



# Faster Payments Scheme Limited Mutual Non-Disclosure Agreement

## Cover note

*Faster Payments Scheme Limited (FPSL) is a designated Payment Systems Operator under the Financial Services (Banking Reform) Act 2013 (FSBRA) and we are regulated and overseen by the Payment Systems Regulator and the Bank of England, amongst other regulators. Our purpose is to be responsible for the payment system behind the clearing and settlement of real time automated payments in the UK. To the fullest extent possible, we ensure the smooth day to day operation of the faster payments system, upholding the continued integrity of the system, managing the systemic risks involved and contributing to the financial stability of the UK. UTSP Limited ("UTSP") is a wholly owned subsidiary of FPSL. UTSP is the company that supplies the new PKI Trust Service to participants in the industry that need it. UTSP's purpose is to further enable the service(s) of FPSL.*

*This Non-Disclosure Agreement (NDA) has been drafted from a wholly neutral and mutual perspective. Our only aim is to ensure the fair and smooth operation of the faster payments system and its reliability and security for the UK as stated above: we do not seek to make a profit; we are not a commercial organisation.*

*Every right granted to, and every obligation required from, you in this NDA is also granted by and placed upon FPSL and/or UTSP. We have taken this approach because it is fair, balanced, open and transparent.*

*We have limited resources and are choosing to invest our resources on opening up and developing the faster payments system, rather than using those resources to draft and negotiate lengthy, complicated and/or unfavourable legal documents.*

*As a result of our approach and in pursuing our purpose with the resources we have, this NDA will not be negotiated or amended, and this includes the indemnity in clause 10. We treat confidential information passed to us with the utmost respect, and you can take further comfort from the fact that we operate in a highly regulated industry and are also governed by multiple statutes, such as FSBRA, as mentioned above. In consideration of this, and because we are responsible for a payment system which is systemically important to UK plc, we expect any party talking to us to be able to recognise this and treat our confidential information with commensurate care. The indemnity gives us this comfort and is wholly mutual.*

*We look forward to working with you.*



\*\*\*\*[DATE]\*\*\*\*

FAO: John Jefferson  
General Manager  
Faster Payments Scheme Ltd  
2 Thomas More Square  
London  
E1W 1YN

Dear John

## **MUTUAL NON-DISCLOSURE AGREEMENT**

This cover note does not form part of the NDA. Please insert your company details at the beginning of the document and sign your agreement to its terms at end of the document.





\*\*\*\*[DATE]\*\*\*\*

FAO: John Jefferson  
General Manager  
Faster Payments Scheme Ltd  
2 Thomas More Square  
London  
E1W 1YN

Dear John

## MUTUAL NON-DISCLOSURE AGREEMENT



This Non-Disclosure Agreement (the "**Agreement**") is entered into, and is effective as of the date stated above ("the **Effective Date**"), by and between (1) Faster Payments Scheme Limited (company no. 07751778) whose registered office is at 2 Thomas More Square, London, E1W 1YN ("**FPSL**") and (2) UTSP Limited (company no. 10281396) whose registered office is at 2 Thomas More Square, London, E1W 1YN ("**UTSP**") (together, a **Party**); and (3) [Name of Counterparty] (company no. [Insert number]) whose registered office is at [Insert Address] (the other **Party**, and all together, the "**Parties**").

In consideration of the disclosure of the Confidential Information (as defined below), it is agreed as follows:

### 1. Definition of Confidential Information

1.1 For their mutual benefit, the Parties plan to disclose to each other and discuss certain confidential information in connection with potentially participating in the system operated by FPSL and/or receiving the PKI Trust Service (as this is defined in the UTSP PKI Trust Service agreement) provided by UTSP (the "**Purpose**"). In this Agreement the term "**Confidential Information**" shall mean any information or data in any form in respect of the Purpose which is or has been disclosed, directly or indirectly, by a Party to this Agreement to the other Party whether



before, on or after the Effective Date. “The **Discloser**” shall mean the Party providing the Confidential Information and “the **Recipient**” shall mean the receiving Party.

- 1.2 Confidential Information shall not include information that the Recipient can demonstrate:-
- a) is now, or subsequently becomes, generally available to the public through no fault or breach on the part of the Recipient;
  - b) was lawfully in its possession prior to disclosure to the Recipient by the Discloser;
  - c) is, or has been, independently developed by the Recipient without the use of any Confidential Information; or
  - d) the Recipient lawfully obtained the Confidential Information from a third party who had the right to disclose it.

## **2. Non-Disclosure and Protection of Confidential Information**

2.1 Each Party agrees that, except as provided for in this Agreement and subject to clause 2.7, it will not disclose, nor allow to be disclosed, the other Party’s Confidential Information to any third party.

2.2 The Recipient agrees not to use any Confidential Information disclosed to it by or on behalf of the Discloser (the “Discloser’s Confidential Information”) other than for the Purpose, nor shall any Confidential Information be disclosed for any third party’s benefit, without the prior written approval of an authorised representative of the Discloser in each instance.

2.3 The Recipient agrees to maintain the Discloser’s Confidential Information in strict confidence and to use all reasonable care, but in any event no less than the same degree of care that it uses to protect its own confidential and proprietary information, to prevent the unauthorised use, disclosure, publication or dissemination of the Discloser’s Confidential Information. The Recipient shall promptly notify the Discloser if it becomes aware of any unauthorised publication or disclosure and shall take all possible action to prevent further publication or disclosure.

2.4 The Recipient may disclose the Discloser’s Confidential Information to the extent required by law, regulation or statute, or by court of competent jurisdiction, regulatory body or recognised stock exchange, provided that (to the extent permitted by law or regulation) within a reasonable timeframe, the Recipient gives the Discloser notice in writing in order for the Discloser to (at its discretion) seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.

2.5 The Recipient may not reverse engineer, decompile or disassemble any software disclosed to the Recipient under the terms of this Agreement, other than as specifically permitted by law.



2.6 The Recipient shall not make copies or reproductions of the Discloser's Confidential Information except to the extent reasonably necessary for the Purpose.

2.7 To the extent that it is necessary to implement the provisions of this Agreement and to act in respect of the Purpose, the Recipient may disclose the Discloser's Confidential Information to its employees and advisers where necessary ("Officers") provided that the Recipient (i) before disclosure, makes such Officers aware of their obligations of confidentiality under this Agreement; and (ii) at all times procures compliance with such obligations of confidentiality.

### **3. Ownership of Confidential Information**

The Recipient acknowledges that all the Discloser's Confidential Information and all documents containing or referring to the Discloser's Confidential Information remain, as between the Parties, the exclusive property of the Discloser and no licence or other rights to Confidential Information is granted or implied hereby other than for the Purpose.

### **4. Warranty**

The Discloser warrants that it has the right to disclose its Confidential Information to the Recipient.

### **5. Accuracy of Information**

All Confidential Information is provided "as is" and without any implied warranty, representation, condition or otherwise, regarding its accuracy or completeness.

### **6. Return of Materials**

The Recipient will return (or, at the Discloser's request, destroy) all materials (whether copies or originals), in whatever form or format, which contain the Discloser's Confidential Information, immediately upon the Discloser's written request. If the Confidential Information is stored in electronic form, the Recipient shall permanently erase all such Confidential Information from its computer and communications systems and devices used by it.

### **7. Term**

The Recipient's duty to protect the Discloser's Confidential Information shall expire five (5) years from the Effective Date, notwithstanding completion or otherwise of the Purpose.



## **8. No Contract for Purchase or Sale**

Neither Party has an obligation under this Agreement to purchase or offer for sale any product or service, including, but not limited to, any product or service that is the subject of or that incorporates any Confidential Information and nothing in this Agreement creates an obligation on either Party to enter into any transaction in relation to the Purpose or otherwise.

## **9. Publicity**

Neither Party shall publicise any information regarding this Agreement, nor make any reference to work that may be performed as a result of this Agreement (including, without limitation, the nature of the Purpose), in its advertising or promotional materials, or publicity of any kind, or issue any press release, or respond to any enquiry regarding any aspect of this Agreement from any third Party without the prior written consent of the other Party.

## **10. Remedies**

10.1 The Recipient hereby acknowledges that unauthorised disclosure or use of the Discloser's Confidential Information could cause irreparable harm and significant injury to the Discloser, which may be difficult to ascertain. Accordingly, the Recipient agrees that damages alone may not be an adequate remedy for breach and that the Discloser will have the right to seek and obtain immediate injunctive relief to enforce the Recipient's obligations under this Agreement in addition to any other rights and remedies it may have.

10.2 The Recipient hereby on demand indemnifies and holds the Discloser (including the Discloser's Officers) harmless from and against any direct losses, damages, and reasonable costs and expenses which the Discloser may sustain or incur as a result of any breach of this Agreement by the Recipient.

## **11. Non-Assignment**

Neither Party is entitled to assign, pledge, sub-contract or transfer any part or all of this Agreement to any other Party in any manner whatsoever without the prior written consent of the other Party.

## **12. Waiver and Severance**

No failure or delay of either Party in exercising any right under this Agreement shall be deemed a waiver of the right. No waiver of any default on any one occasion shall constitute a waiver of any subsequent default. No single or partial exercise of any right shall preclude the further or full



exercise of it. If any provision of this Agreement or any part of such provision is held invalid or unenforceable, the remainder of this Agreement will not be affected thereby and each remaining provision or part thereof will be valid and enforceable to the full extent permitted by law.

### **13. Entire Agreement and Governing Law**

This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior oral or written agreements concerning such Confidential Information. Each of the Parties acknowledges and agrees that it has not entered into this Agreement in reliance on any statement or representation of any person (whether a party to this Agreement or not) other than as expressly incorporated in this Agreement. This Agreement may not be amended except by written agreement signed by authorised representatives of both Parties. This Agreement will be governed by and construed in accordance with English law and the Parties hereby submit to the exclusive jurisdiction of the English courts.



Signed

Print Name

Title

For and on behalf of **FASTER PAYMENTS SCHEME LIMITED**

Signed

Print Name

Title

For and on behalf of **UTSP LIMITED**

Signed

Print Name

Title

For and on behalf of **[Insert Company Name]**