B.1 Privacy and Data Protection - Service Provider as Data Controller

For the purposes of this Clause B1, unless the context indicates otherwise, the following expressions shall have the following meanings:

"Data Controller"	has the meaning given to it in Data Protection Legislation;
"Data Processor"	has the meaning given to it in Data Protection Legislation;
"Data Protection Impact Assessment"	a process used to identify and mitigate the privacy and data protection risks associated with an activity involving the Processing of Personal Data;
"Data Protection Legislation"	means: (a) any legislation in force from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; (b) from 25 May 2018 only, the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data (the "**General Data Protection Regulation**"); (c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data; and (d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation;
"Data Subject"	has the meaning given to it in Data Protection Legislation;
"Personal Data"	has the meaning given to it in Data

	Protection Legislation;
"Processing"	has the meaning given to it in Data Protection Legislation and "**Process**" and "**Processed**" will be construed accordingly;
"Restricted Countries"	any country outside the European Economic Area;
"Sensitive Personal Data"	sensitive or special categories of Personal Data (as defined in Data Protection Legislation) which is Processed pursuant to or in connection with this Contract; and
"Service Provider Personal Data"	Personal Data and/or Sensitive Personal Data Processed by Authority the on behalf of the Service Provider, pursuant to or in connection with this Contract;
"Subject Access Request"	a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted in Data Protection Legislation.

B1.1 With respect to the Parties' rights and obligations under the Contract, the Parties acknowledge that the Service Provider is a Data Controller solely responsible for determining the purposes and manner in which Service Provider Personal Data is to be Processed, and that the Authority is a Data Processor.

B1.2 Details of the Service Provider Personal Data to be Processed by the Authority and the purposes of such Processing are as follows:

B1.2.1 The Service Provider Personal Data to be Processed by the Authority (if any) concerns the following categories of Data Subject:

Staff data

B1.2.2 The Service Provider Personal Data to be Processed includes the following types of Personal Data and/or Sensitive Personal Data:

Name, Office Location, Office Telephone number

B1.2.3 The Service Provider Personal Data is to be Processed for the following purpose(s):

Operation of the Helpdesk and provision of responses to Helpdesk requests.

B1.3 Without prejudice to the generality of Clause 22, the Authority shall:

B1.3.1 process the Service Provider Personal Data only in accordance with instructions from the Service Provider to perform its obligations under the Contract;

B1.3.2 use its reasonable endeavours to assist the Service Provider in complying with any obligations under Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Service Provider to breach any of its obligations under Data Protection Legislation to the extent the Authority is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;

B1.3.3 notify the Service Provider without undue delay if it determines or is notified that an instruction to Process Personal Data issued to it by the Service Provider is incompatible with any obligations under Data Protection Legislation to the extent the Authority is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;

B1.3.4 maintain, and make available to the Service Provider on its request, documentation which describes the Processing operations for which it is responsible under this Contract including:

B1.3.4.1 the purposes for which Service Provider Personal Data is Processed;

B1.3.4.2 the types of Personal Data and categories of Data Subject involved;

B1.3.4.3 the source(s) of the Personal Data;

B1.3.4.4 any recipients of the Personal Data;

B1.3.4.5 the location(s) of any overseas Processing of Service Provider Personal Data;

B1.3.4.6 retention periods for different types of Service Provider Personal Data; and

B1.3.4.7 where possible a general description of the security measures in place to protect Service Provider Personal Data.

B1.3.5 where requested to do so by the Service Provider, or where Processing Service Provider Personal Data presents a specific risk to privacy, carry out a Data Protection Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant requirements detailed in Data Protection Legislation) and make the results of such an assessment available to the Service Provider;

B1.3.6 without prejudice to any cyber security and/or payment card industry data security standard obligations in this Contract, take appropriate technical and organisational security measures that are satisfactory to the Service Provider from time to time, against unauthorised or unlawful Processing of Service Provider Personal Data and against accidental loss, destruction of, or damage to such Service Provider Personal Data;

B1.3.7 without prejudice to any cyber security and/or payment card industry data security standard obligations in this Contract, provide the Service Provider with such information as the Service Provider may from time to time require to satisfy itself of compliance by the Authority (and/or any authorised sub-contractor) with Clauses A1.3.6 and A1.3.8, including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this shall include a full report recording the results of any privacy or security audit carried out at the request of the Authority itself or the Service Provider;

B1.3.8 notify the Service Provider without undue delay and in any event within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of this Clause A1, including the unauthorised or unlawful Processing of Service Provider Personal Data, or its accidental loss, destruction or damage;

B1.3.9 having notified the Service Provider of a breach in accordance with Clause A1.3.8, keep the Service Provider properly and regularly informed in writing until the breach has been resolved to the satisfaction of the Service Provider;

B1.3.10 fully cooperate as the Service Provider requires with any investigation or audit in relation to Service Provider Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to the Contract, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by the Service Provider (or any agent

acting on its behalf), any relevant regulatory body, including the Information Commissioner, the police and any other statutory law enforcement agency, and shall do so both during the Contract and after its termination or expiry (for so long as the Party concerned retains and/or Processes Service Provider Personal Data);

B1.3.11 notify the Service Provider within two (2) Business Days if it, or any sub-contractor, receives:

B1.3.11.1 from a Data Subject (or third party on their behalf):

B1.3.11.1.1 a Subject Access Request (or purported Subject Access Request);

B1.3.11.1.2 a request to rectify, block or erase any Service Provider Personal Data; or

B1.3.11.1.3 any other request, complaint or communication relating to the Service Provider's obligations under Data Protection Legislation.

B1.3.11.2 any communication from the Information Commissioner or any other regulatory authority in connection with Service Provider Personal Data; or

B1.3.11.3 a request from any third party for disclosure of Service Provider Personal Data where compliance with such request is required or purported to be required by law;

B1.3.12 provide the Service Provider with full cooperation and assistance (within the timescales reasonably required by the Service Provider) in relation to any complaint, communication or request made as referred to in Clause A1.3.11, including by promptly providing:

B1.3.12.1 the Service Provider with full details and copies of the complaint, communication or request;

B1.3.12.2 where applicable, such assistance as is reasonably requested by the Service Provider to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation; and

B1.3.12.3 where applicable, such assistance as is reasonably required by the Service Provider to enable it to comply with a request from a Data Subject to rectify, block or erase any Service Provider Personal Data.

B1.3.13 when notified in writing by the Service Provider, supply a copy of, or information about, any Service Provider Personal Data. The Authority shall supply such information or data to the Service Provider within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within two (2) Business Days from the date of the request;

B1.3.14 when notified in writing by the Service Provider, comply with any agreement between the Service Provider and any Data Subject in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to such Data Subject, or any court order requiring the rectification, blocking, erasure or destruction of any Service Provider Personal Data; and

B1.3.15 if required to do so by Data Protection Legislation, appoint a designated Data Protection Officer.

B1.4 The Authority shall not share Service Provider Personal Data with any sub-contractor without prior written consent from the Service Provider and only where there is a written contract in place between the Authority and the sub-contractor which requires the sub-contractor to:

B1.4.1 only Process Service Provider Personal Data in accordance with the Service Provider's instructions to the Authority; and

B1.4.2 comply with the same obligations which the Authority is required to comply with under this Clause A1 (and in particular Clauses 12.1, 16.1, 16.2, 18.1, 20.2, 22 and 23).

B1.5 The Authority shall, and shall procure that any sub-contractor shall:

B1.5.1 only Process Service Provider Personal Data in accordance with the Service Provider's instructions to the Authority and as reasonably necessary to perform the Contract in accordance with its terms;

B1.5.2 not Process Service Provider Personal Data for any other purposes (in whole or part) and specifically, but without limitation, reproduce or refer to it in training materials, training courses, commercial discussions and negotiations with third parties or in relation to proposals or tenders with the Service Provider;

B1.5.3 not Process Service Provider Personal Data in such a way as to:

B1.5.3.1 place the Service Provider in breach of Data Protection Legislation;

B1.5.3.2 expose the Service Provider to the risk of actual or potential liability to the Information Commissioner or Data Subjects;

B1.5.3.3 expose the Service Provider to reputational damage including adverse publicity;

B1.5.4 not allow Authority's Personnel to access Service Provider Personal Data unless such access is necessary in connection with the provision of the Services;

B1.5.5 take all reasonable steps to ensure the reliability and integrity of all Authority's Personnel who can access Service Provider Personal Data;

B1.5.6 ensure that all Authority's Personnel who can access Service Provider Personal Data:

B1.5.6.1 are informed of its confidential nature;

B1.5.6.2 are made subject to an explicit duty of confidence;

B1.5.6.3 understand and comply with any relevant obligations created by either this Contract or Data Protection Legislation; and

B1.5.6.4 receive adequate training in relation to the use, care, protection and handling of Personal Data on an annual basis.

B1.5.7 not disclose or transfer Service Provider Personal Data to any third party without the Authority having obtained the prior written consent of the Service Provider (save where such disclosure or transfer is specifically authorised under this Contract);

B1.5.8 without prejudice to Clause A1.3.6, wherever the Authority uses any mobile or portable device for the transmission or storage of Service Provider Personal Data, ensure that each such device encrypts Service Provider Personal Data; and

B1.5.9 comply during the course of the Contract with any written retention and/or deletion policy or schedule provided by the Service Provider to the Authority from time to time.

B1.6 The Authority shall not, and shall procure that any sub-contractor shall not, Process or otherwise transfer any Service Provider Personal Data in or to any Restricted Countries without prior written consent from the Service Provider (which consent may be subject to additional conditions imposed by the Service Provider).

B1.7 If, after the Service Commencement Date, the Authority or any sub-contractor wishes to Process and/or transfer any Service Provider Personal Data in or to any Restricted Countries, the following provisions shall apply:

B1.7.1 the Authority shall submit a written request to the Service Provider setting out details of the following:

B1.7.1.1 the Service Provider Personal Data which will be transferred to and/or Processed in any Restricted Countries;

B1.7.1.2 the Restricted Countries which the Service Provider Personal Data will be transferred to and/or Processed in;

B1.7.1.3 any sub-contractors or other third parties who will be Processing and/or receiving Service Provider Personal Data in Restricted Countries;

B1.7.1.4 how the Authority shall ensure an adequate level of protection and adequate safeguards in respect of the Service Provider Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Service Provider's compliance with Data Protection Legislation;

B1.7.2 in preparing and evaluating such a request, the Parties shall refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner in connection with the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries;

B1.7.3 the Authority shall comply with any instructions and shall carry out such actions as the Service Provider may notify in writing when providing its consent to such Processing or transfers, including:

B1.7.3.1 incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this Contract or a separate data processing agreement between the Parties; and

B1.7.3.2 procuring that any sub-contractor or other third party who will be Processing and/or receiving or accessing the Service Provider Personal Data in any Restricted Countries enters into a data processing agreement with the Authority on terms which are equivalent to those agreed between the Service Provider and the Authority in connection with the Processing of Service Provider Personal Data in (and/or transfer of Service Provider Personal Data to) any Restricted Countries, and which may include the incorporation of the clauses referred to in B1.7.3.1.

B1.8 The Authority and any sub-contractor (if any), acknowledge:

B1.8.1 the importance to Data Subjects and the Service Provider of safeguarding Service Provider Personal Data and Processing it only in accordance with the Service Provider's instructions and the Contract;

B1.8.2 the loss and damage the Service Provider is likely to suffer in the event of a breach of the Contract or negligence in relation to Service Provider Personal Data;

B1.8.3 any breach of any obligation in relation to Service Provider Personal Data and/or negligence in relation to performance or non performance of such obligation shall be deemed a material breach of Contract;

B1.8.4 notwithstanding Clause 26.1.1, if the Authority has committed a material breach under Clause A1.8.3 on two or more separate occasions, the Service Provider may at its option:

B1.8.4.1 exercise its step in rights pursuant to Clause A16;

B1.8.4.1 withdraw authorisation for Processing by a specific sub-contractor by immediate written notice; or

B1.8.4.2 terminate the Contract in whole or part with immediate written notice to the Authority.

B1.9 Compliance by the Authority with this Clause A1 shall be without additional charge to the Service Provider.

B1.10 Following termination or expiry of this Contract, howsoever arising, the Authority:

B1.12.1 may Process the Service Provider Personal Data only for so long and to the extent as is necessary to properly comply with its non-contractual obligations arising under law (and will then comply with Clause A1.10.2);

B1.12.2 subject to Clause A1.10.1, shall;

B1.10.2.1 on written instructions from the Service Provider either securely destroy or securely and promptly return to the Service Provider or a recipient nominated by the Service Provider (in such usable format

as and to the extent the Service Provider may reasonably require) the Service Provider Personal Data; or

B.10.2.2 in the absence of instructions from the Service Provider after 12 months from the expiry or termination of the Contract securely destroy the Service Provider Personal Data.

B1.11 Service Provider Personal Data may not be Processed following termination or expiry of the Contract save as permitted by Clause A1.10.

B1.12 For the avoidance of doubt, and without prejudice to Clause A1.10, the obligations in this Clause A1 shall apply following termination or expiry of the Contract to the extent the Party concerned retains or Processes Service Provider Personal Data.

B1.13 The indemnity in Clause 18 shall apply to any breach of Clause A1 and shall survive termination or expiry of the Contract.

B1.14 The Parties' liability in respect of any breach of Clause 22.1 and this Clause A1 insofar as they relate to fines, court awards, settlements and legal costs shall be unlimited.

A3 Personnel Management and Training

(See Section 3 of Checklist for use of optional additional clauses)

A3.1 The Service Provider shall provide the Key Personnel and shall procure that they:

A3.1.1 diligently supervise the performance of the Services;

A3.1.2 attend all contract meetings with the Authority (the location, frequency and time of which shall be specified by the Authority from time to time); and

A3.1.3 be available to the Authority to resolve any issues arising in connection with the Contract at such time period as is specified in Schedule 1.

A3.2 The Service Provider may only make any changes to the Key Personnel (except in the event of sickness, incapacity or resignation) with the prior

consent of the Procurement Manager (which shall not be unreasonably withheld).

A3.3 The Service Provider:

A3.3.1 without prejudice to Clause 8.2, undertakes that all the Service Provider's Personnel possess the appropriate skills, qualifications and experience to perform the tasks assigned to them, and that they shall be available at such times as are necessary to perform the Services in accordance with the Contract;

A3.3.2 shall ensure that all the Service Provider's Personnel are in possession of valid work permits if they are non-European Community nationals; and

A3.3.3 subject to Clause A3.5 shall (at its expense) provide or procure the provision of training for the Service Provider's Personnel in respect of all aspects of its performance of the Contract and, as the Authority may require, for any employees, agents and contractors of the Authority in relation to the operation or use of any equipment supplied under the Contract in accordance with the terms set out in Schedule 1.

A3.4 Without prejudice to the Service Provider's other obligations under the Contract, where training of any or all of the Service Provider's Personnel is required for the purposes of performance of the Contract, the Service Provider shall not assign any Service Provider's Personnel to the performance of the Contract unless and until such Service Provider's Personnel have satisfactorily completed such training.

A3.5 The Authority will arrange (at its expense) safety training (as referred to in Schedule 7) for those of the Service Provider's Personnel identified at the Service Commencement Date (if any) but, for the avoidance of doubt, such safety training in respect of any other Service Provider's Personnel will be arranged by and be at the expense of the Service Provider. For the avoidance of doubt, the Authority will not be responsible for the remuneration, travel, subsistence or other similar costs and expenses of any of the Service Provider's Personnel attending any training under this Clause A3.5.

A.3A Criminal Record Declarations

A.3A.1 In this Clause A.3A:

A.3A.1.1 **"Relevant Individual"** means any member of the Service Provider's Personnel engaged in any aspect of the provision of the Services and requiring potentially the access to Authority Premises [or Authority Assets]; and

A.3A.1.2 **"Relevant Conviction"** means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.

A.3A.2 The Service Provider shall procure from a Relevant Individual a declaration that he has no Relevant Convictions (**"Declaration"**) or disclosure of any Relevant Convictions he has committed. A Declaration shall be procured prior to any Relevant Individual being engaged in any aspect of the provision of the Services. The Service Provider shall confirm to the Authority in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Service Provider shall procure that a Relevant Individual notifies the Service Provider immediately if he commits a Relevant Conviction throughout the duration of this contract and the Service Provider shall notify the Authority in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

A.3A.3 The Service Provider is not permitted to engage or allow the engagement of any Relevant Individual any person in any aspect of the provision of the Services any Relevant Individual who has disclosed a Relevant Conviction.

A.3A.4 The Authority may in accordance with the audit rights set out in Clause 16 audit and check any and all such records as are necessary in order to monitor compliance with this Clause A.3A at any time during performance of this Contract.

A.3A.5 If the Service Provider fails to comply with the requirements under Clauses A.3A.2 and/or A.3A.3, the Authority may, without prejudice to his rights under Clause 26.1.1, serve notice on the Service Provider requiring the Service Provider to immediately remove or procure the removal of any Relevant Individual who has not provided a Declaration from the Authority Premises [and cease their access to any Authority Assets] (as the case may be) with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Services unless (in the case of non-compliance with Clause A.3A.2) within 7 days of receipt of the notice the Service Provider confirms to the Authority he has procured all of the Declarations required under Clause A.3A.2.

A.3A.6 A persistent breach of either or both of Clause A.3A.2 or A.3A.3 by the Service Provider shall constitute a material breach of this Contract which is not capable of remedy and entitles the Authority to terminate the Contract in whole or in part with immediate effect in accordance with Clause 26.1.1.

A.3A.7 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Service Provider shall remove or procure the removal of any Relevant Individual who has not provided a Declaration from the

Authority Premises [and cease their access to any Authority Assets] (as the case may be) with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Services.

A.3A.8 Nothing in this Clause A.3A in any way waives, limits or amends any obligation of the Service Provider to the Authority arising under this Contract and the Service Provider's obligation to provide the Services remains in full force and effect and the Service Provider cannot claim any extra costs or time as a result of any actions under this Clause A.3A.

A4 Security and Guarantees (See Section 4 of Checklist for Use of Optional Clauses)

A4.1 As a condition precedent to the Contract, the Service Provider shall (to the extent that it has not already done so) provide at its expense:

A4.1.1 a parent company guarantee (from such Holding Company as the Authority may require unless otherwise agreed with the Authority) and, if requested by the Authority, a legal opinion as to its enforceability; [*and/or]

A4.1.2 a performance bond, together with a legal opinion as to its enforceability,

[*each] as may be set out in the Appendices to this Contract (for the avoidance of doubt, if no such appendices are included, no such guarantee, [*bond] or legal opinion is required).

A4.2 The Authority shall not be obliged to make any payment to the Service Provider under the Contract whether for the Charges or otherwise unless and until the parent company guarantee [*and/or performance bond (as the case may be)] (and legal opinion if applicable) have been provided in a form satisfactory to the Authority.

A4.3 The Service Provider shall be regarded as being in material breach of the Contract which is incapable of remedy in the event that any parent company guarantee [*and/or performance bond] (as the case may be) is or becomes invalid or otherwise unenforceable.

[*A4.4 Where the Service Provider has provided the Authority with a performance bond and thereafter any variation is made to the Services under Clause 31, the Authority may in its discretion require the Service Provider to provide at its expense a replacement performance bond for a greater sum where such