

## DESWIK END USER LICENSE AGREEMENT

**IMPORTANT - READ CAREFULLY:** This End-User License Agreement (EULA) is a legal agreement between you (either an individual or a single legal entity) (**Licensee**) and **Deswik** to use the Software. This EULA applies after the Licensee has received the Software from an Agent or directly from Deswik (**commencement**). An amendment or addendum to this EULA may accompany the Software. The Licensee agrees to be bound by the terms of this EULA by installing, copying, downloading or otherwise using the Software. If the Licensee does not agree to the terms of this EULA, the Licensee must not install copy, download or otherwise use the Software.

### 1 License

- 1.1 Deswik grants a non-exclusive, non-transferable, non-sub-licensable license to the Licensee (**License**) to use the Software solely as an end user only. The Software is for the Licensee's own use and must not be used by others (including by way of sub-license) or for marketing or redistribution, whether alone or as a component of any other product.
- 1.2 The licenses granted are subject to the condition that the Licensee must ensure the maximum number of Authorised Users accessing and using the Software does not exceed the number of User Licenses for which the necessary Fees have been paid to the Agent or Deswik. The Licensee may purchase additional User Licenses at any time on payment of the applicable Fees to the Agent or Deswik.
- 1.3 By installing, copying, downloading or otherwise using the Software, the Licensee will be deemed to be bound by the terms of this EULA. If the Licensee does not agree to the terms, the Licensee must not install, copy, download or otherwise use the Software.
- 1.4 If you are accepting this EULA on behalf of your employer or another entity, you represent and warrant that:
  - (a) you have full legal authority to bind your employer or such entity to this EULA as the Licensee; and
  - (b) you agree to this EULA on their behalf.  
If you don't have authority to bind that party, please do not proceed to install the Software or click the "agree" checkbox presented to you.  
If you do install the Software or click the "agree" (or similar) checkbox in these circumstances:
  - (c) you are deemed to represent that party,
  - (d) you are binding that party to this EULA; and
  - (e) the word "Licensee" refers to that party.
- 1.5 The Licensee may make one copy of the Software for backup purposes only.
- 1.6 An amendment or addendum to this EULA may accompany the Software. Any amendment or addendum forms part of the license terms as if

they were included in this document and, together, form the terms of this EULA. To the extent that any inconsistency arises between the amendment or addendum and these terms, the relevant provisions of the amendment or addendum will apply to the extent of the inconsistency.

- 1.7 Subject to the terms of this EULA, and unless terminated earlier in accordance with this EULA, licenses are:
  - (a) Perpetual for licenses acquired under the "Permanent License" option.
  - (b) Time limited for licenses acquired under "Subscription" or "Monthly Rental" options, with expiration dates based on Fees paid.
  - (c) Temporary "Evaluation Licenses", which operate for a limited period, as determined by Deswik.

### 2 Intellectual Property Rights

- 2.1 The rights granted to the Licensee in the Software are a license only. Nothing contained in this EULA or otherwise grants to the Licensee any rights of ownership in all or any part of the Software.
- 2.2 The Software, all copies and all Intellectual Property Rights in the Software and copies are owned either by Deswik or relevant third parties. The Software is protected by copyright and other Intellectual Property Rights, laws and treaties.
- 2.3 The Licensee acknowledges that the Software is the subject of copyright and that the Licensee must not at any time (either before or after termination of this License) do any act or permit the doing of any act which infringes that copyright.
- 2.4 Deswik reserves all rights in the Software not expressly granted to the Licensee in this EULA.

### 3 Evaluation License

- 3.1 Deswik may provide an evaluation copy of all or part of the Software for assessment purposes.
- 3.2 Where an evaluation copy is provided, the Licensee may only download, install, use and operate the Software for a limited period and must ensure that the Software is only accessible by the limited number of temporary users agreed between Deswik and Licensee.
- 3.3 At the end of the evaluation period, the Software must be removed from the Licensee's hardware

and system and all copies of the Software in the Licensee's possession must be deleted.

#### 4 Additional Software

- 4.1 This EULA applies to Additional Software that Deswik may make available to the Licensee after the date the Licensee obtains its initial copy of the Software, in conjunction with any amendment or addendum Deswik provides with the Additional Software.

#### 5 Services

- 5.1 Deswik may at any time in its sole discretion discontinue any internet-based services provided or made available to the Licensee through the use of the Software.
- 5.2 Any support services will be provided by Deswik in accordance with the written terms for those services and may be subject to additional Fees.

#### 6 License Fee

- 6.1 In consideration of the grant of the License by Deswik, the Licensee must pay the Fee. The Licensee must pay all Fees by their due date. Failure to pay Fees by the due date will result in the immediate termination of the licenses granted under this EULA which relate to the outstanding Fee.
- 6.2 The Licensee will pay all Fees net of any applicable withholding taxes. Deswik will work with the Licensee 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. The Licensee will provide Deswik reasonable evidence that it has paid the relevant authority for the sum withheld or deducted.

#### 7 Rights and Restrictions

- 7.1 The licenses are granted subject to the Licensee ensuring that the maximum number of Authorised Users accessing and using the Software is no greater than the number of User Licenses for which the necessary Fees have been paid. The Licensee must ensure that only an Authorised User uses the Software and that such use is strictly in accordance with the terms and conditions of this EULA.
- 7.2 Unless the Licensee has Deswik's prior written consent, the Licensee may only install the Software and make the Software available for use on hardware systems owned, leased, rented or wholly controlled by the Licensee.
- 7.3 If Deswik provides written consent to the Licensee under clause 7.2 for installation of the

Software on another system (**Other System**), the Licensee must ensure that the terms of this EULA are complied with by users of the Other System. The Licensee indemnifies Deswik for all costs, damages and losses Deswik suffers arising from the installation and use of the Software on the Other System.

- 7.4 The Licensee may not modify, adapt, translate, rent, lease, loan, sublicense, market, sell, distribute, transfer, or create any derivative work based upon, the Software or any part of the Software including Embedded Software, Accessible Code or Protected Code.
- 7.5 The Software contains trade secrets and the Licensee may not decompile, reverse engineer, disassemble or otherwise reduce the Software to a humanly perceivable form or attempt to derive the source code of the Software or any part thereof. The Licensee agrees not to divulge, directly or indirectly, any such trade secrets to any person, unless and until such trade secrets cease to be confidential, other than through a breach of confidentiality by the Licensee.
- 7.6 Notwithstanding anything else contained in this EULA, the Licensee may not use the Software to enable, support, or otherwise facilitate or help Licensee or a third party to develop any product, software or service competitive with the Software or any of Deswik's other software products.
- 7.7 The Licensee must not directly or indirectly access or use any Embedded Software independently of the rest of the Software.
- 7.8 The Licensee must not copy or embed elements of the Accessible Code contained within the Software into other applications or software.
- 7.9 Subject to the terms of this EULA, the Licensee may modify the Accessible Code to develop bug fixes, for customisation or to install additional features for the sole use of the Licensee.

#### 8 Embedded Software

- 8.1 The Licensee acknowledges that the Software may contain Embedded Software and, in addition to the obligations of this EULA, additional obligations may apply to any use of the Embedded Software.
- 8.2 The Licensee must consult with Deswik and the relevant third party to acquire any necessary licenses and consents for the installation and use of any Embedded Software.

#### 9 Licensing Mechanisms and Penalties

- 9.1 The Software includes license protection mechanisms designed to manage and protect the Intellectual Property Rights of Deswik and its third party suppliers. The Licensee must not modify or alter these mechanisms to try to defeat the

Software use rules that the mechanisms are designed to enforce. Deswik may immediately terminate this EULA, and any license granted under it, if any attempt is made to modify or alter these mechanisms.

- 9.2 The Software may also include a security mechanism to detect installation or use of unlicensed copies of the Software, and collect and transmit data to Deswik, and/or its affiliates or agents, about suspected unlicensed copies. Data collected does not include any customer data created with the Software. By using the Software, the Licensee consents to such detection and collection of data, as well as its transmission and use if suspected unlicensed copies are detected. Deswik will use this data only for the purpose stated in this clause 9.2.
- 9.3 If at any time Deswik reasonably suspects the Software has been distributed to or obtained by any person without Deswik's written consent or that Embedded Software is being varied, accessed or used independently of the Software, or that the Licensee is otherwise in breach of a term of this EULA, Deswik may require the Licensee to provide an unqualified certificate executed by the Licensee's auditor verifying the Licensee's compliance with the terms of this EULA.
- 9.4 If the Licensee's auditor does not provide the unqualified certificate within 90 days of Deswik issuing the request to the Licensee (or such longer period as Deswik may in its sole discretion agree), the Licensee will be considered to be in breach of the terms of this EULA and Deswik may terminate this EULA and all licenses granted under it.
- 9.5 Where a breach involves the distribution or use of Software outside the terms of the User License or any Additional User License or involves the use or attempted use or distribution of Embedded Software, Deswik and/or any third party owner of the Embedded Software may retrospectively charge the Licensee a fee calculated on the number of prohibited distributions or uses using the relevant list prices that Deswik and/or any third party owner of the Embedded Software charges for the Software or Embedded Software (as applicable). These charges are in addition to any other right or claim that Deswik or any third party owner of the Embedded Software may have against Licensee and are in

addition to any other Fees payable by Licensee under this EULA.

- 9.6 By accepting the terms of this EULA, or by installing, copying, downloading or otherwise using the Software, the Licensee agrees to comply with the Sanctions Undertaking, the terms of which are deemed incorporated into this EULA. The Licensee indemnifies Deswik for all costs, damages and losses Deswik suffers arising from any breach by the Licensee or its Authorised Users for any breach of the Sanctions Undertaking.

## 10 Publicity

- 10.1 The Licensee grants Deswik the right to include the Licensee as a customer of Deswik in Deswik's promotional material, including on its website.
- 10.2 The Licensee may withdraw the rights given under clause 10.1 by 30 days written notice to Deswik.

## 11 Termination

- 11.1 This License is effective from commencement until it expires (in the case of Subscription, Monthly Rental or Evaluation Licenses), or until it is otherwise terminated in accordance with this clause.
- 11.2 Deswik may terminate this License immediately by notice in writing if:
- (a) the Licensee fails to pay the Fees by the due date; or
  - (b) the Licensee is in breach of any term or condition of this License and such breach is not remedied within fourteen (14) days of written notice from Deswik.
- 11.3 The Licensee may terminate this License immediately by notice in writing if Deswik becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration or intervention, or ceases or threatens to cease conducting its business in the normal manner.
- 11.4 Upon termination of this License for whatever reason:
- (a) the Licensee must prevent all access to the Software and all Authorised Users must cease all use of the Software;
  - (b) the Licensee must remove all copies of the Software from the Licensee's hardware and system and any Other System and delete or destroy all copies of the Software and all Accessible Code in its possession, custody or control;
  - (c) the Licensee may be required to provide Deswik with an unqualified certificate executed by the Licensee's auditor verifying compliance with clause 11.4(a) and 11.4(b);

- (d) Deswik may repossess the Software and any of Deswik's property in the possession, custody or control of the Licensee; and
  - (e) Deswik will be discharged from any further obligations under this License.
- 11.5 Decommissioning of the Software by the Licensee will terminate this EULA between Deswik and Licensee.
- 11.6 Upon termination of this License for any reason the Licensee shall have no right to a refund of the whole or any part of the Fees or other amounts paid for this License and the Software.
- 11.7 Termination is without prejudice to any rights Deswik may have as a result of breach of this License by the Licensee or an Authorised User.

## 12 Assignment or other Transfer

- 12.1 The Licensee can only assign this License to succeeding parties in the case of a merger, acquisition or change of control if:
- (a) the Licensee notifies Deswik within sixty (60) days of the assignment;
  - (b) the assignee agrees to be bound by the terms and conditions of this EULA; and
  - (c) upon assignment or transfer, the assigning licensee makes no further use of the Software and deletes or destroys all copies of the Software in its possession, custody or control.
- 12.2 Any purported assignment or transfer of the Software by the Licensee other than in accordance with the requirements of this clause 12 will be void and will entitle Deswik to terminate this EULA in accordance with clause 11.
- 12.3 Deswik may assign its rights and obligations under this EULA without the consent of the Licensee. Any permitted assignee shall be bound by the terms and conditions of this EULA.

## 13 Disclaimer & Limitation of Remedies

- 13.1 The Software is provided on an as is basis. The Licensee acknowledges that software, by its very nature, is an imperfect product and has faults, gaps and other anomalies.
- 13.2 Deswik warrants to the Licensee that the Software conforms in all material respects to the Software specifications (as published by the developer of the Software) for a period of ninety (90) days from the date of delivery of the Software to the Licensee, provided the Software is used in accordance with ordinary industry practices and conditions and not modified. However, Deswik does **not** warrant

that the operation of the Software will be uninterrupted or error free.

- 13.3 To the extent permitted by law, Deswik expressly disclaims any and all warranties concerning the Software, including any warranties of merchantability and/or fitness for any particular purpose, warranties of performance and any warranty that might otherwise arise from the course of dealing or usage.
- 13.4 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 installation or use of the Software, including but not limited to those resulting from defects in the Software, or loss or inaccuracy of data of any kind and whether or not Deswik has any notice of the possibility of such damages.
- 13.5 If Deswik breaches any provision of this EULA, Deswik's sole and exclusive maximum liability, whether based in contract, tort, or otherwise, will not in any event exceed, in Deswik's absolute discretion, either: (i) the total price paid for the Software; (ii) the cost of replacing the Software; (iii) the cost of obtaining equivalent software; or (iv) the cost of having the Software repaired.
- 13.6 The express warranty provided in clause 13.2 is limited to the Licensee and is not transferrable. Deswik grants no other warranty, either express or implied, with respect to the use of the Software.
- 13.7 Nothing in this License is intended or will be construed as excluding or modifying any statutory rights, warranties or conditions which are applicable to this License or the Software and which by virtue of any legislation may not be modified or excluded.

## 14 Indemnity

- 14.1 If the Software becomes or may become the subject of a claim of infringement of any third party's Intellectual Property Rights, Deswik may, at its sole option and discretion:
- (a) procure for the Licensee the right to use the Software free of any liability;
  - (b) replace or modify the Software to make it non-infringing; or
  - (c) refund any Fees related to the Software by the Licensee.
- 14.2 The remedies set out in clause 14.1 are the sole liability of Deswik and the exclusive remedy of the Licensee for any infringement of Intellectual



Property Rights by Deswik in the Software or any other items provided by Deswik under this EULA.

14.3 The Licensee acknowledges and agrees that if the Licensee breaches this EULA and Deswik or a third party owner of Embedded Software suffers any loss, damage, cost or expense directly or indirectly as a result of the breach, Deswik or the third party owner of the Embedded Software may bring an action directly against the Licensee.

14.4 The Licensee will indemnify Deswik and hold Deswik harmless against all costs, expenses, losses and claims made against Deswik as a result of any infringement of Deswik's or any third party's Intellectual Property Rights arising from the Licensee's or an Authorised User's modification of any part of the Software or other items provided by Deswik or any breach of this EULA.

14.5 The Licensee agrees that the Licensee must commence any action arising out of or related to this EULA or the Software or the Licensee's use of the Software within one (1) year of the loss or damage arising. After that time the Licensee agrees that any cause of action will be permanently barred.

## 15 Privacy

15.1 Deswik may collect certain data and information from the Licensee and the Authorised Users in connection with use of the Software, and otherwise in connection with this EULA.

15.2 Any data or information will be collected and used by Deswik in accordance with Deswik's privacy policy (available on Deswik's website at [www.deswik.com](http://www.deswik.com)) as amended or updated from time to time).

## 16 Dispute Resolution

16.1 The parties agree to comply with the dispute resolution provisions of this clause 16 in respect to any dispute which arises between the parties in respect to this EULA prior to commencing any litigation or arbitration.

16.2 **Dispute notice.** If there is a dispute between the parties, either party may give a notice to the other succinctly setting out the details of the dispute and stating that it is a dispute notice given under this clause 16.

16.3 **Notice in response.** Within five (5) Business Days after the delivery of the dispute notice, the recipient must deliver to the other party a notice in response:

- (a) acknowledging the party's receipt of the dispute notice;
- (b) stating that it is a notice given under this clause 16.3; and
- (c) succinctly setting out any information it believes is directly relevant to the dispute.

## 16.4 Initial meeting

- (a) The parties must meet within ten (10) Business Days after the date of delivery of the dispute notice and attempt to resolve the dispute.
- (b) Each party must use its best endeavours to resolve the dispute and act in good faith.

## 16.5 Mediation

- (a) If the dispute is not resolved within ten (10) Business Days of the meeting held pursuant to clause 16.4 or such further period as the parties may agree, the parties will endeavour to settle the dispute by mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to arbitration or litigation.
- (b) The mediation will be conducted in accordance with the ADC Commercial Mediation Guidelines operating at the time the dispute is referred to the ADC (**Guidelines**), which set out the procedures to be adopted, the process of selection of a mediator and the costs involved. The terms of the Guidelines are deemed incorporated into this EULA.

16.6 **Agreement remains in force.** The parties must each continue to perform their respective obligations under this EULA pending resolution of the dispute.

16.7 **Injunctions.** Nothing in this clause 16 prevents any of the parties from commencing injunctive relief where damages may be an inadequate or inappropriate remedy.

16.8 **Survival.** This clause 16 survives rescission, termination or expiry of this EULA.

## 17 Restrictions

17.1 The export of the Software from the country of original purchase may be subject to control or restriction by applicable local laws.

17.2 The Licensee must:

- (a) determine the existence and application of any local laws prior to any proposed export and must obtain all necessary authorisations and permits; and
- (b) not export the Software in violation of any applicable legal restrictions on the export.

## 18 Survival

18.1 The provisions of clause 2 (Intellectual Property Rights), 7.4, 7.5, 7.6, 7.7, 7.8, 7.9 (Rights and

Restrictions), 9 (Licensing Mechanisms and Penalties), 11.4, 11.6 (Termination), 13 (Disclaimer and Limitation of Remedies), 14.4, 14.5 (Indemnity), 15 (Privacy), 16 (Dispute Resolution), 19.2 (Law), 20 (Definitions) and 21 (Interpretation) survive rescission, expiry or termination of this EULA.

## 19 General

- 19.1 The Licensee must immediately advise Deswik if at any time the Licensee becomes aware of any breach of its obligations under this EULA.
- 19.2 This License is governed by and construed in accordance with the laws in force in Queensland and the Commonwealth of Australia. Any dispute under these terms shall be subject to the exclusive jurisdiction of the courts of Queensland and the Commonwealth of Australia and the parties submit to the jurisdiction of such courts for such purposes and waive any and all objections to jurisdiction or venue in such courts.

## 20 Definitions

- 20.1 **Accessible Code** means source code that is unprotected and accessible in the Software and includes, without limitation, assemblies, scripts, macros, custom reports and workflows.
- 20.2 **Additional Software** means updates, patches, new functionality, supplements, plugins, custom modifications or new functionality specific to the Licensee's needs, or other add-on components of the Software.
- 20.3 **Agent** means an entity selling and distributing Deswik products which is authorised by Deswik to do so.
- 20.4 **Authorised User** means a person who is authorised by the Licensee to access or use the Software under a User License.
- 20.5 **Business Day** means a day that is not a Saturday, Sunday or a public holiday in Brisbane, Queensland, Australia.
- 20.6 **Deswik** means Deswik Mining Consultants (Australia) Pty Ltd (ACN: 130 036 832) Level 9, 348 Edward Street, Brisbane Queensland 4000, Australia.
- 20.7 **Embedded Software** means any third party software which may contain Accessible Code or Protected Code licensed by Deswik from a third party and embedded in the Software.
- 20.8 **EULA** means this document and any amendment or addendum provided by Deswik to the Licensee.

20.9 **Fees** mean all fees and expenses payable by the Licensee to Deswik or an Agent in acquiring the Software and any User Licenses.

20.10 **Intellectual Property Rights** means the rights comprised in any patent, copyright, design or trademark 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 trade secrets, goodwill or confidential information.

20.11 **Protected Code** means any source code which Deswik or a third party has taken steps to protect from access.

20.12 **Sanctions Undertaking** means Deswik's "Sanctions Undertaking and End User Assurance", 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.

20.13 **Software** means the software the accompanies this EULA, including computer software, Additional Software, Accessible Code, Protected Code and associated media, printed materials, 'online' or electronic documentation, internet based services and Embedded Software.

20.14 **User License** means a license or licenses granted by Deswik under this EULA to the Licensee to permit an Authorised User to access and use the Software. The number of User Licenses granted to the Licensee is dependent on the Fees paid by the Licensee.

## 21 Interpretation

### 21.1 Severability

- (a) Subject to clause 21.1(b), if a provision of this document is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this document.
- (b) Clause 21.1(a) does not apply if severing the provision:
- (i) materially alters the scope and nature of this document; or
  - (ii) materially alters the relative commercial or financial positions of the parties; or
  - (iii) would be contrary to public policy.

21.2 **Entire Agreement.** This EULA and any addendums or supplements included with the Software and any Software Support and Maintenance Agreement entered into between the parties:

- (a) constitute 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

- (b) may only be altered in writing signed by all parties. Deswik's consent may be withheld at its complete discretion with requirement to provide reasons.
- 21.3 **General.** In this document, unless the context otherwise requires:
- (a) a reference to:
- (i) the singular includes the plural and the plural includes the singular;
  - (ii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this document and references to this document include any recital, schedule or annexure;
  - (iii) any contract (including this document) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
  - (iv) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (v) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
  - (vi) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
  - (vii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
  - (viii) a reference to a day or a month means a calendar day or calendar month;
- (b) the meaning of any general language is not restricted by any accompanying example and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (c) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
- (d) headings and the table of contents are for convenience only and do not form part of this document or affect its interpretation;
- (e) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (f) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first act or event;
- (g) a provision of this document 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 document.

\* \* \*