



Turquoise Connectivity Agreement

VERSION 1.0

February 2011

CUSTOMER DETAILS

Registered Legal Name
Registered Address

AUTHORISATION

We understand and agree that all services provided hereunder are subject to the Terms and Conditions which appear on this form below.

SIGNED for	(the "Customer")	
Signature:		Date:
Print Name:		
Title:		

Your order is hereby confirmed and accepted.

SIGNED for	Turquoise Global Holdings Limited ("Turquoise")	
Signature:		Date:
Print Name:		
Title:		

Definitions

In this Agreement, unless the context requires otherwise, the following words shall have the following meanings:

Certification Testing	means the testing conducted by Turquoise and the Customer to ensure that the Systems can operate properly in conjunction with, and without adversely affecting, the Service.
Charges	means the list of charges payable for services from Turquoise listed in the Turquoise Tariff Schedule.
Commencement Date	means the date agreed upon by Turquoise and the Customer.
Customer	means the person or entity named in the Agreement (Customer Details).
Data	means all information received by the Customer from Turquoise's trading system(s).
Force Majeure Event	means any cause beyond a party's reasonable control affecting the performance of its obligations hereunder including but not limited to fire, flood, explosion, accident, war, strike, embargo, governmental or regulatory requirement, civil or military authority, Act of God, industrial disputes and acts or omissions of providers of telecommunications services.
Information License Agreement	means the agreement governing the receipt and distribution of Data received from Turquoise by the Customer.
Location	means the premises to which the Customer has requested the Test Service to be provided.
Membership Agreement	means the terms and conditions governing access to, and use of, the trading platform operated by Turquoise and signed by a Customer to become a member of Turquoise
Service	means the provision by Turquoise of access to its trading system(s).
Software	means the Customer's proprietary computer software including all versions releases and associated documentation.
Systems	means the operating and applications software and hardware and network configurations developed by the Customer for use in conjunction with the Service.
TAP	means any Trading Access Provider appointed by the Customer to supply it with systems or networks for accessing the Service and approved by Turquoise.
Technical Specifications	means the Technical Specifications provided to the Customer by Turquoise, as amended from time to time.
Test Service	means the provision by Turquoise of computer and support services to the Customer for testing purposes in respect of the Services.
Test Specifications	means the specification of tests to be carried out by the Customer when using the Test Service.
Turquoise	means Turquoise Global Holdings Limited, the entity authorised by the Financial Services Authority to operate a Multilateral Trading Facility.
Turquoise Tariff Schedule	means the document outlining the various Charges applicable to the services provided by Turquoise.

1 Testing Obligations of Turquoise

- 1.1 Turquoise shall, subject to having the appropriate communications equipment and link in place, take all reasonable steps to:
- 1.1.1 provide the Customer with the Test Specifications prior to the commencement of the Test Service.
- 1.1.2 provide the Test Service to the Location;
- 1.1.3 conduct Certification Testing; and
- 1.1.4 advise the Customer that it has passed Turquoise's Certification Testing as soon as as is reasonably possible after it has done so;
- 1.2 Turquoise grants to the Customer all necessary rights by way of licence to use the Data for the purposes of testing pursuant to this Agreement. Turquoise warrants that it has all necessary rights to permit the Customer to use the Data within the terms of this Agreement.

2 Obligations of the Customer

- 2.1 The Customer shall:-
- 2.1.1 only use the Data for the purposes of evaluating whether the Systems can operate properly in conjunction with the Service;
- 2.1.2 conduct Certification Testing in accordance with the Test Specifications; and
- 2.1.3 not use the Test Service or Service for any illegal purpose or otherwise than in compliance with the applicable laws in the jurisdictions in which the Customer operates.
- 2.2 Subject to clause 2.3, where Software is certified by Turquoise as part of the Test Service, the Customer shall be entitled from the date of certification to publicise and market the fact that such Software is certified provided the wording in the publicity has been previously approved in writing by Turquoise.
- 2.3 Where the Customer introduces for sale a new release or version or otherwise modifies any Software previously certified by Turquoise it shall not be entitled to publicise or otherwise represent that such modified Software has been certified by Turquoise unless it re-performs and passes the applicable Certification Testing or Turquoise has confirmed in writing and in advance that such requirements are waived.

3 Service

- 3.1 Turquoise shall take all reasonable steps to provide the Service on the terms and

conditions contained in this Agreement, subject to:

- 3.1.1 The Customer having passed the Turquoise Certification Tests;
- 3.1.2 The Customer being a Member of Turquoise or a party to the Information License Agreement as appropriate; and
- 3.1.3 where applicable, the Customer having satisfactory arrangements in place with the TAP.
- 3.2 The Customer shall not use the Service for any illegal purpose or otherwise than in compliance with the applicable laws in the jurisdictions in which the Customer operates.

4 Duration of Agreement

- 4.1 This Agreement will become effective when signed by both parties.
- 4.2 This Agreement will remain in force unless and until terminated in accordance with clause 5, or 14.2.

5 Termination of Agreement

- 5.1 Either party may terminate this Agreement by giving the other party one month's written notice that it wishes to do so.
- 5.2 Either party may terminate this Agreement forthwith by giving the other party written notice if that other party:
- 5.2.1 makes a voluntary arrangement with its creditors or becomes subject to an administration order;
- 5.2.2 has a receiver appointed over any of its property or assets, or an encumbrancer takes possession;
- 5.2.3 goes into liquidation; or
- 5.2.4 takes or is subject to any action similar to that specified in clauses 5.2.1 to 5.2.3 in any jurisdiction outside England.
- 5.3 Turquoise may terminate this Agreement or suspend its performance of all or any obligations under it immediately and without liability for compensation or damages if the Customer ceases to have satisfactory communications facilities in place in accordance with clause 3.1 and 15.1 or fails to comply in all material respects with any of its express or implied obligations under this Agreement. Such termination right is subject to advance notice by Turquoise to Customer and a ten (10) day period to cure such issue.

5.4 Termination of this Agreement shall not release either party from any liability which at the time of termination has already accrued, nor affect in any way the survival of any other right, duty or obligation of the parties which expressly or by implication survives such termination.

6 Charges

6.1 The Customer agrees to pay the Charges, where applicable, as outlined in the Turquoise Tariff Schedule as applicable to the Service.

7 Notices

7.1 Delivery of notices under this Agreement may include electronic transmission. Notices shall be effective on confirmed date of receipt or three (3) working days after dispatch (in the case of posted notices to be sent to Turquoise's business address), whichever is the earlier.

8 Assignment

8.1 The Parties may not assign or transfer any rights or obligations under this Agreement without the provision of prior written notice.

8.2 Customer shall have the right to delegate any and/or all of its obligations under this agreement to any of its affiliates, provided that any such delegation shall not relieve Customer of its obligations under his Agreement.

9 Variations

9.1. This Agreement may only be amended in writing by duly authorised representatives of the parties.

10 Waiver and Entire Agreement

10.1 Failure by either party to exercise any right or remedy under this Agreement will not constitute a waiver of that party's rights or remedies.

10.2 Each party confirms that:

10.2.1 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, no party shall be under any liability or shall have any remedy in respect of misrepresentation or untrue statement unless and to the extent that a claim lies under this Agreement; and

10.2.2 in entering into this Agreement it has not relied on any representation or warranty or undertaking which is not contained in this Agreement or any document referred to in it.

11 Intellectual Property Rights

The intellectual property rights of whatever nature in the Data are governed by the terms of the Membership Agreement or the Information License Agreement as appropriate.

12 Liability regarding Testing

It is agreed that:-

12.1 all development and testing of the Systems will be conducted at the Customer's risk and expense and Turquoise will not be liable in any circumstances for any costs incurred or damage suffered by the Customer as the result of or in connection with such testing or development;

12.2 Turquoise will not be liable in any circumstances, unless caused by gross negligence or wilful misconduct, for any failure to provide the Test Service at any of, or for any change in, the times at which it has advised the Customer the Test Service will be provided;

13 Indemnity and exclusion of liability

13.1 Turquoise and its affiliates will not be liable for any loss incurred by the Customer arising from or related to a loss of connectivity to Turquoise or any other systems failure on behalf of the Customer or Turquoise nor any loss arising, in whole or in part, from a failure in the systems and controls of the Customer or Turquoise governing access to the Service, including but not limited to the unauthorised use of the Customer's user account.

13.2 Turquoise warrants that as at the effective date of this Agreement it has all rights, authorisations and licenses to provide the Service to the Customer as contemplated in this Agreement.

Turquoise shall indemnify, protect and hold harmless the Customer, its affiliates and their respective directors, officers, employees and agents from and against any and all losses, liabilities, judgments, suits, actions proceedings, claims, penalties, damages, or costs (including reasonable legal fees as incurred), resulting from or arising from a claim that use of the Service as contemplated in this Agreement infringes or violates the Intellectual Property Rights of a third party.

13.3 Subject to the indemnity obligation under Clause 13.2 above, in no circumstances will

Turquoise or its directors, officers, employees, affiliates or agents be liable to the Customer or any person for whom the Customer purports to act for any incidental, special or consequential damages (including but not limited to, loss of profits, loss of opportunity and loss of use) resulting from or arising out of the provision of access to Turquoise, regardless of whether such damages could have been foreseen or prevented.

- 13.4 Subject to clause 13.2 and 13.6 Turquoise's aggregate liability (whether for breach of contract, negligence or for any other reason) arising from Turquoise's failure to perform any obligation under this Agreement, shall, in respect of any one incident or series of incidents attributable to the same cause, be limited in aggregate to £50,000 (fifty thousand pounds Sterling).
- 13.5 Except to the extent caused by Turquoise's own gross negligence, wilful default, or fraud, the Customer will indemnify, protect and hold harmless Turquoise, its affiliates, and their respective directors, officers, employees and agents from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, penalties, damages or costs (including reasonable legal fees as incurred) resulting from or arising out of the Customer's breach of this Agreement. Turquoise shall provide the Customer with: (i) prompt written notice of each such claim received by Turquoise; (ii) control over the defence and settlement of such claim; and (iii) full information and reasonable assistance to settle or defend any such claim. Notwithstanding the foregoing, the Customer shall not settle any such claim without Turquoise's prior written approval if such settlement requires Turquoise to take any action, refrain from taking any action or admit any liability.
- 13.6 Nothing in this Agreement will:
- 13.6.1 exclude or restrict to an extent prohibited by law any duty or liability Turquoise may have to the Customer; or
- 13.6.2 exclude or restrict any claim which can be directly attributable to the Parties' wilful default or fraud.

14 Force Majeure

- 14.1 Neither party shall be liable to the other for any delay or failure to fulfil any obligation under this Agreement to the extent such delay or failure was due to a Force Majeure Event.
- 14.2 Either party may terminate this Agreement on notice in writing to the other if due to a Force Majeure Event a party is unable to fulfil its obligations under this Agreement for more than 45 calendar days. Neither party shall have any liability to the other in respect of termination of this Agreement as a result of such a Force Majeure Event.

15 Technical Compliance

- 15.1 In the event that Turquoise, acting reasonably, considers that the Customer and/or Customer's access to the Testing Service is causing, or is likely to cause, technical problems for Turquoise or interference with the continued delivery of the Service to other Customers, then Turquoise may suspend access to the Service without notice provided that it will use best endeavours to provide notice and an opportunity to rectify where practicable.
- 15.2 The Customer undertakes that, in addition to this Agreement, it shall comply with any applicable provision contained in the Technical Specifications (which the Customer acknowledges it has received from Turquoise).

16 Communications

- 16.1 Turquoise shall have no obligation to provide the Service under terms and conditions contained in this Agreement unless the Customer has in place stable and reliable communications facilities.

17 Severability

- 17.1 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of all other provisions (and, if applicable, the remainder of the provision in question) shall not be affected.

18 Confidentiality

- 18.1 The parties shall keep confidential all information relating to this Agreement and the Technical Specifications unless such information has become public knowledge otherwise than in breach of this clause or disclosure is required by law or a party's regulatory body or disclosure is made in

confidence to their professional advisers. This clause survives termination of this Agreement.

- 18.2 Turquoise agrees that it will not, without the prior consent of Customer in each instance, and except as reasonably necessary to operate the Test Service and/or the Service (i) use in advertising, publicity, marketing or other promotional materials or activities, the name, trade name, trademark, trade device, service mark or symbol, or any abbreviation, contraction or simulation thereof, of Customer, its affiliates or their respective partners or employees, or (ii) represent, directly or

indirectly, that any product or any service provided by Turquoise has been approved or endorsed by Customer. For the sake of clarity, Turquoise may only disclose the fact that any software is certified for publicity or marketing purposes with Customer's prior consent

19 Choice of Law

- 19.1 This Agreement shall be governed by, and construed in all respects, in accordance with the laws of England and Wales and subject to the exclusive jurisdiction of the Courts of England and Wales.