

## General Terms and Conditions

1.

### Definitions and Interpretation

The following definitions and rules of interpretation apply in these General Terms:

**"Affiliates"** means Tectrade Computers Corp., Tectrade Computers Ireland, and any Group Company of Tectrade, Tectrade Computers Corp., Tectrade Computers Ireland from time to time;

**"Charges"** the charges payable by the Customer to Tectrade for the Services and/or Equipment as detailed in the Order Confirmation;

**"Confidential Information"** has the meaning set out in paragraph 13;

**"Contract"** each contract between the parties for the provision of Services and/or sale of Equipment by Tectrade to the Customer formed in accordance with paragraph 2.2;

**"Customer Systems"** any software, hardware, networks, Equipment or other systems belonging to or hired by the Customer, or its Group Companies, or its licensors (apart from Tectrade) which Tectrade is required to interact with or use in any way in the course of providing the Services, and including any Customer Systems described in or identified pursuant to the Order Confirmation;

**"Data Protection Legislation"** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998;

**"Data Controller"** and **"Data Subject"** have the meaning set out in the Data Protection Legislation;

**"Document Deliverables"** any items which are specifically identified as being **"Document Deliverables"** in an Order Confirmation;

**"Due Date"** has the meaning set out in paragraph 7.2;

**"Equipment"** the Equipment to be sold to the Customer by Tectrade pursuant to a Contract;

**"Excluded Losses"** means: (i) loss of or corruption or damage to data; (ii) loss of business; (iii) loss of revenue; (iv) loss of profit; (v) loss of contracts; (vi) loss or liability under any other contract; (vii) loss of or damage to reputation; (viii) loss of goodwill; (ix) loss of anticipated savings; (x) loss of bargain; (xi) any indirect, incidental, consequential, or special loss; and; (xii) punitive or exemplary damages, costs, charges or expenses in each case whether direct or indirect;

**"Force Majeure"** any cause affecting the performance by a party of its obligations (excluding a party's payment obligations) arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control or (or in relation to sub-contracted obligations) beyond the reasonable control of its sub-contractors, including (but not limited to) Acts of God, war, civil unrest, riot, strike, lock-out, failure of networks or utilities, failure of Customer Systems (in the case of Tectrade), new government regulations, failures of communications, terrorism, nuclear events, asbestos, pollution, fire, flood, earthquake or any disaster or industrial dispute;

**"GDPR"** General Data Protection Regulation (EU) 2016/679;

**"Group Company"** any company that is or becomes at any time either: (i) a holding company of a party; (ii) a subsidiary of a party; or (iii) a subsidiary of any such holding company. The terms holding company and subsidiary shall be as defined in Section 1159 of the Companies Act 2006;

**"Intellectual Property Rights"** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, 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;

**"Order Confirmation"** the document identified as an order confirmation which contains details of the Equipment and/or Services to be provided by Tectrade to the Customer, which has been issued by Tectrade in writing in confirmation of an order from the Customer;

**"Party" or "Parties"** a party or the parties to this Contract;

**"Personal Data"** has the meaning set out in the Data Protection Act 1998;

**"Premises"** any premises owned or occupied by the Customer or any Group Company of the Customer, or any Representative of the Customer (other than Tectrade and its Representatives) where the Equipment is to be delivered and/or Services are to be provided as set out in the Order Confirmation (or at such other address as the parties may agree in writing);

**"Professional Services"** the professional services to be provided by Tectrade under the Contract (if any) as detailed in the Order Confirmation;

**"Representative"** employees, agents, officers, advisers and other representatives of a party;

**"Services"** the Support Services and/or Professional Services (as applicable) to be provided under a Contract;

**"Support Services"** the support services to be provided by Tectrade under the Contract (if any) as detailed in the Order Confirmation;

**"Tectrade Tools"** all Tectrade processes, know-how, methods, documentation, software, service definitions and descriptions (whether included in an Order Confirmation or otherwise);

**"Working Day"** a day other than a Saturday, Sunday or Public Holiday in England.

1.1. If any term in these General Terms conflicts with a term in an Order Confirmation, the relevant term in the Order Confirmation shall prevail over the conflicting term in these General Terms.

1.2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's permitted assigns. A reference to a "company" shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.3. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.4. A reference to writing or written includes email, unless stated otherwise in this Contract.

1.5. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

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2.1. Any order from the Customer constitutes an offer to purchase Equipment or Services in accordance with these terms and conditions.

2.2. An order shall only be deemed to be accepted, and a Contract shall only come into existence between the parties when Tectrade issues an Order Confirmation, and each Contract shall incorporate these General Terms and shall enter into force and be legally binding on the date that the Order Confirmation is issued.

2.3. These General Terms (and any Framework Agreement between the parties) shall apply to the exclusion of and prevail over any terms or conditions that the Customer seeks to impose or incorporate, (whether on any purchase order issued by the Customer or otherwise) or which are implied by trade custom or practice or course of dealing

2.4. Each Contract shall continue unless terminated earlier in accordance with these terms.

2.5. The Customer acknowledges that it has not relied upon any statement, promise or representation made or given by or on behalf of Tectrade which is not set out in the Contract. Any samples, drawings, proposals, descriptive matter or advertising issued by Tectrade and

any descriptions of the Equipment issued or published are for the sole purpose of giving an approximate idea of the Equipment and shall not form part of the Contract or have any contractual force.

### Provision of Equipment and Services

3.1. Delivery of the Equipment shall be completed on arrival of the Equipment at the Premises. The Customer shall be responsible for unloading the Equipment on its arrival at the Premises. Any dates quoted for delivery of the Equipment are approximate only and time of delivery is not of the essence. Tectrade may supply Equipment in more than one single delivery.

3.2. If the Customer fails to accept delivery of the Equipment on the "Agreed Delivery Date" as set out in the Order Confirmation, Tectrade shall be entitled to store the Equipment until delivery takes place and charge the Customer for the costs of storage and insurance and if the Customer has not accepted or taken delivery of the Equipment at the Premises on or within 5 (five) Working Days after the Agreed Delivery Date, Tectrade may resell or otherwise dispose of part or all of the Equipment and charge the Customer for all related costs and expenses (including insurance).

3.3. The Customer must Notify Tectrade within 3 (three) Working Days from receipt of the Equipment of any damage to the outer packaging, shortage or other discrepancy with the delivery; otherwise the Customer is deemed to have accepted the Equipment.

3.4. The Customer authorises Tectrade or its distribution partner to accept, on its behalf any end-user license agreement, or similar agreement, for Equipment purchased under this Contract. These authorisations will not require Tectrade or its suppliers to accept the end-user license agreement but Tectrade may in its sole discretion choose to exercise that authority. The Customer acknowledges that any required license to use any Equipment purchased under this Contract comes from the manufacturer and not from Tectrade or its distribution partner.

3.5. The legal and beneficial ownership of the Equipment shall pass to the Customer on payment in full of the Charges for the Equipment, and provided that at such time no other Charges are outstanding under the Contract. Risk in the Equipment shall pass to the Customer on delivery of the Equipment to the Premises.

3.6. Until title to the Equipment has passed to the Customer, it shall:

3.6.1. hold the Equipment on a fiduciary basis as Tectrade's bailee;

3.6.2. not remove, deface or obscure any identifying mark on or relating to the Equipment;

3.6.3. maintain the Equipment in satisfactory condition and keep it insured against all risks for their full price on Tectrade's behalf from the date of delivery;

3.6.4. notify Tectrade immediately if it becomes subject to any of the events listed in paragraphs 9.1.2 to 9.1.10; and

3.6.5. give Tectrade such information relating to the Equipment as Tectrade may require from time to time.

but the Customer may use the Equipment in the ordinary course of its business.

3.7. If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in paragraphs 9.1.2 to 9.1.10 or Tectrade reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy Tectrade may have, Tectrade may at any time require the Customer to deliver up the Equipment and, if the Customer fails to do so promptly, enter the Premises or the premises of any third party where the Equipment is stored in order to recover it.

3.8. Tectrade shall provide the Services to the Customer with reasonable skill and care, in accordance with the terms and conditions of the Contract, and in a reasonable time if no other time period is expressly stated. Any timeframes given for performance of the Services are estimates only, and time of performance is not of the essence.

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4. **Warranty**
- 4.1. Tectrade warrants to the Customer that:
- 4.1.1. it will perform the Services using reasonable care and skill;
- 4.1.2. the Services will conform in all material respects with the description given in the Order Confirmation;
- 4.1.3. it owns or has obtained licences, consents, permissions and rights to enable Tectrade to comply with the Contract and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under the Contract including for the Customer's use and receipt of the Services in accordance with the terms of the Contract, and Tectrade shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached.
- 4.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract, including any implied warranties or conditions of merchantability, fitness for a particular purpose and non-infringement.
- 4.3. If the Equipment supplied under the Contract is subject to an agreement between Tectrade and the manufacturer of the Equipment, whereby the manufacturer provides the Customer with warranties for the Equipment ("Warranty Agreement"), the Customer acknowledges that the manufacturer of the Equipment shall be solely responsible for the performance of the Warranty Agreement and the warranty it provides, but that payment for the performance of the Warranty Agreement shall be in accordance with this Agreement. Where the manufacturer does not provide a Warranty Agreement, Tectrade shall, where it is permitted by the manufacturer to do so, pass down the terms of any manufacturer warranty to the Customer.
- 4.4. Subject to paragraph 4.4 above, Tectrade does not provide any warranties to the Customer and Tectrade shall have no liability to the Customer in respect of any defects in the Equipment.
- 4.5. The Customer accepts responsibility for the selection of the Software, Equipment and Services to achieve its intended results and acknowledges that the Software has not been developed, nor Equipment or Services selected or developed to meet the individual requirements of the Customer.
- 4.6. The Customer acknowledges that the nature of computer viruses, worms, software bombs, malicious software or similar items ("Viruses") is constantly evolving and therefore Tectrade will not be liable for any Viruses introduced into the Customer Systems, unless such Virus was introduced as a direct result of Tectrade's failure to comply with the warranty at clause 4.1.1 when providing the Support Services.
5. **Customer Data and Backup**
- 5.1. The Customer and its Group Companies at all times own the Customer Data, Customer Systems, and all materials supplied to Tectrade by the Customer and its Group Companies ("Customer Owned Items"), and Tectrade hereby agrees that title to the Customer Owned Items vests in the Customer. To the extent that Tectrade or its Representatives have possession of any Customer Owned Items which are tangible property, Tectrade shall return them to the Customer on demand and Tectrade shall not permit and shall secure the release of any security interest or lien over Customer Owned Items.
- 5.2. The Customer shall: (i) keep full backup copies of all of its data, to which Tectrade shall not have access to, and from which the Customer shall exclude Tectrade (notwithstanding any request made by Tectrade's employees, agents, sub-contractors and any other person); and (ii) take sole responsibility and liability for determining the nature of its data storage and the nature and frequency of its data backup.
6. **Customer Obligations**
- 6.1. The Customer shall ensure that information and instructions it provides to Tectrade in respect of the scoping and performance of the Contract are complete and accurate in all respects. Tectrade shall not have any liability in relation to failure to or delay in performance of its obligations if the information and/or instructions provided by the Customer is subsequently shown to be incomplete or inaccurate in any respect.
- 6.2. The Customer shall provide Tectrade and its Representatives with such reasonable full, safe and uninterrupted access to the Customer Premises and/or Customer Systems or other materials at such times as Tectrade may request (including out of hours access) where necessary to enable it to perform its obligations under the Contract.
- 6.3. The Customer shall be solely responsible for obtaining at its own cost and in sufficient time to enable the work in question to be undertaken any necessary consents, licences and permissions in relation to those Premises and the Customer Systems required to undertake that work.
- 6.4. The Customer hereby grants Tectrade a non-exclusive licence to use any materials supplied by the Customer to the extent necessary to perform the Services in accordance with the Contract. To the extent that the Customer has not obtained such necessary consents, licenses and permissions the Customer shall notify Tectrade of any such consent or approvals required from the relevant third party and the Customer acknowledges that in these circumstances the provision of the Services is conditional on Tectrade obtaining a licence of such rights from the relevant licensor or licensors on such terms as will entitle Tectrade carry out the Services.
- 6.5. The Customer shall ensure that all Customer Systems which are relevant to the Services are operational and in good working order and configured according to the specifications provided by Tectrade. The Customer shall inform Tectrade in advance of any changes it proposes to make to the Customer Systems that may impact on Tectrade's ability to provide the Services (including but not limited to software upgrades, new operating systems, patching of any operating systems or any additions to or removals from the environment) and Tectrade shall not have any liability in relation to failure to provide the Services as a result of any such changes.
- 6.6. The Customer shall not export, directly or indirectly, any technical data acquired under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("Export Control Laws"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
7. **Charges and Payment Terms**
- 7.1. The Charges are set out in the Order Confirmation, subject to variation in accordance with the Contract. Unless otherwise set out in an Order Confirmation, Tectrade shall be entitled to invoice the Charges for Equipment at any time after completion of delivery, and shall be entitled to invoice for the Services at any time from the commencement of their provision.
- 7.2. Save to the extent that alternative payment terms are set out in the Order Confirmation, the Customer shall pay each undisputed invoice for the Charges submitted by Tectrade within 30 (thirty) days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by Tectrade ("Due Date") and time for payment shall be of the essence. The Charges shall be paid in pounds sterling, unless otherwise specified in the Contract.
- 7.3. The Charges are exclusive of value added tax (VAT). Where any taxable supply for VAT purposes is made under the Contract, the Customer shall, on receipt of a valid VAT invoice from Tectrade, pay such VAT at the same time as payment is due under the Contract.
- 7.4. Without limiting any other right or remedy of Tectrade, if the Customer fails to make any payment of the Charges by the Due Date for payment, Tectrade shall have the right to suspend provision of all or part of the Services whether under the Contract or any other Contract then in force between the parties, and shall be entitled to charge interest on the overdue amount at the rate of 6 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 7.5. The Customer shall pay all amounts due under this Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Tectrade in order to justify withholding payment of any such amount in whole or in part. Tectrade may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Tectrade to the Customer.
- 7.6. Tectrade may increase the Charges at any time to reflect any increase in cost of, or inability or delay in providing, the Equipment or the Services which is due to: (i) inaccurate or incomplete information provided by the Customer; (ii) the act, neglect or default of the Customer, a Customer Representative or of a third party (other than a Tectrade Representative); (iii) the Customer's failure to comply with its obligations in the Order Confirmation, or the Contract (iv) the inability of Tectrade to perform the Contract due to any Force Majeure Event; or (v) the Customer's failure to provide suitable and fully operational Customer Systems to enable Tectrade to provide the Services.
- 7.7. All out-of-pocket expenses (including travel, accommodation, subsistence and any other ancillary expenses) shall be subject to the prior approval of the Customer before being incurred and shall be charged to the Customer by Tectrade monthly in arrears, unless other payment terms are set out in the Order Confirmation.
- 7.8. Where the Customer requests that Tectrade undertakes any Services at outside the agreed scope as set out in the Order Confirmation, and Tectrade is not otherwise obliged to provide the Services at such times, Tectrade reserves the right to make an additional charge in respect of the provision of such out of hours work.
8. **Intellectual Property Rights**
- 8.1. The Customer acknowledges that all Intellectual Property Rights used, generated or developed by Tectrade in the provision of Services or otherwise in connection with this Agreement including, without limitation, the Tectrade Tools, are owned by Tectrade or its licensors (as the case may be).
- 8.2. The Customer specifically acknowledges that all copyright and Intellectual Property Rights in the software provided as part of the Equipment remain the property of the licensor of the Equipment and that neither the Customer nor any third party to whom the Customer supplies or transfers the software has any rights therein except as expressly licensed by the licensor of the software.
- 8.3. In consideration of the Customer's payment of the applicable Charges, Tectrade authorises the Customer to use the Document Deliverables on a non-exclusive basis for the Customer's internal business purposes only, to the extent necessary to enable the Customer to receive the Services. This licence will be perpetual and will survive the termination of any Contract except where Tectrade has terminated the applicable Contract pursuant to either paragraph 9.1 or 9.2, in which case the licence will automatically terminate.
9. **Termination**
- 9.1. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 9.1.1. the other party commits any material breach of any term of that Contract and which (in the case of a breach capable of being remedied) shall not have been remedied within 14 (fourteen) days of a written request to remedy the same;
- 9.1.2. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

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- 9.1.3. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 9.1.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 9.1.5. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 (fourteen) days;
- 9.1.6. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 9.1.7. a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 9.1.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 9.1.9. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraph 9.1.2 to 9.1.8 (inclusive); or
- 9.1.10. the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 9.2. Without limiting its other rights or remedies, Tectrade may terminate the Contract with immediate effect by giving written notice to the Customer:
- 9.2.1. on giving at least ninety (90) days' notice; or
- 9.2.2. if the Customer fails to pay any undisputed Charges due under the Contract on the Due Date for payment and fails to pay such amount within 14 (fourteen) days after being notified by Tectrade in writing to make such payment.
10. **Consequences of Termination**
- 10.1. Any termination of the Contract pursuant to its terms shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party. Any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after termination of a Contract shall remain in full force and effect.
- 10.2. On termination of the Contract which includes the provision of Services, howsoever arising:
- 10.2.1. subject to paragraph 10.2.2, the Customer shall immediately pay to Tectrade all of Tectrade's outstanding unpaid invoices and interest and, in respect of Equipment and Services supplied but for which no invoice has yet been submitted, Tectrade shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 10.2.2. Where the Customer has terminated the Contract pursuant to paragraph 9, Tectrade shall within twenty eight days of the date of termination, refund to the Customer any advance Charges which have been paid by the Customer in anticipation of the provision of the Services which have not as at the date of termination been provided; and
- 10.2.3. the Customer shall immediately return all Equipment to Tectrade which has not been fully paid for. If the Customer fails to do so, then Tectrade may enter the Customer's Premises and take possession of such Equipment.
11. **Limitation of Liability**
- 11.1. Nothing in a Contract shall limit or exclude either party's liability for:
- 11.1.1. death or personal injury arising from its negligence or that of its employees, agents or subcontractors; or
- 11.1.2. fraudulent misrepresentation;
- 11.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 and section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 11.1.4. any other matter for which that party may not exclude or limit its liability as a matter of law and the provisions of the Contract shall be read subject to this.
- 11.2. Subject to paragraph 11.1 above, and to any accepted liability in Part II of the Contract relating to Backup Services (where applicable), Tectrade shall not be liable whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, through indemnification, or otherwise for any Excluded Losses whatsoever and howsoever arising irrespective of whether such loss or damage is foreseeable or in its reasonable contemplation.
- 11.3. Subject to paragraphs 11.1 and 11.2, Tectrade's total aggregate liability in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to 120% (one hundred and twenty per cent) of the part of the Charges paid by the Customer under that Contract which relate to the Equipment and/or Services which give rise to the liability.
- 11.4. The Customer shall indemnify Tectrade against any direct losses, damages, costs (including legal fees) and expenses incurred by or awarded against Tectrade as a result of the Customer's breach of contract (including acts or omissions of any Customer Representatives in breach of any of these paragraphs).
- 11.5. The Customer acknowledges that:
- 11.5.1. even though Tectrade is providing the Services and that these may be used by the Customer to assist in circumstances that would otherwise cause an interruption to the Customer's business, it is not intended that Tectrade will or should undertake liability for any Excluded Losses (regardless of how such liability might otherwise arise);
- 11.5.2. the Charges reflect the level of liability undertaken by Tectrade as set out in the provisions of this paragraph 11 and that if the exclusions and limitations contained in this paragraph 11 were not to apply then Tectrade would not be willing to provide the Services for that price;
- 11.5.3. it is not intended that Tectrade will or should provide business interruption (or any other kind of) insurance to the Customer;
- 11.5.4. the exclusions and limitations contained in this paragraph 11 are regarded by the Customer as reasonable and reflect the agreed balance of risk.
12. **Data Protection**
- 12.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 12.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and Tectrade is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). The Order Confirmation and/or Tectrade's privacy policy shall set out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Data Protection Legislation).
- 12.3. Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Tectrade for the duration and purposes of this agreement.
- 12.4. Without prejudice to the generality of clause 12.1, Tectrade shall, in relation to any Personal Data processed in connection with the performance by it of its obligations under this agreement:
- 12.4.1. process that Personal Data only on the written instructions of the Customer unless Tectrade is required by the laws of any member of the European Union or by the laws of the European Union applicable to it to process Personal Data (Applicable Data Processing Laws). Where Tectrade is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, it shall promptly notify the Customer of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit Tectrade from so notifying the Member Institution;
- 12.4.2. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate and proportionate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 12.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 12.4.4. not transfer any Personal Data outside of the European Economic Area ("EEA") unless the prior general or specific consent of the Customer has been obtained, and provided that the Customer hereby acknowledges and consents that Tectrade may transfer outside of the EEA to hosted service providers and subcontractors, subject always to compliance with Data Processing Laws with appropriate safeguards and/or binding corporate rules/contractual protections in place for such transfer, in particular that:
- 12.4.5. the Customer or Tectrade has provided appropriate safeguards in relation to the transfer;
- 12.4.6. the Data Subject has enforceable rights and effective legal remedies;
- 12.4.7. Tectrade complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 12.4.8. Tectrade complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 12.4.9. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 12.4.10. notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 12.4.11. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Data Processing Law to store the Personal Data; and
- 12.4.12. maintain complete and accurate records and information to demonstrate its compliance with this clause 12.
- 12.5. The Order Confirmation shall set out details of any third-party processor of Personal Data under the Contract, and the Customer hereby consents to their appointment. As between the Customer and Tectrade, Tectrade shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 12.5.
- 12.6. Either party may, at any time on not less than 30 (thirty) days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
13. **Confidentiality**

## General Terms and Conditions

- 13.1. For the purposes of this paragraph 13, any information, data, technical or commercial know-how, specifications, inventions, processes or initiatives disclosed at any time by or on behalf of a party (the "Disclosing Party") to the other party (the "Receiving Party"), shall be considered to be "Confidential Information" of the Disclosing Party, including but not limited to information concerning the Disclosing Party's business, products, services, data or information provided prior to the signature of this Agreement. The Customer's "Confidential Information" includes Customer Data and Tectrade's "Confidential Information" includes any information relating to Tectrade's systems (including information relating to Tectrade's third party suppliers and licensors relating to any part of the Tectrade systems).
- 13.2. Confidential Information does not include information that: is or becomes public knowledge other than as a direct or indirect result of any breach of confidentiality by the Receiving Party; or was known by the Receiving Party before the Confidential Information was disclosed to the Receiving Party by the Disclosing Party, or was independently and lawfully obtained by the Receiving Party from a third party who was not prohibited from making a non-confidential disclosure of the same to the Receiving Party, provided that in each case it has not been obtained in violation of, and is not otherwise subject to, any other obligation of confidentiality.
- 13.3. The Receiving Party shall keep in strict confidence all of the Disclosing Party's Confidential Information and shall: (i) not duplicate, reproduce, use or exploit the Confidential Information in any way except for the purpose of performing its obligations under the Contract; (ii) not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement; and (iii) apply the same security measures and degree of care to the Confidential Information as the Receiving Party applies to its own confidential information, which the Receiving Party warrants as providing adequate protection from unauthorised disclosure, copying or use.
- 13.4. The Receiving Party may disclose Confidential Information to such of its Representatives who need to know it for the purpose of discharging the Receiving Party's obligations under this Agreement or the Contract, provided that the Receiving Party shall ensure that such Representatives are subject to the same obligations of confidentiality which bind the Receiving Party and shall at all times be liable for the failure of any of its Representatives to comply with such confidentiality obligations.
- 13.5. The parties agree that Confidential Information may be disclosed where requested or required by any court or competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body or with the prior written consent of the other party.
- 13.6. On termination of the Contract, and at any time at the request of the Disclosing Party, the Receiving Party shall: (i) destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information; and (ii) erase all the Disclosing Party's Confidential Information from its computer systems or which is stored in electronic form (to the extent possible, provided that the Receiving Party may retain documents and materials containing the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Receiving Party to keep evidence that it has performed its obligations under the Contract. The confidentiality provisions of this Contract shall continue to apply to any documents and materials retained by the Receiving Party.
14. **General**
- 14.1. **Affiliates.** Tectrade may from time to time provide Services and/or Equipment through one of its Affiliates. Where it does so, that Affiliate shall have directly enforceable rights against the Customer pursuant to the Contract, and all references to Tectrade in the Contract shall be deemed to include reference to that Affiliate in such circumstances.
- 14.2. **Force Majeure.** No failure or delay by a party to perform its obligations in accordance with the Contract (excluding payment obligations) shall give rise to any claim by the other party or be deemed a breach of the Contract if such failure or delay results from any event of Force Majeure. A party affected by an event of Force Majeure shall: (i) notify the other party as soon as reasonable practicable after becoming aware that it is or is likely to be subject to an event of Force Majeure, detailing the nature of the event and its effect on the Contract; and (ii) take all reasonable steps that are within its power and control to minimise the effects of the Force Majeure and shall inform the other party promptly when the event of Force Majeure has passed. If either party is affected by an event of Force Majeure which prevents Tectrade from providing the Services or delivering Equipment in accordance with the terms of the Contract for a continuous period of more than 6 (six) weeks, the party not affected by the event of Force Majeure may terminate the Contract affected by the event of Force Majeure with immediate effect by giving written notice to the other party.
- 14.3. **Non Solicitation.** Neither party shall (unless with the written consent of the other party) at any time from the date of the Contract, nor within 12 (twelve) months after the termination of the Contract, make direct or indirect unsolicited offers of employment to an employee of the other party who has been engaged in a managerial or technical capacity in connection with the Contract without the prior written consent of the other party, provided always that nothing in this paragraph 14.3 shall prevent or restrict either party from: (i) running general recruitment campaigns not directed explicitly to any such employee of the other party; or (ii) from making offers of employment to any such employee who may respond to that campaign.
- 14.4. **Anti-bribery.** Each party shall comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010. The Customer shall comply with all applicable export, import and economic sanctions laws and regulations and all laws, statutes, regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 and including, without limitation, in connection with any use of the Software pursuant to the Contract.
- 14.5. **Rights and Remedies.** Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.6. **Variation.** No variation of this Agreement or the Contract shall be effective unless it is in writing and signed by each party (or their authorised representatives).
- 14.7. **Waiver.** No waiver by either party of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same or any other provision. A failure or delay by a party to exercise any right or remedy provided under this Agreement, a Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement, the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.8. **Severance.** If any provision or part-provision of this Agreement or the Contract is found by any court, governmental, regulatory or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision will not affect the other provisions of this Agreement or that Contract and all provisions not affected by such invalidity or unenforceability will remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid and unenforceable provision.
- 14.9. **Entire Agreement.** Each separate Contract together with the Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, proposals, discussions, negotiations, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Tectrade which is not set out in the Contract. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement or the Contract. Nothing in this paragraph 14.9 shall, however, operate to limit or exclude any liability for fraud.
- 14.10. **Assignment and Other Dealings.** Tectrade shall be entitled to sub-contract, assign or otherwise transfer this Agreement or the Contract or any of its rights and obligations under this Agreement or the Contract without the prior written consent of the Customer. The Customer may only sub-contract, assign or otherwise transfer this Agreement or the Contract with Tectrade's prior written consent.
- 14.11. **No Partnership or Agency.** Nothing in this Agreement or the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 14.12. **Third Party Rights.** Subject to paragraph 14.1, the parties confirm their intent not to confer any rights on any third parties by virtue of the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract. The Customer and Tectrade may vary, terminate or rescind a Contract without the consent of any third party.
- 14.13. **Public Announcements.** The Customer shall not make, or permit any person to make, any public announcement concerning the Agreement or any Contract without the prior written consent of Tectrade, except as required by law, any governmental or regulatory authority, any court or other authority of competent jurisdiction.
- 14.14. **Notices.** All notices required to be given in under or in connection with this Agreement and the Contract shall be in writing and shall be either: given by hand or sent by recorded delivery to the other party's registered office (if a company) or (in any other case) its principal place of business (or to another address notified in writing to the other party for such purposes after the date of this Agreement); or sent by email to the other party's email address. Any notice shall be deemed to have been duly received: (i) if delivered personally, when left at such address; (ii) if sent by recorded delivery, at the time recorded by the delivery service; or (iii) if sent by email, when it has been acknowledged by the other party. This paragraph 14.14 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any dispute resolution.
- 14.15. **Law and jurisdiction.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably submits to the exclusive jurisdiction of England and Wales, provided that nothing in this clause shall limit the right of Tectrade to take proceedings against the Customer in any other court of competent jurisdiction