**CORE PRINCIPLES FOR *[INSERT NAME OF JOINT VENTURE]***

* The following sets out the Core Principles adopted for ***[Insert Name of JV]*** (the “**JV**”).
* In the event of any conflict between these Core Principles and any translations, the provisions of the English language version shall take precedence.

1. **ROLE OF JV OPERATOR AND JV MANAGER[[1]](#footnote-1)1**

(a) The operator / manager of a JV requires access to all information that is strictly necessary to ensure the safe and efficient operation / management of the JV. Such information will, in particular, include the individual volume of fuel supplied (or planned to be supplied) by each of the JV shareholders/participants (“**JV Participants**” or **“Participants**”) and throughputters (together referred to as “**Users**”). In addition, the identity of all customers to be fuelled is required by the operator / manager of into-plane JVs (including, in circumstances where there is a shared customer, such information from the operator / manager of another into-plane JV that services the relevant shared customer(s)).

(b) On account of its access to potentially Sensitive Information (see definition in Appendix 1) the JV operator / manager needs to pay particular attention to situations where there is a risk of exchange of such information between actual or potential competitors **("competitors**") and restrict such flow to that which is **strictly necessary**. In particular, the JV operator / manager shall ensure that Sensitive Information of a competing fuel supplier is not passed to JV board directors / JV operating committee members / shareholder representatives of a competing fuel supplier ("**JV Representative(s)**") and/or throughputters beyond the legitimate scope set out in Section 2 below. Should the JV operator / manager believe it necessary to share Sensitive Information beyond the legitimate scope set out in Section 2, the JV operator / manager must obtain **prior legal review and approval by all JV Participants.**

(c) If a customer has split its business at an airport between suppliers who are Users in different into-plane operations (JVs or otherwise) at that airport, the JV operator / manager must take particular care to ensure that information provided to or received from the operator / manager of the other into-plane operations that is / are Users 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); (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).

(d) Where the JV 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 JV Representative(s) / throughputters beyond the legitimate scope set out in Section 2 below. For example, each affected JV Representative(s) of a supplier / 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 JV Representative(s) / throughputter(s) shall not be provided with information about other suppliers’ volumes or flights supplied.**

(e) In view of the fact that the JV operator / manager has access to potentially Sensitive Information, care must be taken to ensure that the JV operator / manager does not act as a conduit for the transmission of potentially Sensitive Information between competitors. Accordingly, the JV operator shall execute a confidentiality undertaking with each of the JV Participants[[2]](#footnote-2) and the JV manager should execute a confidentiality agreement with the JV operator[[3]](#footnote-3).

(f) Where the JV operator is a JV Participant[[4]](#footnote-4), the staff of the JV operator that are seconded/assigned to undertake the operation/management of the JV shall not be involved in commercial airline sales/marketing activities and the confidentiality of Sensitive Information obtained in the course of the operatorship will (subject to the legitimate scope of information flow as set out in Section 2 below) be maintained within the group of staff operating the JV in question.

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

(i) The JV manager must not have any responsibilities for commercial airline sales / marketing activities in his / her employer’s organisation[[5]](#footnote-5);

(ii) The employer of the JV manager should commit to Participants that, when the JV / manager ceases his role in the JV, he will not be placed in a commercial airline sales / marketing role by his employer in the same market until 12 months have elapsed[[6]](#footnote-6).

(iii) The JV manager shall, so far as he / she is able, procure that JV Representative(s) and key supervisory staff receive regular competition law compliance training addressing issues relevant to aviation JV operations.

(h) In circumstances where employees / contractors of any aviation fuel supplier conduct activities pursuant to which there may be access to Sensitive Information (e.g. internal audits / JIG inspections) of any aviation joint venture, the JV manager shall ensure that appropriate confidentiality agreements are signed[[7]](#footnote-7). Visiting employees/contractors who have a commercial airlines sales/marketing role must not have access to Sensitive Information during visits in any case.

1. It is acknowledged and understood that the JV Operator and/or JV Manager may be required to share Sensitive Information with relevant government or airport authorities, Regulators and Financial Institutions. The information may contain volume forecasts, future cashflows as well as aggregated financial and volume information that is less than 12 months old.

This information may be shared with the institutions listed above for the purposes of:

1. Current and future planning requirements of the airport
2. Discussion or negotiation over current or future contractual terms with the relevant authorities
3. Satisfying the requirements of financial institutions proving banking, funding or investment services to the JVs.

Furthermore, the information may only be shared for the listed purposes provided the receiving party undertakes or otherwise provides proportionate assurances that it will treat the information as confidential, not release it to any other third parties without consent and not to release it to any of the JV’s Participants.

**2. ROLE OF JV REPRESENTATIVE(S****)**

(a) Participants in Aviation JVs have a legitimate interest to ensure that a JV is being properly managed – safely, efficiently and in compliance with applicable laws.

(b) However, it is appropriate to establish procedures to ensure that only the ***minimum*** level of potentially Sensitive Information that is ***strictly necessary*** for Participant stewardship is communicated by the JV operator / manager to the JV Representative(s) .

(c) The following are examples of items that JV Representative(s) may steward and the information that may be accessed in connection with such tasks. **However, JV Representative(s) shall not have access to information that discloses the identity of particular JV Participants’ or throughputters' customers****[[8]](#footnote-8) or that includes the individual volume of fuel supplied by other JV Participants or throughputters to their individual or shared customers (*e.g.*, participant X has a contract to supply (or has supplied) Y litres to customer Z).**

*(i)* ***Budgets/Tax.*** To ensure that operating and capital budgets are properly managed and to comply with fiscal regulations, JV Representative(s) / throughputters may need to provide to the JV operator / manager their forecast, for the planning period, of the fuel that the company they represent expects to supply through the JV together with the anticipated types of business / aircraft. The JV operator / manager may then aggregate the information received from all JV Participants and throughputters and report back the total volume to be delivered by the JV, split by the type of business / aircraft to be serviced (e.g., X% is on long haul and the balance of Y% is on short haul). **However, this information does not need to identify the customers involved or the actual or forecast volumes of fuel to be supplied by individual JV Participants or throughputters**. As a consequence, JV Representative(s) will have information on the total volume that will be handled by the JV, divided by the type of business in sufficient detail to enable the calculation of expenses in line with activity based and any other type of costing (equipment, storage, manpower, etc.) and ensures that charging mechanisms are implemented according to the JV agreements.

*(ii)* ***Operational resources & efficiency.*** To ensure the efficiency of operations, JV Representative(s) may be required to carry out frequent reviews of the JV operations. In particular, he / she will review how JV resources are employed and try to devise means to optimise resources. This implies receiving information on the services being provided at any given time in a day by the JV and the total volume that is handled by the JV.  **However, this information does not need to identify the customers[[9]](#footnote-9) involved or the actual or forecast volumes of fuel to be supplied by individual JV Participants or throughputters**. For instance, a JV Representative(s) will need to know that at 8 am the JV has 4 planes to refuel, belonging to two different airlines, of which two are short haul and two are long haul flights; however, he / she will not need to know which Participants or throughputters are the suppliers or the identity of the customers in question.

*(iii)* ***Safety.*** To conduct operations safely and with due regard to Safety, Health and Environmental (HSE) regulations, JV Representative(s) need to be assured of the quality and integrity of the fuel that will be supplied using the JV facilities. While the primary responsibility for ensuring product quality / integrity rests with the JV operator / manager, periodically Participants technical staff may review compliance with industry safety standards[[10]](#footnote-10) and issue a report to JV Representative(s) as to the JV’s compliance with procedures regarding quality, testing and ensuring traceability of the product. While such reports necessarily contain extensive information about operations of the JV that pertain to safety they do not need to identify the individual volume of fuel supplied by the JV Participants or throughputters. In addition, JV Representative(s) may need to be informed about a Participant’s or throughputter's customer that has a poor safety record or may otherwise pose a risk from an HSE perspective. For this reason reference may be made to JIG Guidelines or another set of criteria, recognised in the industry for the purpose of defining the HSE compliance record of a customer. It should be agreed that, in any case in which a Participant or throughputter wants to supply, via the JV’s facilities, an customer that is below such HSE standards, the JV operator/ manager may disclose the identity of the customer to JV Representative(s)[[11]](#footnote-11). This assessment does not require volume information, but information on the frequency with which the customer is or will be serviced may need to be exchanged.

*(iv)* ***Trade Control Laws .*** To comply with the laws of the United Kingdom, the European Union, the United States the countries of origin of the Participants and the country in which the JV’s activity takes place, JV Representative(s) may need to know if a Participant or throughputter intends to or has contracted to supply, via the JV’s facilities, an customer customer that is affected by applicable trade control laws. In such circumstances it may be necessary for the identity of the relevant customer customer (but not the identity of the supplier) to be disclosed by the JV manager to the JV Representative(s) of any JV Participant that is subject to such legislation.

*(v)* ***Special requirements.***  In order to minimise costs and ensure that the operations are conducted in adherence to the approved budget, JV Representative(s) may need to be informed about customers with special requirements that impact the cost of service (*e.g.*, a requirement that a crew of X men is always available for a customer Y between 6 am and 8 am and whether the flight is long or short haul). Reference should be made to a standard cost of service by the JV, and it should be agreed that each time a Participant or throughputter wishes to engage a higher-cost-to-serve airline customer, the Participant or throughputter should be obliged to inform the JV Representative(s) about the service that results in the incremental cost, but no information on volume or the identity of the customer is required. Wherever possible, when this situation arises the JV manager should in the first instance attempt to address this without reference to JV Representative(s) so as to preserve the anonymity of the supplier although it is recognised that this may not always be possible[[12]](#footnote-12).

*(vi)* ***Shared customers.*** Many customers split their business between several suppliers at an airport. Usually the customer asks its suppliers to determine how to implement the split and, if so, the JV needs rules to achieve this, normally by allocating aircraft flight numbers by supplier. Affected JV Representative(s) or throughputters may need to verify that the company they represent is meeting its contractual obligations to deliver a certain volume of fuel or percentage share of an customer’s business. However, the JV operator / manager should provide to the individual suppliers of that customer only: (i) the aggregate volume supplied to the shared customer (including volume, if any, supplied to a shared customer by another into-plane JV); (ii) the volume supplied by that individual supplier which is receiving the information; and (iii) the overall breakdown of long and short haul flights of that shared customer (including the fuellings, if any, carried out by another into-plane JV at the airport). From this information, the relevant JV Representative(s) or throughputter should be able to ascertain that his / her company’s percentage supply obligations are being fulfilled and it is receiving an appropriate allocation of long and short haul flights.

*(vii)* ***Decisions relating to a Participant’s interests in the JV.*** To ensure that appropriately informed decisions are made by a Participant in relation to its interests in the JV, for example in forming a decision whether to sell its interests in the JV or to make further investment decisions, a JV Representative(s) may in certain circumstances need to share certain aggregated information which is less than twelve (12) months old with his or her appointing Participant company. Such information shall only be shared to the extent that the proposed information has first been reviewed by the relevant Participant’s legal adviser, in order to ensure that no more information is shared beyond that which would allow the relevant Participant to make the relevant decision.

(d) JV Representative(s) shall not have any responsibilities for commercial airline sales / marketing activities[[13]](#footnote-13). If a JV Representative(s) appointed by any company has any commercial airline sales / marketing responsibilities within his / her employer’s organisation in addition to his / her JV management role the JV operator / manager should be informed promptly. The JV operator / manager will then inform the other JV Participants. Unless appropriate assurances as to compliance can be provided by the Participant in question that are satisfactory to all the other JV Participants appropriate legal advice[[14]](#footnote-14) will be obtained on behalf of the JV to, determine what (if any) steps should be taken to manage information flow within the JV (including communications to, from and between JV Representative(s) / throughputters) so as to avoid any potential anti-competitive effect. For the purpose of consistency and efficiency, each of the JV Participants should consider these steps at a central / headquarter level of its corporate organisation.

1. **INFORMATION FLOW RESTRICTIONS IN PARTICIPANT COMPANIES**

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 Aviation JVs, there is a residual possibility that potentially Sensitive Information may inadvertently flow notwithstanding the efforts to avoid such a circumstance. JV Participants should therefore consider whether information flow restrictions (such as a “**firewall**” or other appropriate procedures) between their respective JV operations and other business groups including, in particular, commercial airline 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.

FEBRUARY 2022

**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):

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

current / future prices discounts, allowances, credit terms;

current/future sales volumes;

pricing policies, price levels, price projections, price changes, differentials;

supply costs;

1. 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;
2. 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;
3. transportation rates or rate policies for individual shipments;
4. contract bids for particular products or particular airports;
5. procedures for responding to customer bid invitations;
6. customers’ fees;
7. suppliers’ 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 Aviation JVs.

(B) Conversely, examples of information that is not normally considered sensitive under antitrust/ competition laws include:

1. safety, health security and environmental information;
2. legislative change and compliance data;
3. JV 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 Users’ customers;

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

(i) Except as stipulated in section D, (ii) 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 JV Participant or throughputter, regardless of whether that information is historic (more than twelve (12) months old) or not.

(D) The following information will never be considered Sensitive Information:

Information that is aggregated and historic (that is data which is at least twelve (12) months old); and

Statutory Financial Accounts (SFA) which are aggregated, even if they refer to accounting periods in the current year.

1. 1 A JV operator may be either the JV company itself ; a participant operator ; or a third party operator (that may be appointed by either an incorporated or unincorporated JV). The JV manager is an individual retained by the JV operator to manage the JV operation on its behalf. [↑](#footnote-ref-1)
2. If the JV considers that, in the relevant circumstances, confidentiality agreements are **not** required appropriate legal advice should be obtained before any such decision is taken [↑](#footnote-ref-2)
3. Forms of confidentiality agreements that are considered appropriate have been issued with these Core Principles. [↑](#footnote-ref-3)
4. 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 JV/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-4)
5. Same as footnote 4. [↑](#footnote-ref-5)
6. Same as footnote 4. [↑](#footnote-ref-6)
7. Same as footnote 2. [↑](#footnote-ref-7)
8. There is an exception where it is strictly necessary, for HSE and / or trade sanctions reasons, in the circumstances and subject to the process set out in the subsection below entitled, respectively, “Safety” and “Trade sanctions”. [↑](#footnote-ref-8)
9. While the identity of the customers may, in fact, be known from public sources (i.e. airline timetables) this information need not be communicated within the JV. [↑](#footnote-ref-9)
10. JIG Checklists and Guidelines are typically used. [↑](#footnote-ref-10)
11. It should be noted that the identity of the supplier of the relevant customer should only be disclosed where that information is considered necessary to resolve the identified safety concern. [↑](#footnote-ref-11)
12. For example, in circumstances where JVs do not have standard costs of service or the cost of the additional service to be provided may be difficult to quantify and will require agreement between the affected supplier and JV Representative(s) to ensure it is allocated appropriately. [↑](#footnote-ref-12)
13. As such, JV Representative(s) shall have no involvement in commercial decisions relating to prices charged, volumes supplied or other terms negotiated with commercial airline customers. Furthermore, JV Representative(s) will have no account management relationship with commercial airline customers. This footnote does not apply to JV participants that are airlines or airline subsidiaries. [↑](#footnote-ref-13)
14. Any such legal advice should take into account the ability of the company in question to separate such responsibilities, with particular attention being paid to ensure smaller companies’ ability to compete effectively is not constrained. In the interests of efficiency, if the issue in question is applicable across multiple JVs in which a company participates, unless otherwise agreed by the Participants , advice should be sought from an international law firm that is mutually agreed by the respective participant organisations. [↑](#footnote-ref-14)