

## I OPERATION OF THIS AGREEMENT

### I.1 General

- (a) These terms and conditions, together with Orders, Catapult's Privacy Policy and the Data Protection Addendum (**DPA**) described in clause 14(b), govern the supply and use of the Equipment, Software and Services.
- (b) These terms and conditions are version v.180121.

### I.2 Orders for Equipment, Accessories, Software and Services

- (a) You and Catapult may enter into Orders for Equipment, Accessories, Software and Services from time to time.
- (b) Catapult shall submit draft orders to you. You may accept or reject any draft order you receive from Catapult. A draft order becomes an Order when you notify Catapult that you accept the draft order. If you make any amendments to the draft order, your proposed amended order is a counter-offer that Catapult may accept or reject in its discretion.
- (c) When a draft order is accepted and executed by you, a separate agreement is formed between the parties for the Equipment, Accessories, Software and Services to be supplied. The terms and conditions of that separate agreement comprise the terms and conditions of the relevant Order; the version of these terms and conditions which are either specified as being expressly incorporated into, are appended to, or are linked to by a hyperlink in, that Order; and any other terms and conditions specified as being expressly incorporated into that Order (such other terms and conditions, being the **Ancillary Terms and Conditions**).
- (d) A reference in these terms and conditions to '**this agreement**' includes the Order (and any Ancillary Terms and Conditions) for the purposes of the incorporation of these terms and conditions into that Order.

### I.3 Pre-Paid Purchases and Subscriptions

- (a) Catapult offers two different commercial models for you to procure the supply of Equipment (and the associated Software and Services):
  - (i) **Pre-Paid Purchase**, where you pre-pay in full for the purchase of the Equipment and access to the Software and Services; or
  - (ii) **Subscription**, where Catapult retains the title to the Equipment and makes the Equipment available to you for use by you and your Personnel subject to the ongoing payment of the Fees.
- (b) The Order will specify whether Equipment is acquired and supplied as a Pre-Paid Purchase or a Subscription.
- (c) Some of the provisions in this agreement apply differently depending on whether you and Catapult have agreed a Pre-Paid Purchase or a Subscription under the Order, and this agreement indicates which provisions are applicable in each instance.
- (d) For clarity, Accessories are only available to be purchased outright (so that you acquire title in the Accessories), and cannot be supplied on a subscription basis.

## 2 TERM

This agreement starts on the Commencement Date and continues for the period specified in the Order (the **Term**) unless terminated earlier under clause 19.

## 3 CATAPULT'S OBLIGATIONS

### 3.1 General

Catapult must provide and make available to you:

- (a) the Equipment and Accessories;
- (b) the Software; and
- (c) the Services,

during the Term, subject to the terms of this agreement.

### 3.2 Performance of the Services

Catapult must perform the Services with due care and skill.

## 4 SUPPLY OF EQUIPMENT AND ACCESSORIES

### 4.1 General

- (a) You must use, and procure that your Personnel use, the Equipment only in accordance with the Documentation.
- (b) Subject to Catapult receiving payment of the amount specified in the Order and invoiced to you in advance of delivery, Catapult shall deliver the Equipment and Accessories to you at the delivery address specified in the Order. Any delivery dates specified in an Order are estimates only and Catapult is not obligated to deliver the Equipment and Accessories on that delivery date.
- (c) Risk in the Equipment and Accessories will pass to you when each is shipped from the Catapult premises.

### 4.2 Supply of Equipment - Subscription

#### **This clause 4.2 applies to Subscriptions only**

Where and to the extent the Equipment is procured on a Subscription basis:

- (a) Catapult shall make available to you, and grants you a right to use, the Equipment during the Term. Title in, and ownership of, Equipment will remain with Catapult at all times (and will not pass to you);
- (b) you must:
  - (i) keep the Equipment in good order and repair (reasonable wear and tear excepted);
  - (ii) keep the Equipment in safe custody and in your possession or control at all times;
  - (iii) notify Catapult within 24 hours of becoming aware that any Equipment has been lost, stolen, damaged or destroyed, or has become inoperable;
  - (iv) not sell, dispose of, lend, sub-license, encumber, or permit any person other than your Personnel to use, the Equipment in any way (or attempt to do the same);
  - (v) not alter or remove any markings (or similar) on the Equipment (including proprietary or identifying markings, trade marks, registration numbers and certification numbers); and
  - (vi) not make any alteration, modification or repairs (or similar) to the Equipment without the prior written consent of Catapult (which may be withheld at its discretion); and
- (c) to the maximum extent permitted by law, you must pay to Catapult on demand an amount equal to all Indemnified Loss suffered or incurred by each Catapult Group Company and their respective Personnel (together, the **Catapult Indemnified Persons**) arising as a result of, or in connection with:
  - (i) any loss of or damage to the Equipment; and

(ii) any breach of clause 4.2(b).

Your liability under this paragraph (c) is not subject to any limit or exclusion of liability under clause 17.2.

#### 4.3 Supply of Equipment - Pre-Paid Purchase

**This clause 4.3 applies to Pre-Paid Purchases only**

Where and to the extent the Equipment is procured as a Pre-Paid Purchase:

- (a) title in, and ownership of, Equipment will remain with Catapult (and will not pass to you) until you have paid Catapult in full for that Equipment and Catapult has completed its obligations under this agreement;
- (b) until such time as title in any Equipment passes to you under paragraph 4.3(a) (the **Relevant Goods**), Catapult retains the right to modify any of the Relevant Goods and you hold the Relevant Goods as the fiduciary agent and bailee of Catapult and must ensure that the Relevant Goods are clearly identifiable as the property of Catapult and are properly stored and protected and remain fully insured. You must not sell or otherwise dispose of or deal in the Relevant Goods and must return the Relevant Goods to Catapult on demand. Clause 4.2(c) shall apply (with necessary changes) to the Equipment procured as a Pre-Paid Purchase until title passes to you; and
- (c) without limiting any other rights, Catapult is entitled to dispose of any repossessed Relevant Goods and apply the proceeds of sale to your indebtedness to Catapult.

#### 4.4 Supply of Accessories

Title in, and ownership of, Accessories will remain with Catapult (and will not pass to the Company) until the Company has paid Catapult in full for those Accessories. Clause 4.2(c) shall apply (with necessary changes) to the Accessories until title passes to you.

---

## 5 SUPPLY OF SOFTWARE

### 5.1 Grant of licence and usage rights

- (a) Catapult hereby grants to you:
  - (i) a non-exclusive, non-transferable, perpetual licence to use the Local Software; and
  - (ii) a non-exclusive, non-transferable, right to access the Cloud Services during the Term,
 in connection with your use of the Equipment and subject to the following:
  - (iii) you must only use the Local Software and Cloud Services for the purposes of monitoring the performance of Equipment Users solely for your internal purposes. You must not use either or both of the Local Software and Cloud Services to provide services, including performance monitoring services or the supply of performance data, to third parties;
  - (iv) you may only install the Local Software on the number and type of computers specified in the Order. You may make and install one copy of the Local Software for backup and archival purposes provided that such backup copy may only be used as if it were a primary copy if the primary copy has failed or is destroyed; and
  - (v) you must comply with, and procure that users of the Software accept and comply with, the terms of the then-current EULA. The **EULA** is the end user licence agreement presented to users at the time of registering for the Cloud Services, using the Cloud

Services or using Local Software (as applicable depending on the specific item of Software).

- (b) The licence and right of access granted under paragraph (a) do not include the right to sub-license, grant access to or otherwise provide the Software to any third party.

### 5.2 Delivery of Local Software; access to Cloud Services

- (a) Catapult shall deliver the Local Software to you at the delivery address specified in the Order on or around the specified delivery date.
- (b) Catapult shall provide you with access to and use of the Cloud Services via the methods specified by Catapult from time to time.

### 5.3 Changes to Local Software

- (a) During the Term, Catapult shall provide to you all patches and updates of the Local Software made generally available by Catapult to Subscribers of the Software at no additional cost.
- (b) You acknowledge and agree that each patch and update will be automatically downloaded and installed by the Software at a time determined by Catapult, with or without notice from Catapult.
- (c) You must always use the latest versions and updates of the Local Software as provided by Catapult.

### 5.4 Changes to Cloud Services

Catapult may correct errors, change, add or delete the functions, features, performance, or other characteristics of the Cloud Services from time to time.

---

## 6 SUPPLY OF SERVICES

### 6.1 Training

Catapult must provide the training (if any) specified in the Order in the manner and for the Fee specified in that Order.

### 6.2 Software Maintenance Services

Catapult must provide the Software Maintenance Services.

---

## 7 REPAIR AND REPLACEMENT

- (a) Catapult shall, at its election, either repair or replace Warranted Equipment during the Term. **Warranted Equipment** means:
  - (i) Equipment that is defective or does not otherwise function in accordance with the Documentation due to any design or manufacturing faults; and
  - (ii) in the case of Subscriptions only, Equipment that otherwise ceases to function in accordance with the Documentation as a result of fair wear and tear arising from normal use of the Equipment in accordance with this agreement and the Documentation.
- (b) If you believe any item of Equipment requires repair or replacement, you must deliver that Equipment to Catapult's nominated services centre, at your risk and cost, for analysis by Catapult.
- (c) Catapult will examine the Equipment delivered to it and if Catapult determines (acting reasonably) that the Equipment:
  - (i) is Warranted Equipment, then Catapult shall repair or replace (at its election) such Warranted Equipment, and deliver the repaired or replacement Equipment to you at Catapult's cost and reimburse you for the costs of delivering the Equipment to the nominated services centre; or

- (ii) is not Warranted Equipment, then Catapult shall notify you of that determination and shall, at your cost, repair or replace (at Catapult's election) the Equipment and deliver repaired or replacement Equipment to you. Catapult shall determine the costs in accordance with its then-current standard rates, and shall include its then-current minimum inspection fee for Equipment returned to Catapult, plus parts, labour and return delivery costs. Catapult shall invoice you for these costs at or around the time of sending the repaired or replacement Equipment to you.

## 8 YOUR OBLIGATIONS

- (a) You acknowledge and agree that despite the Equipment having been designed to minimise the risk of personal injury to users of the Equipment, there is a remaining inherent risk of injury. Subject to paragraph 17.2(e), you are responsible for all risks arising out of or in connection with the possession, operation and use of the Equipment and Software by you and your Affiliates, and their respective Personnel.
- (b) You must procure that your Personnel comply with the terms of this agreement, and you are liable for their acts and omissions as if they were your acts and omissions.
- (c) You must obtain, and you warrant that you have obtained, all necessary rights, permissions and consents from each Equipment User to permit Catapult to do the things, and exercise the rights, set out or referenced in clauses 13(b) and 14.
- (d) You must procure that each user of the Software keeps their individual login details for the Software secure and confidential and does not permit any other person to use that user's individual login details.
- (e) You are responsible for and must provide all computers, hardware, software, networks and other equipment and services necessary to access and make use of the Software.
- (f) You are responsible for implementing and maintaining, and must implement and maintain, adequate back-up and recovery procedures to protect and preserve the Data.
- (g) You must not, and must procure that your Personnel do not, do any of the following:
  - (i) reverse engineer, reverse compile, decompile or disassemble the object code of any part of the Software or otherwise attempt to derive the source code of the Software;
  - (ii) use the Cloud Services unlawfully, fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the Cloud Services or systems;
  - (iii) transmit or process via the Cloud Services any material that is defamatory, offensive or otherwise objectionable;
  - (iv) use the Cloud Services in a way that could damage, disable, overburden, impair or compromise Catapult's systems or security or interfere with other users; and
  - (v) collect or harvest any information or data, or attempt to decipher any transmissions to or from the systems used by Catapult.

## 9 FEES AND PAYMENT

- (a) You must pay Catapult the fees payable in accordance with this agreement within 30 days of your receipt of a valid invoice.
- (b) Except as required by law, you must pay to each Catapult Group Company all payments due to it under this agreement without any deduction, encumbrance or set-off and free and clear of, and without deduction for or on account of, any taxes, levies, imports, duties, charges, fees and withholdings of any kind and whether imposed by any governmental or any other authority (**Taxes**).
- (c) If any Taxes are required by law to be deducted or withheld from any payments due to a Catapult Group Company under this agreement (including under clause 4.2(c) and 4.3(b)), you must gross up such payment such that the balance payable to that Catapult Group Company after deduction of the applicable Taxes shall be equivalent to the original amount due to that Catapult Group Company.
- (d) You must notify Catapult promptly on or before signing this agreement of any requirements (or potential requirements) imposed by law which will or may result in a deduction or withholding of any amounts due to a Catapult Group Company under this agreement (including local withholding Taxes) and must take all actions reasonably required to avoid or mitigate the effect of such requirements (including, taking advantage of any applicable double taxation treaties). Catapult must cooperate with any reasonable requests from you in relation to taking advantage of such double taxation treaties.
- (e) If you do not pay any amount owing to Catapult by the due date for such payment, Catapult may do either or both of:
  - (i) on not less than 5 Business Days' notice to you, do any one or more of suspend, limit or restrict your access to the Software and suspend the performance of any of Catapult's other obligations to you until such amount is paid in full; and
  - (ii) charge interest on the amount outstanding at the rate of 10% per annum (or the maximum rate permitted by law, if lower), calculated from and including the date on which the payment became due until the date on which the payment is made. You must pay the interest on Catapult's written demand.

## 10 TAXES

### 10.1 Sales taxes

An Order may set out provisions relating to the collection and payment of sales, valued added and similar taxes applicable to that Order.

### 10.2 VAT

- (a) Unless otherwise stated, all amounts set out in this agreement are exclusive of VAT.
- (b) If VAT is properly payable by a party making a supply under or in connection with this agreement (the **supplier**), then the party liable to pay for that supply (the **recipient**) shall, in addition to any other amounts payable for that supply, pay to the supplier the amount of that VAT (the **VAT amount**).
- (c) The VAT amount is payable at the same time and in the same manner as the other amounts payable for that supply or, if later, on demand following the recipient receiving a valid VAT invoice.

- (d) Any reference in the calculation of any amount payable under this agreement to a cost, expense or other liability incurred by a party must exclude the amount of any credit for VAT in relation to that cost, expense or other liability.

## 11 INTELLECTUAL PROPERTY

- (a) Each party will retain its Pre-existing IPR and nothing in this agreement assigns or transfers the Pre-existing IPR of one party to the other.
- (b) Catapult grants to you a worldwide, royalty-free, perpetual, non-exclusive licence to use the IPR in the Documentation for the purposes of making use of the Equipment and Software.

## 12 CONFIDENTIALITY

- (a) A recipient of Confidential Information may only use the Confidential Information of the discloser for the purposes of performing the recipient's obligations or exercising the recipient's rights under this agreement.
- (b) A recipient must:
- not disclose the Confidential Information of the other to any person except to the extent this agreement permits;
  - not assist or permit any person to make any unauthorised use of the discloser's Confidential Information; and
  - take reasonable steps to safeguard the Confidential Information, including co-operating with the discloser as reasonably required to protect the confidentiality of its Confidential Information.
- (c) A recipient may disclose Confidential Information to:
- its Representatives on a "need to know basis"; or
  - any other person only with the discloser's prior written consent.

Before doing so, the recipient must ensure that those persons are aware of the confidential nature of the Confidential Information and are bound by confidentiality obligations consistent with this agreement.

- (d) On expiry or termination of the agreement, you must, at Catapult's election, either return or destroy and either certify the return and destruction of, or permit a Catapult representative to witness the destruction of, all documents and other materials in any medium in your possession or control which contain or refer to Catapult's Confidential Information. However, you may retain a single copy of any document or other material containing or referring to the Confidential Information to the extent you are required to do so by law. The return or destruction of Catapult's Confidential Information does not relieve you from your obligations under this clause 12.

## 13 DATA

- (a) The Data is and remains your property at all times.
- (b) You agree that Catapult may, and hereby grant Catapult the rights to:
- access, use, adapt, modify, reproduce, reformat, transform, and process the Data during the Term to the extent necessary to provide the Equipment, Software and Services and to otherwise perform Catapult's obligations under this agreement;
  - during or after the Term create Derivative Materials from the Data, only to extent that the Derivative Materials do not incorporate your Confidential

Information in a form that could reasonably identify any individual; and

- during or after the Term use information about you, users of the Equipment and Software, or your use of the Equipment, Software and Services, for the purpose of improving the Equipment, Software and Services, detecting and addressing threats to the functionality, security, integrity and availability of the Software, detecting and addressing breaches of this agreement or any of Catapult's other policies and to help Catapult to resolve service requests.
- (c) Subject to paragraph (a), any IPR in any Derivative Materials vest in Catapult absolutely immediately on creation.

## 14 PRIVACY

- (a) Each party must:
- collect, process, store and use personal data in accordance with applicable privacy law and consistent with the consent provided by each data subject;
  - comply with its own privacy policy;
  - maintain and enforce appropriate technical and organisational measures to protect its information technology systems for the protection of personal data; and
  - inform the other party of any request from a data subject regarding their personal data and the action being taken to comply with such request.
- (b) You confirm that you have obtained written consent, in accordance with any applicable privacy law, from all data subjects whose personal data is collected, stored or processed in accordance with this agreement.
- (c) Each party agrees to comply with their respective obligations as set out in the DPA at [www.catapultsports.com](http://www.catapultsports.com) which is incorporated in, and forms part, of this agreement.

## 15 AUDIT

Catapult may:

- monitor your usage of the Software; and
  - on reasonable notice audit your systems and records relating to the use of the Software and Equipment,
- for the purposes of verifying your compliance with the terms of this agreement.

## 16 WARRANTIES

### 16.1 Catapult warranties

Catapult represent and warrants to you that:

- no Service, Software or item of Equipment, or the use of any of the foregoing, will result in any unauthorised use of the rights (including IPR) of any person; and
- the Equipment is free from defects in workmanship and manufacture.

### 16.2 Disclaimer

- Subject to clause 16.1 and paragraphs 16.2(b) and 17.2(e), Catapult excludes and disclaims to the maximum extent permitted by law all guarantees, conditions, warranties or terms of any kind, whether express or implied or imposed by any applicable law.
- Some jurisdictions do not allow the exclusion of guarantees, conditions, warranties or terms implied or

imposed by any applicable law. Nothing in this agreement excludes, restricts or modifies any guarantee, warranty, term or condition, right or remedy implied or imposed by any applicable law which cannot lawfully be excluded, restricted or modified.

## 17 INDEMNITIES AND LIABILITY

### 17.1 Indemnities

- (a) Catapult indemnifies you and your employees, officers, agents and contractors from and against all losses, damages, liability, costs and expenses sustained or incurred by those indemnified and which arise out of or in connection with any demand, allegation, claim or action that the Equipment, Software or Services, or their use, infringe the rights (including any IPR) of any person (**Third Party IP Claim**).
- (b) Catapult is not liable to indemnify any persons under clause 17.1(a):
- (i) unless:
    - (A) you notify Catapult as soon as reasonably practicable of a Third Party IP Claim; and
    - (B) Catapult has (at its expense) the sole control of the defence of the Third Party IP Claim and all related settlement negotiations; and
    - (C) you provide Catapult (at Catapult's expense) with all assistance reasonably requested in connection with conducting the defence or settlement of any Third Party IP Claim; and
  - (ii) to the extent that the Third Party IP Claim was caused by, or contributed to by:
    - (A) a modification of the Service, Software or item of Equipment the subject of the Third Party IP Claim by a person other than Catapult or its Personnel; or
    - (B) you or any of your Personnel dealing with the Service, Software or item of Equipment in a manner not authorised by this agreement.
- (c) Catapult's liability under this clause 17.1 is not subject to any limit or exclusion of liability under clause 17.2.

### 17.2 Liability

- (a) To the extent permitted by law and except as otherwise expressly set out in this agreement:
- (i) the liability of a party under or in respect of an Order is limited in the aggregate to an amount equal to the amounts paid and payable by you under that Order; and
  - (ii) a party is not liable to the other party for:
    - (A) any special, indirect, incidental or consequential loss or punitive loss or damage; or
    - (B) loss of profits, revenue, business, goodwill, bargain, anticipated savings or management time,

whether or not the first party was aware of should have been aware of the possibility of such loss or damage.
- (b) If any guarantee, condition, warranty or term is implied or imposed by any applicable law and cannot be excluded (a **Non-Excludable Provision**), and Catapult is able to limit your remedy for a breach of the Non-Excludable Provision, then Catapult's liability for breach of the Non-Excludable Provision is limited exclusively (so far as

applicable laws do not prohibit) to one or more of the following at Catapult's option:

- (i) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
  - (ii) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- (c) To the extent permitted by law, a party's liability to the other party under or in connection with the agreement is reduced to the extent, if any, to which the other party's acts or omissions cause or contribute to its own loss or damage.
- (d) The limitations and exclusions of the liability set out in this clause 17 apply regardless of the basis on which such liability arises, whether in contract, breach of statutory duty, tort (including negligence), in equity or under statute.
- (e) Nothing in this agreement shall exclude or limit either party's liability for death or personal injury caused by its (or its agent's or sub-contractor's) negligence or for fraud or fraudulent misrepresentation or for any other liability that cannot, as a matter of law, be limited or excluded.

## 18 FORCE MAJEURE

- (a) A party will be relieved of its obligations (other than an obligation to pay money) to the extent those obligations are prevented by an event outside the reasonable control of the party and that event:
- (i) was not caused or contributed to by that party;
  - (ii) could not have been prevented by reasonable precautions or remedied by reasonable expenditure by the party which is seeking to rely on the event as the basis for relief,
- and such relief will continue for the duration of that event.
- (b) The party affected by the event must take all reasonable steps to resume the performance of its affected obligations as soon as reasonably possible.

## 19 TERMINATION

- (a) Without limiting any other rights which a party may have at law, a party may immediately terminate this agreement by written notice to the other party if the other party:
- (i) breaches a material term or condition of this agreement (including any of clauses 4, 5, 8, 9, 11, 12, 13, 14, 20, and 21); or
  - (ii) breaches a non-material term of this agreement and fails to remedy such breach within 30 days of receipt of a written notice from the other party requiring it to do so; or
  - (iii) the party becomes insolvent, bankrupt, or becomes subject to a presumption of insolvency under any laws, suffers a meeting of its creditors, has any sort of administrator or receiver appointed in respect of any of its assets, executes a deed of company arrangement, has a petition presented to appoint any such administrator or receiver, is unable to pay its debts or threatens or ceases to carry on its business or suffers any execution which remains unsatisfied for 10 days or anything similar or equivalent to any of these things.

- (b) The rights and obligations under clauses 12, 13, 17 and 20 and any other clause which by its nature is intended to survive the termination of expiry of this agreement will continue in full force and effect after this agreement ends.
- (c) All rights that a party has accrued before the agreement ends continue after expiry or termination.

---

## 20 PUBLICITY

- (a) Subject to paragraph (b), a party must not make any public statement about this agreement, the subject matter of this agreement or its relationship with the other party without the other party's prior written approval.
- (b) You agree that Catapult may use your name and logo in Catapult's customer lists and marketing materials in an informative manner and in a manner no more materially prominent than any other Catapult Group customer in those lists and materials, during and after the Term.

---

## 21 NOTICES

Any notice or other communication that is required or permitted to be given under this agreement must be given in writing and may be delivered by hand or sent by mail or email to the applicable address specified in the Order or as otherwise advised from time to time.

---

## 22 GENERAL

- (a) This agreement forms the entire agreement between Catapult and you in relation to its subject matter and replaces all previous agreements, arrangements, understandings, representations or other communications between the parties in relation to that subject matter.
- (b) Any changes to this agreement must be agreed in writing by Catapult and you.
- (c) This agreement is governed by the laws of Victoria, Australia and the parties submit to the jurisdiction of the courts of Victoria and the Commonwealth of Australia except that:
  - (i) the laws of the Commonwealth of Massachusetts apply, and the parties submit to the jurisdiction of the courts of the Commonwealth of Massachusetts, where the Catapult Group Company under the Order is Catapult Sports LLC; and
  - (ii) the laws of England and Wales apply, and the parties submit to the jurisdiction of the courts of England, where you are incorporated in the United Kingdom or any member state of the European Union.
- (d) A person who is not a party to this agreement has no right under this agreement to enforce any term of this agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to applicable laws.
- (e) No waiver of a right or remedy under this agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted. A single or partial exercise of a right or remedy under this agreement does not prevent a further exercise of that or of any other right or remedy.
- (f) Any provision of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The remainder of this agreement will remain in full force and effect.

- (g) Unless context requires otherwise, an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally.
- (h) This agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.
- (i) Catapult holds the benefit of this agreement on trust for, and may enforce this agreement directly against you on behalf of, each Catapult Group Company, even though those Catapult Group Companies are not parties to this agreement.
- (j) Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.
- (k) A consent required under this agreement from Catapult may be given or withheld, or may be given subject to any conditions, as Catapult (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.
- (l) You must not sell, transfer, delegate, assign, licence or create any security interest over any right or obligation under this agreement without Catapult's prior written consent. You authorize Catapult to, and agree that Catapult may, at any time and without obtaining any further consent from you: (A) assign all or any of its rights, subcontract all or any of its obligations, or novate all or any of its rights or obligations, under this agreement and, for the purposes of such novation, you consent to the assumption of the applicable liabilities by the relevant transferees and release of such obligations of the relevant transferors; and (B) mortgage, charge or otherwise create a security interest over this agreement.
- (m) The parties acknowledge and agree that Catapult and you are acting in the capacity of an independent contractor and that this agreement does not create any relationship of employment, agency or partnership between the parties either at common law or for the purposes of tax legislation, the superannuation guarantee legislation, workers compensation legislation or any other law.
- (n) Unless context requires otherwise, a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a party includes its successors and permitted assigns;
  - (iii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (iv) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - (v) a defined word or phrase means that any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (vi) words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation;
  - (vii) a document includes all amendments or supplements to, or replacements of, that document;
  - (viii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced.

- (o) This agreement may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument.

## 23 DEFINITIONS

**Accessories** means garments, pouches and vests (and similar) and any other items specified in an Order to be '**Accessories**'.

**Affiliate** means, in respect of an entity or other person, an entity or other person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, that entity or other person.

**Catapult** means the relevant Catapult entity specified in the Order.

**Catapult Group** means Catapult and its Affiliates.

**Catapult Group Company** means a member of the Catapult Group.

**Cloud Services** means the services specified in the Order as Cloud Services, which are 'software as a service' services hosted by Catapult and made available to you via the internet.

**Commencement Date** means the date so specified in the Order.

**Confidential Information** means, in relation to a party, information that is by its nature confidential, is designated by that party as confidential, or the other party knows or ought reasonably to know is confidential, and includes any information relating to the financial affairs, assets or liability of a party, or any information relating to the internal management of a party, its personnel, policies, plans, strategies, customers, suppliers, products or services. Confidential Information does not include information or material which is or becomes generally known to the public other than through a breach of this agreement or can be proven by the recipient to be:

- (a) at the time it was first disclosed to a party, already in the recipient's lawful possession;
- (b) developed independently by the recipient; or
- (c) was disclosed to the recipient by a third party entitled to disclose it.

**Data** means all data and information about or relating to you and Equipment Users that is entered into, stored in, generated by or processed by the Software, and includes biometric and athlete performance-related and capability-related data.

**Derivative Materials** means materials, data and insights created by or on behalf of Catapult and which are based on, or created or derived from, the Data.

**Documentation** means the user manuals and on-line documentation which are provided by or on behalf of Catapult to you.

**Equipment** means the athlete monitoring equipment described in the Order and any other items specified as '**Equipment**' in the Order.

**Equipment User** means those athletes and individuals that are monitored and measured using the Equipment and Software.

**EULA** has the meaning given in clause 5.1(a)(v).

**Fee** means an amount payable in accordance with clause 9.

**IPR** means all industrial and intellectual property rights of any kind including copyright, patents, trade marks, design, moral rights and other proprietary rights.

**Indemnified Loss** means (i) the Loss; plus (ii) any amounts payable under clause 9(c); plus (iii) an amount equal to any additional Taxes assessable on the Catapult Group arising out

of, or in connection with, the receipt by the Catapult Group of amounts under either or both of (i) and (ii).

**Loss** means all and any liabilities, costs, expenses, damages and losses and, in each case, whether or not in the contemplation of the parties at the date of this agreement, however it arises (including any act or omission of the Catapult Parties) and whether it is present or future, fixed or unascertained, actual or contingent. Loss shall include the amount of any deductible amount on, or an increase in the premium of, an insurance policy maintained by Catapult (or a Catapult Group Company) in respect of the Equipment.

**Local Software** means the items of software specified in the Order as Local Software Services, which are made available to you for installation and use on computers and systems operated by you.

**Non-Excludable Provision** has the meaning in clause 17.2(b)

**Order** means an order form for one or more of Equipment, Software, Accessories and Services in the format specified by Catapult from time to time and which is accepted and executed by Catapult as contemplated in clause 1.2.

**Personnel** of a party means officers, employees, contractors, agents, subcontractors and professional advisors of that party, and includes officers, employees, contractors, agents and subcontractors of any subcontractor but excludes the other party.

**Pre-existing IPR** means a person's IPR existing prior to the Commencement Date or subsequently brought into existence other than in the course of performing this agreement (including any improvements, modifications or developments of such IPR).

**Pre-Paid Purchase** has the meaning given in clause 1.3(a)(i).

**Representatives** means, in relation to each party, any person acting for or on behalf of that party and includes any director, officer, employee, agent, contractor, legal advisor or professional advisor.

**Services** means:

- (a) the training services (if any) set out in the Order; and
- (b) the Software Maintenance Services.

**Software** means the Local Software and the Cloud Services.

**Software Maintenance Services** means the services described in Appendix A to these terms and conditions.

**Subscription** has the meaning given in clause 1.3(a)(ii).

**Taxes** has the meaning in clause 9(b)9(c).

**Term** has the meaning given in clause 2.

**Third Party IP Claim** has the meaning given in clause 17.1(a).

**VAT** means any tax levied by reference to added value or sales, including (a) within Australia, 'GST' as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); (b) within the United Kingdom, 'VAT' as defined in the Value Added Tax Act 1994; and (c) within the European Union, such tax as may be levied in accordance with (but subject to derogations from) the Directive 2006/112/EC; and (d) any similar or equivalent tax in any other jurisdiction.

**Warranted Equipment** has the meaning given in clause 7(a).

**you** means the person specified as the 'Customer' in the Order.

## Appendix A - Software Maintenance Services

---

### I CATAPULT SUPPORT

- (a) Catapult will use its reasonable endeavours to operate and maintain Catapult Support between the hours of 9.00 a.m. and 5.00 p.m. Monday to Friday, excluding public holidays, in each of Victoria, Australia (being those times in Melbourne, for customers in Asia-Pacific), the UK (being those times in London, for customers in EMEA) and the United States (being those times in Boston, for customers in the Americas), as applicable (the **Hours of Service**).
  - (b) You may contact Catapult Support:
    - (i) by phone on +44 0113 426 0128 (EMEA) or +61 3 9095 8410 (APAC); or
    - (ii) by email on APAC\_Support@catapultsports.com (APAC), EMEA\_Support@catapultsports.com (EMEA) or US\_Support@catapultsports.com (Americas).
  - (c) Catapult will acknowledge receipt of each notification to the help desk as soon as practicable. For notifications received by telephone, Catapult is only required to immediately acknowledge receipt during Hours of Support. If, for any reason, Catapult is unable to respond to a help desk notification during the Hours of Service, Catapult will use its reasonable endeavours to respond to such message following the recommencement of the Hours of Service.
  - (d) Catapult will use its reasonable endeavours to respond to messages received by Catapult Support outside of the Hours of Service following the recommencement of the Hours of Service.
- 

### 2 SUPPORT REQUESTS

#### 2.1 Troubleshooting

- (a) You must first work through the applicable Support Troubleshooting Guides provided on Catapult's portal prior to submitting any Support Request to Catapult.
- (b) If you are unable to resolve any actual or suspected issue having worked through the Support Troubleshooting Guide, you must submit a reasonably detailed Support Request to Catapult Support via the "Submit a Request" feature at support.catapultsports.com.

#### 2.2 Qualified Employees

You must provide on Catapult's request suitably qualified and informed Personnel to provide assistance and information to Catapult, including with respect to knowledge or control of matters that may assist Catapult in performing its obligations under this agreement.

#### 2.3 Catapult Response

Catapult will determine the nature, potential severity and impact of the issue giving rise to your Support Request and consistent with your product type, Catapult will during the Hours of Service investigate the problem and respond to you where reasonably practicable within one Business Day from the time of the first telephone consultation with you and will, as and when necessary, provide you with the following information by email response:

- (a) an outline of the problem;
- (b) the proposed corrective action; and
- (c) to the extent possible, the proposed timeframe for performing such corrective action.

### 3 EXCLUDED SERVICES

Each of the following matters are outside the scope of the Software Maintenance Services:

- (a) any maintenance services in respect of superseded versions of the Software;
  - (b) correction of Errors caused by operation of the Software in a manner other than that expressly authorised by this agreement or the Documentation;
  - (c) consulting and training services;
  - (d) making changes to the Software designed to provide functionality not specified in the Documentation or this agreement;
  - (e) reviewing or advising in relation to the method of use of the Software or its integration with any of your systems or processes; and
  - (f) maintenance of any computers, hardware, software, networks and other equipment and services necessary to access and make use of the Software.
- 

### 4 DEFINITIONS

- (a) **Catapult Support** means the support service described in clause 1(a) of Appendix A.
- (b) **Excluded Services** means those services described in clause 3 of Appendix A.
- (c) **Hours of Service** has the meaning given in clause 1(a) of Appendix A.