

## SAS DATA SERVICES LIMITED

### TERMS AND CONDITIONS FOR CONSULTANCY SERVICES

These Terms and Conditions (**Conditions**) set out the terms under which we, SAS Data Services Limited (a company registered in England under number 05514218 with our registered office at 21 Jesmond Way, Stanmore, Middlesex, HA7 4QR, United Kingdom) (**SAS Data Services, we**) provide IT consultancy services (**Services**) to you, the person, firm or company which purchases those Services from us (**you, Client**). Our VAT Number is 906488206.

These Services may be listed on our website at [www.sasdataservices.com](http://www.sasdataservices.com) (**our site**) and/or shall be set out in writing by us in an email and/or by letter. Please read these Conditions carefully. You should understand that by ordering any of our Services, you agree to be bound by these Conditions. You should print a copy of these Conditions for future reference.

#### 1. TERMS OF ENGAGEMENT

- 1.1 You, the Client, shall engage us, SAS Data Services, to provide the Services subject to these Conditions.
- 1.2 Your standard terms and conditions (if any) attached to, enclosed with, or referred to in your documentation or any accompanying purchase order shall not govern the contract between us.
- 1.3 These Conditions shall apply to and be incorporated in the contract between us and shall prevail over any inconsistent terms or conditions contained in, or referred to in, your purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 1.4 Any variation of these Conditions shall be in writing and signed by or on behalf of each of the parties.
- 1.5 The Services shall commence (or shall be deemed to have commenced) on the date specified by us in writing (by email and/or post) and shall continue unless and until terminated:
  - (a) as provided by these Conditions; or
  - (b) by either party immediately by giving written notice to the other (unless a longer period of notice has been specified by SAS Data Services in writing).

- 1.6 Termination of the Services in accordance with condition 1.5(b) is without prejudice to SAS Data Services' right to charge for all time and expenses properly expended and incurred by it until termination.

## 2. SAS DATA SERVICES' OBLIGATIONS

- 2.1 We shall:

- (a) use our best endeavours to provide the Services with all due care, skill and ability;
- (b) devote such time as has been agreed between us in writing to the carrying out of the Services, together with such additional time (if any) as may be necessary for their proper performance; and
- (c) give to you all such information and reports as you may reasonably require in relation to the provision of the Services.

- 2.2 SAS Data Services shall use reasonable endeavours to meet any performance dates specified by you, but any such dates shall be estimates only and time shall not be of the essence.

- 2.3 SAS Data Services shall appoint a manager (**SAS Data Services' Manager**) who shall have authority to contractually bind SAS Data Services on all matters relating to the Services. SAS Data Services shall use reasonable endeavours to ensure that the same person acts as its manager throughout the provision of the Services, but may replace him from time to time where reasonably necessary.

- 2.4 Where the Services comprise 'ethical hacking' and other IT security auditing services, the provisions of Schedule 1 shall apply.

- 2.5 Any other Services shall be subject to separate written agreement between the parties.

- 2.6 Unless we have been specifically authorised to do so by you, we shall not:

- (a) have any authority to incur any expenditure in your name or for your account;
- (b) hold ourselves out as having any authority to bind you.

- 2.7 We shall use our best endeavours to comply with all reasonable health and safety procedures at your premises to the extent that these have been notified to us in writing.

### **3. CLIENT'S OBLIGATIONS**

#### **3.1 You shall:**

- (a) co-operate with SAS Data Services in all matters relating to the Services and appoint a manager (**Client's Manager**), who shall have the authority to contractually bind you on matters relating to the Services;
- (b) provide in a timely manner access to your premises and data, office accommodation and other facilities as SAS Data Services reasonably requests;
- (c) promptly provide information SAS Data Services requests, ensuring that it is accurate in all material respects; and
- (d) be responsible (at your own cost) for preparing the relevant premises for the supply of the Services.

3.2 If SAS Data Services' performance of our obligations is prevented or delayed by any act or omission of you or your agents, sub-contractors or employees, you shall be liable to pay to SAS Data Services on demand all reasonable costs, charges or losses sustained or incurred by us (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to SAS Data Services confirming such costs, charges and losses to you in writing.

### **4. NON-SOLICITATION AND OTHER ACTIVITIES**

4.1 You shall not, without our prior written consent, at any time from the date of the Contract to the expiry of six months after the completion of any Services, solicit or entice away from SAS Data Services or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of SAS Data Services.

4.2 Any consent given by us in accordance with condition 4.1 shall be subject to you paying to us a sum equivalent to 20% of the then current annual remuneration of SAS Data Services' employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by you to such employee or sub-contractor.

4.3 Nothing in this agreement shall prevent SAS Data Services from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the term of its engagement by you.

## **5. THIRD PARTY PRODUCTS**

- 5.1 Where we agree as part of the Services to provide any products or services from or via third parties (**Third Party Products**), these shall be supplied in accordance with the relevant third party's standard terms and conditions or licence terms. You acknowledge that such Third Party Product may include open source software.
- 5.2 Where you use such Third Party Products, you do so on the basis that we introduce you to the relevant supplier of the Third Party Products as, with a direct contractual relationship arising between you and the relevant supplier.
- 5.3 You shall indemnify us against all costs, claims, damages, losses and expenses arising as a result of any claim or action suffered by us in the event that we are held to be acting as your agent in respect of any Third Party Products.
- 5.4 Whilst we shall make all reasonable endeavours to ensure that any Third Party Products are supplied to your satisfaction, we accept no liability in this respect and you are responsible for checking compliance with your requirements and seeking any legal redress against the supplier in the event that any problems arise.

## **6. CHARGES AND PAYMENT**

- 6.1 You shall pay us a fee of [ ] per HOUR exclusive of VAT.
- 6.2 SAS Data Services shall invoice the Client monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 6. Each invoice shall set out the time spent by each member of the Services team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 6.3 SAS Data Services' standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 6.00 pm on weekdays (excluding weekends and public holidays).
- 6.4 SAS Data Services' standard hourly rates are calculated in units of fifteen minutes, rounded up to the nearest fifteenth minute.
- 6.5 SAS Data Services has no obligation to work outside its standard hours as referred to in condition 6.3 above, but if it shall elect to do so (in its sole

discretion), such overtime shall be charged at its standard rate unless otherwise agreed in writing between the parties.

- 6.6 SAS Data Services shall ensure that all members of the project team complete time sheets recording time spent on the Services and SAS Data Services shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 6.2.
- 6.7 You shall be required to pay each invoice submitted by us in full in cleared funds (without deduction or set off) in accordance with condition 6.2 within seven days of receipt.
- 6.8 You shall reimburse all reasonable expenses properly and necessarily incurred by us in the provision of the Services, subject to the production of receipts or other appropriate evidence of payment. Such expenses will include the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by SAS Data Services for the supply of the Services. Such expenses, materials and third party services shall be invoiced by SAS Data Services at cost.
- 6.9 Without prejudice to any other right or remedy that SAS Data Services may have, if the Client fails to pay SAS Data Services on the due date SAS Data Services may:
  - (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of The Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. SAS Data Services may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
  - (b) suspend all Services until payment has been made in full.
- 6.10 Time for payment shall be of the essence.
- 6.11 All payments payable to SAS Data Services for the Services shall become due immediately on termination of those Services, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such other right.
- 6.12 We may, without prejudice to any other rights we may have, set off any liability of the Client to us against any of our liability to the Client.

## 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Save as otherwise agreed in writing, all Intellectual Property Rights and all other rights in all products and materials developed by SAS Data Services in relation to the Services in any media, (including, without limitation, computer programs, data, diagrams, reports and specifications including drafts) (**Deliverables**) shall be owned by SAS Data Services (other than any Third Party Products or Client Materials, as defined in conditions 5.1 and 7.6 respectively).
- 7.2 SAS Data Services hereby licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services as is envisaged by the parties. Such licence is for the Client's own internal business purposes only with no right to sublicense such rights to others. If SAS Data Services terminates the Services under condition 10.1, this licence will automatically terminate.
- 7.3 For the purposes of these Conditions **Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 7.4 The Client acknowledges that its use of rights in of the Deliverables developed by third parties which constitute Third Party Products is conditional on the Client obtaining a licence of such rights from the relevant licensor or licensors on such terms as will entitle it to use such Third Party Products.
- 7.5 You acknowledge, for example, that any website software used by us may incorporate certain open source codes that are licensed for use and are subject to restrictions pursuant to, and under separate agreements. By using these open source codes you agree to be bound by and comply with the terms of those additional agreements. We give no warranty in relation to and have no liability in connection with your use of these open source codes.
- 7.6 All Intellectual Property Rights in any of your materials (including, but not limited to, computer programs, data, reports and specifications) you provide to us during the provision of the Services (**Client Materials**) are owned or

licensed to you and no rights to the Client Materials shall pass to us. You hereby grant us a non-exclusive licence of such Intellectual Property Rights solely for the purposes of providing the Services in accordance with the terms of these Conditions.

- 7.7 You shall indemnify us against all damages, losses and expenses arising as a result of any claim against us that the Client Materials infringe the Intellectual Property Rights or other rights of a third party.

## 8. CONFIDENTIALITY

- 8.1 For the purposes of these Conditions, **Confidential Information** shall mean all information whether technical or commercial (including all specifications, drawings, designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

- (a) identified as confidential at the time of disclosure; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

- 8.2 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

- 8.3 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided the recipient is bound to maintain the confidentiality of the Confidential Information received.

- 8.4 The obligations set out in this condition 8 shall not apply to Confidential Information which the receiving party can demonstrate:

- (a) is or has become publicly known other than through breach of this condition 8;
- (b) was in possession of the receiving party prior to disclosure by the other party;
- (c) was received by the receiving party from an independent third party who has full right of disclosure;
- (d) was independently developed by the receiving party; or
- (e) was required to be disclosed by governmental authority, provided that the party subject to such requirement to disclose gives the other prompt written notice of the requirement.

- 8.5 The obligations of confidentiality in this condition 8 shall not be affected by the expiry or termination of this agreement.

**9. LIMITATION OF LIABILITY**

- 9.1 The following provisions set out the entire financial liability of SAS Data Services (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you, the Client, in respect of:

- (a) any breach of contract;
- (b) any use made by you of the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Services.

- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.

- 9.3 Nothing in these Conditions excludes the liability of SAS Data Services:

- (a) for death or personal injury caused by our negligence; or
- (b) for fraud or fraudulent misrepresentation.

- 9.4 Subject to condition 9.2 and condition 9.3:

- (a) SAS Data Services shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
  - (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or
  - (viii) loss or corruption of data or information; or
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; or
  - (x) for any issues arising in respect of Third Party Products.



- (b) SAS Data Services' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Services shall be limited to the price paid for the Services in the six month period immediately preceding any claim in respect thereof.

9.5 Whilst we shall use all reasonable endeavours to prevent viruses in accordance with best industry practice, you acknowledge that viruses may be outside our reasonable control and thus amount to force majeure (see condition 13).

9.6 These Conditions set out the full extent of our obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into the contract between us or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

## **10. TERMINATION**

10.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the contract between us without liability to the other if:

- (a) the other party commits a material breach of these Conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

## **11. CONSEQUENCES OF TERMINATION**

- 11.1 Termination of the Services, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

## **12. DATA PROTECTION**

- 12.1 You acknowledge and agree that details of your name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of us in connection with the Services. We may be assisted by suppliers and contractors who are based outside the EEA and you give consent to the transfer of data to them as appropriate.

- 12.2 We, SAS Data Services, warrant that, to the extent we process any Personal Data on your behalf:

- (a) we shall act only on your instructions; and
- (b) we have in place appropriate technical and organisational security measures against unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

- 12.3 You warrant and undertake to us that:

- (a) your Personal Data has been and shall be obtained and processed (in so far as your Personal Data has been processed) lawfully;
- (b) the Services to be provided by us will be entirely consistent with and appropriate to the specified and lawful purposes for which you have notified under the Data Protection Act 1998 for your Personal Data (**Notified Purposes**);
- (c) you have not and will not during the continuance of any Contract use or disclose your Personal Data or any part of it in a manner incompatible with the Notified Purposes;
- (d) your Personal Data is adequate, relevant and not excessive in relation to the Notified Purposes; and

- (e) your Personal Data is accurate and you shall keep your Personal Data fully up to date at all times during the continuance of any Contract.

- 12.4 You shall indemnify us against any loss or damage which we may sustain or incur as a result of any breach by you of the provisions of this condition 12.

**13. FORCE MAJEURE**

SAS Data Services shall have no liability to you, the Client, under these Conditions if we are prevented from, or delayed in, performing the Services or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of SAS Data Services or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers or sub-contractors (including providers of Third Party Products), power outage or electrical failure, theft of computers or related equipment, viruses and other hostile computer acts, telecommunications failures or non-availability of third party data centres.

**14. WAIVER**

- 14.1 A waiver of any right under these Conditions is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

- 14.2 Unless specifically provided otherwise, rights arising under these Conditions are cumulative and do not exclude rights provided by law.

**15. SEVERANCE**

- 15.1 If any provision of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

- 15.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**16. STATUS OF PRE-CONTRACTUAL STATEMENTS**

16.1 Each of the parties acknowledges and agrees that in entering into the contract for the provision of Services by SAS Data Services it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in these Conditions.

**17. ASSIGNMENT**

17.1 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under these Conditions.

17.2 We, SAS Data Services, may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under these Conditions.

**18. NO PARTNERSHIP OR AGENCY**

Nothing in these Conditions is intended to or shall operate to create a partnership between you, the Client, and us, SAS Data Services, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**19. THIRD PARTY RIGHTS**

The contract between us is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

**20. NOTICES**

20.1 Any notice under these Conditions shall be in writing and shall be sent by pre-paid recorded delivery post to the other party as follows:

- (a) To SAS Data Services at the address set out in these Conditions or otherwise notified to the Client for such purposes;
- (b) To the Client at the most up to date postal billing address and/or email address as notified to SAS Data Services.

- 20.2 A correctly addressed notice sent by pre-paid recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by a timed printout obtained by the sender).

## **21. GOVERNING LAW AND JURISDICTION**

- 21.1 These Conditions and any disputes or claims arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 21.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions or their subject matter or formation (including non-contractual disputes or claims).
- 21.3 Where the Client is based outside England and Wales, it shall notify SAS Data Services in writing of the name, address and fax number of a person it has appointed as its agent, as may be changed by notice from time to time, to receive on its behalf in England or Wales service of any proceedings arising out of or in connection with the Services. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Client). If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Client shall forthwith appoint a substitute and notify SAS Data Services in writing of the new agent's name, address and fax number.

## Schedule 1 IT Security Auditing Services

### 1. NATURE OF SERVICES

1.1 Where any of the Services to be provided by us, as detailed in writing, comprise IT Security Auditing services, the provisions of this Schedule 1 shall apply.

1.2 We use the term 'IT Security Auditing' to denote the IT security auditing services offered by us. These Services include:

(a) Internet Audits: the review of a Client's accessible services. These services include (but are not limited to) websites, web applications, databases, servers, internet connectivity points, routers, firewalls, switches, intrusion protection systems or any other internetworked equipment (together known as **Internetworked Systems**) to establish the general security of such Internetworked Systems and to identify possible security flaws in such Internetworked Systems; and/or

(b) Physical Network Audits: the on-site review of a Client's office-based hardware and related security systems at the Client's premises to test physical security, network security, security of local network servers (such as workgroup servers, document servers and general office IT equipment, including personal computers), network routers, switches, intrusion protection systems and to identify possible security flaws.

1.3 For the avoidance of doubt, our Services under this Schedule DO NOT INCLUDE:

(a) any kind of guarantees or warranties in relation to the level of security of your IT system;

(b) any kind of firewall implementation, anti-virus implementation, or ongoing 'protection'. Our IT Security Auditing Services provide a test of your IT system. This test alone does not automatically make your systems secure or provide you with any future security.

1.4 **WARNING: We would remind you that the performance of IT Security Auditing, whether by Internet Audits or Physical Network Audits or otherwise, is not completely without risk and your attention is specifically drawn to the provisions of paragraph 3 below.**

### 2. ACCESS TO THE CLIENT'S IT SYSTEMS

- 2.1 You acknowledge that, in order to carry out the Services required of us, we will need access to your IT systems, which you agree to grant to us solely for the purpose of performing the Services.
- 2.2 You acknowledge that our Services will entail deep access to your security systems and Internetworked Systems in a manner which might otherwise constitute unauthorised access or 'hacking', as prohibited by the Computer Misuse Act 1990 and other related legislation.
- 2.3 You hereby give us all necessary consents to access your IT systems subject to these Conditions.
- 2.4 It is essential, to safeguard SAS Data Services' interests, that we are satisfied that those instructing us to carry out IT Security Auditing have the relevant authority from the company, firm or organisation whose IT system we are testing. As such, you will be required to provide us with such evidence as we shall reasonably require to verify your identity and confirm your authority to instruct us to carry out the Services.
- 2.5 We do not accept instructions to carry out IT Security Auditing of a third party's IT systems, without the express additional written consent of that third party and prior verification of its and your identity credentials.
- 2.6 Where your IT system is hosted on a server held by a third party you agree to notify us in writing accordingly and you shall obtain the written consent of that third party to the conduct of the Services by us.

### **3. WARRANTIES AND INDEMNITIES BY YOU**

- 3.1 **We, at SAS Data Services, carry out our IT Security Auditing Services in such a manner as to assess the vulnerability of your IT system, but we do not attempt to perform damage in order to test that vulnerability. Damage to your IT system is unlikely, but does, however, remain a possibility.**
- 3.2 YOU, THE CLIENT WARRANT TO US, SAS DATA SERVICES, THAT:
  - (a) YOU WILL COMPLY WITH THESE CONDITIONS;
  - (b) YOU HAVE THE AUTHORITY TO REQUEST US TO CARRY OUT IT SECURITY AUDITING AGAINST THE RELEVANT IT SYSTEM;
  - (c) YOU HAVE OBTAINED ALL NECESSARY CONSENTS TO ALLOW US TO PERFORM THE IT SECURITY AUDITING REQUIRED OF US;

- (d) YOUR REQUEST FOR US TO CARRY OUT IT SECURITY AUDITING IS BASED UPON A DESIRE TO IMPROVE THE SECURITY OF THE PARTICULAR IT SYSTEM AND IS NOT BASED UPON ANY MALICIOUS INTENT OR ANY BAD FAITH;
- (e) YOU ACKNOWLEDGE AND AGREE THAT THE IT SECURITY AUDITING SERVICES PROVIDED BY US WILL INVOLVE TESTING OF YOUR IT SYSTEM USING TECHNIQUES THAT MIGHT OTHERWISE AMOUNT TO UNLAWFUL ACCESS TO THAT SYSTEM;
- (f) YOU ACKNOWLEDGE AND AGREE THAT THE IT SECURITY AUDITING SERVICES ARE NOT ENTIRELY WITHOUT RISK (WHICH YOU ARE PREPARED TO BEAR IN RETURN FOR THE POSSIBILITY OF A MORE SECURE IT SYSTEM), INCLUDING, BUT NOT LIMITED TO:
  - (i) TEMPORARY WEBSITE OR SERVER MALFUNCTION, WHICH MAY ENTAIL REMEDIAL ACTION BY A SUITABLY QUALIFIED PERSON;
  - (ii) DAMAGE TO OR DELETION OF DATA, AND YOU WARRANT THAT YOU WILL TAKE ALL REASONABLE STEPS TO BACK UP ALL IMPORTANT DATA PRIOR TO THE COMMENCEMENT OF THE SERVICES;
  - (iii) THE LARGE SCALE INSERTION OF CERTAIN 'JUNK' DATA INTO WEBSITES, SUCH AS FEEDBACK FORMS.
- (g) YOU ACKNOWLEDGE AND AGREE THAT SAS DATA SERVICES WILL NOT BE RESPONSIBLE FOR FIXING ANY IT SYSTEM ISSUES ARISING AS A RESULT OF THE SERVICES PROVIDED BY US;
- (h) YOU ACKNOWLEDGE AND AGREE THAT OUR SERVICES MAY ENTAIL THE RETRIEVAL OF DATA FROM YOUR IT SYSTEM DURING OUR AUDITING PROCESSES ON AN INTENTIONAL BASIS, BOTH PUBLIC AND PRIVATE DATA, INCLUDING (BUT NOT LIMITED TO) SUBSCRIBER DATA, ADMINISTRATIVE DATA, PAYMENT DATA;
- (i) IN THE EVENT THAT WE ARE APPROACHED OR CHARGED BY ANY COMPETENT BODY OR AUTHORITY IN RESPECT OF ANY ALLEGED CRIME OR BREACH OF CONFIDENTIALITY OR BREACH OF DUTY IN RESPECT OF OUR IT SECURITY SERVICES, YOU WILL PROVIDE SUCH ASSISTANCE AS WE REASONABLY REQUIRE TO PROVE THE EXISTENCE OF THIS AGREEMENT AND THE SERVICES AUTHORISED BY IT.

3.3 You, the Client, shall indemnify and hold harmless us, SAS Data Services against all liabilities, costs, expenses, damages and losses (including any



direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with:

- (a) any breach of the warranties contained in paragraph 3.2;
- (b) your breach of these Conditions;
- (c) any claim made against us for actual or alleged infringement of a third party's intellectual property or other rights, including in respect of unauthorised access to any IT system arising as a result of our carrying out the Services in accordance with these Conditions.

#### **4. LIMITATIONS OF LIABILITY**

- 4.1 Your attention is drawn to condition 9 of these Conditions which sets out the extent of SAS Data Services' liability in respect of the provision of IT Security Auditing Services.

#### **5. CLIENT RESPONSIBILITIES**

- 5.1 The Client acknowledges that SAS Data Services' ability to provide the Services is dependent upon the full and timely co-operation of the Client (which the Client agrees to provide) as well as the accuracy and completeness of any design specifications, information and data and any other client materials (**Client Materials**) the Client provides to SAS Data Services. Accordingly, the Client shall provide SAS Data Services with access to, and use of, all information, data and documentation reasonably required by SAS Data Services for the performance by SAS Data Services of its obligations under these Conditions.
- 5.2 The Client shall be responsible for the accuracy and completeness of the Client Materials provided to SAS Data Services in accordance with the provisions of paragraph 5.1.

#### **6. PROVISION OF REPORTS**

- 6.1 When we have completed the IT Security Auditing Services we shall provide you with a report of our findings and recommendations (**Report**). We agree not to disclose our Report or any of our findings or recommendations to any third party unless specifically requested by you in writing.
- 6.2 Whilst the Report will be tailored specifically for your business, you acknowledge that it will also include references to confidential practices and technical expertise (**Technical Know-How**) we use in the provision of the Services and elements of our proprietary information. As such, we at SAS

Data Services will retain ownership of all intellectual property rights and other rights in the Report and Technical Know-How, which constitute our Confidential Information for the purposes of condition 8.1 of these Conditions.

- 6.3 You acknowledge and agree, therefore, that you will not sell, disclose or make the Report or our Technical Know-How available to any third party without our prior written consent.