

## **MARKET REVIEW INTO CARD-ACQUIRING SERVICES**

### **Notice of the Payment Systems Regulator's intention to operate a confidentiality ring following publication of the interim report of the market review into card-acquiring services**

As part of the market review into the supply of card-acquiring services (the 'Market Review'), the Payment Systems Regulator ('the PSR') commissioned IFF Research to conduct a quantitative survey of small and medium sized merchants. The PSR used and took into account the results of the survey in producing its interim report published in September 2020 ('Interim Report').

Following a request by a party, the PSR has, pursuant to section 92 of the Financial Services (Banking Reform) Act 2013 ('FSBRA'), decided to disclose the material underlying the survey results to certain parties by way of a confidentiality ring (the 'Confidentiality Ring') for the purpose of assisting the PSR in carrying out its functions under Part 5 of FSBRA by allowing the parties' advisers an opportunity to review and understand the information provided and intelligently respond to the provisional findings in the Market Review. This is in addition to the PSR's earlier decision to disclose certain material underlying its pass-through analysis.

In planning this Confidentiality Ring, we have taken the ongoing COVID-19 situation – especially widespread home working - into account.

#### **Material to be disclosed**

The PSR intends to disclose the following material (together, the "Disclosed Material").

The material consists of three files in xlsx format. These are described below.

- Raw data file containing the responses of 1,037 small and medium sized merchants to questions in the merchant questionnaire.
- Raw data file key needed to interpret the variable names and values from the raw data file.
- Data tables file providing weighted tabulations of the responses.

The PSR considers that the Disclosed Material includes 'confidential information' within the meaning of section 91 of FSBRA, to which the general restriction on disclosure by the PSR in section 91 of FSBRA applies. The PSR has decided to disclose the Disclosed Material to certain parties in accordance with section 92(1) of FSBRA and regulation 3(2) of the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014 through the Confidentiality Ring for the sole purpose of allowing such parties to review and understand the PSR's analysis in the Interim Report, in order to prepare submissions and make representations to the PSR in connection with the Market Review and, accordingly, to facilitate the exercise by the PSR of its statutory functions under Part 5 of FSBRA and (if relevant) to prepare and conduct an appeal against any decision of the PSR in connection with the Market Review, including an appeal in which such parties are, or are intending to apply to be, an intervener ('the Permitted Purpose').

## **Confidentiality Ring Timing**

The PSR proposes to operate the Confidentiality Ring for a period of 3 weeks from the date it is opened.

The deadline for stakeholders to submit responses to the PSR's consultation on the Interim Report is currently 5pm on 8 December 2020. To allow for access to the Confidentiality Ring described in this Notice, the PSR plans to extend the existing consultation period accordingly. The new deadline for submitting responses to the consultation on the Interim Report will be contingent upon the duration of the Confidentiality Ring and the date on which it opens.

We will make a further announcement in due course to confirm the duration of the Confidentiality Ring and the end of the extended consultation period.

## **Access to the Confidentiality Ring**

In order to safeguard the confidentiality of the Disclosed Material, access to the Confidentiality Ring will be granted to a limited number of approved external legal and/or economic advisers of certain parties. These external advisers and their employer firms will be required to sign undertakings before they will be granted access to the Confidentiality Ring.

The undertakings that the external legal and/or economic advisers approved by the PSR (and their employer firms) will be required to sign before they will be granted access to the Confidentiality Ring by the PSR accompany this notice.

The PSR will approve a maximum of 12 external legal or economic advisers per party to access the Confidentiality Ring.

We intend to make the Disclosed Material available to the advisers who have provided satisfactory undertakings to the PSR via a secure method of data transfer (the HighQ system). The PSR will register one email address, corresponding to one named adviser per firm of advisers, onto the HighQ system to facilitate transfer.

**This notice invites interested parties to submit expressions of interest for their external legal and/or economic advisers to access the Confidentiality Ring.** In addition to providing an explanation of their interest, parties should also provide their reasons for requesting access to the Confidentiality Ring, and details of the interested party's external legal and/or economic advisers (i.e. name, job title and employer) seeking access to the Confidentiality Ring.

This notice also invites parties to submit any comments they may have on the PSR's proposed approach to disclosing the Disclosed Material. Comments should be supported with an appropriate explanation so that the PSR is in a position properly to consider the merits of the comments received.

Any expressions of interest must be submitted to the Market Review team at [cards@psr.org.uk](mailto:cards@psr.org.uk) as soon as possible and by no later than 5pm on 4 December 2020. The PSR will consider these before deciding whether to grant access to the Confidentiality Ring.

## Confidentiality Ring Undertakings: Adviser

### MARKET REVIEW INTO CARD-ACQUIRING SERVICES UNDERTAKINGS GIVEN BY [NAME OF ADVISER] TO THE PAYMENT SYSTEMS REGULATOR REGARDING ACCESS TO THE CONFIDENTIALITY RING FOLLOWING PUBLICATION OF THE INTERIM REPORT

#### WHEREAS

- (1) On 24 January 2019, the Payment Systems Regulator ('PSR') published the final Terms of Reference for its market review into the supply of card-acquiring services ('Market Review') carried out under Part 5 of the Financial Services (Banking Reform) Act 2013 ('FSBRA').
- (2) In 2019, the PSR published four working papers together with the questionnaire for the merchant survey. The PSR received comments on these from interested parties.
- (3) The PSR published an interim report into the Market Review (the 'Interim Report') on 15 September 2020. As part of the Market Review, the PSR commissioned IFF Research to conduct a quantitative telephone survey of small and medium sized merchants that use card-acquiring services (the Merchant Survey). The PSR has used and taken into account the results of the Merchant Survey in producing the Interim Report.
- (4) The PSR has decided to disclose the material set out in Schedule 1 which may be amended from time to time by the PSR (the 'Disclosed Material') by means of a confidentiality ring commencing on [ ] December 2020 ('the Confidentiality Ring'). A reference to the Disclosed Material in these undertakings includes a reference to any part of the Disclosed Material.
- (5) The PSR considers that the 'Disclosed Material' includes confidential information within the meaning of section 91 of FSBRA to which the general restriction on disclosure applies. The PSR may disclose confidential information to any other person in circumstances permitted by section 92 of FSBRA.
- (6) The PSR has decided to disclose the Disclosed Material to certain parties to the Market Review (each a 'Relevant Party') by means of the Confidentiality Ring pursuant to section 92 of FSBRA and regulation 3(2) of the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014. Access to the Confidentiality Ring is restricted to the external legal and/or economic advisers of the Relevant Parties and is provided for the sole purpose of allowing the advisers of a Relevant Party, on behalf of the

Relevant Party, to review and understand the PSR's analyses, to prepare submissions and representations to the PSR regarding the Market Review, and (if relevant) to prepare and conduct an appeal against any decision of the PSR in connection with the Market Review, including an appeal in which the Relevant Party is, or is intending to apply to be, an intervener, in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal ('the Permitted Purpose').

(7) Access to the Confidentiality Ring will be granted to, and only to, an adviser:

- a. who has been approved in writing by the PSR;
- b. who has given written undertakings acceptable to the PSR ('the Individual Undertakings'); and
- c. if relevant, in respect of whom the adviser's firm/employer has given written undertakings acceptable to the PSR ('the Firm Undertakings');

in accordance with arrangements specified by the PSR (each such adviser being an 'Authorised Adviser').

(8) The number of Authorised Advisers is limited to 12 for each Relevant Party.

(9) The arrangements for obtaining PSR approval of an adviser and for giving undertakings in respect of an adviser are:

- a. notice of not less than one PSR Working Day<sup>1</sup> must be given to the PSR of the date on which the adviser first wishes to be granted access to the Confidentiality Ring (the "Access Date");
- b. by 4pm on the PSR Working Day before the Access Date the Individual Undertakings signed by the adviser and, if relevant, the Firm Undertakings signed on behalf of the adviser's firm/employer, must be provided to (and received by) the PSR;<sup>2</sup>
- c. before the adviser attempts to access the Confidentiality Ring confirmation in writing must be obtained from the PSR that it has approved the adviser and has accepted the signed Individual Undertakings and, if relevant, the signed Firm Undertakings.

---

<sup>1</sup> A 'PSR Working Day' is any day of the week, Monday to Friday, on which the PSR's offices are open (and excludes public or bank holidays).

<sup>2</sup> Receipt of scanned copies of signed undertakings is acceptable to the PSR.

(10) Subject to the Individual Undertakings and the Firm Undertakings, the PSR will make the Disclosed Material available to the Authorised Advisers through a secure method of data transfer (“the HighQ system”). The PSR will register one email address, corresponding to one named Authorised Adviser per firm, onto the HighQ system to facilitate transfer.

(11) Each Authorised Adviser will then be permitted:

a. to download the Disclosed Material from the HighQ system into a secure folder on computers with the specifications set out below and accessible to the Authorised Advisers of [Name of Party] only (each a ‘Secure Computer’). Each Secure Computer must have the following specifications:

- it must be password-protected;
- it must not be possible to download the Disclosed Material onto personal devices; and
- it may be networked to the other Secure Computers;

b. to download the Disclosed Material from the HighQ system into a secure folder on a server of the Authorised Adviser’s firm/employer accessible to the Authorised Advisers only; and

c. to print copies provided each Authorised Adviser only has one hard copy in existence at any one time,

(each such download to a Secure Computer and each copy, a ‘Permitted Copy’).

(12) Disclosure of the Disclosed Material other than in accordance with the Individual Undertakings is not permitted without the express and prior written consent of the PSR. Breach of the Individual Undertakings by an Authorised Adviser may result in:

a. the PSR:

- i. terminating the Authorised Adviser’s access to the Confidentiality Ring and refusing the Authorised Advisor access to any subsequent disclosure room or confidentiality ring run by the PSR, whether relating to the Market Review or any other review;
- ii. where relevant, referring the breach to the Authorised Adviser’s regulatory body which may decide to take disciplinary action in relation to the breach.

- b. a breach by the Authorised Adviser of his or her obligations under section 91 of FSBRA (as regards the disclosure and use of the Disclosed Material) which constitutes a criminal offence under section 93 of FSBRA;

(13) The Permitted Purpose must be completed no later than the date of the expiry of the period for appealing against any decision of the PSR in connection with the Market Review (unless [Name of Party] appeals or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal including any period preceding the appeal or intervention) at which point all documents in whatever format incorporating any of the Disclosed Material, other than those documents which have been submitted to the PSR and subject to paragraph 11 below must be destroyed or rendered inaccessible in the case of electronic documents. The PSR requires Authorised Advisers to confirm the destruction or inaccessibility of such documents by email, specifying the manner of destruction or, in the case of electronic documents, how they have been rendered inaccessible, on or before the date of the expiry of the period for appealing against any decision of the PSR in connection with the Market Review (unless [Name of Party] appeals or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal including any period preceding the appeal or intervention).

(14) [Name of Firm] has been instructed by [Name of Party], which is a Relevant Party, for the purpose of providing [legal/economic] advice to [Name of Party] in relation to the Market Review. [Name of Adviser] is employed by [Name of Firm] as a [legal/economic adviser] [a partner in [Name of Firm]].

## **NOW THEREFORE**

I, [Name of Adviser], [Job title] at [Name of Firm], which has been engaged by [Name of Party] in connection with the Market Review, undertake to the PSR in my own name:

1. To access the Disclosed Material only through the Permitted Copies and in the secure electronic format provided by the PSR using only:
  - a. a Secure Computer with the specifications set out in Recital 11 above and accessible to the Authorised Advisers of [Name of Party] only; or
  - b. a secure folder on the server of the Authorised Adviser's firm/employer to which only the Authorised Advisers of [Name of Party] have access (such access to be controlled by appropriate information barriers and

privacy settings of no less a standard than would be applied to personal data or price sensitive client information held by the Authorised Adviser's firm/employer, or the firm/employer's own commercially sensitive information, and any variation of these access permissions is to be made only with the express written consent of the PSR);

2. To use the Disclosed Material for, and only for, the Permitted Purpose;
3. Save as provided in paragraphs 6 and 7, to hold the Disclosed Material in strict confidence and not to disclose or make available in any manner the Disclosed Material to any other person (including any other legal adviser, economic adviser, officer or employee of [Name of Firm] and [Name of Party]) without the express and prior written consent of the PSR except:
  - a. another Authorised Adviser of [Name of Party], or
  - b. a member of PSR staff working on the Market Review (or the court if in the course of an appeal),

(such a person being a 'Non-Authorised Person');

4. Not to make any electronic or non-electronic copy in any format of the Disclosed Material other than the Permitted Copies, save that I may copy the Disclosed Material for, and only for, the purposes of preparing a summary, report or submission within the scope of the Permitted Purpose;
5. To ensure that, save as provided in paragraphs 6 and 7, any document (including any summary, report or submission) I prepare, or analysis I undertake, which contains, including by referring to, the Disclosed Material or which derives wholly or partially from the Disclosed Material is not used, disclosed or made available in any way to:
  - a. disclose the Disclosed Material to any Non-Authorised Person; or
  - b. enable or assist any Non-Authorised Person to gain an understanding of [Name of Party]'s position or potential future position in any market relative to any other market operator (other than relative to a market wide benchmark) and in particular does not reveal any data, either by provider or in aggregate, on any absolute or relative indicators relating to the providers' business operations;
6. For the avoidance of doubt, while I may share a non-confidential version of any summary, report or submission (or draft thereof) with [Name of Party] (including other legal or economic advisers of [Name of Party] who are not Authorised Advisers) to facilitate the Permitted Purpose, I will not share any such document



with [Name of Party] (including other legal or economic advisers of [Name of Party] who are not Authorised Advisers) until after the PSR has confirmed in writing to an Authorised Adviser of [Name of Party] that the non-confidential summary, report or submission (or draft therefore) does not include any of the Disclosed Material and meets the requirements in paragraph 5 (including by making the necessary redactions);

7. While I may share the non-confidential conclusion of my assessment of the Disclosed Material with [Name of Party] (including any other legal or economic adviser of [Name of Party]), which must be no longer than is reasonably necessary to facilitate the Permitted Purpose, I will not share the non-confidential conclusion with [Name of Party] (including any other legal or economic adviser of [Name of Party]) until after the PSR has confirmed in writing to an Authorised Adviser of [Name of Party] that the document does not include any of the Disclosed Material and meets the requirements in paragraph 5;
8. To ensure that any submission I prepare containing, including by referring to, the Disclosed Material is submitted to the PSR separately from any other submission on behalf of [Name of Party], highlights any Disclosed Material and is accompanied by any working files used to perform any analysis referred to in the submission;
9. To keep secure at all times:
  - a. the Disclosed Material and the Permitted Copies provided to me; and
  - b. any summary, report, submission or other document prepared by or provided to me which contains, including by referring to, the Disclosed Material

(together the 'Relevant Material and Documents'), including in a manner which means the Relevant Material and Documents are not accessible to any Non-Authorised Person;

10. That, save as provided in paragraph 11, within 5 PSR Working Days of the relevant concluding event I will:
  - a. return to the PSR or destroy the Relevant Material and Documents or, where the Relevant Material and Documents are in electronic form and their destruction is not possible, to return them to the PSR or render them inaccessible from any computer system, disk or device so that they are not readily available to any person; and



- b. where the Relevant Material and Documents are destroyed or rendered inaccessible, inform the PSR of the manner of the destruction or rendering inaccessible;

The relevant concluding event is:

- i. if there is an appeal against a decision of the PSR in connection with the Market Review in which [Name of Party] is a party or is intervening, the conclusion of the appeal;
- ii. if there is no such appeal, the expiry of the period for bringing such an appeal, or
- iii. if I cease to advise [Name of Party] in relation to the Market Review or appeal before the event specified by (i) or (ii), my ceasing to advise [Name of Party] in relation to the Market Review or appeal.

11. That, while the Authorised Advisers of [Name of Firm] may retain one copy (between them) of the Disclosed Material, Permitted Copies and any summary, report, submission or other document which contains, including by referring to, the Disclosed Material if it is required to comply with [Name of Firm]'s professional indemnity insurance policy or any applicable law, legislation (including regulation) or court order, I will ensure that:

- a. the copy is stored securely in accordance with the undertaking in paragraph 9;
- b. the PSR is notified of the retention within 5 PSR Working Days of the relevant concluding event specified by paragraph 10(i) or (ii); and
- c. the PSR is consulted as far as practicable prior to any disclosure of the copy under [Name of Firm]'s professional indemnity insurance policy or any applicable law, legislation (including regulation) or court order;

12. To notify the PSR immediately if I become aware of or suspect that there has been a breach of:

- a. these undertakings;
- b. the Individual Undertakings given by another Authorised Adviser of [Name of Party]; or
- c. the Firm Undertakings given in respect of any of the Authorised Advisers of [Name of Party].

## PROVIDED THAT

These undertakings shall not apply to any part of the Disclosed Material that:

- i) does not include any confidential information belonging to, relating to or deriving solely or partially from any other party to the Market Review;
- ii) is information that has previously been disclosed by the PSR to [Name of Party] in the Market Review;
- iii) at the time of disclosure is in the public domain or subsequently comes into the public domain, except through breach of these undertakings, the Individual Undertakings given by other Authorised Advisers or the Firm Undertakings;
- iv) is required to be disclosed by law, legislation (including regulation) or court order, as long as, and unless prohibited by law, legislation (including regulation) or court order, I consult with the PSR as far as practicable prior to the proposed disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure; or
- v) is covered by a confidentiality ring established by the Competition Appeal Tribunal in the course of an appeal against the decision of the PSR in connection with the Market Review in which [Name of Party] is a party or is intervening.

## AND IN AGREEMENT THAT

These undertakings shall be governed by and construed in accordance with English law and I submit to the exclusive jurisdiction of the courts of England and Wales to hear and decide any action or proceedings which may arise out of, or in connection with these undertakings.

[Name of Party] has given full and informed consent to the terms of these undertakings, including the restrictions placed upon [Name of Adviser] on the disclosure of information by these undertakings.

[Name of Adviser] of [Name of Firm]

[signature]

[Date]

## Schedule 1: Disclosed Material

### Merchant Survey data

The material consists of three files. These are described below.

1. Raw data file in .xls format
  - contains merchant-level data, specifically, 1,037 merchant responses to the final merchant questionnaire published on the PSR website.
  - Variable names are shown in row 1 and each row represents responses recorded for an individual merchant.
  
2. Raw data file key .xls format
  - file used to interpret the variable names and values in the raw data file. It consists of two sheets:
    - The 'Variable names' sheet: is descriptor key for the variables in row 1 of the raw data file
    - 'Variable values' sheet: a descriptor key for the merchant responses for all variables in the raw data file
  
3. Data tables file in .xls format
  - weighted tabulations of the data in the raw data file used to produce the figures in the published IFF merchant survey results annex.
  - The first sheet "Contents" explains what each sheet contains.

## Confidentiality Ring Undertakings: Firm

### MARKET REVIEW INTO CARD-ACQUIRING SERVICES UNDERTAKINGS GIVEN BY [NAME OF FIRM] TO THE PAYMENT SYSTEMS REGULATOR REGARDING ACCESS TO THE CONFIDENTIALITY RING FOLLOWING PUBLICATION OF THE INTERIM REPORT

#### WHEREAS

- (1) On 24 January 2019, the Payment Systems Regulator ('PSR') published the final Terms of Reference for its market review into the supply of card-acquiring services ('Market Review') carried out under Part 5 of the Financial Services (Banking Reform) Act 2013 ('FSBRA').
- (2) In 2019, the PSR published four working papers together with the questionnaire for the merchant survey. The PSR received comments on these from interested parties.
- (3) The PSR published an interim report into the Market Review (the 'Interim Report') on 15 September 2020. As part of the Market Review, the PSR commissioned IFF Research to conduct a quantitative telephone survey of small and medium sized merchants that use card-acquiring services (the Merchant Survey). The PSR has used and taken into account the results of the Merchant Survey in producing the Interim Report.
- (4) The PSR has decided to disclose the material set out in Schedule 1 which may be amended from time to time by the PSR (the 'Disclosed Material') by means of a confidentiality ring commencing on [ ] December 2020 ('the Confidentiality Ring'). A reference to the Disclosed Material in these undertakings includes a reference to any part of the Disclosed Material.
- (5) The PSR considers that the 'Disclosed Material' includes confidential information within the meaning of section 91 of FSBRA to which the general restriction on disclosure applies. The PSR may disclose confidential information to any other person in circumstances permitted by section 92 of FSBRA.
- (6) The PSR has decided to disclose the Disclosed Material to certain parties to the Market Review (each a 'Relevant Party') by means of the Confidentiality Ring pursuant to section 92 of FSBRA and regulation 3(2) of the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014. Access to the Confidentiality Ring is restricted to the external legal and/or economic advisers of the Relevant Parties and is provided for the sole purpose of allowing the advisers of a Relevant Party, on behalf of the

Relevant Party, to review and understand the PSR's analyses, to prepare submissions and representations to the PSR regarding the Market Review, and (if relevant) to prepare and conduct an appeal against any decision of the PSR in connection with the Market Review, including an appeal in which the Relevant Party is, or is intending to apply to be, an intervener, in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal ('the Permitted Purpose').

(7) Access to the Confidentiality Ring will be granted to, and only to, an adviser:

- a. who has been approved in writing by the PSR;
- b. who has given written undertakings acceptable to the PSR ('the Individual Undertakings'); and
- c. if relevant, in respect of whom the adviser's firm/employer has given written undertakings acceptable to the PSR ('the Firm Undertakings');

in accordance with arrangements specified by the PSR (each such adviser being an 'Authorised Adviser').

(8) The number of Authorised Advisers is limited to 12 for each Relevant Party.

(9) The arrangements for obtaining PSR approval of an adviser and for giving undertakings in respect of an adviser are:

- a. notice of not less than one PSR Working Day<sup>3</sup> must be given to the PSR of the date on which the adviser first wishes to be granted access to the Confidentiality Ring (the "Access Date");
- b. by 4pm on the PSR Working Day<sup>4</sup> before the Access Date the Individual Undertakings signed by the adviser and, if relevant, the Firm Undertakings signed on behalf of the adviser's firm/employer, must be provided to (and received by) the PSR;<sup>5</sup>
- c. before the adviser attempts to access the Confidentiality Ring confirmation in writing must be obtained from the PSR that it has approved the adviser and has accepted the signed Individual Undertakings and, if relevant, the signed Firm Undertakings.

---

<sup>3</sup> A 'PSR working day' is any day of the week, Monday to Friday, on which the PSR's offices are open (and excludes public or bank holidays).

<sup>4</sup> A 'PSR Working Day' is any day of the week, Monday to Friday, on which the PSR's offices are open (and excludes public or bank holidays).

<sup>5</sup> Receipt of scanned copies of signed undertakings is acceptable to the PSR.

(10) Subject to the Individual Undertakings and the Firm Undertakings, the PSR will make the Disclosed Material available to the Authorised Advisers through a secure method of data transfer (“the HighQ system”). The PSR will register one email address, corresponding to one named Authorised Adviser per firm, onto the HighQ system to facilitate transfer.

(11) Each Authorised Adviser will then be permitted:

a. to download the Disclosed Material from the HighQ system into a secure folder on computers with the specifications set out below and accessible to the Authorised Advisers only (each a ‘Secure Computer’). Each Secure Computer must have the following specifications:

- it must be password-protected;
- it must not be possible to download the Disclosed Material onto personal devices; and
- it may be networked to the other Secure Computers;

b. to download the Disclosed Material from the HighQ system into a secure folder on a server of the Authorised Adviser’s firm/employer accessible to the Authorised Advisers only; and

c. to print copies provided each Authorised Adviser only has one hard copy in existence at any one time,

(each such download to a Secure Computer and each copy, a ‘Permitted Copy’).

(12) Disclosure of the Disclosed Material other than in accordance with the Individual Undertakings is not permitted without the express and prior written consent of the PSR. Breach of the Individual Undertakings by an Authorised Adviser may result in:

a. the PSR:

- i. terminating the Authorised Adviser’s access to the Confidentiality Ring and refusing the Authorised Advisor access to any subsequent disclosure room or confidentiality ring run by the PSR, whether relating to the Market Review or any other review;
- ii. where relevant, referring the breach to the Authorised Adviser’s regulatory body which may decide to take disciplinary action in relation to the breach.

- c. a breach by the Authorised Adviser of his or her obligations under section 91 of FSBRA (as regards the disclosure and use of the Disclosed Material) which constitutes a criminal offence under section 93 of FSBRA;

(13) The Permitted Purpose must be completed no later than the date of the expiry of the period for appealing against any decision of the PSR in connection with the Market Review (unless [Name of Party] appeals or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal including any period preceding the appeal or intervention) at which point all documents in whatever format incorporating any of the Disclosed Material, other than those documents which have been submitted to the PSR and subject to paragraph 11 in the Adviser Undertakings must be destroyed or rendered inaccessible in the case of electronic documents. The PSR requires Authorised Advisers to confirm the destruction or inaccessibility of such documents by email, specifying the manner of destruction or, in the case of electronic documents, how they have been rendered inaccessible, on or before the date of the expiry of the period for appealing against any decision of the PSR in connection with the Market Review (unless [Name of Party] appeals or is an intervener in relation to such an appeal in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal including any period preceding the appeal or intervention).

(14) [Name of Firm] has been instructed by [Name of Party], which is a Relevant Party, for the purpose of providing [legal/economic] advice to [Name of Party] in relation to the Market Review. The individual[s] listed in Schedule 2 [is/are] employed by [Name of Firm] as [either] a [legal/economic adviser] [or] [a partner in [Name of Firm]].

## **NOW THEREFORE**

[Name of Firm] which has been engaged by [Name of Party] in connection with the Market Review undertakes to the PSR that:

1. It will give only Authorised Advisers of [Name of Party] access to the Disclosed Material and only in accordance with the terms of the Individual Undertakings given by those Authorised Advisers;
2. It will notify the PSR immediately if it becomes aware of or suspects that there has been any breach of:



- a. these undertakings;
  - b. the Individual Undertakings given by an Authorised Advisers of [Name of Party]; or
  - c. the other Firm Undertakings given in respect of any of the Authorised Advisers of [Name of Party].
3. It will notify the PSR immediately if any Authorised Adviser ceases to be at [Name of Firm] before:
- a. if there is an appeal against a decision of the PSR in connection with the Market Review in which [Name of Party] is a party or is intervening, the conclusion of the appeal;
  - b. if there is no such appeal, the expiry of the period for bringing such an appeal.

Further, [Name of Firm] undertakes to the PSR to use its reasonable endeavours to ensure that the Authorised Advisers at [Name of Firm] comply with the Individual Undertakings which they have given.

#### **PROVIDED THAT**

These undertakings shall not apply to any part of the Disclosed Material that:

- i. does not include any confidential information belonging to, relating to or deriving solely or partially from any other party to the Market Review;
- ii. is information that has previously been disclosed by the PSR to [Name of Party] in the Market Review;
- iii. at the time of disclosure is in the public domain or subsequently comes into the public domain, except through breach of these undertakings, the Individual Undertakings or the other Firm Undertakings;
- iv. is required to be disclosed by law, legislation or court order, as long as, and unless prohibited by law, legislation or court order, [Name of Firm] consults with the PSR prior to the proposed disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure; or
- v. is covered by a confidentiality ring established by the Competition Appeal Tribunal in the course of an appeal against the decision of the PSR in

connection with the Market Review in which [Name of Party] is a party or is intervening.

**AND IN AGREEMENT THAT**

These undertakings shall be governed by and construed in accordance with English law and [Name of Firm] submits to the exclusive jurisdiction of the courts of England and Wales to hear and decide any action or proceedings which may arise out of, or in connection with these undertakings.

[Name of Party] has given full and informed consent to the terms of these undertakings and the Individual Undertakings given by the Authorised Advisers of [Name of Firm], including the restrictions placed upon those Authorised Advisers on the disclosure of information.

[Name of Firm]

[signature]

[Date]

## Schedule 1: Disclosed Material

### Merchant Survey data

The material consists of three files. These are described below.

1. Raw data file in .xls format
  - contains merchant-level data, specifically, 1,037 merchant responses to the final merchant questionnaire published on the PSR website.
  - Variable names are shown in row 1 and each row represents responses recorded for an individual merchant.
2. Raw data file key .xls format
  - file used to interpret the variable names and values in the raw data file. It consists of two sheets:
    - The 'Variable names' sheet: is descriptor key for the variables in row 1 of the raw data file
    - 'Variable values' sheet: a descriptor key for the merchant responses for all variables in the raw data file
3. Data tables file in .xls format
  - weighted tabulations of the data in the raw data file used to produce the figures in the published IFF merchant survey results annex.
  - The first sheet "Contents" explains what each sheet contains.

## Schedule 2: List of Authorised Advisers

- a. [Name of Adviser] ([a legal/economic adviser or a partner]);