



**TECTRADE COMPUTERS CORPORATION  
MASTER SERVICES AGREEMENT**

**THIS MASTER SERVICES AGREEMENT** (this “*MSA*”) is made as of [date] (the “*Effective Date*”) by and between

Tectrade Computers Corp. (“*Company*”), with principal offices located at 379 West Broadway, New York, NY 10012

[US Company Name] (“*Client*”), with principal offices located [address]

**AGREEMENT**

**1. Definitions.**

a. “*Additional Terms*” means any additional terms provided by Company to Client and/or attached to the Services Terms, as well as any other terms that may be attached to this Agreement during the Term of this Agreement.

b. “*Affiliates*” means in relation to a party to this Agreement at any time on or following the date of this Agreement: (a) any subsidiary, holding or parent entity of a party; or (b) any entity or person that owns more than fifty percent (50%) of the outstanding voting securities or equity interests of such party; or (c) any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such party (for the foregoing purposes, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting securities or other interests, by contract or otherwise). Without limiting the foregoing or providing a non-exhaustive recitation of either party’s Affiliates, Tectrade Computers Ltd., Tectrade Computers (IRE) Ltd., Computer Systems Integration Ltd., and APSU Inc. shall be considered Affiliates of Company

c. “*Agreement*” means this Master Services Agreement and the Services Terms, including any and all Additional Terms, Exhibits, and SOWs as may be attached hereto from time to time.

d. “*Commencement Date*” means the date indicated as such in any SOW being the date that SOW shall begin to have effect between the Parties. If no such date is given then it shall be the date of signature of the SOW by the Client

e. “*Equipment*” means the hardware sold and/or software licensed to Client as set forth in an attached SOW hereto, if any.

f. “*Initial Term*” means for the provision of Managed Services the term of three (3) years from the Commencement Date, unless the SOW contains a different term, and for the provision of Services means the term set out in the SOW which shall commence from the Commencement Date;

g. “**Licensed Software**” means all software (whether on premises or software-as-a-service) licensed or otherwise provided to Client, or to which Client is provided access, whether or not set forth in an SOW.

h. “**Premises**” means the location where Client has requested that Equipment be delivered or installed and/or Client’s place of business where Client has requested Company perform the Services, whether or not set forth in an applicable SOW hereto.

i. “**Services**” means the services, software, and/or hardware to be provided by Company to Client as described in this Agreement.

j. “**Services Terms**” means the Hardware and Software Terms, Managed Services Terms, and Professional Service Terms attached hereto as addendums.

k. “**SOW**” or “**SOWs**” means the Equipment Schedule, Statement of Work, Scope of Work, Quote, and/or Service Definition Document (“SDD”) that are attached to Services Terms attached hereto and executed between the parties during the term of this Agreement.

## 2. **Services.**

a. Agreement Terms. Company agrees to provide to Client the Services during the Term (as hereinafter defined). Client acknowledges and agrees that Company may, from time to time, provide Client with Additional Terms specific to certain Equipment (including but not limited to Licensed Software) or Services requested by Client, and that Client’s acceptance of such Equipment or Services shall be deemed to be acceptance of the applicable Additional Terms, regardless of whether Client signs or acknowledges such Additional Terms. In the event of a conflict between any Services Terms and Additional Terms, the provisions of the Additional Terms shall apply. All Services Terms, SOW(s), Additional Terms, and Exhibits attached hereto shall be incorporated into and deemed part of this Agreement as if fully recited herein. Notwithstanding anything to the contrary in this Agreement, the terms of this Agreement shall govern all Services provided by Company or its Affiliates to Client or its Affiliates, regardless of whether an SOW has been executed by the parties.

b. Order Confirmation Terms. Not limiting the generality of Section 2(a) above, Client acknowledges and agrees that by accepting any delivery of any or all Services rendered, tendered, and/or delivered under this Agreement, the terms and conditions of this Agreement shall control, irrespective of any contrary language that may have been provided or issued by Client in any of its or its Affiliates’ purchase orders or similar instruments.

c. Company Affiliates and Company Affiliate Liability. Each of Company’s Affiliates shall be entitled to and bound by all of the rights and obligations of Company under this Agreement and any and all such Company Affiliates are hereby authorized by the Client to provide Services to Client and/or any of the Client Affiliates (including sundry professional services and procurement functions) strictly pursuant to the terms of this Agreement and enforce this Agreement in their own name, provided that: 1) none of the Company Affiliates will be jointly and/or severally liable with, or for the acts or omissions of the Company; 2) none of the Company Affiliates will be jointly and/or severally liable with, or for the acts or omissions of

another Company Affiliate; and 3) Company shall bear sole responsibility and/or liability for any acts and omissions of any Company Affiliates that perform Services under this Agreement. In the event that any such Company Affiliate ceases to be a Company Affiliate, for any reason, it shall retain the benefit of this Agreement in connection with any existing SOW.

d. Client Affiliates and Authority to Bind Client Affiliates. By entering into this Agreement and as a material inducement for the Company to enter into this Agreement, Client hereby affirms, warrants, and agrees that it has the authority to bind each and every Client Affiliate, including any and all Client Affiliates that become Client Affiliates on or following the date of this Agreement, to the terms of this Agreement as if and in each instance such Client Affiliate is a direct signatory to this Agreement, including but not limited to this Section 2 and Section 12 and its included subsections. Accordingly, and for purposes of illustration only: 1) Services under this Agreement may be performed by Company on behalf of the Client, by and through Computer Systems Integration Ltd., with the direct beneficiary of such Services being the Client or Client Affiliates, and 2) in the event that the Client or Client Affiliates wishes to bring suit or commence a proceeding in connection with Services performed under this Agreement by Computer Systems Integration Ltd. and/or the Company, the claims contained within such suit and/or proceeding shall be solely directed to the Company, and the venue and jurisdiction of such suit and/or proceeding shall be subject to the terms and conditions of Section 12(f).

e. Change Orders. The Parties may agree to make modifications, changes or updates to an SOW or to the Services generally (a "Change Order" or "Change Orders"). Change Orders shall be dealt with in accordance with the following terms and conditions:

- i. Company or Client (and/or any of Client Affiliates (as applicable)) shall notify the other party, in writing of any proposed Change Orders. Client's notification to Company must specify the priority designated to the Change Order by Client and the urgency of such Change Order relative to any other Change Orders previously notified to Company which are then being considered and/or addressed by Company, as well as the requested changes to the applicable task, deliverable, responsibility, duty, budget, time line or other reasonably salient matter.
- ii. Company will, as soon as reasonably practicable, provide Client with a proposed price, cost, timeline, and fee quotation for the Change Order (whether proposed by Company or by Client), the reasonably practicable implementation date and the fees for all work to be undertaken by Company in connection with the Change Order, including project management, implementation and, if relevant, on-going provision of services. Once Company and Client have agreed to the scope and terms of the applicable Change Order as well as the price, cost, and fee quotation for the applicable Change Order, Company will send Client a notice of the



preliminarily agreed upon Change Order for approval and counter signature by the Client (and/or any of Client Affiliates (as applicable)).

- iii. Both Parties agree to act in good faith and promptly when considering a Change Order requested by the other party including any a notice of a preliminarily agreed upon Change Order. Without limiting the foregoing, Client agrees that it will not unreasonably withhold approval of notice of the preliminarily agreed upon Change Order, if the proposed changes in budgets or timelines result from, among other appropriate reasons, forces outside the reasonable control of Company or changes in the assumptions upon which the initial budget or timelines were based, including, but not limited to, the assumptions set forth in the budget or timelines and/or changes that affects the scope of Company's regulatory obligations. Company reserves the right to postpone effecting material changes in the SOW and/or Services' scope until such time as the parties agree in writing to and execute any corresponding notice of the preliminarily agreed upon Change Order.
- iv. As soon as the notice of the preliminarily agreed upon Change Order has been signed on behalf of both parties, the SOW and/or Services will immediately be deemed to have been modified in accordance with the terms of the executed notice of Change Order. The parties may alternatively agree a new SOW if the parties consider such approach to be a more appropriate method to document a Change Order.

### 3. Invoicing and Payment.

a. Payment. Company's fees and any additional payment terms for the Services may be set forth in one or more SOWs attached hereto (collectively, the "**Fees**"). Unless otherwise set forth in this Agreement or an applicable SOW, payment shall be due within thirty (30) days of Company's invoice therefor (the "**Due Date**"). All payments for Equipment and Services purchased in the U.S. shall be made in U.S. dollars by electronic funds transfer or wire transfer, payable to Tectrade Computers Corp. at the account designated by it. All payments for Equipment and Services purchased in the U.K. (if applicable) shall be made in pounds sterling (GBP) to Computer Systems Integration Ltd. at the account designated by it. Any unpaid amounts after the due date of any invoice issued to Client by Company shall accrue interest at a rate of one and one-third percent (1.3%) per month or the maximum legal rate, whichever is lower, until paid in full. Client shall be responsible for Company's costs of collection, including but not limited to collection agency and attorneys' fees, incurred by Company in its efforts to collect such amounts.

b. Disputes. Client shall notify Company of any disputed invoice no later than fourteen (14) days before the Due Date for payment of such invoice, providing full written details of the nature of the dispute specifying whether the dispute relates to the whole or only

part of the invoice. If a portion of an invoice is disputed, Client shall pay the undisputed portion of the Fees on or before the Due Date. The parties shall seek in good faith promptly to resolve any dispute that may arise relating to Fees.

c. Taxes. Client is responsible for paying all taxes applicable to receipt of the Services (including but not limited to any income and Value-Added Taxes), other than on the net income of Company. Payments hereunder shall be made without deduction for withholding taxes.

#### **4. Confidentiality.**

a. Confidential Information. Each party (“**Discloser**”) acknowledges that during the performance of its obligations under this Agreement, it may be required to disclose to the other party (“**Recipient**”) certain information that it regards as proprietary or confidential. As used in this Agreement, the term “**Confidential Information**” means information regarding Discloser’s trade secrets, personnel, products, customers, financial data, marketing and pricing strategies, services, business plans, methods, computer systems architecture, network configurations, any information which is governed by any now-existing or future non-disclosure agreement between the parties, and any other information which is or should reasonably be understood by Recipient to be of a confidential or proprietary nature. Recipient agrees that it will not use Confidential Information for any purpose not permitted under this Agreement and that it will not disclose any Confidential Information to anyone except an employee, agent or advisor (collectively, “**Representatives**”) who has a need to know same, and who (i) will be informed of the confidential nature of the Confidential Information and (ii) will treat such Confidential Information in full confidence and shall not reveal any Confidential Information to any other person, firm, organization or entity. Recipient will protect the Confidential Information in the same manner it protects its own confidential and proprietary information, but in no event shall such protection be less than a reasonable standard of care. The foregoing obligations shall not apply to the extent Confidential Information must be disclosed by Recipient to comply with any requirement of law or order of a court or administrative body (provided that Recipient agrees to notify Discloser of the issuance of such order as soon as practicable, to reasonably cooperate with Discloser (at Discloser’s expense) in its efforts to convince the court or administrative body to restrict disclosure), and to disclose only the portion of such information that it is legally required to disclose.

- b. Exclusions. “Confidential Information” does not include information that:
- i. is known to or in the possession of Recipient prior to its disclosure of information to Recipient hereunder, as evidenced by the Recipient's written records;
  - ii. is or becomes known or generally available to the public through no act or omission of Recipient or its Representatives in breach of this Agreement;



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- iii. is made available free of any legal restriction to Recipient by a third party;
- or
- iv. is independently developed by Recipient without use of or reference to Confidential Information.

c. Return or Destruction. Upon the Discloser's written request, the Recipient shall promptly either destroy or return to the Discloser all Confidential Information in its and its Representatives' possession.

5. **Licensed Software.** Client acknowledges and agrees that all Licensed Software is and shall remain the exclusive property of the applicable licensor, including but not limited to any copyright, trademark, trade secret, or patent rights contained therein. Client shall not (i) use any Licensed Software with external programs in a manner that intentionally circumvents contractual usage restrictions; (ii) license, sublicense, sell, resell, rent, lease, transfer, distribute, use for time sharing, or otherwise make any of the Licensed Software available for access by third parties; (iii) access Licensed Software for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Licensed Software; (iv) disassemble, decompile, translate or convert into human readable form or into another computer language, reconstruct or decrypt, or reverse engineer all or any part of the Licensed Software; (v) copy, create derivative works based on or otherwise modify Licensed Software, except as may otherwise be expressly authorized in writing; (vi) remove or modify a copyright or other proprietary rights notice on any Licensed Software; (vii) use the Licensed Software for the purpose of benchmarking, performance analysis or in any manner to compete with the business of licensor of the Licensed Software; (viii) use Licensed Software to create, use, send, store or run viruses or other harmful computer code, files, scripts, agents or other programs or otherwise engage in a malicious act or disrupt its security, integrity or operation, or (ix) use the Licensed Software in a manner other than for Client's internal business purposes or in breach of any applicable third party end user license agreement or other third party terms.

6. **Non-Solicitation.** During the Term of this Agreement and for a period of one (1) year thereafter, except within the terms of a specific prior written consent of the other party, neither party shall directly or indirectly solicit for employment any employee of the other party who is engaged in a managerial or technical position so long as they are employed by such party, except that the parties will not be precluded from hiring any such person who responds to a general public advertisement placed by it.

## 7. **Term and Termination.**

- a. Term.
  - i. The term of this Agreement shall commence on the Effective Date and continue until terminated in accordance with this Agreement.
  - ii. SOWs shall commence on the Commencement Date and continue for the duration of the Initial Term. On expiration of the Initial Term, each SOW will be



automatically renewed for successive 1-year periods unless and until it is terminated in accordance with this agreement (each period a “Renewal Term”).

iii. If this Agreement is terminated while one or more SOWs are still in progress, the terms and conditions of this Agreement shall survive with respect to such SOWs until termination or expiration of the same.

b. Termination.

i. This Agreement or any attached SOW may be terminated (a) by either party if the other party is in material breach of its obligations hereunder and such breach continues uncured for a period of thirty (30) days after written notice to the defaulting party setting forth the default with specificity, or (b) the other party makes a general assignment for the benefit of its creditors, appoints or has appointed a receiver, trustee in bankruptcy or similar officer to take charge of all or part of its property, files or has a petition filed against it in any bankruptcy (unless such petition is dismissed within sixty (60) days of its filing), and/or is adjudged insolvent or bankrupt.

ii. Either party may terminate any SOW on giving to the other not less than one hundred and eighty (180) days’ prior written notice of termination, provided that such termination may only take effect on the date of expiry of the Initial Term or then current Renewal Term of that SOW, and shall not affect any remaining SOWs, or this Agreement as a whole.

iii. This Agreement may be terminated by either party upon 30 days written notice if there are no longer any SOWs in progress

**8. Disclaimer of Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES, IF ANY, MADE BY COMPANY UNDER THIS AGREEMENT, COMPANY AND ITS LICENSORS, SUPPLIERS, AND THIRD PARTY PROVIDERS MAKE NO OTHER WARRANTIES RELATING TO THE SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY APPLICABLE SOW, INCLUDING BUT NOT LIMITED TO ANY EQUIPMENT OR LICENSED SOFTWARE, WHETHER EXPRESS OR IMPLIED. COMPANY DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE AND NON-INFRINGEMENT.

**9. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF COMPANY, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUPPLIERS FROM ANY CLAIM OF ANY NATURE ARISING FROM THIS MSA EXCEED ONE HUNDRED TWENTY PERCENT (120%) OF THE AMOUNT CLIENT ACTUALLY PAID OR OWES TO THE COMPANY FOR THE EQUIPMENT OR SERVICES GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTHS PRIOR TO THE CLAIM ARISING. NEITHER COMPANY NOR ANY OF ITS SUPPLIERS, LICENSORS, OR THIRD PARTY PROVIDERS



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SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OR FOR ANY LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF DATA OR LOSS OF USE ARISING OUT OF THIS AGREEMENT OR THE USE OF (OR INABILITY TO USE) THE SERVICES OR EQUIPMENT EVEN IF COMPANY OR LICENSOR HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY CLAIM BROUGHT MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION AROSE OR SHOULD HAVE BEEN DISCOVERED. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY. CLIENT SPECIFICALLY AGREES TO WAIVE THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IS KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." CLIENT HAS ACCEPTED THE LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES AS PART OF A BARGAIN TO LOWER THE FEES DUE TO COMPANY FOR THE SERVICES PROVIDED UNDER THIS AGREEMENT AND ANY APPLICABLE SOW. SUCH AMOUNTS WOULD BE HIGHER IF COMPANY WERE REQUIRED TO BEAR THE RISK OF ANY SUCH LIABILITY OR DAMAGES.

**10. Indemnification.** Each party shall defend, indemnify, and hold harmless the other party and its Affiliates from and against any and all liabilities, obligations, damages, deficiencies, costs and expenses, including reasonable attorneys' fees, for any damages to real or tangible personal property or injuries (including death) to persons arising out of the gross negligence or willful misconduct of the indemnifying party. Client shall further indemnify Company from and against any and all liabilities, obligations, damages, deficiencies, costs and expenses, including reasonable attorneys' fees arising out of Client's breach of any Additional Terms, including but not limited to any terms governing Licensed Software.

**11. Force Majeure.** Neither party shall be in breach of this Agreement, any Services Terms, or any SOW or responsible for damages caused by delay or failure to perform its obligations hereunder if such delay or failure is due to causes beyond the reasonable control of either of the parties including but not limited to fires, insurrection or riots, terrorism, embargoes, inability to obtain supplies, requirements or regulations of any civil or military authority; and any default by a third party supplier or contractor of either party that is itself subject to an analogous event that is beyond the reasonable control of such third party supplier (a "*Force Majeure*").

## 12. Miscellaneous.





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a. Equitable Relief. Client acknowledges that any breach or threatened breach of this Agreement involving an unauthorized use of Company or its licensors' intellectual property or confidential information will result in irreparable harm to Company for which damages would not be an adequate remedy, and therefore, in addition to its rights and remedies otherwise available at law, Company will be entitled to seek injunctive or other equitable relief, as appropriate, and Client hereby waives the right to require Company to post a bond. If Company seeks injunctive or other equitable relief in the event of a breach or threatened breach of this Agreement by Client, Client agrees that it will not allege in any such proceeding that Company's remedy at law is adequate. If Company seeks any equitable remedies, it will not be precluded or prevented from seeking remedies at law, nor will Company be deemed to have made an election of remedies.

b. Independent Contractor. Company is an independent contractor of Client and nothing in this Agreement will in any way be construed to constitute either party as a partner, joint venture, co-owner, employee, or agent of the other party.

c. Subcontractors. Company may retain subcontractors as in Company's reasonable judgment may be necessary to complete Company's duties and obligations under this Agreement. Company shall be solely responsible to pay any subcontractors engaged by it in connection with this Agreement.

d. No Public Announcement. Neither party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned, or delayed), except as required by law, any governmental or regulatory authority, any court, or other authority of competent jurisdiction.

e. Successors and Assigns. The rights and obligations of either party shall not be transferable without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. All obligations of the parties herein shall be binding upon their respective successors or assigns.

f. Choice of Laws; Venue. This Agreement shall be governed by, and its terms shall be construed in accordance with, the laws of the State of New York. Each party consents to the exclusive jurisdiction of the state and federal courts located in New York, New York to resolve all disputes, claims, or controversies arising out of or related to this Agreement, including but not limited to the performance or non-performance of any Affiliates. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or purchases hereunder. Each party further agrees that service of any process, summons, notice or document by registered mail to its address set forth above shall be effective service of process for any action, suit or proceeding brought against it under this Agreement.



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g. Waiver. No waiver or breach of any term or condition of this Agreement shall operate as a waiver of any other breach of such term or condition, or of any other term or condition, nor shall any failure to enforce any provisions hereunder operate as a waiver of such provision or any other provision hereunder.

h. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, except in those instances where removal or elimination of such invalid, illegal, or unenforceable provision or provisions would result in a failure of consideration under this Agreement, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

i. Survival. Sections 3, 4, 5, 6, 7, 8, 9, 10 and 12 shall survive termination of this Agreement.

j. Notices. All notices hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, one day after delivery to a nationally recognized overnight delivery service, charges prepaid, three days after being sent by registered or certified mail, postage prepaid, to the parties at their respective addresses set forth above, or to such other address as any party shall have specified by notice to the other in accordance with this Section.

k. Headings. Headings used in this Agreement are for the purpose of reference only and are not to be considered in construction or interpretation of this Agreement.

l. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including PDF) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

m. Entire Agreement; Amendment. This Agreement, including all attached Services Terms, SOWs, Additional Terms, and Exhibits, contains the entire Agreement between the parties relating to the subject matter hereof. All prior agreements and all prior negotiations, representations and communications relating to the same subject are superseded by this Agreement. As of the Effective Date, all goods and services provided by Company to Client, including but not limited to those services in progress as of the Effective Date pursuant to a prior agreement between the parties, shall be governed by the terms of this Agreement. This Agreement may not be modified other than by a written document signed by an authorized representative of each party.



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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives the day and year first set forth above:

**Company**

**Client**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## ADDENDUM 1

### SERVICES TERMS for Hardware and Software

These Hardware and Software Terms (these “**Terms**”) are attached to and incorporated into the Master Services Agreement (the “**MSA**”) dated [date] between Tectrade Computers Corp (“**Company**”) and [customer name] (“**Client**”). All terms not defined in these Terms shall have the definitions ascribed to them in the MSA. In the event of any conflict or inconsistency between the terms of these Terms and the MSA, the terms of the MSA shall govern.

#### 1. Definitions.

- a. “**Business Day**” means a day that is not a Saturday, Sunday, or federal holiday in the United States.
- b. “**Delivery**” means the delivery of the Equipment to the Delivery Premises.
- c. “**Delivery Date**” means the mutually agreed upon estimated date for Delivery to Client of Equipment, as may be set forth in an applicable Equipment Schedule attached hereto or otherwise communicated to Client.
- d. “**Delivery Premises**” means the location where Client has requested that Equipment be delivered or installed, as may be set forth in an applicable Equipment Schedule attached hereto or otherwise communicated to Company in writing.
- e. “**Equipment**” means the hardware and software set forth in an applicable Equipment Schedule attached hereto or otherwise provided by Company to Client at Client’s request.
- f. “**Equipment Fees**” means the sale price for the hardware and software set forth in an applicable Equipment Schedule attached hereto or otherwise communicated to Client.
- g. “**Equipment Schedule**” means the schedule of hardware purchased and/or software licensed to Client, as may be attached hereto from time to time.
- h. “**Third Party Terms**” means the third party end user license agreement, warranty agreement, or other agreement applicable to any Equipment purchased or licensed under any Equipment Schedule attached hereto, and which may be attached as an Exhibit to an applicable Equipment Schedule.

2. Delivery Date. All Delivery Date(s) are approximate and Client acknowledges and agrees that the date and time of Delivery is not of the essence. Company is not responsible for any loss, damage, cost or expense related to any delay in shipment or Delivery. If either party wishes to change the Delivery Date, it shall notify the other party in writing as soon as commercially reasonable, but no later than two (2) Business Days prior to the original Delivery Date. Company and Client shall mutually agree upon a new Delivery Date, which shall not be more than five (5) Business Days from the original Delivery Date.



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3. Delivery. Company shall use commercially reasonable efforts to consolidate the Equipment into a single delivery, however Company shall have no obligation to do so. Client shall be responsible for unloading the Equipment upon its arrival at the Delivery Premises. If Client does not accept delivery of the Equipment on the Delivery Date, other than as a result of Company's failure to deliver the Equipment in accordance with the terms of these Terms, Company shall invoice to Client, and Client agrees to pay, the cost of storage and insurance for the Equipment incurred by Company as a result of such failed delivery until Delivery is completed. If Delivery has not been completed within five (5) Business Days of the Delivery Date as set forth in the applicable Equipment Schedule, other than as a result of Company's failure to deliver the Equipment in accordance with the applicable Equipment Schedule, Company may resell or otherwise dispose of all or some of such Equipment and invoice Client for, and Client agrees to pay, all related costs and expenses, including but not limited storage and insurance costs.

4. Acceptance. If Client discovers (a) that Equipment has been damaged or lost during shipment, (b) the items delivered do not conform to the Equipment purchased as set forth in the applicable Equipment Schedule, or (c) any other damages or discrepancies, Client shall notify Company in writing within three (3) Business Days of Delivery. Unless Company timely receives notice of any damage or discrepancy in accordance with this Section 5, Client shall be deemed to have accepted the Equipment delivered and shall be responsible for payment of all applicable Fees.

5. Title and Risk of Loss. Delivery of Equipment shall be F.O.B. Delivery Point, and risk of loss shall pass to Client upon Delivery. Title shall pass to Client upon payment in full of all applicable Fees. Until such time as all applicable Fees have been received by Company, Client shall:

- a. hold the Equipment on a fiduciary basis as Company's bailee;
- b. not remove, deface or obscure any identifying mark on or relating to the Equipment;
- c. maintain the Equipment in satisfactory condition and keep it insured against all risks for their full price on Company's behalf from the date of Delivery;
- d. notify Company immediately if it becomes subject to any of the events listed in Section 7(b)(i)(a) of the MSA; and
- e. give Company such information relating to the Equipment as Company may require from time to time.

6. Resale of Equipment. Prior to the payment in full of the Equipment Fees set forth in these Terms, Client may resell or use the Equipment in the ordinary course of its business, provided that (a) any such contract of sale shall be in the name of Client, and (b) that the amounts received as a result of the sale of the Equipment shall be immediately paid to Company to the extent that Client owes Company any (i) Equipment Fees, and (ii) additional fees for Equipment storage, Equipment insurance, costs of collection, and other damages and expenses incurred by Company in connection with the Equipment and Client's breach of these Terms, the applicable Equipment Schedule, any Additional Terms, and/or the MSA, and (iii) any other

amounts owed by Client to Company under any other agreement between the parties. Client acknowledges and agrees it does not have the authority to enter into any contract on behalf of Company.

7. Return of Equipment. If Client becomes subject to any of the events listed in Section 7(b) of the MSA, or if Company reasonably believes that any such event will occur, and Client has not paid the Equipment Fees in full, and provided that the Equipment has not been resold or irrevocably incorporated into another product, Company may require Client to deliver the Equipment to Company. In addition to such other remedies that may be available to Company, Company shall have the right to enter the Premises, or any third party premises, for the purpose of recovering the Equipment if Client fails to deliver the Equipment to Company upon Company's demand therefor if an event listed in Section 7(b) has occurred or Company reasonably believes it is about to occur, or if Client fails to timely pay the Equipment Fee in full. Client shall indemnify and hold harmless Company and its directors, officers, employees, and agents in connection with its recovery of Equipment pursuant to the foregoing sentence.

8. Third Party Terms.

a. Equipment Delivered to Client hereunder may be subject to Third Party Terms, including but not limited to an end user license agreement, any other "click-wrap" terms, or other electronic notices supplied with such Equipment. Client hereby acknowledges and agrees that Client's use of such Equipment shall be subject to any applicable Third Party Terms regardless of whether such Third Party Terms are directly provided to Client by Company. Client hereby authorizes Company and/or its suppliers to accept any Third Party Terms on Client's behalf as an agent of Client in the performance of Company's obligations hereunder; provided, however, that neither Company nor its suppliers shall have any obligation to do so. Client acknowledges and agrees that Company is not a party to any such Third Party Terms, regardless of whether Company accepts such Third Party Terms on Client's behalf, and that Client is solely responsible for Client's compliance with such Third Party Terms.

b. If the manufacturer of the Equipment Delivered to Client hereunder has provided Client with warranties related to the Equipment under an agreement between Company and such manufacturer (each, a "**Warranty Agreement**"), Client acknowledges and agrees that the applicable Equipment manufacturer shall be solely responsible for the performance of the Warranty Agreement and the warranty provided thereunder, *provided however* that payment for the performance of the Warranty Agreement shall be in accordance with the terms of the Equipment Schedule.

9. Indemnification. Client agrees to indemnify and hold Company and its licensors, suppliers, and third party providers harmless from any claim or demand, including any and all losses, liabilities, claims, demands, damages, costs or expenses, causes of action, suits, proceedings, judgments, awards, executions, and liens, including reasonable attorneys' fees and costs, whether brought by third parties or otherwise, due to or arising out of: (i) Client's breach of any representation, warranty, covenant or obligation set forth in these Terms, (ii) Client's breach or any other violation of Client's agreement with any licensor, supplier, or third party

provider, including but not limited to the Third Party Terms; or (iii) Client's use of the Equipment. Client's indemnification obligations under this Section 9 shall survive termination of these Terms.

10. Invoice and Payment. All Equipment Fees, including but not limited to any storage and insurance fees, shall be invoiced to Client on or after Delivery of all Equipment. Client acknowledges and agrees that Company may increase the purchase price of Equipment at any time before Delivery upon written notice to Client if (i) there is an increase in the cost for Company to provide the Equipment to Client, or (ii) to reflect the correction of any inaccurate or incomplete information provided to Company by Client.

11. Equipment Schedule Accuracy. By executing an Equipment Schedule attached hereto, Client confirms that the Equipment, Delivery Date, Delivery Premises, and any other provisions set forth in the Equipment Schedule are complete and accurate. Under no circumstances shall Company be liable to Client for Client's error in confirming the provisions of an Equipment Schedule as set forth in the preceding sentence.

## **ADDENDUM 2**

### **SERVICES TERMS** **for** **Professional Services**

These Professional Services Terms (these “***Terms***”) is attached to and incorporated into the Master Services Agreement (the “***MSA***”) dated [date] between Tectrade Computers Corp (“***Company***”) and [customer name] (“***Client***”). All terms not defined in these Terms shall have the definitions ascribed to them in the MSA. In the event of any conflict or inconsistency between the terms of these Terms and the MSA, the terms of the MSA shall govern.

1. **Scope of Services.** During the Term, Company shall provide the services set forth in a Scope of Work, as may be attached hereto from time to time, or as may be otherwise provided by Company at Client’s request (collectively, the “***Professional Services***”).

2. **Fees.**

a. **Fees.** The fees for the provision of the Professional Services may be as set forth in an applicable Scope of Work attached hereto. Subject to Client’s written approval, Company may increase the fees at any time to reflect a rise in Company’s costs in providing the Professional Services or as a result of Client’s failure to comply with the provisions of these Terms, any Scope of Work, any Additional Terms, or the MSA, or modifications to the software, hardware, networks, equipment or other systems owned, leased, or otherwise used by Client, which Company interacts with or uses in any way in the course of providing the Professional Services, that are not implemented or recommended by Company.

b. **Expenses.** Company shall be entitled to reimbursement of pre-approved business expenses that are incurred in the furtherance of performing the Professional Services under this Agreement.

3. **Company License.**

a. **Limited License.** Company hereby grants Client, during the Term, a non-exclusive, non-transferable, revocable, limited license to use the Tectrade Tools, solely for Client’s internal business purposes and only to the extent necessary to enable Client to receive the Services. As used in this Section 3, “***Tectrade Tools***” means all Company processes, know-how, methods, and documentation, whether developed or created prior to, during, or after the Term of this Agreement. Company shall retain all rights in the Tectrade Tools, including but not limited to copyright, trademark, patent, and trade secret rights.

b. **Proprietary Rights.** All rights not expressly granted hereunder are reserved by Company or its licensors, and Client agrees that it does not acquire any rights, express or implied, therein, other than the licenses expressly set forth in this Agreement.





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c. **Ownership; Feedback.** Company and/or its licensors own, and shall continue to own, all right, title and interest in and to the Tectrade Tools, and any intellectual property developed in the course of providing the Professional Services or otherwise in connection with these Terms and any attached Scope of Work, as applicable, including but not limited to all patent, trademark, copyright, trade secret and all other intellectual property rights therein, including any and all improvements, enhancements or modifications thereto. To the extent Client provides Company with any ideas or other suggestions, whether or not patentable that directly concern enhancements, improvements or other changes to the Tectrade Tools, or any of Company's Confidential Information (such ideas or suggestions, "**Feedback**"), Company shall have all right, title and interest in and to such Feedback, and Client hereby assigns and agrees to assign to Company all right, title and interest in and to such Feedback.

4. **Disclaimer of Warranty.** COMPANY DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO THE PROFESSIONAL SERVICES OR ANY OTHER INFORMATION, PRODUCTS, OR SERVICES FURNISHED BY IT UNDER THESE TERMS, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT GUARANTEE THAT THE PROFESSIONAL SERVICES OR ANY OTHER INFORMATION, PRODUCTS, OR SERVICES FURNISHED BY IT UNDER THESE TERMS WILL BE ERROR-FREE, NON-INFRINGEMENT, OR CONTINUOUSLY AVAILABLE, OR FREE OF VIRUSES OR OTHER HARMFUL MATERIALS.

5. **Indemnification.** Client agrees to indemnify and hold Company and its licensors, suppliers, and third party providers harmless from any claim or demand, including any and all losses, liabilities, claims, demands, damages, costs or expenses, causes of action, suits, proceedings, judgments, awards, executions, and liens, including reasonable attorneys' fees and costs, whether brought by third parties or otherwise, due to or arising out of: (i) Client's breach of any representation, warranty, covenant or obligation set forth in these Terms (or any other violation of Client's agreement with any licensor, supplier, or third party provider); or (ii) Client's use of the Professional Services. Client's indemnification obligations under this Section shall survive termination of these Terms.

### ADDENDUM 3

#### SERVICES TERMS

#### for Managed Services

These Managed Services Terms (these “*Terms*”) is attached to and incorporated into the Master Services Agreement (the “*MSA*”) dated [date] between Tectrade Computers Corp (“*Company*”) and [customer name] (“*Client*”). All terms not defined in these Terms shall have the definitions ascribed to them in the MSA. In the event of any conflict or inconsistency between the terms of these Terms and the MSA, the terms of the MSA shall govern.

#### 1. Definitions.

a. “*Client Data*” means all information, images, text, files, materials, content and other data which is transferred to or otherwise processed by or on behalf of Company under these Terms, including any such data on Tectrade Systems or which is accessed or accessible by Company on Client Systems.

b. “*Client Premises*” means the premises owned or leased by a Client where the Managed Services are to be provided, as set forth in a SOW attached hereto.

c. “*Client Systems*” means any software, hardware, networks, equipment or other systems owned, leased, or otherwise used by Client, including but not limited to any equipment sold to Client by Company, that are not Tectrade Systems, which Company interacts with or uses in any way in the course of providing the Managed Services.

d. “*Excluded Circumstance*” means any unavailability, suspension or termination of the Managed Services, or any other Managed Services performance issues: (i) that result from a termination of these Terms as set forth herein or in a SOW or the MSA; (ii) caused by factors outside of Company’s reasonable control, including any Force Majeure event or Internet access or related problems; (iii) that result from any actions or inactions of Client, a User, or any third party; (iv) that result from Client’s equipment, software or other technology and/or third party equipment, software or other technology, other than Tectrade Systems; or (v) arising from Company’s suspension and/or termination of the Managed Services in accordance with these Terms, a SOW, or the MSA.

e. “*Managed Services*” means the services set forth in a SOW attached hereto or otherwise provided by Company pursuant to Client’s request.

f. “*Security Emergency*” means (i) use of the Managed Services that do or could disrupt the Managed Services, other clients’ use of the Managed Services, or the infrastructure used to provide the Managed Services and (ii) unauthorized third party access to the Managed Services.

g. “*Service Credit*”, if included in the Managed Services, means a dollar credit, calculated as may be set forth in a SOW attached hereto, that Company may credit back to Client for failure to meet any Service Levels.



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h. “**Service Definition Document**” means any Service Definition Document attached hereto describing the Managed Services to be provided to Client by Company, fees to be paid, and other key provisions.

i. “**Service Level**”, if included in the Managed Services, has the meaning set forth in a SOW attached hereto.

j. “**Tectrade Systems**” means any software, hardware, networks, equipment or other systems used, owned, or created by Company that stores or processes Client Data under these Terms, including any of the foregoing that have been rented to Client by Company, that are not Client Systems.

n. “**Third Party Terms**” means the third party end user license agreement, warranty agreement, or other agreement which may be attached as an Exhibit to a SOW.

k. “**User**” or “**Users**” means any individual or entity that directly or indirectly through another party: (i) accesses or uses Client Data; or (ii) otherwise accesses or uses the Managed Services under Client’s account.

2. **Services.** During the Term, Company shall provide the Managed Services as set forth in a SOW. If the Managed Services include the provision of IBM Spectrum Protect software, access to backup software agents will be limited to the agents set forth in an Exhibit A attached hereto.

### 3. Fees.

a. Fees. For the Managed Services, Client shall pay to Company the fees as set forth in a SOW attached hereto, or as may otherwise be agreed upon by the parties.

b. Expenses. Company shall be entitled to reimbursement of pre-approved business expenses that are incurred in the furtherance of performing the Managed Services.

### 4. License.

a. If Client is provided access to software as part of the Managed Services, Company hereby grants to Client a limited, non-exclusive, non-transferable license to use the software listed in the SOW (the “**Software**”) during the Term for the purposes of receiving the Managed Services. Client and the Users shall comply with all terms applicable to the Software, including but not limited to any Third Party Terms and any other "click-wrap" terms or other electronic notices supplied with such Software. Client hereby agrees to use its best efforts to prevent and protect the Software from unauthorized disclosure or use.

b. Ownership; Feedback. Company and/or its licensors own, and shall continue to own, all right, title and interest in and to the Tectrade Tools, and any intellectual property developed in the course of providing the Professional Services or otherwise in connection with these Terms and any attached Scope of Work, as applicable, including but not limited to all patent, trademark, copyright, trade secret and all other intellectual property rights therein, including any and all improvements, enhancements or modifications thereto. To the extent Client provides Company with any ideas or other suggestions, whether or not patentable that directly concern enhancements, improvements or other changes to the Tectrade Tools, or any of

Company's Confidential Information (such ideas or suggestions, "**Feedback**"), Company shall have all right, title and interest in and to such Feedback, and Client hereby assigns and agrees to assign to Company all right, title and interest in and to such Feedback.

## **5. Company Responsibilities.**

a. Company shall: (i) process Client Data in accordance with the written instructions of Client, including by not storing, transferring, or allowing Client Data to be accessed, other than in accordance with the provisions of any applicable data laws; (ii) take reasonable technical and organizational measures against unauthorized or unlawful processing of Client Data and against accidental loss or destruction of, or damage to, Client Data; and (iii) notify the Client as soon as reasonably practicable of any suspected data breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Client Data transmitted, stored or otherwise processed by Company or in Tectrade Systems. Company acknowledges and agrees that Client Data may be processed and stored outside of the United States of America. Company shall have no liability for any claim arising out of Company's storage, transfer, and processing of Client Data, to the extent that such claim arose from Company following Client's instructions.

b. If Company has installed any Tectrade Systems at the Client Premises, subject to Client's compliance with its obligations under Section 6 of these Terms, Company shall (i) properly maintain such Tectrade Systems; and (ii) remove the Tectrade Systems from the Client Premises within a commercially reasonable time frame after Client's written request, provided that Company shall have no liability for any failure to perform the Managed Services under these Terms as a result of its compliance with such request.

## **6. Client Obligations.**

a. Client acknowledges that the Company's ability to deliver the Managed Services is dependent upon Client's full and timely cooperation, as well as the accuracy and completeness of any information and data Client provides. Therefore, Client agrees that it shall: (i) provide the Company with access to, and use of, all reasonably required information, data, documentation, computer time, facilities, working space and office services; (ii) appoint a representative who shall act as a liaison with the Company, and have proper authority to commit the Client, be available at all times when Company's personnel are at the Client Premises (or designate an alternate with the same level of authority in the event of unavailability caused by illness or other reasons), and meet with the Company's representatives from time to time to review progress and resolve any issues relating to the Managed Services; (iii) be responsible for delays to the delivery of Managed Services caused by the Client or resulting from its failure to fulfill any of its obligations; and (iv) provide the Company with full access to the Client Systems, whether on the Client Premises or via remote access.

b. Client shall inform Company in writing in advance of any changes it proposes to make to the Client Systems that may impact Company's ability to provide the Managed Services (including but not limited to software upgrades, new operating systems, and patching of any

operating systems or any additions to or removals from the environment), and Company shall not have any liability in relation to failure to provide the Managed Services as a result of any such changes.

c. Client represents and warrants that it shall: (i) take reasonable care of all Tectrade Systems on the Client Premises and not damage, alter, tamper with, move, remove, replace or repair such Tectrade Systems without the prior written permission of Company, except for the purposes of protecting them from loss or damage or further loss or damage; (ii) inform Tectrade of any damage to, loss of or alterations to such Tectrade Systems, or any faults in the Tectrade Systems, without undue delay; (iii) maintain the Client Premises or any other location where Tectrade Systems or Client Systems reside at its own cost and as may be reasonably specified by Tectrade from time to time; (iv) provide at its own cost an adequate electricity supply and suitable earth connections for such Tectrade Systems or Client Systems; (v) not remove, alter or obscure any labels or markings on the Tectrade Systems which identify Company or a third party owner; (vi) not charge, mortgage or otherwise encumber such Tectrade Systems; (vii) take reasonable steps to ensure that the Tectrade Systems and/or Client Systems are operated in a proper manner in accordance with Company's directions, and (viii) obtain all necessary consents, licenses and permissions with respect to the Client Premises and Client Systems to enable Company to perform the Managed Services.

## **7. Client Data and Users.**

a. Ownership of Client Data. Client hereby acknowledges that Client bears the entire and sole responsibility for the accuracy, reliability, usefulness, completeness, and contents, of any and all Client Data, including but not limited to any loss, liabilities or damages that arise or result from the Client Data (without limiting the foregoing, Client is solely responsible for properly handling and processing notices sent to Client, Users, or any of Client's affiliates by any person claiming that Client Data violates such person's rights). As between Client and Company, Client or Client's licensors own all right, title, and interest in and to Client Data. Except as otherwise provided in this Agreement, Company obtains no rights from Client or Client's licensors to Client Data, including any related intellectual property rights. Client consents to Company's use of Client Data to provide the Managed Services and hereby grants to Company a worldwide, royalty-free, and non-exclusive right to use the Client Data solely for the purpose of enabling Company to provide Client with the Managed Services.

b. Client Representations and Warranties. Client hereby represents and warrants that Client owns or has the necessary rights to send, upload, transmit, provide or otherwise disclose the Client Data to Company and the Tectrade Systems, and the provision of the Client Data to, and use of the Client Data by, with, or through the Managed Services under the MSA and these Terms will not (i) violate or infringe any third party intellectual property rights, or other rights, including but not limited to privacy, copyright, patent, trademark or trade secret rights, or (ii) violate any applicable data privacy laws or regulations. Client hereby further represents and warrants that the Client Data: (iii) does not and will contain any viruses, worms, malware, "Trojan horses" or any generally harmful, malicious, or destructive code; and (iv) is not spam, is

not generated by any bots or harmful software, and does not contain unethical or unwanted commercial content designed to drive traffic to third party sites or boost the search engine rankings of third party sites, or to further unlawful acts (for example and without limitation, “phishing”) or mislead recipients as to the source of the material (for example and without limitation, “spoofing”).

c. User and Client Compliance. Client is solely responsible for all Users’ use of any Client Data and the Managed Services. Client will ensure that all Users comply with Client’s obligations under this Agreement and that the terms of any agreement between Client and a User are consistent with this Agreement. If Client becomes aware of any violation of Client’s obligations under this Agreement by a User, Client will immediately terminate such User’s access to Client Data and the Managed Services. Client hereby understands and agrees that at all times Company reserves the right (but does not assume the obligation), to be exercised in its sole discretion in the event it deems Client to be in violation this Agreement, in Company’s sole discretion, either to (i) delete or remove any Client Data from Tectrade Systems for any reason; or (ii) terminate or deny access to and use of the Managed Services to Client or any other party, for any reason.

d. Loss of Client Data. If, during the Term of these Terms, Client Data is lost as a direct result of Company’s breach of this term of these Terms or the MSA, Company’s total liability for such loss shall be limited to: (i) the cost for Company to restore the lost Client Data itself; or (ii) the reasonable value of the lost Client Data, as determined solely by Company based upon Client’s demonstrable proof of its value. The foregoing shall be subject to and fall within the aggregate liability cap set forth in Section 13 of these Terms.

## 8. Tectrade Systems.

a. Any Tectrade Systems installed by Company or a third party at the Client Premises as part of the Managed Services under these Terms shall at all times remain in the ownership of Company or the applicable third party owner. Client shall not acquire any rights of ownership in or title to any such Tectrade Systems. Upon completion of installation until the commencement of removal of the Tectrade Systems from the Client Premises (the “*Installation Period*”), Client shall be fully responsible for any loss of or damage to the Tectrade Systems that is not caused by Company or its agents. Client shall insure any Tectrade Systems hardware on the Client Premises at its own cost against fire, theft and all other usual and insurable risks (including loss or damage caused by an event of Force Majeure), and shall provide Company with a copy of the relevant policy of insurance on Company’s request. In the event of any damage to or loss of any Tectrade Systems during the Installation Period (other than damage or loss caused by Tectrade or any of its Representatives), Client shall pay to Company the cost of repairing or replacing (as applicable) the applicable Tectrade Systems regardless of whether or not such costs are actually recoverable by Client under any insurance policy.

b. If any Client Premises where Tectrade Systems are located are leased by Client and the landlord of such Client Premises is or becomes entitled to place a lien or similar charge on the Tectrade Systems (or any part of it), Client shall make all commercially reasonable efforts

to assist Company in procuring a waiver of such rights from the applicable Client Premises landlord.

9. **Service Credits.** If Service Credits are included in the Managed Services, Company shall either issue the Service Credit to the credit card or bank account used to pay for the billing cycle in which the failure occurred or deduct the Service Credit from a future invoice, except that Service Credits will not be payable by Company if the Service Levels have not been met due to or as a result of an Excluded Circumstance. Service Credits may not be transferred or applied to any other account, and shall not entitle Client to any other refund or payment from Company. Client's sole and exclusive remedy for any unavailability, non-performance, or other failure by Company to provide Managed Services is the receipt of a Service Credit, if applicable, or termination of these Terms pursuant to Section 11 of these Terms.

10. **Suspension.** Company may suspend the Managed Services in the event that Client (a) violates or breaches these Terms, a SOW, any Additional Terms, or the MSA; or (b) uses the Managed Services in any manner that Company reasonably believes will cause harm to or otherwise damage Company or the Managed Services. Notwithstanding anything to the contrary in these Terms, a SOW, or the MSA, if there is a Security Emergency, then Company may automatically suspend use of the Managed Services. Company will make commercially reasonable efforts to narrowly tailor the suspension as needed to prevent or terminate the Security Emergency.

## 11. Termination.

a. In addition to termination under Section 7 of the MSA, Client may elect to terminate these Terms if Company fails to make the Managed Services available for a period in excess of twenty-four (24) consecutive hours on three (3) occasions in any period of three (3) consecutive months (such third occasion, the "**Optional Termination Date**") by serving written notice of termination to Company within twenty-eight (28) days of the Optional Termination Date (the "**Termination Notice**"). If Company timely receives a valid Termination Notice from Client pursuant to this Section, these Terms shall terminate upon the twenty-eighth (28<sup>th</sup>) day after the Optional Termination Date. Client shall be deemed to have waived its right to terminate these Terms as to the applicable Optional Termination Date under this Section if it does not timely send a Termination Notice. Client shall not be entitled to terminate these Terms under this Section if (i) the Managed Services have been suspended pursuant to Section 10 of these Terms, above, or (ii) if included in the Managed Services, the Client is not eligible to receive Service Credits pursuant to the terms of these Terms.

b. Upon termination of these Terms, Client shall have twenty-eight (28) days from the effective date of termination to remove and/or transfer the Client Data from the Tectrade Systems. Client is solely responsible for ensuring that it has made all copies of the Client Data that it requires during this time, and Company shall have no liability for Client's failure to do so.

c. Upon termination of these Terms, Client shall immediately provide Company and its agents with full, safe and uninterrupted access to any Client Premises where Tectrade Systems

are located and to any relevant Client Systems, for the purposes of allowing decommissioning and removal of the Tectrade Systems by Company or its agents. Notwithstanding the foregoing, if Company provides data management and storage services to Client, Client shall have twenty-eight (28) days from the effective date of termination to provide access to the applicable Client Premises to Company or its agents. Client shall not be entitled to deny Company or its agents such access by reason of any dispute. Company shall use commercially reasonable efforts to remove all Tectrade Systems from the Client Premises within fourteen (14) days of the date from which the Client has provided Company or its agents with all necessary access as required under this Section. Upon termination, Company may agree to, or assist Client with, the purchase or rental of any hardware and licensing of any software provided under these Terms, pursuant to a separate written between the parties.

12. **Disclaimer of Warranty.** ALL MANAGED SERVICES ARE PROVIDED TO CLIENT “AS IS,” “WITH ALL FAULTS,” AND “AS AVAILABLE” BASIS. COMPANY DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO THE MANAGED SERVICES, SOFTWARE, OR ANY OTHER INFORMATION, PRODUCTS, OR SERVICES FURNISHED BY IT UNDER THESE TERMS, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT GUARANTEE THAT THE MANAGED SERVICES, SOFTWARE, OR ANY OTHER INFORMATION, PRODUCTS, OR SERVICES FURNISHED BY IT UNDER THESE TERMS WILL BE ERROR-FREE, NON-INFRINGEMENT, OR CONTINUOUSLY AVAILABLE, OR FREE OF VIRUSES OR OTHER HARMFUL MATERIALS.

13. **Indemnification.** Client agrees to indemnify and hold Company and its licensors, suppliers, and third party providers harmless from any claim or demand, including any and all losses, liabilities, claims, demands, damages, costs or expenses, causes of action, suits, proceedings, judgments, awards, executions, and liens, including reasonable attorneys' fees and costs, whether brought by third parties or otherwise, due to or arising out of: (i) Client's breach of any representation, warranty, covenant or obligation set forth in these Terms or any Additional Terms (or any other violation of Client's agreement with any licensor, supplier, or third party provider); or (ii) Client's use of the Managed Services. Client's indemnification obligation under this Section shall survive termination of these Terms.

14. **Transition Assistance.** Company may provide assistance to Client in the transitioning of some or all of the Managed Services to a third party service provider. Such transition services shall be subject to a separate written agreement between the parties and shall be performed at Company's then-current rates.



**Exhibit A**  
**Summary of Backup Agents**

**Spectrum Protect Products Included**

[IBM Spectrum Protect Extended Edition](#)

Enhanced storage management software that expedites disaster recovery

[IBM Spectrum Protect for Databases](#)

Security for your Informix®, Oracle and SQL Server data

[IBM Spectrum Protect for Mail](#)

An e-mail protection software module for Tivoli Storage Manager

[IBM Spectrum Protect for Enterprise Resource Planning](#)

Storage management software for protecting your vital SAP system data

[IBM Spectrum Protect for Storage Area Networks](#)

LAN-free backup and restore

[IBM Spectrum Protect for Advanced Copy Services](#)

Ready-to-use, product-based solutions for high-efficiency backups and restores

[IBM Spectrum Protect Fastback](#)

Seamless data protection and recovery for critical Windows applications

[IBM Spectrum Protect Fastback for exchange](#)

Seamless data protection and recovery for critical Windows applications

[IBM Spectrum Protect for Virtual Environments](#)

Improved backup performance for VMware

**Spectrum Protect Products Excluded**

[IBM Spectrum Protect for Microsoft SharePoint](#)

Policy-based backup and recovery for your Microsoft® SharePoint data

[IBM Spectrum Protect for Space Management](#)

Software that moves inactive data to reclaim online disk space for important active data

[IBM Spectrum Protect HSM on Windows](#)

Hierarchical storage management software for automatically migrating rarely used files to lower cost storage

[IBM System Storage Archive Manager](#)

Storage management software for facilitating regulatory compliance

[IBM Spectrum Protect for System Backup and Recovery](#)

A flexible backup method for your AIX® system