

1. **[SOFTWARE<sup>1</sup>**

- 1.1 Each Party mutually undertakes to sign the Escrow Agreement promptly following signature of this Agreement. The Lead Party additionally undertakes to procure that the Escrow Agent promptly signs the Escrow Agreement.
- 1.2 Each Party mutually undertakes to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:
- 1.2.1 the Source Code Materials shall constitute the material;
- 1.2.2 this Agreement shall constitute the licence agreement; and
- 1.2.3 all software [(including Party Software and/ or Third Party Software)] forming part of the Results shall constitute the package.
- 1.3 For the purposes of the Escrow Agreement, the trigger events are:
- 1.3.1 termination of this Agreement due to any Parties' material or persistent breach howsoever arising;
- 1.3.2 termination by the Escrow Agent of the Escrow Agreement, if such termination is occasioned by any breach or default by a Party of its obligations under the Escrow Agreement howsoever arising including failure by a Party to pay any of the Escrow Agent's fees; or
- 1.3.3 the insolvency of a Party who controls the Source Code Materials.
- 1.4 Each Party undertakes to procure that any sub-contractor (including any third party provider of software which forms part of the Results) provides it with all assistance necessary to fulfil its obligations under this clause 8 and the Escrow Agreement.
- 1.5 [Notwithstanding the terms of this clause 8 the terms of the Software Licence provided for at Schedule 12 shall apply at all times to the Supplier Software.]<sup>2</sup>
- 1.6 [Each Party shall ensure that it has all rights to license any Third Party Software to the Parties and their Group Companies. In the event it does not have such right it shall procure the entering into of a direct licence between the Third Party who owns the Third Party Software and the Parties. The terms of any such direct licence which the Parties enter into shall apply to the use of the relevant Third Party Software within the Project.]<sup>3</sup>

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<sup>1</sup> Clause only relevant where Software is being provided.

<sup>2</sup> To be used only where this is a software development project and additional licence terms are agreed within Schedule 12 that differ to the terms of this clause 8.

<sup>3</sup> This is only relevant where Third Party Software is used