

# DESWIK SAAS STANDARD TERMS

## 0. Agreement Structure

This Agreement consists of:

- (a) the Proposal;
- (b) the relevant Service-specific Appendices to these Standard Terms; and
- (c) the body of these Standard Terms.

Any inconsistency between such terms will be resolved in the order of precedence set out above.

## 1. Supply, Term & Services

### 1.1 Supply

The Proposal constitutes an offer by Deswik to provide the Services on the terms of these Standard Terms, and is accepted by Customer signing and returning the Proposal, or by Customer accessing or using the Services.

### 1.2 Term

The Agreement commences on the earlier of (i) execution of the Proposal, and (ii) Customer's access or use of the Services. The term will continue for the period of time specified in the Proposal as the 'term', and if no term is specified in the Proposal then - for Platform Services - the period paid in advance by Customer, or - for Other Services - the period of time until completion of those services (**Term**). Unless otherwise specified in a Proposal, an upgrade to the Hosted Solution during the Term (for example an added feature or functionality, or a change to the scope of license) does not extend the Term.

### 1.3 Services

In consideration of payment of the Charges, Deswik will provide Customer with the Services, including a non-exclusive, non-transferable licence for the Term for the Authorised Users and/or Sites specified in the Proposal, to access the Hosted Solution described in the Proposal, for the benefit of the Authorised Users and/or Sites specified in the Proposal.

## 2. Standard of Services

- (a) Deswik will perform the Services in accordance with the Proposal.
- (b) In performing the Services, Deswik will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work.

- (c) Deswik will use no less than industry standard security measures employed by similar entities providing similar services, designed to prevent unauthorised access to Deswik's own systems. Elements of the Platform Services such as the Platform itself may be controlled by a third party with their own security procedures. Upon request, Deswik will confirm to Customer the identity of such third parties to allow Customer to perform its own due diligence to satisfy itself of third party security practices.

## 3. Restrictions

Except to the extent otherwise expressly permitted by this Agreement, Customer must not (and must not permit anyone else to):

- (a) rent, lease, sell, distribute or sublicense the Services;
- (b) provide access to the Services to a third party, other than to Authorised Users;
- (c) use the Services to develop a similar or competing product or service;
- (d) reverse engineer, decompile, disassemble or seek to access the source code or non-public APIs to the Services;
- (e) modify or create derivative works of the Services;
- (f) interfere with or circumvent usage limits or scope of use restrictions contained in this Agreement or as published from time to time on Deswik's Website; or
- (g) remove, obscure or modify in any way any proprietary or other notices or attributions in the Services.

## 4. Other Services

- (a) The Proposal may provide for Services, other than Platform Services, which may include provision by Deswik of advisory services, opportunity sizing, scoping, or the deployment, installation, integration, configuration, enhancement or development of software, or other similar services (**Other Services**).
- (b) Unless the Proposal otherwise specifies, following any deployment, installation, development, integration, configuration or enhancement of software, such software (together with any enhancements) will be considered Hosted Solution under this Agreement. If no Charges are specified in the Proposal for the hosting, support and ongoing licence to use that software, any licence

contemplated in clause 1.3 will be the subject of a separate agreement between the parties.

- (c) The access contemplated in clause 1.3 may be contingent upon the completion of Other Services described in the Proposal.

## 5. Payment & Invoicing

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- (a) Customer will pay Deswik the Charges as set out in the Proposal.
- (b) Unless otherwise specified in the Proposal, Customer must pay Deswik the amount invoiced within 30 days from the date Deswik renders the invoice.
- (c) If Customer has failed to make a payment which is due and payable to Deswik in accordance with the Agreement and that amount remains unpaid for five Business Days after Deswik gives notice to Customer of the default, Deswik may do any or all of the following:
- (i) suspend performance of its obligations under this Agreement (including its obligation to provide access to the Platform Services) until the amount outstanding is paid in full;
  - (ii) Suspend performance of its obligations under any other agreement between Deswik and Customer until the amount outstanding is paid in full;
  - (iii) charge interest on the daily balance of all unpaid Charges at six percent above the cash rate published by the Reserve Bank of Australia from time to time, capitalised at the end of each month, calculated from and including the date on which the payment became due until but excluding the date on which the payment is made; and
  - (iv) terminate this Agreement by giving at least 30 days' notice in writing.
- (d) Charges are not refundable.

## 6. Charges Review

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- (a) Where this Agreement contemplates Deswik providing Services on an ongoing basis (such as Platform Services, licensing, hosting or support services), then the Charges may be reviewed and increased whenever Deswik determines it appropriate, (taking into account its normal fees for similar goods and services at the relevant time), to take effect at the start of the next Invoice Cycle.
- (b) In this clause **Invoice Cycle** means:

- (A) each separate period of time contemplated by an invoice for services being provided on a rolling or ongoing basis; or
- (B) in the absence of any distinct period contemplated by clause (A) – on each anniversary of the commencement of the relevant Services.

## 7. Intellectual Property

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- (a) Deswik's Intellectual Property Rights will vest in, or remain with (as the case may be), Deswik. Customer acknowledges Deswik's title to and interest in Deswik's Intellectual Property Rights.
- (b) Customer and each of its Associated Entities must:
- (i) not, subject to the terms of this Agreement, use or allow the use of any of Deswik's Intellectual Property Rights or any part of them in a manner that is contrary to or conflicts with or in any way or damages the title, interest or interest of Deswik in Deswik's Intellectual Property Rights;
  - (ii) not challenge or call into question in any way the right, title, interest and goodwill of Deswik in respect of Deswik's Intellectual Property Rights;
  - (iii) subject to this Agreement, not register or attempt to register under the provisions of any statute or otherwise Deswik's Intellectual Property Rights without the express written consent of Deswik;
  - (iv) not modify, reverse engineer or make a copy of Deswik's Intellectual Property Rights for any purpose, and it must not attempt to discover any source code or underlying ideas or algorithms in the Platform or Hosted Solution;
- (c) All tools, software (including Improvements) and other materials and equipment used in or created for the provision of Services by Deswik, all feedback about the Services provided by Authorised Users, and all present and future intellectual and industrial property rights in those tools, software and other materials and equipment:
- (i) will remain the sole property of Deswik or its licensors (as the case may be); and
  - (ii) may be used by Deswik in providing services to other customers.

## 8. Taxes

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- (a) All amounts specified in (or in connection with) this Agreement are exclusive of Indirect Transaction Taxes.
- (b) If Indirect Transaction Taxes are imposed on any supply, transfer or sale (**supply**) made under or in connection with this Agreement, or if the party making that supply (**supplier**) is liable, under the applicable law, to pay, or collect and remit, the Indirect Transaction Taxes to the appropriate government agency, the party receiving that supply shall pay to Deswik an additional amount equal to the Indirect Transaction Taxes payable by Deswik in respect of the supply at the same time as payment for the supply.
- (c) Customer will pay all Charges net of any applicable withholding taxes. Deswik will work with Customer to avoid any withholding tax if exemptions, or a reduced treaty withholding rate, are available. If Deswik qualifies for a tax exemption, or a reduced treaty withholding rate, Deswik will provide reasonable documentary proof. Customer will provide Deswik reasonable evidence that it has paid the relevant authority for the sum withheld or deducted.

## 9. Customer's Responsibilities

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Unless otherwise specified in the Proposal or any other agreement between Deswik and Customer, Customer warrants that it is responsible for:

- (a) all equipment, including computer hardware and software, used by Customer in connecting with the Platform;
- (b) ensuring that any software not included in the Services that is necessary for the proper operation or utilisation of the Services (including any non-Deswik software and any Deswik software licensed under a separate agreement) are kept up to date;
- (c) any charges or costs incurred in connection with their telephone or internet connections necessary for Customer to access the Platform;
- (d) the provision of data, instructions, documentation, information, and access to equipment, systems and Customer personnel reasonably required by Deswik from time to time to perform the Services including making the Hosted Solution available via the Platform;
- (e) communicating promptly to Deswik any difficulties with access to the Services;
- (f) ensuring login credentials are kept confidential;

- (g) in respect of any Authorised User whose access should be removed (e.g., due to resignation or termination), ensuring:
  - (i) that such access is promptly revoked in any case where Customer has the ability or means to revoke such access; or
  - (ii) Deswik is promptly notified that the relevant Authorised User's access should be revoked;
- (h) ensuring that Deswik is promptly notified if Customer becomes aware of any unauthorised access to credentials or Platform Services;
- (i) Authorised Users' acts and omissions;
- (j) ensuring Authorised Users comply with this Agreement and the reasonable use policies available at Deswik's Website;
- (k) ensuring each Authorised User has undergone the relevant training specified in the Proposal prior to access (unless the Proposal explicitly states that no training is required);
- (l) ceasing access (including causing all Authorised Users to cease access) to the Services upon expiry of the Term or termination of this Agreement or suspension of Services; and
- (m) ensuring the Platform Services meet Customer requirements and regulatory obligations.

## 10. Data, Customer Analysis & Continuity

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- (a) Customer warrants that it is responsible for:
  - (i) ensuring the completeness and accuracy of the data, instructions, documentation and information it provides Deswik;
  - (ii) any loss or damage suffered that is a direct or indirect result of any incomplete, inaccurate, faulty or aberrant data, or data shared without the required permissions or consents, instructions, documentation or information provided to Deswik;
  - (iii) data uploaded to Platform by, or on behalf of Customer, including
  - (iv) ensuring the data has been collected, processed and entered into the Platform in accordance with applicable laws on the processing of personal data;
  - (v) ensuring nothing prohibited, such as unlawful content, or explicit material, is uploaded, stored or shared in the Platform;
  - (vi) ensuring that the data or any other material uploaded to the Platform by, or on behalf of Customer is free from any virus, malware, worm, trojan horse, zombie, keylogger or other malicious code; and
  - (vii) ensuring that the data that exists in each Deployment belongs only to the entity/ies specified in the Proposal.

- (b) Customer acknowledges that:
- (i) Provided Deswik meets its obligations under clause 2(c), Deswik has no responsibility for unauthorised access to the Platform Services;
  - (ii) the Hosted Solution does not detect faulty or aberrant input data, and under no circumstances will Deswik validate any Customer's data for sufficiency, accuracy or usability;
  - (iii) the Hosted Solution does not detect any viruses or malicious code, and Customer is responsible for ensuring that data uploaded to the Platform by, or on behalf of Customer is free from viruses or other malicious code;
  - (iv) Deswik will handle data in accordance with its Privacy Policy available at Deswik's Website, and unless otherwise agreed or legally prohibited, Deswik will delete all Customer's Platform data no more than 12 months after the expiry of the Term;
  - (v) if Customer wishes to engage Deswik to store Customer data after the expiry or termination of this Agreement;
  - (vi) Customer must notify Deswik of that intention prior to the expiry or termination of this Agreement;
  - (vii) Deswik and Customer will engage in good faith negotiations to enter into a separate agreement for the ongoing storage of the relevant data;
  - (viii) any Customer Platform data stored by Deswik (for example pursuant to 10(b)(iv)) is typically not updated except when specified in a Proposal or as necessary to deploy Updates;
  - (ix) recommencement of Platform Services after expiry or termination may not be feasible due to data retention procedures, is at Deswik's discretion, and may be subject to payment of Charges for the intervening period; and
  - (x) Charges are determined, in part, based on the configuration of the Platform Hosted Solution contemplated by the Parties at the commencement of the initial Term. Any additional costs to Deswik as a result of changes to that configuration sought by Customer after the commencement of the initial Term (for example, in relation the country where Customer's Data must be stored) will be passed onto Customer.

## 11. Reliance

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Customer acknowledges that:

- (a) unless otherwise stated in the Proposal, Customer must not use the Services as part of a critical risk control process;
- (b) it will undertake its own assessment to develop a thorough understanding of the output derived from the Services or Hosted Solution, and will exercise its own judgment relation to how that output is deployed or utilised – Deswik will not be liable for any direct or indirect losses suffered by Customer relating to Customer's failure to comply with this clause; and
- (c) the Services are provided for Customer's benefit and should not be disclosed to any third party or quoted or referenced in any public document without Deswik's prior written consent.

## 12. Availability, Updates & Disclaimer

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### 12.1 Deswik May Disable Access

Deswik may disable Customer access to the Platform Services upon expiry of the Term or earlier termination of this Agreement.

### 12.2 Updates & Outages

- (a) Deswik may make enhancements, updates or new releases of the Platform Services from time to time (**Updates**). Customer acknowledges that additional downtime may apply in the event that Deswik makes Updates, and that configurations may become outdated after the Update
- (b) Updates are on an 'as and when available' basis and do not cover access to new modules, other sub-modules, alternative deployment methods, or differing or enhanced compute resources.
- (c) Outage periods for the Platform Services may be notified by Deswik from time to time for any purpose including maintenance, concurrency upgrades, scheduled downtime (for example for Updates), unscheduled interruption due to factors beyond the control of Deswik, unavailability of any third party provider as applicable.
- (d) Deswik may temporarily suspend Customer access to the Platform Services to preserve data integrity, in the event of a security breach, or technical malfunction, or when Deswik has a reasonable perception that Customer's use of the Platform Services is in breach of the Agreement, poses a risk to the Platform Services or any third party, or may adversely impact

Deswik's systems, the Platform Services, or another customer.

- (e) Deswik will use reasonable endeavours to give Customer reasonable notice of any scheduled outages, however Customer acknowledges that such notice may not always be provided (for example where there is any unexpected or unplanned outage) and must regularly backup any data that may be need during an outage.

### 12.3 Versions

Deswik reserves the right to migrate Customer to the latest Hosted Solution version to facilitate management of the complexity of supporting different versions.

### 12.4 Disclaimer

While Deswik will use commercially reasonable endeavours to enable continuous access to the Platform Services, the very nature of a software-as-a-service offering is that access is subject to network connectivity and can not be guaranteed. As such, the Platform Services are provided on an "as is where is" basis without any firm service levels. Deswik does not warrant that the Platform Services will be continuously available, uninterrupted, error-free, meet Customer's requirement, be fit for purpose, or operate with Customer's hardware or software (including software provided by Deswik).

### 13. Usage Monitoring Mechanisms

Deswik may use monitoring mechanisms in the Platform Services to detect unauthorised use, as well as to collect and transmit data related to use of the Platform Services to Deswik and/or its Associated Entities and agents for the purposes of enforcing usage limitations agreed in the Proposal or otherwise provided in this Agreement, undertaking usage analytics for internal purposes, and for any other lawful business purpose during or after the Term (provided that the data used and stored for such other purposes is aggregated and anonymised). By using the Platform Services, Customer consents to Deswik using these mechanisms and collecting this data, as well the transmission of the data as described. Deswik will use this data only for the purposes stated in this clause 13.

### 14. Number of Authorised Users

Depending on the nature of the Hosted Solution, Deswik may provide Platform Services on a broad, group-based or 'unlimited' user basis where specified in a Proposal. Such access will be based on an expected user count, users must belong to a

particular group or Site as specified in the Proposal, and users may require training per clause 9(k). For clarity, there also exists a technical limitation on the number of users - an unreasonably high number of simultaneous users may cause degraded performance and/or unavailability of the Hosted Solution.

### 15. Customer Access Administrators

Where the Hosted Solution allows for customer access administrators, it is Customer's exclusive responsibility to manage and monitor the granting of access, and allocation of user licenses, by such customer access administrators.

### 16. Reasonable Usage Allowance

Charges paid by Customer are based, in part, on the cost to Deswik to access the infrastructure required to provide the Hosted Solution at the time of the Proposal (for example, the costs of access to data storage facilities and machine types with certain CPU and memory specifications). Where an increase in Customer usage of the Hosted Solution over the Term results in additional costs to Deswik of providing the Hosted Solution, Deswik may charge Customer for those additional costs.

### 17. Customer Authentication Platform

Authentication using single sign on (SSO) by Customer's chosen identity provider can be accommodated by Deswik upon Customer request. Due to a requirement of the SSO itself, Customer may be required to use SSO where their domain has already been registered for use on the Platform. Customer is responsible for managing the SSO and Deswik is not liable for any issues caused by the SSO including delays in, or lack of access to, the Services.

### 18. Minimum Requirements

In order to receive the Platform Services, Customer must meet the minimum specifications made available by Deswik from time to time, which may include minimum internet requirements, minimum hardware requirements, or the requirement to be able to use a particular version of a specified browser.

### 19. Assumptions

Should any assumptions in the Proposal prove or become inaccurate during the Term, Deswik reserves the right to raise a variation to adjust the scope and/or

pricing of the Services for Customer's review and approval.

## 20. API Access and Data Export

- (a) Unless otherwise specified in the Appendices or the Proposal, interaction with the Hosted Solution via an API is not supported.
- (b) Where specified the Appendices or in the Proposal that Customer may export Customer's Hosted Solution data either partially or in full, unless otherwise specific in the Proposal, this will be via manual export by Customer and is not supported for use within the Hosted Solution. For example, the data exported may become incompatible with the Hosted Solution.
- (c) Deswik may alter the data schema (for example, structure, names of columns, type of data valid for the column) of the Hosted Solution data at any time.

## 21. Support and Maintenance

Deswik will provide the support and maintenance specified in the Proposal.

## 22. Training

Unless otherwise specified in the Appendices or the Proposal, all training is provided subject to the 'Training Only' terms and conditions relevant to the region and available at Deswik's Website.

## 23. Customer Premises

Where the parties have mutually agreed for Deswik personnel to visit a site, premises or other location owned, controlled or operated by Customer in connection with the Services (**Customer Premises**), Customer will ensure Customer Premises are safe and comply with all relevant occupational health and safety legislation, regulations and industry standards. Unless otherwise stated in the Proposal, all travel to and from Customer Premises will be charged to Customer at cost, and Deswik personnel time spent on Customer Premises induction activities will be charged at Deswik's then standard hourly consulting fee.

## 24. Additional Offering-Specific Terms

Depending which Services are specified in the Proposal, additional offering-specific terms may apply. Such terms may be included in the Proposal or provided separately prior to commencement.

## 25. Sanctions Undertaking

By accepting the terms of this Agreement, or by otherwise using the Services, Customer agrees to comply with the Sanctions Undertaking, the terms of which are deemed incorporated into this Agreement. Customer indemnifies Deswik for all costs, damages and losses Deswik suffers arising from any breach by Customer or its Personnel for any breach of the Sanctions Undertaking.

## 26. Confidentiality

- (a) This clause survives the termination or expiry of this agreement.
- (b) Subject to clauses (c) and (d), each party (**Recipient**) receiving the Confidential Information of the other Party (**Discloser**) must:
  - (i) not disclose or use (other than to perform its obligations under this agreement) the Discloser's Confidential Information; or
  - (ii) not make any public announcement or issue any press release regarding this agreement or the transactions contemplated by it,
  - (iii) use its best endeavours to ensure that its Personnel do not:
    - (A) disclose or use (other than to perform their obligations under this Agreement) the Discloser's Confidential Information;
    - (B) make any public announcement or issue any press release regarding this Agreement or the transactions contemplated by it.
- (c) The Recipient may disclose, and may permit its Personnel to disclose, any Confidential Information:
  - (i) with the prior written consent of the Discloser;
  - (ii) if it is required to do so by law or by any recognised stock exchange or government agency;
  - (iii) if the Confidential Information has come within the public domain, other than by a breach of this Agreement by a party, or has come within the possession of the Recipient otherwise than in the course of dealings between the parties as contemplated by this agreement;
  - (iv) to its professional advisers; or
  - (v) to an Associated Entity.
- (d) Each party will implement commercially reasonable measures to prevent any

'cyberattack', 'hack' or other intentional data security breach performed by a hostile third-party.

- (e) Provided the Recipient has complied with clause (d), it will not be liable for a breach of this Agreement, or liable in tort or any other legal or equitable basis, for the release of Confidential Information if the release was the result of a 'cyberattack', 'hack' or other intentional data security breach performed by a hostile third-party.
- (f) Upon the termination of this agreement, the Recipient must, on demand, return to the other all Confidential Information that it has received to the Discloser and any copies.
- (g) Despite clause (f), the Recipient may (subject to the continuing obligations under this Agreement), retain a copy of documents and other materials containing, recording or constituting Confidential Information to the extent that:
  - (i) it is required to retain the Confidential Information under any applicable law, regulation, professional standard, or order from a court or an administrative or regulatory agency having competent jurisdiction; or
  - (ii) its computer back-up procedures (or those of its Associated Entities, legal, accounting or financial advisors to whom Confidential Information has been disclosed) create copies of Confidential Information, in which case those entities may retain those copies for the period backed-up computer records are normally archived by the relevant entity;
  - (iii) it is required to retain the Confidential Information for the purpose of any risk management policy or policy of insurance effected by it, in which case a single copy of the Confidential Information may be retained by that party, and access to that copy will be limited to a single appropriate senior officer of that party.

## **27. Force Majeure**

### **27.1 Giving of notice**

If a Force Majeure Event occurs, the Affected Party must, as soon as practicable, give the other party written notice of that fact including:

- (a) reasonable particulars of the Force Majeure Event;

- (b) details of the obligations affected by it and the extent to which they are affected;
- (c) an estimate of its likely duration; and
- (d) the steps taken to rectify it.

### **27.2 Liability for force majeure**

Subject to clause 27.3, if a Force Majeure Event occurs:

- (a) the Affected Party is not liable for any failure or delay in performing the Affected Obligations; and
- (b) the Affected Party's obligations under this Agreement are suspended, to the extent to which they are affected by the Force Majeure Event, for the duration of the Force Majeure Event.

### **27.3 Exceptions**

Clause 27.2 does not apply to the extent that:

- (a) the Affected Party could have avoided or circumvented the Force Majeure Event by taking reasonable precautions or other reasonable steps;
- (b) the failure or delay in performing the Affected Obligations was caused by a breach of this Agreement by the Affected Party;
- (c) the failure or delay in performing the Affected Obligations results from the Affected Party having a lack of funds;
- (d) the Affected Obligation is a payment obligation; or
- (e) the Affected Party has not otherwise complied with its obligations under this clause 27.

### **27.4 Efforts to overcome**

An Affected Party who has given notice of a Force Majeure Event under clause 27.1 must:

- (a) use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as reasonably possible; and
- (b) keep the other party regularly informed as to the steps or actions being taken to achieve this.

However, nothing in this clause 27 requires a party to settle any industrial dispute against its will.

### **27.5 Right of termination**

If a Force Majeure Event continues for more than 90 consecutive days, any party may terminate this Agreement by giving at least 30 days' notice to the other party.

## 28. Liability

### 28.1 Limitation of Liability

Deswik is not liable to Customer or to any other person for:

- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of Customer or any of its Personnel; or
- (b) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:
  - (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
  - (ii) Deswik or its Personnel were previously notified of the possibility of the loss or damage.
- (c) any loss arising out of or in connection with loss or damage to real or tangible personal property, personal injury or death caused by or contributed to by Customer's use of the Hosted Solution, the Platform or the Platform Services.

### 28.2 Maximum Liability

The maximum aggregate liability of Deswik for all proven losses, damages and claims arising out of or in connection with this Agreement, including liability for breach, in negligence or in tort or for any other common law, equitable or statutory action, is limited to a sum equal to the amounts paid to Deswik under this Agreement in the period of one year ending on the date the loss, damage or claim first arose.

### 28.3 Indemnity

Customer indemnifies and holds harmless Deswik and Deswik Associated Entities and its, and their, Personnel (each an "indemnified person"), in respect of any loss suffered or incurred in connection with any claims, proceedings, demands and actions of any nature whether actual or threatened made against an indemnified person arising out of or in connection with loss or damage to real or tangible personal property, personal injury or death caused by or contributed to by Customer's use of the Hosted Solution, the Platform or the Platform Services.

## 29. General

### 29.1 Entire Agreement

- (a) This Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and

supersedes, terminates and replaces all prior agreements and communications between the parties.

Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another party in relation to the subject matter of this Agreement.

### 29.2 Severability

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Agreement in any other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

### 29.3 Variation

Deswik may vary these terms from time to time by posting new versions on the Deswik Website. The variation will take effect 14 days after being posted. If a variation meaningfully reduces Customer's rights, Deswik will also provide specific notification either by email or a prominent notice on the Deswik Website. By continuing to use the Services or Hosted Solution after the new version becomes effective, Customer agrees to be bound by the revised terms.

### 29.4 Governing law and jurisdiction

- (a) This Agreement is governed by and must be construed in accordance with the laws in force in Queensland, Australia.
- (b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

### 29.5 No set-off

Unless this Agreement expressly provides otherwise, a party has no right of set-off against a payment due to another party.

### 29.6 No Assignment / Transfer

Customer may not assign this Agreement (or any licences or rights granted within) without the prior written consent of Deswik. Customer acknowledges that Deswik may charge Customer, on a time and materials basis at Deswik's then current applicable rates for the personnel in question, for Deswik's activities associated with an assignment or transfer such as migrating users and data, adding/removing/updating SSO, training new users,

and responding to assignee's vendor onboarding and security related questions.

## 29.7 Publicity

Customer grants Deswik the right to include Customer as a customer of Deswik in Deswik's promotional material, including on its website. Customer may withdraw the rights given under clause 29.7 by 30 days written notice to Deswik.

## 29.8 Survival

This clause 29.8 (Survival) and clauses 5 (Payment & Invoicing), 7 (Intellectual Property), 26 (Confidentiality), 28 (Liability), 29 (General) and 30 (Interpretation) survive the expiry or termination of this Agreement.

## 30. Interpretation

### 30.1 Definitions

- (a) **Affected Obligations** and **Affected Party** have the meanings given to those terms in the definition of "Force Majeure Event".
- (b) **Appendices** means each appendix to these Standard Terms.
- (c) **Associated Entity** has the meaning given to that term in the *Corporations Act 2001* (Cth).
- (d) **Agreement** means the Proposal and these Standard Terms.
- (e) **Authorised Users** means the people or group of people - such as a discreet operational division or business unit - who are expressly identified in the Proposal as permitted to access or use the Services.
- (f) **Business Day** means a weekday (other than a public holiday) on which banks are open for business in Brisbane, Queensland.
- (g) **Charges** means the fees or charges payable by Customer for the provision of the Services as set out in the Proposal.
- (h) **Claim** means any action, suit, proceeding or demand of any kind whether in contract, negligence (or any other tort), equity, under statute or otherwise.
- (i) **Confidential Information** means the terms and existence of this Agreement and all information belonging or relating to a party to this Agreement, whether oral, graphic, electronic, written or in any other form, that is:
  - (i) or should reasonably be regarded as, confidential to the party to whom it belongs or relates; or
  - (ii) not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement, and includes in the case of Deswik, confidential information comprised in the Hosted Solution, the Platform Services and any benchmark tests or reports related thereto.
- (j) **Customer** means the entity identified as the customer or client in the Proposal.
- (k) **Deployment** means an isolated cloud deployment of the Hosted Solution with its own URL, database, user group(s) and access permissions.
- (l) **Deswik** means Deswik Mining Consultants (Australia) Pty Ltd ACN 130 036 832.
- (m) **Deswik's Website** means [www.deswik.com](http://www.deswik.com), or such other website as advised by Deswik from time to time.
- (n) **Force Majeure Event** means any act, event or cause including:
  - (i) an act of God, peril of the sea, accident of navigation, war, sabotage, riot, act of terrorism, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, breakdown of plant or equipment, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, pandemic, quarantine, radiation or radioactive contamination;
  - (ii) any third-party host of a Platform used by Deswik to provide Hosting Services changing, in a materially adverse way, the nature or basis on which the Platform can be supplied;
  - (iii) an action or inaction of a government agency, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, new or increased tariffs, regulation, decree or other legally enforceable order,
 to the extent that the act, event or cause directly or indirectly results in a party ("the **Affected Party**") being prevented from or delayed in performing one or more of its material obligations under this Agreement ("the **Affected Obligations**") and that act, event or cause is beyond the reasonable control of the Affected Party

- (o) **Hosted Solution** means the programs and information, in whatever form, to which Deswik gives access for the purpose of and subject to this Agreement, and as more particularly set out in the Proposal. Examples of a Hosted Solution include cloud-based software applications such as Deswik.APEX, Deswik.ORB, Deswik.BOLT, Deswik.RACE and their various modules and sub-modules, and cloud-based approaches to desktop and enterprise solutions such as Deswik.Suite, Deswik.MDM and Deswik.OPS.
- (p) **Improvements** means any improvements, modifications or developments that Deswik makes to the Hosted Solution in connection with the Services.
- (q) **Indirect Transaction Taxes** means any value added tax, goods and services tax or similar tax including, without limit, sales, use or consumption taxes, imposed, claimed, levied or assessed by, or payable to, any government agency, but does not include any related penalty, fine or interest thereon.
- (r) **Liabilities** means damages, losses, liabilities, fines, penalties, claims, costs and expenses (including legal fees on a solicitor-client indemnity basis) of any kind.
- (s) **Personnel**, in respect of a party, means the officers, employees, contractors (including subcontractors and their employees) and agents of that party and its Associated Entities.
- (t) **Platform** means that part of Deswik's systems (including hardware, software and data) and processes used by Deswik to provide access to the Hosted Solution under the Agreement and (to the extent and subject to the terms set out in the Proposal) made available for that purpose by Deswik, regardless of whether the Hosted Solution is hosted by Deswik or third party.
- Those systems can be subject to third party terms and conditions and may include:
- (i) the web development platform called Tropofy which underpins the deployment of hosted decision support toolkits built by Deswik;
  - (ii) the hardware architecture and automated deployment and release process used by Deswik to install and upgrade Tropofy based toolkits;
  - (iii) the Amazon Web Services configuration often expressed as a Cloud Formation Template (see <https://aws.amazon.com/cloudformation/>) used by Deswik to manage hosted environments;
- (iv) other infrastructure as a service providers and physical hosting locations used by Deswik at its discretion to provide access to the Hosted Solution.
- (u) **Platform Services** means software-as-a-service in the form of access given by Deswik to the Hosted Solution via the Platform, subject to this Agreement and as more particularly set out in the Proposal.
- (v) **Proposal** means the written proposal given by Deswik to Customer to which these Standard Terms are attached, or in which these Standard Terms are referenced.
- (w) **Sanctions Undertaking** means Deswik's "Sanctions Undertaking and End User Assurance" document, available at [www.deswik.com/terms-conditions](http://www.deswik.com/terms-conditions). Deswik reserves the right to amend the Sanctions Undertaking at any time at its discretion.
- (x) **Services** means services to be provided by Deswik to Customer under this Agreement as set out in the Proposal and includes Platform Services and Other Services.
- (y) **Site** means a discrete mining operation which may include multiple minable areas but only where equipment, people and resources are regularly shared across these minable areas.
- (z) **Standard Terms** means the terms and conditions in this document.
- (aa) **Deswik's Intellectual Property Rights** means all present and future intellectual and industrial property rights, whether protectable by statute, at common law or in equity:
- (i) in any program, code, algorithm, software, process or other subject matter that is used, written, developed, created or produced by Deswik or its Associated Entities to carry out the Services; or
  - (ii) which are otherwise owned by or licenced to Deswik or an Associated Entity of Deswik, including such rights that are comprised of or contained in:
    - (iii) anything created or developed by Deswik in relation to the Platform and not owned by a third party, and the Hosted Solution;
    - (iv) patents, designs, copyright, rights in circuit layouts, trademarks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;

- (v) any such rights that are owned by or licenced to Deswik or its Associated Entities,
- (vi) any application or right to apply for registration of any of these rights;
- (vii) any registration or application for registration of any of those rights; and
- (viii) all renewals and extensions of those rights.

### 30.2 Interpretation

Unless the contrary intention appears, a reference in this Agreement to:

- (a) a document (including this Agreement) includes any variation, amendment or change to it or replacement of it;
- (b) a party means a party to this Agreement and parties means all the parties to this Agreement.
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association;
- (e) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (f) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (g) a reference to *use* in the context of a licence to use a computer program means, subject to any limitations and extensions set out in the Proposal, the non-exclusive right to cause the object code version of the program to be executed via remote access over the public internet via the Platform for the purpose for which it was designed (and in any event for the licensee's internal operational purposes not involving commercialisation in favour of any third party);
- (h) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) the reference to "\$" is a reference to the lawful currency of Australia;
- (j) the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation and when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (k) an agreement on the part of two or more persons binds them jointly, and each of them severally;

- (l) if the doing of any act, matter or thing under or in connection with this Agreement is dependent on the consent or approval of a party, that consent or approval may be withheld, delayed, given or given on any conditions in the absolute unfettered discretion of that party;
- (m) if the date for payment of any monies under the Agreement falls on a day that is not a Business Day, the payment will be due on the following Business Day.

### 30.3 Inconsistency

If there is any inconsistency between the terms set out in any purchase order or similar document, and these Standard Terms, the Standard Terms prevail.

## APPENDIX A SPECIFIC TERMS FOR OPTIMISATION HOSTED SOLUTIONS

### A. Application of Appendix

The additional terms in this Appendix will apply to Hosted Solutions that contemplate mathematical based optimisation solutions (for example, Deswik.APEX, Deswik.BOLT, Deswik.ORB, Deswik.RACE).

### B. Backups and Data Retention

Customer acknowledges that:

- (a) the Hosted Solution and Platform are designed for transient data storage only and should not be relied upon by Customer for data backup;
- (b) Customer is responsible for maintaining regular data backups on its own systems and any data on the Platform it seeks to maintain.

### C. Fair Usage

Customer acknowledges that:

- (a) the Hosted Solution and Platform are not designed for long term storage of Customer data, and there is a limit to the number of scenarios generated by customers that Deswik can store (for example, the number of scenarios generated or files uploaded);
- (b) unless otherwise specified in a Proposal or product documentation, the number of scenarios maintained per Deployment is determined by Deswik based on a fair use approach.

### D. Reliance

Customer acknowledges that there are limitations to the ability of algorithm-based decision support system to analyse or take into account each and every consideration relevant to a decision, and Customer will use its own independent judgment in making decisions based on any output data obtained from the Hosted Solution or Services.

### E. Solve Concurrency

The Hosted Solution will be subject to a maximum of one solve at any given point in time, or such other maximum specified in the Proposal or product documentation. Additional licensed concurrency above the maximum will incur charges for Customer. The solve concurrency limit is pooled for all licences within a Deployment.

### F. Compute Allowance

- (a) Charges paid by Customer are based on Deswik's access to standard machine types with standard CPU and memory specifications.
- (b) Unless otherwise specified in the Proposal, Customer is assigned a standard compute allowance related to the expected type of models solved in that license based on the initial input of Customer (**Compute Allowance**). Customer acknowledges that it is possible that Authorised Users create models which exceed the Compute Allowance.
- (c) Compute Allowance is pooled for all licences within a Deployment. Should a Deployment exceed its allowance, Deswik reserves the right to levy additional compute charges against Customer.
- (d) Certain Hosted Solution modules and sub-modules are designed to solve mathematical problems for specific time horizons. Where a time horizon or other complex feature modelled by Customer extends beyond what was designed, the time required to solve such scenarios may become prohibitively long.

## APPENDIX B SPECIFIC TERMS FOR MDM (SAAS)

### A. Application of Appendix

The additional terms in this Appendix will apply to Hosted Solutions that comprise of a cloud-based offering of Deswik.MDM (for example, Deswik.MDM SaaS).

### B. Licensing Structure

Unless otherwise stated in the Proposal, Customer will be allocated an Authorised User Type (or Types) with differing access to the Hosted Solution as follows:

		Authorised User Type		
		View Only	Named User	Customer Access Administrator
Nature of Access	Can Access Hosted Solution	x	x	
	Can Access Licensed Functionality within Hosted Solution		x	
	Can Grant View Only Access			x
	Can Allocate 'Named User' Licenses from a Pool			x

The number of licenses per license type will be specified in the Proposal.

### C. Backups and Data Retention

Customer acknowledges that:

- (a) Deswik can exercise its discretion to remove from the Platform:
  - (i) duplicate data;
  - (ii) data that has not been accessed by, or on behalf of, Customer for 7 years;
  - (iii) data in breach of the Agreement, including prohibited content; or
  - (iv) upon 14 days prior notice, irrelevant data / data unrelated to the primary objective of the Hosted Solution.
- (b) Backups of Customer data may be retained by Deswik for up to 6 months after termination of the Services to allow for any export and transition requirements agreed in the Proposal. After this period, Deswik will securely remove Customer data from the Platform.

- (c) There may be atypical situations when up to 24 hours of data stored in the Platform may be unrecoverable.
- (d) Where Customer requires all data in the Hosted Solution to be restored to an earlier point in time, Customer may raise a request pursuant to the support and maintenance terms and Deswik will confirm the most appropriate restore option (if feasible), expected downtime, and any additional cost.

### D. Fair Usage / Compute Allowance

- (a) Unless otherwise specified in the Proposal, Customer will incur additional charges if the data stored on the Platform exceeds 1 TB per year.
- (b) The additional charges payable by Customer will be calculated by reference to the costs to Deswik of storing the data that exceeds the usage limits.

### E. API Access

Deswik will provide secure access to the Deswik.MDM public APIs in accordance with Deswik technical help documentation. API requests share capacity with other production workloads within the SaaS environment, so performance may vary at peak times and could be impacted by overall system load.

### F. Data Sovereignty

The application will be hosted in a Customer tenant in a mutually agreed AWS region chosen from a list of regions supported by Deswik, with the default region being: eu-west-1 Europe (Ireland). Deswik's access control service (used for authentication and authorisation) is hosted centrally in a single AWS region selected by Deswik. This affects access control traffic and does not change the selected hosting location for application data, such as files and content.

## APPENDIX C SPECIFIC TERMS FOR OPS (SAAS)

### A. Application of Appendix

The additional terms in this Appendix will apply to Hosted Solutions that contemplate a cloud-based offering of Deswik.OPS (for example, Deswik.OPS SaaS).

### B. Licensing Structure

Unless otherwise stated in the Proposal, Customer will be allocated an Authorised User Type (or Types) with differing access to the Hosted Solution as follows:

		Authorised User Type		
		View Only	Named User	Customer Access Administrator
Nature of Access	Can Access Hosted Solution	x	x	
	Can Access Licensed Functionality within Hosted Solution		x	
	Can Grant View Only Access			x
	Can Allocate 'Named User' Licenses from a Pool			x

The number of licenses per license type will be specified in the Proposal.

### C. Backups and Data Retention

Customer acknowledges that:

- (a) Deswik can exercise its discretion to remove from the Platform:
  - (i) duplicate data;
  - (ii) data that has not been accessed by, or on behalf of, Customer for 7 years;
  - (iii) data in breach of the Agreement, including prohibited content; or
  - (iv) upon 14 days prior notice, irrelevant data / data unrelated to the primary objective of the Hosted Solution.
- (b) Backups of Customer data may be retained by Deswik for up to 6 months after termination of the Services to allow for any export and transition requirements agreed in the Proposal. After this period, Deswik will securely remove Customer data from the Platform.

- (c) There may be atypical situations when up to 4 hours of data stored in the Platform may be unrecoverable.
- (d) Where Customer requires all data in the Hosted Solution to be restored to an earlier point in time, Customer may raise a request pursuant to the support and maintenance terms and Deswik will confirm the most appropriate restore option (if feasible), expected downtime, and any additional cost.

### D. Fair Usage / Compute Allowance

- (a) Unless otherwise specified in the Proposal, Customer will incur additional charges if the data stored on the Platform exceeds 500 GB per year.
- (b) The additional charges payable by Customer will be calculated by reference to the costs to Deswik of storing the data that exceeds the usage limits.

### E. API Access

Deswik will provide secure access to the Deswik.OPS public APIs in accordance with Deswik technical help documentation. API requests share capacity with other production workloads within the SaaS environment, so performance may vary at peak times and could be impacted by overall system load.

### F. Data Sovereignty

The application will be hosted in a Customer tenant in a mutually agreed AWS region chosen from a list of regions supported by Deswik, with the default region being: eu-west-1 Europe (Ireland). Deswik's access control service (used for authentication and authorisation) is hosted centrally in a single AWS region selected by Deswik. This affects access control traffic and does not change the selected hosting location for application data, such as files and content.