

TURQUOISE

TESTING AGREEMENT 3.3

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	<i>[Insert Customer Name]</i> (the " Customer ")	
Signature:		Date:
Print Name:		
Title:		

Your order is hereby confirmed and accepted.

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

TERMS AND CONDITIONS

Definitions

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

Affiliated Companies	Means, with respect to a person, any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such person. For the purposes of this definition, control of a person shall mean the power, direct or indirect, (A) to vote more than 50 per cent. of the securities having ordinary voting power for the election of directors of such person, or (B) to direct or cause the direction of the management policies of such person whether by contract or otherwise;
Agreement	means these terms and conditions, the customer details section above, the Turquoise Tariff Schedule and any other documents referred to herein;
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 as set out in the Turquoise Tariff Schedule;
Customer	means the person or entity named in the customer details section above;
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. This does not excuse non performance caused by the usual and natural consequences of external force;
Guide to Connectivity and Hosting	means the technical specification guide to connectivity and hosting available on the Turquoise website (www.tradeturquoise.com) as amended from time to time;
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 any Turquoise service (e.g. trading) selected by the Customer for testing;
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 specification documentation available on the Turquoise website (www.tradeturquoise.com) as amended from time to time;
Test Data	means all information provided by Turquoise on the Test Service and all information inputted by the Customer to the Test Service;
Test Service	means the provision by Turquoise of computer and support services to the Customer, such bookings as agreed between Turquoise and the Customer from time to time;

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Test Specifications	means the specification of tests to be carried out by the Customer when using the Test Service;
Turquoise	means Turquoise Services Limited, the entity authorised by the Financial Services Authority to operate a Multi Lateral Trading Facility;
Turquoise Tariff Schedule	means the tariff schedule outlining the charges applicable to the services provided by Turquoise and available on the Turquoise web site (www.tradeturquoise.com) as amended from time to time.

1 Testing Obligations of Turquoise

- 1.1 Turquoise shall, subject to having the appropriate communications equipment and link in place in accordance with the Guide to Connectivity and Testing:
 - 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 tests, as soon as possible after the Customer has done so;
- 1.2 Each party grants to the other all necessary rights by way of licence to use the Test Data provided by such party solely for the purpose of providing and/or receiving (as the case may be) the Test Service. The parties warrant that they have all necessary rights to permit the use of the Test Data in accordance with the terms of this Agreement.

2 Obligations of the Customer

- 2.1 The Customer shall:-
 - 2.1.1 only use the Test Data provided to it by Turquoise 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 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 that any reference to the certification appearing in any publicity or marketing materials used in connection with such publicity or marketing has been previously approved (not to be unreasonably withheld, delayed and/or subject to unreasonable conditions) in writing by Turquoise. Once such references have been approved, subsequent materials that do not alter the reference to the certification need not be approved.
- 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 in respect of such modified software or Turquoise has confirmed in writing and in advance that such requirements are waived.

3 Duration of Agreement

- 3.1 This Agreement will become effective when signed by both parties.
- 3.2 This Agreement will remain in force unless and until terminated in accordance with clause 4 or 11.2.

4 Termination of Agreement

- 4.1 Either party may terminate this Agreement by giving the other party one (1) month's prior written notice that it wishes to do so.
- 4.2 Either party may terminate this Agreement forthwith by giving the other party written notice if that other party:
 - 4.2.1 commits a material breach of this Agreement which, if capable of remedy, has not been remedied within fourteen (14) days of receipt of a notice from the non-breaching party requiring that such material breach be remedied;
 - 4.2.2 makes a voluntary arrangement with its creditors or becomes subject to an administration order;
 - 4.2.3 has a receiver appointed over any of its property or assets;
 - 4.2.4 goes into liquidation; or
 - 4.2.5 takes or is subject to any action similar to that specified in clauses 4.2.2 to 4.2.4 in any jurisdiction outside England.
- 4.3 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 fails to comply in all material respects with the terms and conditions of this Agreement (including payment of undisputed charges to Turquoise, provided that the Customer has been provided by Turquoise with at least thirty (30) days written notice of any such failure, and such failure has not been rectified during such period by the Customer).
- 4.4 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.

5 Charges

- 5.1 The Customer agrees to pay the charges as applicable to the Test Service.

6 Notices

- 6.1 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.

7 Assignment

- 7.1 Subject to the provisions of clause 7.2, neither party may assign or transfer its rights or obligations under this Agreement without the other party's prior written consent.
- 7.2 Each party may assign its rights and/or obligations under this Agreement to its Affiliated Companies, which become effective on written notice to the other party.

8 Variations

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

9 Waiver and Entire Agreement

- 9.1 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.
- 9.2 This Agreement is the parties' entire understanding of the contract between them and supersedes all prior agreements, representations and proposals, oral or written.
- 9.3 Each party confirms that:
- 9.3.1 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
- 9.3.2 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.

10 Liability regarding Testing

It is agreed that:-

- 10.1 Subject to 10.3 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;
- 10.2 Subject to 10.3 Turquoise will not be liable in any circumstances 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;
- 10.3 Each party shall not in any circumstances be liable in contract, tort (including negligence and breach of statutory duty) or otherwise for loss, whether direct or indirect, of profits, business, anticipated savings or for any indirect or consequential loss howsoever caused or arising out of or in connection with the provision or receipt (as the case may be) of the Test Service SAVE THAT:
- (A) each party's liability in respect of fraud, wilful default and/or pursuant to clauses 10.5 and 15; and
- (B) both parties' liability, solely to the extent that it may not be limited by law, shall be unlimited.
- 10.4 Turquoise shall be in no way liable for any loss or damage, whether direct or indirect, incurred by the Customer arising from any failure, act, omission or negligence of any TAP (including without limitation, any failure by any such TAP to transmit Test Data correctly or at all or any misuse by any such TAP of the Customer's access).
- 10.5 Turquoise warrants that it has all rights and licenses to provide the Test Service and the Test data to the Customers as contemplated in this Agreement. Turquoise shall indemnify, protect and hold harmless Customer, its Affiliated Companies, 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 Test Service and/or the Test Data as contemplated in this Agreement infringes or violates any patents, copyrights, trade secrets,

licenses or other proprietary rights (whether registered or unregistered anywhere in the world) of any third party.

- 10.6 Subject to clause 10.3, each party's liability under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise) shall be limited to ten thousand pounds (£10, 000).

11 Force Majeure

- 11.1 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.
- 11.2 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 forty-five (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.

12 Technical Compliance

- 12.1 The Customer undertakes that, in addition to this Agreement, it shall comply with any applicable provision contained in the Technical Specifications
- 12.2 In the event that Turquoise, acting reasonably, considers that the Test Service and/or any TAP is causing, or is likely to cause, technical problems for Turquoise or interference with the continued delivery of the Test Service or other services to other customers, then Turquoise may suspend access to the Test Service without notice provided that it will use best endeavours to provide notice and an opportunity to rectify where practicable.

13 Communications

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

14 Severability

- 14.1 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.

15 Confidentiality

- 15.1 The parties shall keep confidential all information relating to this Agreement and the Technical Specifications that are marked with a restrictive legend (together the "**Confidential Information**") unless such information has been independently generated or become public knowledge otherwise than in breach of this clause or disclosure is required by law or a party's regulatory body or any other body to the jurisdiction of which a party is subject or disclosure is made in confidence to a party's professional advisers.
- 15.2 Turquoise agrees that it will not, without the prior written 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.
- 15.3 The provisions of this clause 15 shall survive any termination or expiry of this Agreement.

16 Rights of Third Parties

- 16.1 Subject to clause 16.2, no person who is not a party to this Agreement shall have any right under the Contracts (Right of Third Parties) Act 1999 or otherwise to enforce any of its terms.
- 16.2 Any Affiliated Company of the Customer may enforce any term or condition of this Agreement provided that this Agreement may not be varied or terminated by any such Affiliated Company.

17 Choice of Law

- 17.1 This Agreement shall be governed by, and construed in all respects, in accordance with the laws of England and in respect of any proceedings arising out of its subject matter the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.

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18 Conflict

- 18.1 Where the Customer is a party to the Membership Agreement and there are conflicts between the Membership Agreement and this Agreement the former will always take precedence.