

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

Contract Title: Synthetic Test and Unified Demonstration System

Contract Reference: ORE/20/69

1. DEFINITIONS & INTERPRETATION

1.1 In these Conditions the expressions below shall have the following meanings unless inconsistent with the context:

Acceptance Certificate: the certificate to be signed by ORE Catapult under Condition 10.1(a).

Acceptance Date: the date on which the Acceptance Certificate is issued by ORE Catapult under Condition 10.1(a).

Acceptance Tests: tests of the Contractor Software after installation to be agreed in accordance with 9.

Acknowledgement: the duly signed copy of ORE Catapult's written acceptance of the Proposal returned to ORE Catapult by the Contractor to acknowledge the Contractor's Contract to the terms of the Contract.

Affiliate: includes, in relation to either Party, each and any subsidiary or holding company of that Party and each and any subsidiary of a holding company of that Party.

Bespoke Software: Software programs developed by the Contractor specifically for ORE Catapult under this Contract.

Contract Change Note: as set out in Condition 13.3.

Commencement Date: the date as set out in Condition 2.2.

Completion Date: the estimated date specified in the Scope of Works, or as otherwise agreed between the parties in writing, by which the Contractor is to provide the Software Module ready for service.

Conditions: these terms and conditions as amended from time to time.

Confidential Information: information of commercial value, in whatever form or medium, disclosed by the Party (or any of its Affiliates) to the other Party (or any of its Affiliates), including commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to ORE Catapults, pricing and marketing and, for clarity, including (in the case of the Contractor's information) information relating to the Application, the Contractor Software or any of its constituent parts, the Source Code relating to the Contractor Software or any such parts.

Contract: the Contract between ORE Catapult and the Contractor consisting the Scope of Works, the Proposal, these Conditions, ORE Catapult's written acceptance of the Proposal and the Acknowledgement.

Contractor: the person or firm from whom ORE Catapult purchases the Services.

Contractor Representative: a person duly authorised by the Contractor to act on its behalf for the purposes of this Contract and identified to ORE Catapult by written notice from the Contractor.

Contractor Software: Contractor Standard Software, the Third-Party Software, the Modified Software and the Bespoke Software including any firmware where relevant.

Contractor Standard Software: Software programs proprietary to the Contractor which are to be provided to ORE Catapult without modification.

Defect: an error in the Supported Software that causes it to fail to operate in accordance with the relevant Documentation.

Documentation: the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied by the Contractor.

Installation Date: the estimated date by which the Contractor will complete installation of a specified Software Module as agreed between the parties to allow any completion or milestone dates to be met in accordance with the Scope of Work.

Intellectual Property Rights: all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now or in the future subsist anywhere in the world, including the right to sue for and recover damages for past infringements in accordance with Condition 25.

Licence: the licence granted under Condition 15.

Licensed Purposes: bears the meaning given in Condition 15.1.

Licensed Software: Contractor Software (except the Third-Party Software, the Modified Software and the Bespoke Software) and all subsequent amendments and updates to, or new versions of, such Contractor Software as may be provided under the Contract.

Licensed Users: the employees and agents of ORE Catapult who use the Licensed Software, up to the maximum number specified if any in the Scope of Works.

Modified Software: Software programs which in their original form are proprietary to the Contractor and/or third Parties, but which are to be modified for the benefit of ORE Catapult under this Contract.

New Releases: a new release of all or any part of the Supported Software suitable for use by ORE Catapult in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added.

New Version: a new version of the Licensed Software released by the Contractor after the Acceptance Date which provides additional and/or improved functionality and/or performance.

Normal Working Hours: the hours 08:30am to 17:00pm GMT, Monday to Friday, except English and Scottish Bank Holidays.

ORE Catapult: Offshore Renewable Energy Catapult, (Company Number 04659351) whose registered office is Offshore House, Albert Street, Blyth, Northumberland, NE24 1LZ or any of its subsidiaries including ORE Catapult Development Services Limited (Company Number 5636283).

ORE Catapult Representative: a person duly authorised by ORE Catapult to act on its behalf for the purposes of this Contract or any order.

Party or Parties: both ORE Catapult and the Contractor in the Contract.

Pre-Installation Test Plan: the document prepared as provided in Condition 7.2(a)

Pre-Installation Tests: the tests to be carried out on the Software before delivery to the Site(s) as provided for in Condition 7.

Price: the sum(s), exclusive of VAT, payable by ORE Catapult, as set out in the Purchase Order and/or Purchase Order Amendment for the Work, Training, Support Services and the Licence(s) in accordance with Condition 12.

Project Manager: the Contractor employee who has overall responsibility for the Services.

Ready for Service: installed, tested and having passed or deemed to have passed the Acceptance Tests under Condition 9.

Scope of Service: the specification agreed between ORE Catapult and the Contractor which sets out ORE Catapult's business requirements regarding the Contractor Software.

Services: the services, including, without limitation, any deliverables to be provided by the Contractor under this Contract, including the Support Services if requested by ORE Catapult.

Site(s): the location(s) at which the Contractor Software is to be installed and training to be delivered.

Software: The programs and other operating information supplied by the Contractor to ORE Catapult under this Contract.

Software Delivery Date: the estimated delivery date as agreed between the parties to allow any completion or milestone dates within the Scope of Work to be met, on which the Contractor will deliver a Software Module to the Site(s).

Software Module: any one of the individual Software programs in the Contractor Software.

Source Code: the source code of the Software to which it relates, in the language in which the Software was written, together with all related flow charts and technical documentation, all of a level sufficient to enable ORE Catapult's development personnel to understand, develop and maintain that Software.

Support Services: the services to be provided by the Contractor under this Contract and any data migration referred to in the Scope of Works.

Supported Software: Contractor Software programs and all subsequent amendments and updates to, and New Releases of, such programs.

Term: the period described in Condition 28.1.

Termination Date: the date of Termination of the Contract, howsoever arising.

Third-Party Software: the Software programs proprietary to third Parties which are to be provided to ORE Catapult without modification.

- 1.2 References to any statute or statutory provision shall include any subordinate legislation made under it, and any subsequent legislation that adds to or replaces it.
- 1.3 The descriptive headings to Conditions, schedules and paragraphs are inserted for convenience only, have no legal effect and shall be ignored in the interpretation of these Conditions.
- 1.4 Words importing the singular include the plural and vice versa, words importing a gender include every gender and reference to persons include an individual, company, corporation, firm, partnership, unincorporated association or body of persons.
- 1.5 The words and phrases “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.
- 1.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.7 A reference to a Party or Parties includes its personal representatives, successors or permitted assigns;
- 1.8 A reference to **writing** or **written** includes faxes and e-mails

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by ORE Catapult to purchase Services in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
 - a) ORE Catapult issuing a written letter of engagement; or
 - b) the Contractor issuing written acceptance of the Order; or
 - c) any act by the Contractor consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (Commencement Date).

- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SUPPLY OF SERVICES

- 3.1 The Contractor shall from the Commencement Date and for the duration of this Contract provide the Services to ORE Catapult in accordance with the Terms of the Contract.

- 3.2 The Contractor shall meet any performance dates for the Services specified in the Scope of Works or notified to the Contractor by ORE Catapult in writing.

- 3.3 In providing the Services, the Contractor shall:

- a) co-operate with ORE Catapult in all matters relating to the Services and comply with all instructions of ORE Catapult;
- b) perform the Services with all reasonable care, skill and diligence in accordance with best practice in the Contractor's industry, profession or trade;
- c) use personnel who are suitably skilled and experienced to perform the Services and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with this Contract;
- d) ensure that the Services will conform with all descriptions and specifications set out in the Scope of Works, and that the deliverables shall be fit for any purpose expressly or impliedly made known to the Contractor by ORE Catapult;
- e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- f) use the best quality goods, materials, standards and techniques, and ensure that the deliverables, and all goods and materials supplied and used in the Services or transferred to ORE Catapult, will be free from defects in workmanship, installation and design;
- g) obtain and at all times maintain, all necessary licences and consents, and comply with all applicable laws and regulations;
- h) observe all health and safety rules and regulations and any other security requirements that apply at any of ORE Catapult's Sites;
- i) hold all materials, equipment and tools, drawings, specifications and data supplied by ORE Catapult to the Contractor in safe custody at its own risk, maintain ORE Catapult materials in good condition until returned to ORE Catapult, and not dispose or use ORE Catapult materials other than in accordance with ORE Catapult's written instructions or authorisation;
- j) not do or omit to do anything which may cause ORE Catapult to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Contractor acknowledges that ORE Catapult may rely or act on the Services; and

- 3.4 The Contractor grants the Licence and shall supply the Software, the Documentation and the Services to ORE Catapult in accordance with the Contract.

- 3.5 If control of an entity, or a division or department within an entity that is included within the definition of the "ORE Catapult" or an "Affiliate" is sold or otherwise transferred to one or more unrelated third Parties, such entity, shall nevertheless continue to enjoy the Licence for one (1) year after the Commencement Date of such transfer, provided that the legal entity assuming control agrees in writing to be bound by this Contract.

4. CONTRACTOR PERFORMANCE

- 4.1 The Contractor shall perform the Services with all reasonable skill, care and diligence and in accordance with the Scope of Works and any legislative or statutory requirements. ORE Catapult's rights under these Conditions are in addition to any statutory terms implied in favour of ORE Catapult by the Supply of Goods and Services Act 1982 and any other applicable statute.
- 4.2 The Contractor shall provide all necessary facilities, materials and any other equipment, and personnel of appropriate qualifications and experience to undertake the provision of the Services. All personnel deployed on work relating to the Contract shall have appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to ORE Catapult.
- 4.3 The Contractor shall comply with any rules, regulations and any safety and security instructions from ORE Catapult and procure such compliance from all personnel deployed on work relating to the Contract.
- 4.4 Time of performance of the Contractor's obligations shall be of the essence of the Contract. Accordingly, in the event that at any stage the Services or any part of them, are not performed or delivered on time, then ORE Catapult shall be entitled to terminate the Contract and the provisions of Condition 31 shall apply.
- 4.5 If the Contractor fails to comply with the provisions set out in this Condition when performing the Services, ORE Catapult shall be entitled to avail itself of any one or more remedies listed in Condition 31.

5. SOFTWARE AND DOCUMENTATION

- 5.1 The Contractor shall carry out the Services with all reasonable skill care and diligence, to provide the Software to meet the Scope of Works by the Completion Date and in accordance with this Contract.
- 5.2 The Contractor shall provide the Third-Party Software to ORE Catapult under the licence terms provided by the relevant third Parties, copies of which shall be provided to ORE Catapult, and ORE Catapult agrees to be bound by such licence terms.
- 5.3 not used.
- 5.4 The Contractor shall provide to ORE Catapult, from time to time, copies of the Documentation containing sufficient up-to-date information for the proper use and maintenance of the Software Module. Such Documentation may be supplied in electronic form.

- 5.5 ORE Catapult may make such further copies of the Documentation as is reasonably necessary for the use and maintenance of the Software and for training ORE Catapult's personnel in use of the Software. ORE Catapult shall ensure that all of the Contractor's proprietary notices are reproduced in any such copy.
- 5.6 ORE Catapult may provide copies of the Documentation to any third Party who needs to know the information contained in it, provided that such third Party is subject to enforceable confidentiality obligations.

6. SERVICES

- 6.1 The Contractor shall develop the Bespoke Software and make modifications to create the Modified Software in accordance with the requirements of the Scope of Works.
- 6.2 The Contractor agrees:
 - (a) to deliver and install the Software at the Site(s);
 - (b) to carry out, in conjunction with ORE Catapult, the Acceptance Tests; and
 - (c) to provide the Software, Ready for Service by the Completion Date.
- 6.3 If requested to do so by ORE Catapult, the Contractor shall:
 - (a) promptly enter into a Software maintenance and support agreement in a form to be agreed between the Parties;
 - b) provide the training specified in the Scope of Works;
 - (d) provide ORE Catapult with disaster recovery and business continuity services in accordance with this Contract.
- 6.4 Time shall be of the essence regarding any date for delivery by the Contractor of any good or service specified in this Contract.

7. PRE-INSTALLATION TESTING

- 7.1 Before delivering any item of Contractor Software or Third-Party Software to the Site(s), the Contractor shall carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the Scope of Works once properly installed.
- 7.2 The Contractor shall carry out the Pre-Installation Tests on the Modified Software and Bespoke Software before delivery to the Site(s) in accordance with the following provisions:

- (a) ORE Catapult shall deliver to the Contractor proposed user acceptance criteria and test data for the Pre-Installation Tests for each module of Modified Software and Bespoke Software. These criteria and data shall be such as are reasonably required to show that each module complies with the relevant parts of the Scope of Works. The Contractor shall provide ORE Catapult with assistance to prepare such user acceptance criteria and test data at ORE Catapult's request. The Parties shall use all reasonable endeavours to agree the Pre-Installation Tests for each module within ten (10) days from the date of delivery to the Contractor of the proposed criteria and data;
- (b) Within a reasonable time before the Software Delivery Date for each Software Module, the Contractor shall carry out the agreed Pre-Installation Tests for the appropriate Software Module. The Contractor shall give ORE Catapult at least twenty-four (24) hours' notice of the start of the Pre-Installation Tests and permit ORE Catapult to observe all or any parts of the testing; and
- (c) if the Software Module fails to pass the Pre-Installation Tests, the Contractor shall remedy the defects and deficiencies, and the relevant test(s) shall be repeated within a reasonable time.

7.3 If the Software Module fails, in some material respect, to pass the Pre-Installation Tests within four (4) weeks from the date of its second Pre-Installation Tests, then ORE Catapult may, by written notice to the Contractor, choose at its sole discretion to specify (without prejudice to ORE Catapult's other rights and remedies) a new date for carrying out further tests on the Software Module on the same terms and conditions as are set out in Condition 7.2. If the Software Module fails such further tests, then ORE Catapult may:

- (a) request a repeat test under this Condition 7;
- (b) permit installation of the Software Module subject to such change of acceptance criteria, amendment of the Scope of Works and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable; or
- (c) if the Contractor is unable to correct material defects within a period of one (1) month from the start of Pre-Installation Tests under Condition 7.2(b), reject the Software Module as not being in conformity with this Contract, and terminate this Contract.

8. SOFTWARE DELIVERY, INSTALLATION AND DELAYS

- 8.1 The Contractor shall deliver each Software Module to the Site(s) by the applicable Software Delivery Date.
- 8.2 The Contractor shall supply to ORE Catapult, within a reasonable time before any Software Delivery Date, such information and assistance as may be necessary to enable ORE Catapult to prepare the Site(s) for the installation of the relevant Software Module.
- 8.3 ORE Catapult shall, at its own expense, prepare the Site(s) in accordance with the reasonable information

provided by the Contractor in advance of each Software Delivery Date. ORE Catapult may request reasonable assistance from the Contractor to carry out such preparation.

- 8.4 The Contractor shall deliver each Software Module to the Site(s) on or before the Software Delivery Date.
- 8.5 The Contractor shall complete installation of each Software Module at the Site(s) by the Installation Date.
- 8.6 ORE Catapult shall be responsible for ensuring that each item of ORE Catapult hardware is installed and is in working order and available to the Contractor by a date to be agreed between the parties in writing (acting reasonably).
- 8.7 If any delivery is delayed at the request of, or because of the acts or omissions of, ORE Catapult, dates agreed between the parties or as set out in the Scope of Works shall be amended to take account of such delay in accordance with Condition 10.5. If the Contractor can demonstrate by documentary evidence that the delay has resulted in an increase in cost to the Contractor of carrying out its obligations under this Contract, the Contractor may notify ORE Catapult that it wishes to increase the Price by an amount not exceeding any such demonstrable cost. No later than seven (7) working days after receipt of such notification, ORE Catapult shall notify the Contractor whether it agrees to such increase in the Price. If ORE Catapult does not agree, the question of whether the Contractor is entitled to an increase in the Price and, if so, the amount of such increase, shall be determined under Condition 38 (Dispute Resolution).
- 8.8 If there is a delay regarding the date when the Software is scheduled to be Ready for Service and such delay is caused by the acts or omissions of the Contractor or any third Party manufacturer, the Contractor shall pay to ORE Catapult any reasonable costs that ORE Catapult can demonstrate it incurred as a direct result of such delay.

9. ACCEPTANCE TESTS

- 9.1 ORE Catapult shall deliver to the Contractor proposed user acceptance criteria and test data for the Acceptance Tests for the Contractor Software. These criteria and data shall be such as are reasonably required to show that the Contractor Software complies with the Scope of Works. The Contractor shall provide ORE Catapult with reasonable assistance to prepare such user acceptance criteria and test data at ORE Catapult's request. The Parties shall use all reasonable endeavours to agree the Acceptance Tests for the Contractor Software within ten (10) days from the date of delivery to the Contractor of the proposed criteria and data.
- 9.2 The Contractor shall carry out the agreed Acceptance Tests for each Software Module within ten (10) days of its Installation Date. The Acceptance Tests shall be started as soon as reasonably possible after installation and shall be run continuously during Normal Working Hours. The Contractor shall carry out the agreed Acceptance Tests for each Software Module unless ORE Catapult notifies the Contractor, not later than five (5) days after the Installation Date that it will carry out the Acceptance Tests. The Party carrying out the Acceptance Tests shall give the other Party at least twenty-four (24) hours' notice of the start of the Acceptance Tests and permit the other Party to observe all or any part of the testing.

- 9.3 If any Software Module fails to pass the Acceptance Tests, ORE Catapult shall, within seven (7) days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Contractor shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 9.4 If any Software Module fails to pass any repeated Acceptance Tests within two (2) weeks from the date of its second submission to the Acceptance Tests, then ORE Catapult may, by written notice to the Contractor, choose at its sole discretion:
- (a) to fix (without prejudice to ORE Catapult's other rights and remedies) a new date for carrying out further tests on the Software Module on the same terms and conditions. If the Software fails such further tests then ORE Catapult may request a repeat test under this Condition 9 or to proceed under Condition 9.4(b) or Condition 9.4(c);
 - (b) to accept the Software Module subject to such change of acceptance criteria, amendment of the Scope of Works and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable; or
 - (c) if the Contractor is unable to correct defects within a period of two (2) weeks from the commencement of Acceptance Tests under Condition 9.2, to reject the Contractor Software as not being in conformity with the Contract, in which event ORE Catapult may terminate this Contract.
- 9.5 On completion of all Acceptance Tests on the individual Software Modules as provided in Condition 9.2, Condition 9.3 and Condition 9.4 above, the Contractor shall carry out the agreed Acceptance Tests for the installed Contractor Software as a whole to ensure that it meets the Scope of Works. The relevant provisions of Condition 9.2, Condition 9.3 and Condition 9.4 above shall apply to these Acceptance Tests in the same way as they apply to Acceptance Tests for the individual Software Modules.

10. ACCEPTANCE

- 10.1 Acceptance of the Contractor Software shall be deemed to have occurred on whichever is the earliest of:
- (a) the signing by ORE Catapult of an Acceptance Certificate for the Contractor Software following successful completion of the testing under Condition 9.5;
 - (b) the use of the Contractor Software by ORE Catapult in the normal course of its business.

11. MILESTONES AND EXTENSION OF TIME

- 11.1 Both Parties shall perform their obligations under this Contract in accordance with any milestones agreed in writing between them and/or as set out in the Scope of Works.

11.2 not used

11.3 The Contractor shall be given an extension of time for completion of any milestone if one of more of the following events occurs:

- (a) a variation to the Contractor Software is made at ORE Catapult's request under the change control procedures set out in Condition 13;
- (b) a force majeure event occurs as described in Condition 36; or
- (c) a delay is caused in whole or in part by an action or omission of ORE Catapult or its employees, agents or third-Party Contractors.

11.4 If the Contractor is entitled to an extension of time under Condition 11.3, it shall give written notice to ORE Catapult not later than seven (7) days after the beginning of the event. Such notice shall specify the event relied on and, in the case of a force majeure event under Condition 36, shall estimate the probable extent of the delay.

11.5 ORE Catapult Representative and the Project Manager shall use all reasonable endeavours to agree in writing, signed by both Parties, what extension of time is reasonable in the circumstances. Any milestones agreed in writing between the parties shall be deemed amended accordingly.

12. PRICE & PAYMENT

12.1 The Price for the Services shall be set out in the Order and shall be the full and exclusive remuneration of the Contractor in respect of the performance of the Services. Unless otherwise agreed in writing by ORE Catapult, the Price shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.

12.2 The Contractor shall invoice ORE Catapult in accordance with the Scope of Work. Each invoice shall include any such supporting information required by ORE Catapult to verify the accuracy of the invoice.

12.3 In consideration of the supply of the Services by the Contractor, ORE Catapult shall pay the invoiced amounts within thirty (30) days of the date of a correctly rendered invoice to a bank account nominated in writing by the Contractor.

12.4 Wherever required by ORE Catapult, payment will be agreed on an individual commission basis and may be linked to successful delivery against defined milestones.

12.5 All amounts payable by ORE Catapult under the Contract are exclusive of amounts in respect of value added tax chargeable (VAT) for the time being. Where any taxable supply for VAT purposes is made under the Contract by the Contractor to ORE Catapult, ORE Catapult shall, on receipt of a valid VAT invoice from the Contractor, pay to the Contractor such additional amounts in respect of VAT as are

chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 12.6 If any Value Added Tax is to be paid, the Contractor shall show this separately on the invoice.
- 12.7 The Contractor shall maintain complete and accurate records of the time spent and materials used by the Contractor in providing the Services, and shall allow ORE Catapult to inspect such records at all reasonable times on request.
- 12.8 ORE Catapult may at any time, without limiting any of its other rights or remedies, set off any liability of the Contractor to ORE Catapult against any liability of ORE Catapult to the Contractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 12.9 All invoices shall be sent to finance@ore.catapult.org.uk. Each invoice must clearly identify the purchase order number. If the purchase order number is not clearly identifiable on the invoice the invoice may be returned to the Contractor without payment.

13. CHANGE CONTROL AND TECHNOLOGY SUBSTITUTION

- 13.1 ORE Catapult may, by giving written notice to the Contractor at any time during the Term of this Contract, request a change to the Contractor Software or the Services.
- 13.2 Within seven (7) working days of receipt of such notice, the Contractor shall, at its rates then in force, prepare for ORE Catapult a written quote for any increase or decrease in the Price, and of any effect that the requested change would have on any agreed milestones and Completion Date.
- 13.3 Within ten (10) working days of receipt of the written quote referred to in Condition 13.2, ORE Catapult shall inform the Contractor in writing of whether or not ORE Catapult wishes the requested change to be made. If the change is required, the Contractor shall not make the requested change until the Parties have agreed and signed a written Contract Change Note, issued by ORE Catapult, specifying, in particular, any changes to any milestones and Price.
- 13.4 The Contractor undertakes to offer to ORE Catapult, and ORE Catapult may at any time before the relevant Software Delivery Date and at its sole discretion choose to obtain from the Contractor, any item of Software in substitution for any corresponding item of Contractor Software where the substitute item contains new technology or has better performance characteristics than such Contractor Software. As part of the offer, the Contractor shall notify ORE Catapult of any change in the Price which would result from such substitution. If ORE Catapult chooses to obtain any such substitute item, the Parties shall use all reasonable endeavours to agree and execute a Contract Change Note.
- 13.5 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms & conditions, shall be effective unless agreed in writing and signed by ORE Catapult.

14. OWNERSHIP

- 14.1 The Parties agree that, except as expressly set out in this Contract, this Contract does not transfer ownership of, or create any licences in, any pre-existing Intellectual Property Rights.
- 14.2 The Intellectual Property Rights in the Bespoke Software and the Modified Software shall, at the Commencement Date or (if later) on creation of the rights, belong to ORE Catapult. The Contractor assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to ORE Catapult. Such Bespoke Software and Modified Software shall be available to ORE Catapult in open source format.
- 14.3 The Contractor shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that ORE Catapult may consider necessary or desirable to perfect the right, title and interest of ORE Catapult in and to the Intellectual Property Rights in the Bespoke Software and the Modified Software .
- 14.4 The Contractor shall:
- (a) procure the irrevocable waiver of all moral rights in the Documentation relating to the Bespoke Software, the Tools and the Modified Software, to the extent permitted by law;
 - (b) ensure that records are maintained which are sufficient to provide evidence of the process of independent creation of the Bespoke Software, the Tools and the Modified Software; and
 - (c) be responsible for ensuring that written agreements are entered into with, and adhered to by, subcontractors engaged in the performance of this Contract and that, unless otherwise agreed with ORE Catapult in writing in advance, the terms of engagement of such subcontractors are consistent with, and enable the Contractor fully to comply with, the provisions as to the Bespoke Software and the Modified Software set out in this Contract, including this Condition 14.
- 14.5 The Contractor shall not be permitted to grant a licence to use the Modified Software to any other Party without the prior written permission of ORE Catapult (at its sole discretion).

15. SOFTWARE LICENCE

- 15.1 The Contractor grants, subject to the terms of this Contract, ORE Catapult and its Affiliates the non-exclusive right to use the Licensed Software and Documentation for the following purposes:
- (a) the provision of Software facilities management, support, maintenance, development, disaster recovery, back-up, information processing, network or other services relating to the Supplied Software;
 - (b) the use and storage of data within any database comprised in the Licensed Software and the extraction and re-utilisation of data therefrom, and the amendment or merging of the data or

database; and

- (c) use in connection with any associated or interconnected networks, including the internet or intranet;
- (d) use in connection with the Multi-Platform Inspection, Maintenance & Repair in extreme environments (MIMRee) consortium project for which ORE Catapult forms part;
- (e) where such licence is needed in order for ORE Catapult or the MIMRee consortium to make use (both non-commercially and commercially) of the Intellectual Property Rights in the Bespoke Software and the Modified Software,

together, **Licensed Purposes**.

15.2 The Licensed Software may be used only by Licensed Users except as follows:

- (a) the Licence may be extended to Contractors employed by ORE Catapult and to partners of the MIMRee project for any of the Licensed Purposes referred to in Condition 15.1(b);
- (b) the Licensed Software may be used on any replacement for all or any part of ORE Catapult hardware;
- (c) the Licence may, with the prior written consent of the Contractor (not to be unreasonably withheld or delayed or subject to unduly onerous conditions), be extended to additional Licensed Users, provided that any appropriate additional fee is paid to the Contractor before such use;
- (d) if ORE Catapult transfers its business permanently to another site, the Contractor Software may be used at the new site by the Licensed Users, provided that the Contractor is informed in writing of the change of site before use of the Contractor Software commences at the new site;
- (e) if ORE Catapult hardware becomes inoperable for any reason, the Licensed Software may be temporarily used on backup equipment until ORE Catapult hardware is repaired, and ORE Catapult may use the Licensed Software for the purpose of testing whether any such backup equipment is suitable for use while ORE Catapult Hardware is inoperable; and
- (f) if any Site becomes temporarily unusable due to flood, fire or similar damage, or an emergency situation, the Licensed Software may be used at an alternative site until the Site is again usable, provided that ORE Catapult gives the Contractor notice of such alternative site. If the alternative site is managed by a third Party, the third Party must have signed a confidentiality undertaking addressed to the Contractor to protect the Contractor's Confidential Information before the Licensed Software is transferred to the alternative site.

16. TRANSFER OR REPRODUCTION OF LICENSED SOFTWARE

- 16.1 ORE Catapult may make such copies of the Licensed Software as are reasonably necessary for use in accordance with this Licence and for the purposes of backup and security. ORE Catapult has no right to make, or authorise the making of, any other copies of the Licensed Software.
- 16.2 The Contractor shall at all times own all copies of all or any part of the Licensed Software. For copies recorded on a tangible medium, ORE Catapult shall place on each copy of all or any part of the Licensed Software a clearly visible label indicating that the copy is the property of the Contractor, and reproducing the Contractor's proprietary rights notice. For electronic copies, ORE Catapult shall ensure that all proprietary notices contained in the Licensed Software shall be maintained in such copies and shall display when the Software is run, in the same way as in the case of the Licensed Software as supplied by the Contractor. ORE Catapult shall keep all copies of the Licensed Software in a secure place when not in use and shall, at all times, keep all such copies in its possession or control.
- 16.3 Except as permitted under Condition 15.2(a) ORE Catapult shall not sub-license, rent, lend, assign or transfer in any other way the Licence or the Licensed Software to any person without the prior written consent of the Contractor; or

17. USE AND ADAPTATION OF LICENSED SOFTWARE

- 17.1 ORE Catapult may use the Licensed Software with other Software.
- 17.2 ORE Catapult may not make adaptations or variations of the Licensed Software without the prior consent of the Contractor. ORE Catapult shall be entitled to make adaptations or variations to Modified Software and Bespoke Software.
- 17.3 ORE Catapult may not disassemble, decompile, reverse translate or in any other manner decode the Licensed Software except as permitted by law.

18. SUPPORT SERVICES

- 18.1 ORE Catapult may request Support Services from the Contractor at ORE Catapult's sole discretion. Where such support is requested, this condition 18 shall apply.
- 18.2 The Contractor shall supply ORE Catapult with New Releases in machine-readable form together with related amendments to the Documentation. The Contractor may make such New Releases available for downloading over the internet and will promptly notify ORE Catapult when such downloads are available
- 18.2 The Contractor shall notify ORE Catapult promptly in writing of the issue of any New Version, specifying in what way the New Version differs from the previous version in terms of functionality, performance and compatibility.
- 18.3 For the avoidance of doubt, nothing in this Contract shall oblige ORE Catapult to accept any New Version.

- 18.4 The Contractor shall ensure that support is available by telephone, e-mail and fax during Normal Working Hours to provide assistance to ORE Catapult in respect of the following:
- (a) remedying Defects in the Supported Software; and
 - (b) providing advice on the use of the Supported Software.
- 18.5 The Contractor shall use all reasonable endeavours to correct Defects notified to it by ORE Catapult in a timely manner appropriate to the seriousness of the circumstances in accordance with the following procedure:
- (a) ORE Catapult shall promptly notify the Contractor of all Defects. Where such notification is made orally, ORE Catapult shall provide written confirmation of the notification within two (2) working days;
 - (b) within two (2) hours of such notification, the Contractor shall acknowledge receipt of the notification and shall determine, in consultation with ORE Catapult, how seriously the Defect affects ORE Catapult's operations;
 - (c) if a notified Defect halts or substantially impairs ORE Catapult's operations which use the Supported Software, the Contractor shall start work on correcting the Defect within four (4) hours of receipt of such notification, (notifications made at 17:00 on a Friday shall be satisfied by the Contractor commencing work to correct any/all Defects, no later than 12:00 on the following Monday), shall use best efforts to correct the Defect as soon as possible and shall keep ORE Catapult informed of progress towards correction of the Defect;
 - (d) if a notified Defect, while not halting or substantially impairing ORE Catapult's operations, causes those operations to become significantly slowed or causes substantial inconvenience, the Contractor shall commence work on correcting the Defect within forty eight (48) hours of receipt of such notification and shall use all reasonable efforts to correct the Defect as soon as possible; and
 - (e) in the case of Defects other than those specified in Condition 18.5(c) and Condition 18.5(d), the Contractor shall start work on correcting the Defect as soon as the Contractor's workload allows and shall use commercially reasonable efforts to correct the Defect.

19. TRAINING

- 19.1 The Contractor undertakes to provide the training to ORE Catapult as defined in the Scope of Works.
- 19.2 Any additional training required by ORE Catapult shall be provided by the Contractor at the Contractor's rates then in force.
- 19.3 Training shall be carried out at ORE Catapult Site(s) or other location(s) as may be agreed by ORE

Catapult. Any special equipment necessary for the training shall be provided by the Contractor.

20. CONTRACTOR PERSONNEL: CONTRACTOR SOFTWARE AND SUPPORT SERVICES

- 20.1 The Contractor undertakes that its employees and Contractors, while on the Site(s) or any other premises of ORE Catapult, will comply with all relevant rules and regulations laid down by ORE Catapult from time to time for the behaviour of its own employees and Contractors, and any other reasonable requirements of ORE Catapult. The Contractor shall remove any employee or Contractor whom ORE Catapult can demonstrate has failed to comply with such rules, regulations and requirements.
- 20.2 The Contractor shall indemnify ORE Catapult for all loss and damage to ORE Catapult's employees, Contractors or property caused by the Contractor's personnel while they are on ORE Catapult's premises.
- 20.3 The Contractor alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of the Support Staff. The Contractor assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of ORE Catapult.
- 20.4 The Contractor shall:
 - (a) take all reasonable steps to maintain continuity in relation to the support staff team; and
 - (b) to the extent possible, give ORE Catapult reasonable written notice of any proposed holiday or leave of absence to be taken.

21. CONTRACTOR PROJECT MANAGEMENT

- 21.1 not used
- 21.2 The Contractor shall appoint a Project Manager, who shall have the responsibility and commensurate authority for the overall progress of the work and to whom all questions regarding this Contract can be referred. The name and qualifications of the appointed individual shall be notified in writing to ORE Catapult Representative.
- 21.3 The Project Manager shall co-operate with ORE Catapult Representative and shall attend meetings scheduled by ORE Catapult Representative at reasonable intervals not less than once a week to advise and assist ORE Catapult on all matters relating to the work.
- 21.4 The Contractor agrees that the Project Manager shall not be replaced before the Acceptance Date without notice to ORE Catapult, unless:
 - (a) the individual to be replaced is prevented by ill-health from carrying out his or her duties in connection with the Contract for a significant period;

- (b) the individual's employment with the Contractor ends;
 - (c) ORE Catapult makes a reasonable written request to the Contractor to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the Contractor's obligations under this Contract.
- 21.5 If any such person is replaced, the Contractor shall consult with ORE Catapult Representative about the identity of a suitable replacement.
- 21.6 ORE Catapult agrees that ORE Catapult Representative shall not be replaced before the Acceptance Date without notice to the Contractor, unless:
- (a) the individual to be replaced is prevented by ill-health from carrying out his duties in connection with the Contract for a significant period;
 - (b) the individual resigns from employment with ORE Catapult;
 - (c) the Contract of employment of the individual is terminated; or
 - (d) the Contractor makes a reasonable written request to ORE Catapult to replace the individual because he has performed unsatisfactorily or has caused a breach of any of ORE Catapult's obligations under this Contract.
- 21.7 ORE Catapult shall consult with the Contractor about the identity of a suitable replacement.

22. SUPPORT SERVICES: ORE CATAPULT'S OBLIGATIONS

- 22.1 Where ORE Catapult requests the provision of Support Services, ORE Catapult shall not, without the Contractor's prior written approval, allow any person other than a representative of the Contractor to modify, repair or maintain any part of the Supported Software.
- 22.2 ORE Catapult shall co-operate with the Contractor in any manner reasonably required by the Contractor in order to carry out the work, including provision of information and data, making available suitably qualified employees and Contractors of ORE Catapult and, subject to the Contractor's compliance with ORE Catapult's normal security requirements. ORE Catapult shall:
- (a) provide access to ORE Catapult's systems for the purpose of carrying out diagnostics and correction of Defects, provided that system access shall be direct or remote, at ORE Catapult's option, and that, in the latter case, such access will be subject to the Contractor's compliance with any additional requirements for security and encryption techniques or Software which may from time to time be specified by the Contractor;
 - (b) provide such further access for the Support Staff to the Site(s) as is necessary to carry out the

Contractor's obligations under this Contract. ORE Catapult shall obtain for the Contractor all permissions necessary to obtain such access;

- (c) when the Support Staff are working on the Site(s), provide facilities and supplies reasonably required by the Contractor, such as power and computer consumables.

22.3 ORE Catapult shall, at its own expense, provide the equipment necessary at the Site(s) to enable the access referred to in Condition 22.2(a) in accordance with the specifications set out in the Scope of Works, but all other costs and expenses for such access shall be borne by the Contractor.

22.4 ORE Catapult may restrict access to certain areas of its premises or systems on security grounds.

22.5 ORE Catapult shall appoint an individual to serve as primary contact with the Contractor for the purpose of the provision of the Support Services, and a deputy to that individual, and shall notify the Contractor of the names of those individuals promptly on their appointment.

23. CONFIDENTIALITY

23.1 A Party (receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving Party by the other Party (**disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing Party's business, its products and services which the receiving Party may obtain. The receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Condition as though they were a Party to the Contract. The receiving Party may also disclose such of the disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

23.2 The Contractor acknowledges and agrees that ORE Catapult maybe required to disclose information to their funding body, Innovate UK and members of the consortium of which these Services shall ultimately form part.

23.3 This Condition 23 shall survive termination of the Contract

24. WARRANTIES AND COMPLIANCE

24.1 The Contractor acknowledges that ORE Catapult has entered into this Contract in reliance upon the Contractor's expertise in selecting and supplying goods and services fit to meet the Scope of Works.

24.2 The Contractor warrants and represents that:

- (a) the Contractor Standard Software and Documentation (and before the vesting and assignment of the same to ORE Catapult under Condition 14.2), the Modified Software, Tools and Bespoke Software are proprietary to the Contractor (subject to ownership in Modified Software and Bespoke Software transferring to ORE Catapult) and that it has the right to license and/or transfer ownership in all Intellectual Property Rights to ORE Catapult under this Contract;
- (b) none of the New Releases, New Versions and Documentation supplied by the Contractor during the provision of the Support Services infringes the Intellectual Property Rights of any third Party;
- (c) the Contractor Software will meet all the requirements of the Scope of Works;
- (d) the Contractor Software at the Acceptance Date, and for twenty-four (24) months after that date, will perform in accordance with the Scope of Works;
- (e) there has not been included or used any libraries or code licensed, or anything similar in, or in the development of, the Contractor Software nor does any Contractor Software operate in such a way that it is compiled with or linked to any of the foregoing;
- (f) it will, where requested to do so, perform the Support Services in a timely, reliable and professional manner, in conformity with Good Industry Practice by a sufficient number of competent Support Staff with appropriate skills, qualifications and experience, and has and will at all times have the ability and capacity to meet such requirements;
- (g) it will perform the Support Services in compliance with all applicable law and regulations;
- (h) ORE Catapult will receive good and valid title to all deliverables in connection with the Support Services, free and clear of all encumbrances and liens of any kind;
 - (a) in respect of New Releases:
 - (b) no release issued by the Contractor in accordance with the Support Services will adversely and materially affect the performance or functionality of the Licensed Software;
 - (c) each release so issued will be compatible with ORE Catapult Hardware, the Third-Party Software and any other hardware, software and equipment used by ORE Catapult or any of its Affiliates which needs to interface in any way with such release; and
 - (d) the implementation of each release will not necessitate the upgrading or replacement of any of ORE Catapult Hardware, the Third-Party Software or such other hardware, software and equipment which at the date of issue of the release is interfacing with the earlier release.
- (i) the Third-Party Software, if installed by reasonably competent engineers, will:

- (a) be suitable for ORE Catapult's requirements notified to the Contractor by ORE Catapult in writing before the installation;
 - (b) be compatible with the Licensed Software such as to enable the Licensed Software to perform in accordance with the Documentation; and
 - (c) continue to be capable of being used with the Licensed Software for three (3) years from the installation of each new version of Third-Party Software.
- 24.3 The sole remedies for breach of the warranties in Condition 24.2(a) and Condition 24.2(b) are set out in Condition 31.
- 24.4 The warranties set out in Condition 24.2 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this Contract.
- 24.5 The Contractor shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by ORE Catapult's personnel or third Parties without the permission of the Contractor, unless the Contractor has failed to respond within any relevant time period provided.
- 24.6 The Contractor shall not in any circumstances be liable under the warranties in Condition 23.2(c) and Condition 23.2(d) if it can demonstrate that any failure of the Contractor Software to comply with such warranties was wholly caused by unauthorised modifications made to the Contractor Software by, or on behalf of, ORE Catapult.
- 24.7 The Contractor's obligations in respect of the Support Services shall not cover any part of the Supported Software which has been materially modified by anyone other than the Contractor, except with the Contractor's express prior written permission.
- 24.8 ORE Catapult acknowledges that the only warranties in relation to the Third-Party Software and the Modified Software (Third Party) or the supply thereof are those contained in the licence from the third Party Contractor(s) of the same, and that to the extent that any of such warranties are given to the Contractor, it will pass on the benefit of such warranties to ORE Catapult and its Affiliates
- 24.9 ORE Catapult has relied on the Contractor's recommendations in deciding to acquire the Third-Party Software and the Modified Software (Third Party) and, accordingly, if the Licensed Software does not function in accordance with the Documentation as a result of acquisition of the same and requires replacement, the Contractor shall be deemed to be in breach of the warranties under Condition 24.2 and shall indemnify ORE Catapult and its Affiliates against the cost of acquiring any appropriate replacement product and any related services required.
- 24.10 Each Party warrants that it has full capacity and authority, and all necessary licences, permits and

consents to enter into and perform this Contract and that those signing this Contract are duly authorised to bind the Party for whom they sign.

24.11 In performing its obligations under this Contract, the Contractor shall comply with:

- (a) all applicable laws, statutes, regulations and codes from time to time in force and the Contractor will inform ORE Catapult as soon as it becomes aware of any changes in that legislation; and
- (b) the mandatory policies.

25. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

25.1 The Contractor shall indemnify ORE Catapult against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by ORE Catapult arising out of or in connection with any claim made against ORE Catapult for actual or alleged infringement of a third Party's intellectual property rights arising out of or in connection with use of the Contractor Software, any New Release, New Version or Documentation, or receipt of the benefit of the Services.

25.2 If any third Party makes a claim, or notifies an intention to make a claim, against ORE Catapult which may reasonably be considered likely to give rise to a liability under this indemnity (a Claim), ORE Catapult shall:

- (a) as soon as reasonably practicable, give written notice of the Claim to the Contractor, specifying the nature of the Claim in reasonable detail;
- (b) not make any admission of liability, Contract or compromise in relation to the Claim without the prior written consent of the Contractor (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) give the Contractor and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of ORE Catapult, so as to enable the Contractor and its professional advisers to examine them and to take copies (at the Contractor's expense) for the purpose of assessing the Claim; and
- (d) subject to the Contractor providing security to ORE Catapult to ORE Catapult's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Contractor may reasonably request to avoid, dispute, compromise or defend the Claim.

25.3 The Contractor shall not in any circumstances have any liability for any claim of infringement of

Intellectual

Property Rights:

- a) caused solely by ORE Catapult's use of the Contractor Software or any New Releases (as the case may be) in combination with software not supplied or approved in writing by the Contractor (other than the operating system of any ORE Catapult hardware, provided that the Contractor was notified of the identity of this operating system before this Contract was entered into); or
- b) resulting solely from any unauthorised modification of the Contractor Software or any New Release (as the case may be) made by, or on behalf of, ORE Catapult.

25.4 If use of the Contractor Software or receipt of the benefit of the Services becomes or, in the opinion of qualified legal counsel, is likely to become, the subject of any such claim, the Contractor may:

- a) replace all or part of the Contractor Software or the New Releases (as the case may be) with functionally equivalent software or documentation without any charge to ORE Catapult;
- b) modify the Contractor Software or the New Releases (as the case may be) as necessary to avoid such claim, provided that the Contractor Software (as amended) functions in substantially the same way as the Contractor Software or the New Releases (as the case may be) before modification;
- c) procure for ORE Catapult a licence from the relevant claimant to continue using the Software or the New Releases (as the case may be);

and in the case of Condition 25.4(a) or Condition 25.4(b) only, the Contractor shall reimburse ORE Catapult and its Affiliates all reasonable additional costs and expenses that they are required to incur in order to obtain software and hardware required to interact with such modified or replaced software and documentation, and additional services from third Parties, all of which would not have been incurred if the Licensed Software and/or Documentation had been non-infringing.

25.5 If:

- a) the Contractor Software or any New Release (as the case may be) is determined in a court of law to be infringing;
- b) the Contractor is advised by sufficiently qualified legal counsel that use or possession by ORE Catapult or any of its Affiliates of the Licensed Software and/or the Documentation in accordance with this Contract is likely to constitute infringement of a third Party's rights; or
- c) if an injunction or similar order is granted in connection with any claim within the scope of Condition 25.1 which prevents or restricts the use or possession by ORE Catapult or any of its Affiliates of the Licensed Software and/or the Documentation in accordance with this Contract;

and the Contractor is unable, after best efforts, to procure for ORE Catapult the right to continue using the Contractor Software or the New Release, or to provide ORE Catapult with functionally equivalent non-infringing software, this Contract and the Licence will be terminated without prejudice to ORE Catapult's right to seek further remedies, including damages, for any loss or damage arising out of such termination.

- 25.6 If a payment due from the Contractor under this Condition is subject to tax (whether by way of direct assessment or withholding at its source), ORE Catapult shall be entitled to receive from the Contractor such amounts as shall ensure that the net receipt, after tax, to ORE Catapult in respect of the payment is the same as it would have been were the payment not subject to tax.

26. LIMITATION OF LIABILITY

26.1 With the exception of the indemnity set out in condition 25.1, neither Party shall be liable to the other Party for any:

- 26.1.1 loss of profit; and/or
- 26.1.2 loss of business; and/or
- 26.1.3 loss of business opportunity; and/or
- 26.1.4 depletion of good-will; and/or
- 26.1.5 loss or corruption of data, or the costs and consequences of any data restoration; and/or
- 26.1.6 costs of loans, borrowing and/or of temporary financing; and/or
- 26.1.7 additional staffing costs; and/or
- 26.1.8 costs, expenses or other claims for any type of special, indirect, consequential loss or pure economic loss, costs, damages, Price and expenses, and compensation (including loss or damage suffered as a result of an action brought by a third Party); and/or
- 26.1.9 indirect or consequential damages.

whatsoever and howsoever caused which arises out of or in connection with this Contract, even if such loss was reasonably foreseeable or one Party had been advised of the possibility of the other Party incurring the same.

26.2 Nothing in this Contract shall limit the liability of either Party for either:

- 26.2.1 death or personal injury caused by that Party's negligence;
- 26.3.2 fraud or fraudulent misrepresentation.

27. INDEMNITY AND INSURANCE

- 27.1 The Contractor shall indemnify ORE Catapult for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Contractor of the terms of this Contract including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the engagement and for a period of three (3) years thereafter, full and comprehensive Insurance Policies.
- 27.2 The Contractor shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to ORE Catapult and that the level of cover and other terms of insurance are acceptable to and agreed by ORE Catapult.
- 27.3 The Contractor shall, on request, provide satisfactory evidence to ORE Catapult that such insurances are in place.
- 27.4 The Contractor shall comply (and shall procure that the Personnel complies) with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Consultant is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultant shall notify ORE Catapult without delay.

28 TERM AND TERMINATION

- 28.1 The Term shall commence on the Commencement Date and shall continue until it automatically terminates on completion of the Service in accordance with the Contract or unless terminated earlier in accordance with these Conditions ("Termination Date").
- 28.2 Without prejudice to any other rights or remedies which the Parties may have, either Party may (at its sole discretion) terminate this Contract with immediate effect on giving notice to the other in the event that:
 - 28.2.1 an order is made or a resolution is passed for the winding up of the other Party or circumstances arise which entitle a Court of competent jurisdiction to make a winding-up order of the other Party or an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other Party or notice of intention to appoint an administrator is given by the other Party or its directors or by a qualifying floating charge holder; or
 - 28.2.2 a receiver is appointed of any of the other Party's assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party or if any other person takes possession of or sells the other Party's assets; or
 - 28.2.3 the other Party makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

- 28.2.4 the other Party is, or is reasonably considered to be unable to pay its debts when they fall due as defined in Section 123 of the Insolvency Act 1986; or
 - 28.2.5 any distraint is levied against the other Party or its property by any person; or
 - 28.2.6 the other Party ceases, or threatens to cease, to carry on business; or
 - 28.2.7 any action or occurrence analogous to the provisions of Conditions 28.2.1 to 28.2.6 occurs in respect of the other Party in any jurisdiction; or
 - 28.2.8 the other Party is in breach of these Conditions and such breach is not capable of remedy; or
 - 28.2.9 the other Party is in breach of these Conditions and such breach is capable of remedy, but the breach has not been remedied within thirty (30) days of issue of a written notice to such Party by the non-breaching Party specifying the breach and requiring remedy; or
 - 28.2.10 either Party is guilty of conduct which in the opinion of the other Party tends to bring that other Party into material disrepute; or
- 28.3 ORE Catapult may terminate this Contract at its convenience by giving thirty (30) days' prior written notice to the Contractor.

29. OBLIGATIONS UPON TERMINATION

- 29.1 On the Termination Date:
- 29.1.1 the Contractor shall vacate the Premises (as applicable) and return all copies of the Outputs and any ORE Catapult resources and/or equipment made available by ORE Catapult for the provision of the Service; and
 - 29.1.2 each Party shall, upon request, and in addition to the obligations of Condition 23, return all documents, books, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of any member of the other Party or their business contacts, and any other property or equipment of any member of the other Party, which is in its possession or under its control.
- 29.2 The provisions of Condition 23 shall survive termination of the Contract, howsoever arising.

30. WAIVER

- 30.1 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

31. ORE CATAPULT REMEDIES

- 31.1 If the Contractor fails to perform the Services by the applicable dates, ORE Catapult shall, without limiting its other rights or remedies, have one or more of the following rights:
- a) to terminate the Contract with immediate effect by giving written notice to the Contractor;
 - b) to refuse to accept any subsequent performance of the Services which the Contractor attempts to make;
 - c) to recover from the Contractor any costs incurred by ORE Catapult in obtaining substitute services from a third party;
 - d) where ORE Catapult has paid in advance for Services that have not been provided by the Contractor, to have such sums refunded by the Contractor; or
 - e) to claim damages for any additional costs, loss or expenses incurred by ORE Catapult which are in any way attributable to the Contractor's failure to meet such dates.
- 31.2 These Conditions shall extend to any substituted or remedial Services provided by the Contractor.
- 31.3 ORE Catapult's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

32. ENTIRE CONTRACT

- 32.1 This Contract constitutes the entire Contract between the Parties and supersedes and extinguishes all previous Contracts, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 32.2 Each Party acknowledges that in entering into this Contract it does not rely on and 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 Contract.
- 32.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

33. SEVERANCE

- 33.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of the Contract.

34. THIRD-PARTY RIGHTS

- 34.1 No one other than a Party to this Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 34.2 It is agreed that it is intended to confer a benefit on ORE Catapult and its Affiliates by making the Contractor Software and Support Services available to them in accordance with this Contract, provided that the rights of such Affiliates under this Contract shall only be enforceable by ORE Catapult on their behalf. ORE Catapult will owe no duty to enforce such rights and it may conduct or compromise any relevant proceedings as it sees fit.
- 34.3 Except as expressly provided in Condition 34.2, a person who is not a Party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This does not affect any right or remedy of a third Party which exists, or is available, apart from that Act.
- 34.4 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.

35. NO PARTNERSHIP OR AGENCY

- 35.1 Nothing in this 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, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party, except as expressly authorised by ORE Catapult or the Contractor (as the case may be).
- 35.2 The Contractor shall, subject to any express restrictions imposed under this Contract, have complete control of the work and shall efficiently and competently direct and supervise its employees, agents and subcontractors who are carrying out the work.

36. FORCE MAJEURE

- 36.1 Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 36.2 The Contractor shall use all reasonable endeavours to mitigate the effect of a Force Majeure event on the performance of its obligations.
- 36.3 Such delay or failure shall not constitute a breach of these Conditions where notified to the other Party as soon as reasonably practicable and the time for performance shall be extended by a period equivalent to that during which performance is so prevented, for a period of up to one month.

37. NOTICES

- 37.1 Any notice or other communication given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing in accordance with this Condition, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- 37.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 36.1; if sent by a guaranteed next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- 37.3 The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

38. DISPUTE RESOLUTION

- 38.1 Any dispute which may arise between the Parties concerning this Contract shall be determined as provided in this Condition 38.
- 38.2 For the purpose of this Condition 38, a dispute shall be deemed to have arisen when one Party serves on the other a notice in writing stating the nature of the dispute.
- 38.3 Unless this Contract has already been terminated by the date of the notice of dispute, the Contractor shall, in every case, continue with the work with all due diligence regardless of the nature of the dispute and ORE Catapult shall continue to make payments (excluding any disputed sums).
- 38.4 After service of the notice of dispute, the following procedure shall be followed by the Parties (all periods specified in this Condition 38.4 shall be extendable by mutual Contract):
- (a) within two (2) days, the Project Manager and ORE Catapult Representative shall meet to attempt to settle the dispute;
 - (b) if the Project Manager and ORE Catapult Representative are unable to reach a settlement within seven (7) days from the date of service of the notice, the Managing Directors of each of the Parties shall meet within the following seven (7) days to attempt to settle the dispute; and
 - (c) if no settlement results from the meeting specified in Condition 38.4(b), for the following twenty eight (28) days the Parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the Parties.
- 38.5 If no settlement is reached under Condition 38.4:
- (a) if the dispute is of a technical nature concerning the interpretation of the Scope of Works or any

similar or related matter then such dispute shall be referred for arbitration. The arbitrator's decision shall (in the absence of clerical or manifest error) be final and binding on the Parties and his fees for so acting shall be borne by the Parties in equal shares unless he determines that the conduct of either Party is such that such Party should bear all of such fees;

- (b) in the case of a dispute over purely legal issues, or where disposition of the legal issues would dispose of all other issues in dispute, the matter shall be brought before the English High Court as soon as possible, and the Parties agree to co-operate in the speedy conduct of such legal proceedings; and
- (c) in any other case, the dispute shall be determined by the English High Court and the Parties submit to the exclusive jurisdiction of such court for such purposes.

39 ASSIGNMENT AND OTHER DEALINGS

- 39.1 ORE Catapult may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 39.2 The Contractor may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of ORE Catapult.

40. ANNOUNCEMENTS

- 40.1 Save as otherwise set out in this Contract, no announcement, circular, advertisement or other publicity in connection with this Contract shall be made or issued by or on behalf of the Contractor (save as required by law or any governmental or regulatory organisation) without the prior written consent of ORE Catapult (such consent not to be unreasonably withheld or delayed).

41. ORE CATAPULT'S LOGO

- 41.1 The Contractor shall not use ORE Catapult logo without the prior written consent of ORE Catapult.

42. GOVERNING LAW AND JURISDICTION

- 42.1 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).