed to other personnel directly responsible for the management of other locations operated by the operator/manager.

If an customer has split its business at an airport between suppliers at that airport who may or may not be throughputters at different operations, the operator / manager must take particular care to ensure that information provided to or received from the operator / manager of the other operations that is / are supplying the shared customer(s) in question is limited to the: (i) identity of the shared customer(s); (ii) aggregate volumes supplied by each of the operations to the shared customer(s), if applicable; (iii) aggregate number of refuellings of the shared customer(s); and (iv) overall breakdown as to the number of long and short-haul flights of the shared customer(s).

1. Where the operator / manager is administering a split contract, caution shall be exercised to ensure that Sensitive Information about the business of competing fuel suppliers is not passed to the other competing suppliers/throughputters. For example, each throughputter that is a party to a split contract only needs to know: (i) that its percentage volume is being supplied (or if the split is out of balance, to what extent and what needs to be done to remedy the situation); and (ii) that it is receiving an appropriate allocation of long and / or short haul flights. The throughputter shall not be provided with information about other suppliers’ volumes or flights supplied.

1. In view of the fact that the operator / manager has access to potentially Sensitive Information, care must be taken to ensure that the operator / manager does not act as a conduit for the transmission of potentially Sensitive Information between competitors. Accordingly, the operator shall execute a confidentiality undertaking with each of the throughputters and the manager should execute a confidentiality agreement with the operator.
2. The following is applicable where the operator is a fuel supplier:

(a) Staff of the operator that are seconded/assigned to undertake the operation/management of the operation shall not be involved in commercial airline sales/marketing activities and the confidentiality of Sensitive Information obtained in the course of the operatorship will be maintained strictly within the group of staff operating the facilities[[1]](#footnote-1).

(b) The following steps should be undertaken in respect of the manager:–

The manager must not have any responsibilities for commercial airline sales / marketing activities in his / her employer’s organisation[[2]](#footnote-2);

The employer of the manager should commit to the throughputters that, when the manager ceases his role in the operation, he will not be placed in a commercial airline sales /marketing role by his employer in the same market until 12 months have elapsed[[3]](#footnote-3).

The manager should, so far as he / she is able, procure that key supervisory staff receive regular competition law compliance training addressing issues relevant to aviation throughput locations.

1. In circumstances where employees / contractors of any aviation fuel supplier or employees/contractors of the operator (not employed at that location) and/or third party auditors/inspectors conduct activities pursuant to which there may be access to Sensitive Information (e.g. internal audits / operational inspections) of any aviation throughput locations, the manager should ensure that appropriate (Tier 3) confidentiality agreements are signed prior to the commencement of the visit. Visiting employees/contractors who have a commercial airlines sales/marketing role must not have access to Sensitive Information during visits in any case
2. While the above procedures are designed to restrict the flow of potentially sensitive information to the minimum level strictly necessary for the efficient operation of the aviation throughput location there is a residual possibility that potentially Sensitive Information may inadvertently flow notwithstanding the efforts to avoid such a circumstance. Operator/manager should therefore consider whether information flow restrictions (such as a “**firewall**” or other appropriate procedures) between their respective operations and, if applicable, other business groups including, in particular, commercial customer marketing and sales groups might be of assistance as a further defence to prevent the flow of potentially Sensitive Information in a manner that may have an anti-competitive effect.

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**APPENDIX 1**

(A) Sensitive Information is information pertaining to actual or potential competitors that may have an impact on competitive conduct. This may include (but is not limited to):

(i) the identity of customers; i.e. the names of airlines being supplied by each fuel supplier;

(ii) current / future prices discounts, allowances, credit terms;

(iii) current/future sales volumes;

(iv) pricing policies, price levels, price projections, price changes, differentials;

(v) supply costs;

(vi) supply and infrastructure availability outlooks; i.e.the forecast fuel supply for each supplier to the airport or customer as may be impacted by their available fuel stocks or their ability to deliver through their infrastructure to the airport or customer;

(vii) industry production changes; i.e. changes to refinery aviation fuel production forecasts which may impact one or more fuel suppliers aviation fuel stocks and therefore ability to supply fuel to the airport or customer;

(viii) transportation rates or rate policies for individual shipments;

(ix) contract bids for particular products or particular airports;

(x) procedures for responding to customer bid invitations;

(xi) customers’ fees;

(xii) supplier’s plans for expansion of business/marketing customers;

It should be understood that not all of the items mentioned will be found within the framework of the throughput operation.

(B) Conversely, examples of information that is not normally considered sensitive under antitrust/ competition laws include: (i) safety, health security and environmental information; (ii) legislative change and compliance data; (iii) operating and technical information (e.g. product quality; availability of resources (other than stock); equipment specifications; equipment operation / failures and disruption resulting from such events) provided that such information does not result in the disclosure of the volume of fuel supplied to or the identity of throughputters' customers and (iv) aggregated volume information as required by relevant government or airport authorities provided, such information complies with section A(i) of Appendix 1.

(C) The following information will always be considered Sensitive Information:

(i) Subject to section (B) (iv) of this Appendix 1, any aggregated information which is less than twelve (12) months old; and

(ii) Information that is non-aggregated relating to an individual throughputter, regardless of whether or not that information is historic (more than twelve (12) months old) or not.

(D) Information that is aggregated and historic (that is data which is at least twelve (12) months old) will never be considered Sensitive Information.

1. The JV participants may agree that this requirement does not apply in respect of third party JV/Throughput location operators or sub-operators appointed in Australia (or “Airfield Representatives”) with fewer than 10 full time equivalent employees, employed for fuel storage and / or refuelling activities at a single Joint Venture/Throughput location, which may supply fuel in competition with the participants but whose business is too small to allow effective separation between operational and sales/marketing activities. Where this requirement is agreed not to apply, the participants’ local legal advisors will implement appropriate alternative safeguards. For the avoidance of doubt, this exception would not affect the continuing obligations of the JV participants / Throughput parties under these Core Principles. [↑](#footnote-ref-1)
2. Same as footnote 1. [↑](#footnote-ref-2)
3. Same as footnote 1. [↑](#footnote-ref-3)