

DESWIK STANDARD TERMS AND CONDITIONS (TRAINING ONLY)

THIS AGREEMENT is made:

between **Deswik USA Inc.** of 1745 Shea Center Drive, Suite 400 Highlands Ranch, CO 80129, United States (**Deswik**)
and **The party identified in the Proposal (Client)**

RECITALS

- A. Deswik is in the business of supplying various mining consulting services and mining software.
B. The Client has requested certain Services on the terms of this Agreement.

1. Supply of Services**1.1 Services**

- (a) During the Term Deswik will provide the Client with the Services in accordance with the terms of this Agreement.
(b) The Client acknowledges and agrees that:
(i) in providing the Services, Deswik is reliant upon the accuracy and completeness of the information provided to Deswik by the Client; and
(ii) the description, scope, extent, quantity and timeframes and all other attributes of the Services as provided by the Client or as set out in the Proposal are a full and accurate description of the Client's requirements.
(c) Deswik must use its reasonable endeavors to provide the Services to the Customer within relevant estimated timeframes contemplated by the Proposal, and must endeavor to inform the Customer as soon as reasonably possible upon becoming aware of any matter which may delay the completion of the services.

1.2 Mutual Cooperation

Both parties will:

- (a) inform the other party as soon as practicable of any unforeseen changes, new developments, or other issues that impact and influence the Services; and
(b) wherever reasonably possible, accommodate each other's scheduling requirements.

2. Obligations**2.1 Client's Obligations**

To enable Deswik to provide the Services the Client must:

- (a) provide Deswik with:

- (i) timely Access to all required Systems and data (including, where necessary or desirable, administrative access);
(ii) timely access to premises, including any necessary security clearances, where required;
(iii) all items identified as Prerequisites in section 4 of the Proposal;
(iv) details of any work standards, policies and procedures that will apply to the Personnel while working at the premises or site designated by the Client; and
(v) where the Services are to be performed at the Client's site, parking and other on-site infrastructure and facilities to enable the Personnel to provide the Services.

- (b) use reasonable endeavors to respond promptly and accurately to all reasonable requests by Deswik to provide information required for the performance of the Services;
(c) ensure that all information provided to Deswik is accurate and complete and is not incomplete or misleading;
(d) where access to a Client's premises or site is required, ensure the Client's premises or site are safe and comply with all relevant occupational health and safety legislation, regulations and industry standards; and
(e) coordinate and be responsible for the assignment of tasks to its own personnel.

The Customer acknowledges and agrees that if the Customer does not comply with this clause 2.1 then Deswik is not obliged to supply the Services to the Customer.

2.2 Deswik's Obligations

- (a) Deswik will ensure its personnel, when using the Client's premises or facilities:
(i) comply with all rules, directions and procedures, including those relating to security or occupational health and safety, which are in effect at the premises or facilities;
(ii) avoid unnecessary interference with the passage of people and vehicles; and
(iii) not create a nuisance or unreasonable noise or disturbance.

3. Fees, Expenses and Payment**3.1 Fees**

- (a) The Client must pay Deswik the Fees for the Services.

- (b) Deswik will issue an invoice to the Client for the Fees and the Client must pay Deswik the Fee within 30 days of receipt a tax invoice from Deswik.
- (c) In addition to the Fees, Deswik must, upon presentation to the Client of receipts or other formal evidence, be reimbursed for:
 - (i) all reasonable out-of-pocket expenses; and
 - (ii) all reasonable travel costs, incurred by Deswik or the Personnel in performing the Services.
- (d) Deswik may charge the Client Interest on any monies owing under this Agreement which are not paid within the period specified in this Agreement.

3.2 Quotations

Where at any time Deswik provides a quotation to the Client (including but not limited to as part of any Proposal) the Client acknowledges and agrees that the quotation is:

- (a) based on Deswik's reasonable assessment of the time and materials required to undertake the work based on the information available to Deswik at the time of preparing the quotation; and
- (b) Services are quoted on a time and materials basis, are indicative only, and are not binding on Deswik.

3.3 Disputes

If at any time the Client disputes an amount included in a tax invoice, the Client must immediately pay the amount not in dispute.

3.4 Deferral of performance

If the Client fails to pay any Fees in accordance with this agreement, and such failure continues for 14 days after the Client is notified of such failure, without limiting any other remedies available to Deswik, Deswik may defer performance of all Services (whether or not relevant to those Fees), or suspend the Client's access to all Services, until the outstanding Fees are paid.

4. Term

This Agreement has effect from the Commencement Date and, unless terminated earlier in accordance with the provisions of this Agreement, remains in force until the Services are completed.

5. Taxes

5.1 Taxes

Any use tax, sales tax, excise tax, duty, custom, or any other Tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between the Client and Deswik shall be paid by the Client in addition to the price quoted or invoiced. In

the event Deswik is required to pay any such Tax, fee or charge, the Client shall reimburse Deswik for such Tax, fee or charge, or in lieu of such payment, the Client shall provide Deswik at the time this Agreement is executed an exemption certificate or other document acceptable to the taxing authority imposing the Tax, fee or charge.

5.2 US contracts

- (a) If, in respect of a tax audit or a levied tax assessment, the appropriate government agency seeks payment of any use tax, sales tax, excise tax, duty, custom, or any other Tax, fee or charge from Deswik for which Deswik seeks reimbursement from the Client (for which the Client would have been liable pursuant to Section 6.1, above), then, unless Deswik notifies the Client in writing of such Tax, fee or charge payable at least 30 days prior to the expiration date of the right to appeal the imposition thereof, any reimbursement by the recipient will be at its sole discretion.
- (b) Deswik shall do all things reasonable necessary to ensure that the Client remains eligible for any exemption, credit, set-off, deduction or similar amount to which the Client is entitled whether such Taxes, fees or charges are paid by Deswik or the Client. If an exemption to the payment of such Tax, fee or charge applies, the Client shall provide Deswik with a valid exemption certificate or other document acceptable to the taxing authority imposing the Tax, fee or charge.

6. Intellectual Property Rights

6.1 Ownership

- (a) All Intellectual Property Rights in the Proposal are owned by Deswik.
- (b) All Intellectual Property Rights in the Software are owned by Deswik, and nothing in this agreement assigns the Client any Intellectual Property Rights in the Software.
- (c) All Project IP created in the course of Deswik providing the Services to the Client and all Intellectual Property Rights in and to all documents and any other subject matter created for the purposes of, or in the course of, Deswik providing the Services to the Client will, upon their creation, be owned by and vested in Deswik.
- (d) Deswik Material remains the property of Deswik and nothing in this agreement grants the Client any Intellectual Property Rights in the Deswik Material or other Intellectual Property Rights of Deswik.

6.2 License of Deswik Material

Subject to third party rights, Deswik grants to the Client a non-exclusive license to use the Deswik Material to receive the Services during the Term.

6.3 License of Client Material

The Client grants to Deswik a non-exclusive, global, irrevocable, perpetual license to exercise:

- (a) the Intellectual Property Rights in any Client Material in connection with Deswik providing Services to the Client, including to use and modify the Client Material for that purpose; and
- (b) the Project IP in connection with Deswik's business, including to reuse non Client-specific Project IP for other clients of Deswik.

6.4 Deswik's marks

- (a) The Client must not, and must ensure that its officers, employees, agents and subcontractors do not, use the trademarks or logos of Deswik except with the prior written consent of Deswik.
- (b) The Client must include Deswik's copyright notice on all entire and partial permitted copies made of the Deswik Materials on any medium.

7. Confidentiality

7.1 Access to Confidential Information

Each party acknowledges that the other party, its employees or agents, may be given access to Confidential Information relating to the other parties' business or the operation of this Agreement or any negotiations relating to this Agreement.

7.2 Obligations of Confidence

Each party undertakes to:

- (a) hold in strict confidence all Confidential Information which comes into its possession; and
- (b) as far as commercially feasible, to take the same degree of care to protect the other party's Confidential Information as the recipient uses to protect its own Confidential Information.

7.3 Survival

The obligations of confidence in this clause 7 survive expiry or termination of this Agreement.

8. Termination

8.1 Termination by Deswik

Without prejudice to any rights or remedies of Deswik, Deswik may, by at least seven (7) days' notice in writing to the Client, terminate this Agreement if:

- (a) the Client fails to pay an undisputed invoice within 30 days of receipt of that invoice and persists in that failure for a period of 14 days after receipt of notice given by Deswik to the Client;
- (b) the Client breaches its obligations under this Agreement and:

- (i) the breach is not capable of remedy;
 - (ii) if capable of remedy, the breach is not remedied within 30 days of receipt of written notice by the Client requiring the breach to be remedied, unless the breach, having regard to its nature and importance does not justify termination; or
- (c) an Insolvency Event occurs in respect to the Client.

8.2 Termination for convenience

Either party may terminate this agreement at any time by giving 30 days' notice to the other party.

8.3 After termination

- (a) Termination of this Agreement does not affect any accrued right or liability of either party nor will it affect the coming into force or the continuation in force of any provision of this Agreement that is expressly or by implication intended to come into or continue in force on or after the termination.
- (b) The Client must promptly pay to Deswik all money due and owing as at the date of termination of this Agreement.
- (c) Deswik must promptly deliver up or return to the Client the Confidential Information including documents, reports and records of the Client's in Deswik's possession, custody or control.
- (d) The Client must promptly deliver up or return to Deswik the Confidential Information including documents, reports and records of Deswik in the Client's possession, custody or control.

9. Disclaimer and Limitation of Remedies

9.1 Customer Warranty

The Customer warrants that:

- (a) the Customer's premises and any other premises at which the Services are performed, and travel to and from those premises, will be safe; and
- (b) use of the Customer Material by Deswik in accordance with this agreement will not infringe the Intellectual Property Rights of any third party.

9.2 Reliance Warranties

- (a) The Customer represents and warrants, and it is a condition of this agreement, that:
 - (i) all information provided by the Customer or on the Customer's behalf to Deswik is accurate and is not, whether by omission of information or otherwise, misleading;
 - (ii) the Customer has not withheld from Deswik any document, information or other fact material to the decision of Deswik to enter into this agreement or any Proposal; and

- (iii) the Customer did not rely upon any representation made to the Customer by Deswik or any Related Body Corporate of Deswik (if any) prior to entry into this agreement.
- (b) The Customer acknowledges that Deswik is relying on the information provided by the Customer in preparing the Proposal and any other relevant scoping documents and timeframes in connection with the Services.

9.3 No Warranty

- (a) Deswik takes commercial steps to provide the Services so as to meet the Client's requirements. However, Deswik gives no warranty that the Services will be fit for any particular purpose.
- (b) Under no circumstances will Deswik be liable for any incidental, special, indirect, direct or consequential damages or loss of profits, interruption of business, loss of business opportunity or goodwill, any claims for indirect, special or punitive damages, third party claims or any indirect or consequential losses or related expenses which may arise from or be related to the Services.
- (c) If Deswik breaches any provision of this agreement, Deswik's sole and exclusive maximum liability, whether based in contract, tort, or otherwise, will not in any event exceed the lesser in value of:
 - (i) re-performing the Services; or
 - (ii) re-performance of the Services by a third party reasonably acceptable to Deswik.
- (d) The Client agrees that the Client must commence any action arising out of or related to this Agreement and the Services within one (1) year of the loss or damage arising. After that time the Client agrees that any cause of action will be permanently barred.
- (e) Nothing in this Agreement is intended or will be construed as excluding or modifying any statutory rights, warranties or conditions which are applicable to this Agreement or the Software and which by virtue of any legislation may not be modified or excluded.

10. Assignment or other Transfer

Neither party may assign all or any of its rights or obligations under this Agreement to any other person or entity without the prior written consent of the other party.

11. Notices

- (a) A notice given under this agreement must be:
 - (i) in writing and signed by or for the sender;

- (ii) directed to the recipient's address specified in this agreement or as varied by written notice; and
- (iii) left at, or sent by prepaid registered post, hand delivery or facsimile to, that address.
- (b) A notice is deemed to have been given:
 - (i) if left at the recipient's address or hand delivered, on the day of delivery;
 - (ii) if sent by prepaid registered post, 5 Business Days after the date of posting; or
 - (iii) if sent by facsimile, when the sender's facsimile machine records that it has been transmitted without error.
- (c) The provisions of this clause 11 are in addition to any other mode of service permitted by law.

12. Miscellaneous

12.1 Governing Law and Jurisdiction

This Agreement is governed by the laws applicable in the State of Colorado, and the parties submit to the jurisdiction of the Colorado courts in respect of all matters arising under or in connection with this Agreement.

12.2 Entire Agreement

This Agreement and the Proposal constitutes the entire agreement between the parties about its subject matter and supersedes all prior contracts, arrangements and understandings in relation to that subject matter and may only be altered in writing signed by all parties.

12.3 Counterparts

This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by facsimile.

12.4 Waivers

A waiver by a party of any of its rights under this agreement must be in writing and does not operate as a waiver of any other right or as a future waiver of that or any other right.

12.5 Further Action

Each Party must do all things and sign all documents reasonably necessary to give effect to this agreement and the transactions contemplated by it.

12.6 Client's Acknowledgements

Any material made available by Deswik and any statement made by Deswik in the Proposal is Deswik's own material and information. The Client in entering into this Agreement relied upon its own personal assessment and enquiries with respect to that material, those statements and the Agreement.

12.7 Severance

If any provision or part of a provision of this Agreement is invalid or unenforceable in any jurisdiction:

- (a) the provision must be read down for the purposes of the operation of that provision in that jurisdiction, if possible, so as to be valid and enforceable; or
- (b) if the provision cannot be read down it must be severed if it is capable of being severed, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction and the parties must consult in good faith to determine whether any amendment or substituted provision is required.

13. Definitions and Interpretation

13.1 Definitions

In this Agreement unless the contrary intention is apparent or the context otherwise requires:

Access means any interaction or communication with the System by way of any communications mechanism using guided or unguided electro-magnetic energy that causes the System to react or respond, in any manner whatsoever, to such interaction or communication and **Accessing** has a corresponding meaning.

Business Day means a day that is not a Saturday, Sunday or a public holiday in the Canadian province in which the work is being undertaken.

Client means the client identified as such at the commencement of the Proposal.

Client Material means any material provided by or to which access is given by the Client to Deswik for the purposes of this agreement including documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, trademarks, logos, schedules and data stored by any means.

Commencement Date means the date specified in section 2 of the Proposal (Scope of Work and Deliverables).

Confidential Information means information relating to a party's Intellectual Property or to a party's business operations including, without limitation:

- (a) any information that is designated by a party as confidential;
- (b) the Software;
- (c) all information given or obtained in circumstances where it could reasonably be inferred as being confidential;
- (d) the terms of this Agreement; and
- (e) all know-how, techniques, processes and commercial and financial information of a party,

but does not include information that:

- (f) becomes publicly available other than as a result of a breach of clause 7;
- (g) is authorized, permitted or directed to be disclosed by the other party;
- (h) is required to be disclosed by law; or
- (i) is required to be disclosed to a party's legal or financial advisers.

Deswik Material means any material provided by or to which access is given by Deswik to the Client for the purposes of this agreement including any documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.

Excluded Services means those excluded services and support identified in section 3.2 of the Proposal (Exclusions).

Fees means the fees set out or calculated in the manner specified in section 5 of the Proposal (Investment).

Indirect Transaction Tax 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.

Input Tax Credit means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

Insolvency Event means:

- (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller, trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person;
- (b) the person or the person's property or undertaking becomes subject to a personal insolvency arrangement;
- (c) the person is or becomes unable to pay its debts when they are due or is presumed to be insolvent at law;
- (d) the person ceases to carry on business; or
- (e) an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.

Intellectual Property includes patents, designs, registered designs, copyright, literary and artistic works, circuit layouts, registered and unregistered trademarks, trade and business names, trade secrets, applications of any of the above, as well as rights in and to inventions,

discoveries, improvements, look and feel, works and names.

Intellectual Property Rights means the rights comprised in any Intellectual Property or other proprietary rights whether at common law or by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect goodwill or confidential information.

Interest means payment of interest calculated on a daily basis and capitalized monthly at the rate which is 2% in excess of the published Bank of America variable interest rate for personal loans or, if lower, any maximum rate permitted by an applicable law.

Personnel means the skilled personnel to be provided by Deswik to the Client to provide the Services.

Project IP means the Intellectual Property or copyright in any reports provided to the Client in the performance of the Services that is created exclusively for the Client in the course of performing the Services.

Proposal means the proposal provided by Deswik to the Client in respect to the Services.

Services means the scope of work and deliverables detailed in section 2 of the Proposal (Scope of Work & Deliverables).

Software means the 'Deswik' suite of software and associated media, printed materials, 'online' or electronic documentation, and internet based services.

System means the designated information technology environment in which the Software is to be used.

Tax or Taxes means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any government agency or otherwise payable.

Tax Invoice means an invoice or other document, including without limit a credit note or debit note, in a form that is valid under the applicable law of the jurisdiction in which a liability to pay Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

Term means the term of this Agreement specified in section 2 of the Proposal (Scope of Work and Deliverables).

Third Party Software means any software which Deswik makes available to the Client, for the purposes of providing consulting services, which is owned or supplied by a third party.

13.2 Interpretation

In this Agreement, unless otherwise stated:

- (a) a reference to this Agreement is a reference to this Agreement as amended, varied, novated, supplemented or replaced from time to time;
- (b) a reference to any legislation includes any amendment or replacement and all subordinate legislation;
- (c) words or expressions:
 - (i) importing the singular include the plural and vice versa;
 - (ii) importing a gender include the other genders;
 - (iii) denoting individuals include corporations, firms, unincorporated bodies, authorities and instrumentalities;
- (d) a reference to a party to this Agreement or any other instrument includes that party's executors, administrators, successors and permitted assigns;
- (e) where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning;
- (f) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of this Agreement;
- (g) where an act would be required to be done, or a time limit or period would expire, on a day which is not a Business Day, the act may be done, or the limit or period will expire, on the following Business Day;
- (h) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the document or the inclusion of the provision in the Agreement;
- (i) a reference to two or more persons means those persons jointly and severally.

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