SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT

DESWIK.SUITE / DESWIK.MDM

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THIS AGREEMENT IS MADE ON THE COMMENCEMENT DATE

between   **MCB Serviços e Mineração Ltda. t/as Deswik Brasil** (CNPJ 08.710.380/0001-60), a limited liability company (sociedade empresária limitada) duly organized and existing under the laws of Brazil, of Antonio de Albuquerque Street, No. 330, Office 701, Savassi, in the City of Belo Horizonte, State of Minas Gerais, Brazil, Zip Code 30.112-010 (**Deswik**)

and   **The party identified in the Proposal** (**Customer**)

RECITALS

A.   Deswik is the owner or authorised reseller of the Software and has licensed or procured a licence for the Customer to use the Software under the terms of the EULA.

B.   Deswik is in the business of supplying various services, including maintenance and technical support services for the Software.

C.   The Customer wishes to engage Deswik to provide technical support and maintenance services for the Software on the terms of this Agreement.

D.   This Agreement addresses technical support and maintenance services for Desktop Applications ('Deswik.Suite') and the Enterprise Application known as 'Deswik.MDM'. Technical support and maintenance services for the Enterprise Application known as 'Deswik.OPS' is provided under a separate agreement.

IT IS AGREED:

1. Definitions and Interpretation

1.1 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.

Accessible Code means source code that is unprotected and accessible in the Software and includes, without limitation, scripts, macros, custom reports and workflows.

Additional Services means any additional services requested by the Customer from time to time including any varied services or the provision of any Excluded Services.

Assisted Upgrade means an upgrade of an Enterprise Software product to a new Major Version which is supervised by Deswik.

Authorship Rights means the rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute, that exist, or that may come to exist, anywhere in the world, in the Services.

Business Day means a day that is not a Saturday, Sunday or a public holiday in the location of the Deswik Support Office.

Commencement Date means the date specified in the Proposal or as otherwise agreed in writing between the parties.

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 including the source codes;

(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 9;

(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.

Desktop Software or **Desktop Application** means Software designated by Deswik as a "desktop" product, commonly part of the "Deswik.Suite", and which, in general terms, is only comprised of an application that resides on the user's PC or laptop. Desktop Software does not have an application or database server as part of the standard solution. These products are licensed on a "Concurrent User" basis.

Deswik Support Office means the location of Deswik's office or agency identified in Schedule A.

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.

Enterprise Software or **Enterprise Application** means Software designated by Deswik as an "Enterprise" product and which, in general terms, has a dedicated application or database server as part of the overall solution. These products are licensed on a "Named User per Site" basis.

Error means a verifiable and reproducible failure of the Software to conform in any material respect to the published specifications under conditions of normal use. **Error** does not include any failure caused by the matters referred to in clause 3.3.

Error Correction means a modification or addition that, when made or added to the Software, brings the Software into material conformity with the published specifications.

EULA means the end user license agreement between Deswik and the Customer in respect of the Software.

Excluded Services means those excluded services and support identified in clause 3.3 and Schedule A.

Expiry Date means 12 months from the Commencement Date, or as otherwise agreed in writing between the parties.

Fees means the fees set out or calculated in the manner specified in the Proposal.

Force Majeure Event means any occurrence or omission outside a party's control including, without limitation:

(a)   a physical natural disaster including fire, flood, lightning or earthquake or the after-effects of a physical natural disaster (including without limitation, electricity or telecommunication disruption or travel disruptions or restrictions);

(b)   war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;

(c)   epidemic or quarantine restriction;

(d)   failure of a third party service provider's business;

(e)   confiscation, nationalization, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;

(f)   any law taking effect after the date of this agreement which has an adverse impact on Deswik's ability to provide the Services;

(g)   strike, lock-out, stoppage, labor dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors; and

(h)   any other situation expressly provided for by law.

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 or becomes unable to pay its debts or is presumed to be insolvent under the Brazilian Recovery and Bankruptcy Act (Law 11.101/05);

(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; or

(f)   something having a substantially similar effect to paragraphs (a) to (e) above happens in connection with that Party under the Law of any applicable jurisdiction.

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, including Software.

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 of 1% over the monetarily corrected value in default.

Major Version means a new release where the first or second numbers in the version number of the Enterprise Software product changes. For example, a change from 2024.1 to 2024.2, or 2024.2 to 2025.1, would be considered a major version release; but a change from 2024.1.1515 to 2024.1.1959 would not be considered a major version release.

Monthly Licenses means the licenses of that name granted to the Customer by Deswik from time to time. This type of license is purchased in monthly increments with expiration dates based on Fees paid.

Proposal means the proposal provided by Deswik to the Customer in respect to the Services and the Software.

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

Release means any new version of the Software, including Error Corrections and Updates.

Service Levels means the service level targets set out in Schedule B.

Services means the services identified in Schedule A.

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

Subscription Licenses means the licenses of that name granted to the Customer by Deswik from time to time. This type of license is purchased in 6 month or 12 month increments with expiration dates based on Fees paid.

Supply means a) the delivery or provision of material goods; b) the institution, acquisition, transfer, assignment, concession, licensing or provision of immaterial goods, including rights; c) provision or availability of services.

Supported Software means the supported software identified in the Proposal.

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

Tax Invoice means the tax document issued by Deswik in connection to the Supply and submitted to the Customer in accordance with applicable law.

Taxes means taxes (including goods and service tax, value added tax and withholding tax), levies, imposts, deductions, charges, withholdings and duties (including stamp and transaction duties), together with any related interest, penalties, fines and other statutory charges.

Term means the term of this Agreement specified in clause 2.

Update means a new version of all or part of the Software which Deswik makes available including minor modifications or improvements to the Software.

1.2   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.

2.   Term

(a)   Subject to clause 2(b), 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 Expiry Date.

(b)   If, prior to the Expiry Date the parties agree in writing that this Agreement is to have effect for a mutually agreed period after the Expiry Date, then this Agreement, unless terminated earlier in accordance with the provisions of this Agreement, remains in force until the expiration of that period.

3.   Provision of Services

3.1   Services

Subject to the Customer paying the Fees, during the Term Deswik will provide the Customer with the Services in accordance with the terms of this Agreement.

3.2   Additional Services

(a)   Upon the agreement of both parties, Deswik may provide Additional Services to the Customer from time to time at the rates applicable at the time. These services may include (without limitation):

(i)   additional training of the Customer's personnel;

(ii)   detailed assistance applying the software to a specific project; or

(iii)   development of enhancements to the Software for the Customer's specific use.

(b)   If the Customer requests Deswik to provide Additional Services or services which are significantly different from the Services, Deswik will advise the Customer as soon as reasonably possible of the likely additional Fees and associated terms and conditions in providing the additional or varied services.

(c)   Until the price and terms for the Additional Services is agreed in writing by the parties, Deswik will not be obligated to provide the Additional Services or varied Services. These services will be provided under a separate agreement.

3.3   Additional Software

Should any additional Software licenses be purchased during the Term:

(a)   In the case of Subscription Licenses, the license Fees will be pro-rated till the Expiry Date and these licenses will be added to the Supported Software.

(b)   In the case of Monthly Licenses, the licenses will be subject to their own support and maintenance agreement.

(c)   The Customer may request that support of certain bundles of licenses be subject to their separate support and maintenance agreements, in which case the expiry dates of these agreements may not coincide.

3.4   Exclusions

The Customer acknowledges that the Services do not include any services for the support of the Software or the correction of faults, errors or defects arising as a result of:

(a)   misuse, improper use, alteration or damage to the Software;

(b)   a combination of the Software with other programs or equipment that has not been approved by Deswik;

(c)   the use by the Customer of a superseded or unsupported Release;

(d)   the operation of the Software in a manner that contravenes the Customer's obligations under the EULA;

(e)   failure by the Customer to operate or use the Software in accordance with the EULA or any user documentation or such other direction of Deswik;

(f)   the Customer manipulating source data in an underlying SQL database. The Customer acknowledges and agree that access to the database must only be via the Deswik supplied API or user interface;

(g)   use by the Customer of the Software in an information technology environment or platform different from that specified by Deswik on its website from time to time;

(h)   equipment or System maintenance or programming on the System performed by a person other than Deswik or its authorized personnel; or

(i)   modifications to the Software or the System made by the Customer or by a third party not specifically authorized by Deswik to undertake those modifications.

3.5   Standard of Services

Deswik will:

(a)   provide the Services honestly and diligently at a professional standard of skill, care and diligence appropriate for an expert in its field and in accordance with all relevant professional standards;

(b)   comply with all applicable laws and regulations and all permits, licenses, authorizations and accreditations applying to Deswik or the Services;

(c)   take steps to ensure that only Deswik personnel who need to Access the Customer's System to undertake the Services have Access to the System;

(d)   maintain the confidentiality of the Customer's Confidential Information in accordance with clause 9; and

(e)   comply with all lawful directions given by the Customer in respect to Access.

4.   New Releases

4.1   Offer of Releases

From time to time Deswik may provide the Customer with new Releases applicable to the Software, the cost of which is included in the Fees.

4.2   Acceptance of Release

(a)   Subject to clause 4.3, the Customer is not obliged to accept or install a Release.

(b)   If the Customer elects not to accept or install a new Release:

   (i)   Deswik will not be liable for any loss or damage that the Customer suffers as a result of any Defects in the Software which are remedied by the Release;

   (ii)   the Customer acknowledges that Deswik may not be able to adequately support or remedy the Customer's issues; and

   (iii)   the Customer acknowledges that support is only provided on the Releases specified in Schedule A.

(c)   If the Customer accepts a Release (by downloading and installing it):

   (i)   this Agreement will continue to apply in all respects to the Release; and

   (ii)   the Customer will delete all copies of the Software or part of the Software which have been superseded by the Release or otherwise deal with all copies in accordance with Deswik's reasonable directions.

4.3   Enterprise Software Releases

(a)   If the Customer is using Enterprise Software, the Customer must accept and install at least the number of Releases per calendar year set out in Schedule A.

(b)   Where indicated in Schedule A, installation of any Major Version must be by way of an Assisted Upgrade.

5.   Service Levels

5.1   Platform and Data Input Requirements

(a)   Deswik will undertake the Services on the basis of minimum hardware and software criteria, specified by Deswik on its website from time to time, which are required as part of the Customer's System.

(b)   The Customer acknowledges and agrees that if the Customer's System:

(i)   does not meet these criteria;

(ii)   does not meet any other minimum hardware or software requirements specified by Deswik; or

(iii)   the Customer's data is not of sufficient quality or is compatible with Deswik's supported formats (as specified by the software documentation),

Deswik may be unable to provide the Services to the required standard or the Customer may be unable to receive the benefit of the Services.

5.2   Service Levels

(a)   Service Levels are based on Deswik's reasonable assessment of the standards which are able to be achieved but are indicative and non-binding targets only.

(b)   Deswik shall use its reasonable endeavors to complete the Services within the timeframe estimated and will notify the Customer as soon as reasonably possible upon becoming aware of any matter that may delay the indicated time for completion.

5.3   Substitution of hardware and software

Where Deswik provides the Customer with any hardware or Software (including Releases):

(a)   risk in the hardware, Software or Releases passes to the Customer on delivery to the Customer; but

(b)   title to that hardware does not pass to the Customer until payment in full to Deswik of the Fees attributable to that hardware; and

(c)   Deswik may substitute or modify the hardware or Software prior to delivery if, in the reasonable opinion of Deswik, that substitution or modification will have no adverse effect on the capacity or performance of the hardware or Software.

5.4   Completion of services

(a)   The Customer must:

(i)   notify Deswik in writing as soon as the Customer becomes aware of any defects in the Services; or

(ii)   provide Deswik with an email confirming successful completion of any Services Deswik advises the Customer have been completed.

(b)   If the Customer does not notify Deswik of any defects under clause 5.4(a)(i) or provide Deswik with an email confirming successful completion of the Services within 14 days of Deswik

notifying the Customer that the relevant Services are complete, the Customer is deemed to have accepted the Services.

(c)   If the Customer notifies Deswik of any defects under clause 5.4(a)(i), Deswik will, as soon as possible investigate and (where applicable) undertake rectification of the defects. Upon completion of any defect rectification the Customer must promptly provide an email notification of the successful completion of the services, unless further defects exist. In this case, the Customer is further required to notify Deswik of such defects.

5.5   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.

6.   Customer's Obligations

6.1   Information

(a)   The Customer acknowledges and agrees that, in providing the Services, Deswik is reliant upon the accuracy and completeness of the information provided to Deswik by the Customer.

(b)   The Customer agrees and accepts that the description, scope, extent, quantity and timeframes and all other attributes of the Services set out in this Agreement are in accordance and are an accurate interpretation of the Customer's requirements and the Customer's System.

6.2   General

To enable Deswik to provide the Services the Customer must:

(a)   in order to enable Deswik to provide the Services within any indicative timeframes, provide:

   (i)   timely access to the Customer's key personnel;

   (ii)   timely Access to all required Systems and data (including, where necessary or desirable, administrative access);

   (iii)   timely access to premises, including any necessary security clearances, where required;

   (iv)   all items identified as prerequisites in the Proposal;

   (v)   internal stakeholder communication and engagement; and

   (vi)   internal project management;

(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)   permit Deswik's personnel involved with providing the Services to access the Customer's System and relevant documentation, as required, to enable Deswik to properly perform the Services;

(e)   where access to a Customer's premises is required, ensure the Customer's premises are safe and comply with all relevant occupational health and safety legislation, regulations and industry standards;

(f)   where relevant, make available to Deswik suitable personnel of the Customer to:

(i)   provide information about the Customer's System and information technology environment;

(ii)   resolve queries; and

(iii)   provide such other information and assistance as is reasonably requested by Deswik and its personnel in relation to the provision of the Services.

6.3   Access

(a)   During the Term, the Customer must provide Deswik with:

(i)   non-exclusive access to the Customer's premises or any other location where the System is located to the extent necessary to enable Deswik to perform the Services; and

(ii)   Access to the System, whether by attendance at the Customer's premises or other location where the System is located and utilizing the Customer's computers and hardware or by way of remote access.

(b)   Deswik will ensure its personnel, when using the Customer'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.

7.   Fees, Expenses and Payment

7.1   Fees

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

(b)   Deswik will issue an invoice to the Customer for the Fees and the Customer must pay Deswik the Fee within 30 days of receipt a Tax Invoice from Deswik.

(c)   In addition to the Fee, Deswik must, upon presentation to the Customer 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 in performing the Services.

(d)   Deswik may change its Fees from time to time by notification to the Customer.

7.2   Fees for additional licenses

If the Customer purchases any additional software licenses during the Term:

(a)   the terms of the EULA will apply to that Software;

(b)   additional Fees will apply based on Deswik's pricing model at the time of purchase; and

(c)   the Customer may request that support for these additional software licenses be added to this agreement. In this case, the maintenance fees for Perpetual Licenses, or the Subscription License fees, as appropriate, will be calculated on a pro rata basis.

7.3   Default

In the event of default, Deswik may charge the Customer a fine of 2% (two per cent) on any monies owing under this Agreement which are not paid within the period specified in this Agreement, with monetary adjustment by the IGP-M/FGV (or, in its absence, by another inflation index to replace it) and Interest.

7.4   Quotations

Where at any time Deswik provides a quotation to the Customer (including but not limited to as part of any Proposal) the Customer 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)   indicative only and is not binding on Deswik.

7.5   Disputes

If at any time the Customer disputes an amount included in a Tax Invoice, the Customer must immediately pay the amount not in dispute.

7.6   Taxes

(a)   The amounts payable by the Customer to Deswik for, or in connection with, any Supply under this Agreement are net prices and do not include any applicable Taxes.

(b)   The Customer must pay Deswik an additional amount on account of Taxes equal to the amounts payable by the Customer for the Supply multiplied by the prevailing Taxes rate, by gross up method.

(c)   Subject to clause 7.6(d), the additional amount on account of Taxes is payable at the same time and in the same manner as the amounts payable by the Customer are required to be paid to Deswik.

(d)   The Customer is not required to pay the additional amount on account of Taxes until Deswik has provided the Customer with a Tax Invoice.

(e)   To the extent that the amounts for the Supply consist of the reimbursement or indemnity for any liabilities, costs or expenses incurred by Deswik, in this Agreement the amount of those liabilities, costs or expenses are deemed to be net of any refund or input tax credit of Taxes to which Deswik is entitled as a result of incurring the liability, cost or expense.

8.   Intellectual Property Rights

The Customer acknowledges that:

(a)   the rights granted to the Customer in the Software and all Updates are a license only on the terms of the EULA;

(b)   the Intellectual Property Rights in the Software and all Updates are owned by Deswik or relevant third parties under the terms of the EULA; and

(c)   all Intellectual Property Rights created as a result of or in the course of Deswik providing the Services to the Customer 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 Customer will, upon their creation, be assigned to and vest entirely in Deswik.

9. Confidentiality

9.1 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.

9.2 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 as the recipient uses to protect its own Confidential Information.

9.3 Survival

The obligations of confidence in this clause 9 survive expiry or termination of this Agreement.

10. Force Majeure

Neither party will be:

(a)   in breach of this agreement as a result of; or

(b)   liable for,

any failure or delay in the performance of that party's obligations under this Agreement to the extent that the failure is caused by a Force Majeure Event.

11. Termination

11.1 Termination of EULA

(a)   This agreement will terminate if for any reason whatsoever the EULA is terminated.

(b)   If this Agreement is terminated under clause 11.1(a), Deswik will not be under any obligation to refund any Fees already paid by the Customer under this Agreement or the EULA.

11.2 Termination by Customer

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

(a)   Deswik 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 Deswik requiring the breach to be remedied,

unless the breach, having regard to its nature, importance or the actions being taken by Deswik during the period to correct any Error, does not justify termination; or

(b)   an Insolvency Event occurs in respect to Deswik.

11.3   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 Customer, terminate this Agreement if:

(a)   the Customer fails to pay an undisputed invoice within thirty days of receipt of that invoice and persists in that failure for a period of fourteen days after receipt of notice given by Deswik to the Customer;

(b)   the Customer 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 Customer 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 Customer.

11.4   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 Customer 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 Customer the Confidential Information including documents, reports and records of the Customer's in Deswik's possession, custody or control.

(d)   The Customer must promptly deliver up or return to Deswik the Confidential Information including documents, reports and records of Deswik in the Customer's possession, custody or control.

(e)   Deswik must upon receiving a notice of termination arrange for an orderly cessation of work in accordance with any written advice from the Customer.

11.5   Effect of Termination on Updates

If a new agreement is not entered into at the expiry or termination of this Agreement, the Customer will not be eligible to Updates to the Software.

12.   Disclaimer and Limitation of Remedies

12.1   No Warranty

(a)   Deswik takes commercial steps to provide the Services so as to meet the Customer's requirements and ensure the Software and any Releases are error free. However, Deswik makes no representation and gives no warranty that:

(i)   the Services, Software and any Releases will be error free, meet the Customer's requirements or be fit for any particular purpose; or

(ii)   the Services will be performed within any particular time.

(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 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.

(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)   the total price paid for the Services during the twelve month period immediately prior to the event of causation;

(ii)   re-performing the Services; or

(iii)   re-performance of the Services by a third party reasonably acceptable to Deswik.

(d)   The Customer agrees that the Customer must commence any action arising out of or related to this Agreement and the Services or the Customer's use of the Software or other Services within one (1) year of the loss or damage arising. After that time the Customer 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.

13.   Representatives

Each party will on the Commencement Date and from time to time if a nominated representative is replaced, advise the other party of the name and contact details of their nominated representative to:

(a)   facilitate communication between the parties and facilitate the provision of the Services;

(b)   provide any information required by a party in respect to the Services;

(c)   deal with any issues which arise in respect to the Services or this Agreement; and

(d)   receive any notices given under this Agreement.

14.   Non-Solicitation

(a)   Each party will not:

(i)   during the Term; or

(ii)   for a period of six months after the Term or any extension of the Term,

solicit the services of, or offer employment to, any employee of the other party.

(b)   For the sake of clarity, this obligation shall not prevent a party from:

(i)   considering and accepting an application made by any officer, employee or contractor of the other party in response to a recruitment advertisement published generally and not specifically directed at the other party's officers, employees or contractors;

(ii)   responding to an approach made to a party or its professional advisers by any of the other party's officers, employees or contractors which can be established from written records was initiated by that officer, employee or contractor; or

(iii)   responding to an approach by a professional recruiter on behalf of any of the other party's officers, employees or contractors party which is made without the recruiter's knowledge of the purpose.

15.   Relationship

(a)   The Customer and Deswik acknowledge and agree that:

(i)   the relationship between the parties is that of independent contractors and not of employer and employee, partners, joint venturers, fiduciaries or principal and agent;

(ii)   Deswik has no voting rights nor management control in respect of the Customer or any part of the Customer or its business;

(iii)   Deswik has no power to bind the Customer and must not represent himself as having any position of authority nor ability to bind the Customer in any way.

(b)   Deswik must disclose to the Customer, all actual and potential material conflicts of interest that exist, arise or may arise in the course of performing the Services as soon as practical after he becomes aware of that conflict.

16.   Assignment or other Transfer

(a)   The Customer can only assign this Agreement to succeeding parties in the case of a merger, acquisition or change of control if:

(i)   the Customer notifies Deswik within sixty (60) days of the assignment;

(ii)   the assignee agrees in writing to be bound by the terms and conditions of this Agreement; and

(iii)   upon assignment or transfer, the assigning Customer makes no further use of the Software and deletes or destroys all copies of the Software in its possession, custody or control and provides evidence of deletion or destruction to Deswik's satisfaction.

(b)   Any purported assignment or transfer of the Software by the Customer other than in accordance with the requirements of this clause 16 will be void and will entitle Deswik to terminate this Agreement in accordance with clause 11.

(c)   Deswik may assign its rights and obligations under this Agreement without the consent of the Customer. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

17.   Dispute Resolution

17.1   Agreement to Participate in Dispute Resolution

The parties agree to comply with the dispute resolution provisions of this clause 17 in respect to any dispute which arises between the parties in respect to this Agreement or the EULA prior to commencing any litigation or arbitration.

17.2   Dispute notice

If there is a dispute between the parties, then 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 17.1.

17.3   Notice in response

Within 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 17.3; and

(c)   succinctly setting out any information it believes is directly relevant to the dispute.

17.4   Initial meeting

(a)   The parties must meet within 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 endeavors to resolve the dispute and act in good faith.

17.5   Arbitration

(a)   If the dispute is not resolved within 10 Business Days of the meeting held pursuant to clause 17.4 or such further period as the parties may agree, any party may refer the dispute to the Câmara de Mediação e Arbitragem Empresarial - Brasil (**CAMARB**) for arbitration.

(b)   All disputes arising out of or in connection with the Agreement shall be finally settled under the Rules of Arbitration of CAMARB ("**CAMARB Rules**") by one or more arbitrators appointed in accordance with the said CAMARB Rules.

(c)   The number of arbitrators shall be three ("**CAMARB Court**"). Deswik shall nominate one arbitrator and the Customer shall nominate one arbitrator, and the two arbitrators so nominated shall agree on and nominate a third arbitrator, who shall serve as the presiding arbitrator. In the event that Deswik or the Customer fails to nominate an arbitrator within the time limits specified in the CAMARB Rules, such arbitrator shall be nominated and appointed by the CAMARB Court. In the event that the two arbitrators fail to nominate a third arbitrator, such arbitrator shall be nominated and appointed by the CAMARB Court. In the event that both the Company or the Consultant fail to nominate an arbitrator within the time limits specified in the CAMARB Rules, all three arbitrators shall be nominated and appointed by the CAMARB Court.

(d)   The seat, or legal place, of arbitration shall be the city of Belo Horizonte, State of Minas Gerais, Brazil. The language to be used in the arbitral proceedings shall be Portuguese.

(e)   The arbitrators shall have the power to grant any legal or equitable remedy or relief available under law, including injunctive relief (whether interim and/or final) and specific performance and any measures ordered by the arbitrators may be specifically enforced by any court of competent jurisdiction. Each Party retains the right to seek interim or provisional measures, including injunctive relief and including pre-arbitral attachments or injunctions, from any court of competent jurisdiction and any such request shall not be deemed incompatible with the agreement to arbitrate, nor shall it be deemed a waiver of the right to arbitrate. This constitutes the necessary written agreement.

(f)   The arbitration award shall be final and binding on the Parties. The Parties undertake to carry out any award without delay and waive their right to any form of recourse based on grounds other than those contained in the United Nations Convention on the Recognition and Enforcement of Arbitral Awards of 1958 insofar as such waiver can be validly made. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant Party or its assets.

17.6 Agreement remains in force

The parties must each continue to perform their respective obligations under this agreement pending resolution of the dispute.

17.7 Injunctions

Nothing in this clause 17 prevents any of the parties from commencing injunctive relief where damages may be an inadequate or inappropriate remedy.

17.8 Survival

This clause 17 survives rescission, termination or expiry of this Agreement.

18. 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, 2 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 18 are in addition to any other mode of service permitted by law.

19. Miscellaneous

19.1 Governing Law and Jurisdiction

(a)   This agreement is governed by the laws of the Federal Republic of Brazil.

(b)   For the purposes of any Dispute Resolution under this Agreement, and subject to previous amicable negotiations and arbitration, the parties must submit to the jurisdiction of the courts in the District of the City of Belo Horizonte, State of Minas Gerais, Brazil.

19.2 Entire Agreement

This Agreement and the EULA:

(a)   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

(b)   may only be altered in writing signed by all parties.

19.3 Survival

The provisions of the clauses of this Agreement in relation to documents, intellectual property rights, insurance, authorship rights, indemnity and confidentiality survive the expiry or termination of this Agreement.

19.4   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.

19.5   Waivers

A waiver by a party of any of its rights under this agreement:

(a)   must be in writing; and

(b)   does not operate as a waiver of any other right or as a future waiver of that or any other right.

19.6   Costs and expenses

Each party must pay its own costs and expenses in respect of the negotiation, preparation and execution of this Agreement and any other document executed pursuant to this Agreement.

19.7   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.

19.8   No Merger

None of the provisions of this Agreement merge on termination, settlement or completion of this Agreement, nor are affected by the signing and/or delivery of any other document.

19.9   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.

SCHEDULE A   SERVICE DESCRIPTION

Item	Details
Deswik Support Office	Asia Pacific – Brisbane, Perth South America – Santiago, Lima, Belo Horizonte North America – Calgary, Denver Africa – Johannesburg EMEA and CIS – London
Service Days	On Business Days – defined as day that is not a Saturday, Sunday or a public holiday in the location of Deswik's relevant Support Office (above).
Service Hours	Support is provided between 8am and 5pm on Business Days in the location of Deswik's relevant Support Office (above).
Support Call Logging Methods	**Australia**: 1300 653 032 or +61 7 3292 2708 **Africa**: +27 11 958 0170 **South America:** Chile: +56 2 3278 3888 Peru: +51 973 596 864 Brazil: +55 31 3024 2575 **North America**: +1 800 977 9156 **EMEA and CIS**: +44 1494 216 321 **Email**: support@deswik.com **Web**: https://clientportal.deswik.com
Support Call Requirements	• Users logging support calls must have attended Deswik Basic Training at a minimum. • User logging call must provide sufficient information for Deswik to reproduce the error.
Desktop Software (Deswik.Suite) – Support Inclusions and Exclusions	
Supported Software Versions (Releases)	• At any point in time: the current release and versions no more than 12 months from their initial release date. • No more than two (2) versions installed side-by-side and these versions must be consecutive releases.
Included Service / Support	• User issues; • Bug fixes; • Supply of patches; • Supply of new versions; • Support desk advice on patch and version compatibility; • Providing required information for the Customer's internal incident management, problem management, change management, and request fulfillment processes and systems; and • Customer service reports as reasonably requested.
Excluded Service / Support	• 3rd party issues attributable to the IT platform/environment or non-supported 3rd party applications; • Customer IT environment / platform issues; • Providing custom / new functionality on request; • Alteration of any customer specific Scripts, Process Maps or Plugins; • Issues with customer data/inputs that do not conform to design specifications or user documentation; • Directly undertaking configuration of new or existing implementations; • Performing any customer specific User Acceptance Testing; • Using support systems other than Deswik's own system; • Being responsible or accountable for the Customer's internal incident management, problem management, change management, and request fulfillment processes and systems; • Performance testing of the IT environment;

	• Training; and • Any customized documentation. Excluded Services can be provided under a separate technical services agreement.
Deswik.MDM – Support Inclusions and Exclusions	
Supported Software Versions (Releases)	• MDM is released on a combined "Extended Maintenance" (EM) and "Limited Maintenance" (LM) release cycle. Supported EM versions • EM versions are the core version of MDM, released annually. • Support is provided for an EM version until 3 months after the next EM release (i.e. 12 months till next release + 3 months transition to upgrade). Sites will be expected to upgrade to the new EM version within 3 months of an EM release. • Technical advice will be available for an EM version until 4 months after the next EM release. • Critical bugs will be corrected via minor releases. Supported LM Versions • LM versions will be on a 'continuous approach' with new versions made as ready, but without a fixed release cycle, in order to release new features or upgrades in response to user feedback. Sites are expected to upgrade to the latest LM release within a reasonable time from the release date of each LM version. • Technical advice will be available for an LM version until 4 months after the next LM release. • Critical bugs will be corrected in a minor release of the latest LM version only. • Use of LM versions rather than EM versions is optional. However, if a user elects to install the LM version they cannot then roll back to the EM version until the next EM version release.
Included Service / Support	• User issues; • Bug fixes; • Supply of minor release; • Supply of major releases; • Support desk advice on release and version compatibility; • Providing required information for the Customer's internal incident management, problem management, change management, and request fulfillment processes and systems; and • Customer service reports as reasonably requested.
Included Technical Advice	• User issues; • Workarounds for non-critical issues; • Support desk advice on patch and version compatibility; • Providing required information for the Customer's internal incident management, problem management, change management, and request fulfillment processes and systems.
Excluded Service / Support	*General exclusions applicable to all Deswik software:* • 3rd party issues attributable to the IT platform/environment or non-supported 3rd party applications; • Customer IT environment / platform issues; • Providing custom / new functionality on request; • Alteration of any customer specific Scripts, Process Maps, Plugins, PowerBI Connectors or other Connectors; • Issues with customer data/inputs that do not conform to design specifications or user documentation; • Directly undertaking configuration of new or existing implementations; • Performing any customer specific User Acceptance Testing; • Using support systems other than Deswik's own system;

	• Being responsible or accountable for the Customer's internal incident management, problem management, change management, and request fulfillment processes and systems;
	• Performance testing of the IT environment;
	• Training; and
	• Any customized documentation.
	
	MDM specific exclusions:
	• Support or assistance required as a result of manipulation of source data other than via the provided API. This may include:
	   o direct database access by the Customer for integrations/reports, including without limitation Customer manipulation of source data in the underlying SQL database;
	   o manipulating file storage.
	• Changes to Deswik software associated with an interface change due to upgrade or reconfiguration of a 3rd party application;
	• Maintenance or management of the site-specific MDM configuration;
	• Assisting with user acceptance testing prior to a system upgrade;
	• Cleaning up Customer data, configuration of templates or process maps as part of an implementation;
	• Assisted Upgrades;
	• Support for interfaces to the Software or data that is not explicitly supported as described in Deswik's end user documentation. To clarify, direct access to databases, unpublished web services and the like is unsupported. Deswik may change any unsupported interface at any time and without notice, where required to ensure product integrity.
	
	Excluded Services may be provided under a separate technical services agreement.

SCHEDULE B   SERVICE LEVEL TARGETS

Severity	Support Type	Description	Response Time	Resolution Time & Description
Critical	Software Defect	An essential function of the Software has ceased to work, which prevents performance of critical day-to-day business activities. A workaround is not immediately available.	4 Business Hours	Provide a solution within 3 Business Days. The solution may include a workaround or a private fix of the product.
	User Assistance	User requires assistance with the Software functionality to produce a result that is critical to day-to-day business activities. A workaround is not immediately available.	4 Business Hours	Provide a solution within 3 Business Days. The solution will contain instructions or workarounds to achieve the desired result (if at all possible).
High	Software Defect	A core function of the Software has ceased to work. A workaround is available.	8 Business Hours	Provide a solution within 7 Business Days. The solution may include a workaround or a public fix of the product.
	User Assistance	User requires assistance with the Software functionality to produce a result which is a core feature of the Software. A workaround is available.	8 Business Hours	Provide a solution within 7 Business Days. The solution will contain instructions or workarounds to achieve the desired result (if at all possible).
Medium	Software Defect	The Software has an issue that is having only a minor impact on normal operating activities. A workaround is available.	2 Business Days	Provide a solution within 20 Business Days. The solution may include a workaround or a commitment to implement a fix into a future release of the product.
	User Assistance	User requires assistance with the Software functionality to improve their productivity, user issues having a minor impact on software usability or questions of a general nature. A workaround is available.	2 Business Days	Provide a solution within 10 Business Days. The solution will contain instructions or workarounds to achieve the desired result (if at all possible).
Low	Software Defect	Minor issues with the software that are not causing the end-user an inconvenience.	4 Business Days	Provide a response within 20 Business Days. The solution may consist of submitting feature requests to product management, and/or scheduling changes to future releases of the product.
	Enhancement Request	Suggested Enhancements	4 Business Days	Provide a response within 20 Business Days. The solution may consist of submitting feature requests to product management, and/or scheduling changes to future releases of the product.

Service Level Target Conditions

(a)   Severity, Response and Resolution times

(i)   Deswik and the Customer will categorise the severity of all issues (acting reasonably) and Deswik will consult with the Company's Expert User on any demoted incidents or where Deswik does not agree with the Customer's proposed categorisation.

(ii)   Target Resolution times are calculated from the point at which the Customer has provided Deswik with sufficient information (and the customer's data files if required) for Deswik to reproduce the issue and the issue can be successfully reproduced by Deswik.

(iii)   Resolution Target times are "paused" when Deswik Support is waiting on the Customer for additional information or if support has been scheduled for a specific time.

(iv)   Any issue deemed by the Customer as a Critical issue, must be raised by the Customer via phone call to the Deswik Support line.

(b)   Access to desktops/laptops for Deswik Desktop Application support

(i)   All Desktop Application support will be provided remotely, using remote access or remote control tools if customer system interaction is required. Use of these remote control tools is subject to the Customer's Approval.

(c)   Access to Deswik Application Servers and Database Servers (if installed)

(i)   In order to provide Support Services for Deswik Enterprise Applications, the Customer must provide Deswik with the following:

(A)   **Remote Access:** provided via RDP or similar remote control software. Where remote access is restricted by means of a secure firewall, secure gateway, VPN or other security mechanism, the Customer must ensure Deswik Support is provided with all network and security rights, privileges, access tokens, certificates, and information necessary to enable Remote Access to the Deswik Application Servers and Database Servers to provide the Support Services.

(B)   **Access and/or Administrative privileges:** the Customer must provide Deswik with user accounts that have sufficient privileges to the Application Servers and Databases Servers to provide the Support Services. The exact privileges required will be specified in Deswik's installation and upgrade documentation and may vary between the "installation" and "normal operation" phases of the product's lifecycle.

(C)   **Physical Site and Server Access:** will not be required under normal circumstances; however, where the usual Remote Access mechanisms are not technically feasible to achieve the Support Services, onsite support may be provided (at Deswik's discretion and with Customer's permission) and require local access to the relevant Customer Site and associated Deswik Application and Database Servers. The Customer shall be responsible for any out of pocket expenses incurred by Deswik in providing such onsite Support Services.

(D)   **Backups**: must be scheduled regularly and are required for recovery purposes. They may be required in order to properly reproduce and diagnose issues with Deswik's Application Servers and Database Servers. Regular SQL file-based backups and backups of the application server file storage must be configured on the production Servers to create backups of the Deswik Application Databases on an accessible file share. Deswik Support Personnel must have sufficient access and privileges to be able to access these SQL file-based backups and to restore them into to the Test Environment.

(E)   **System Monitoring**: to ensure safe and continuous operation, the Customer must monitor key services and resource use as recommended by Deswik, and provide Deswik with details of monitoring and any relevant alerts as needed.

Services to be monitors include, without limitation, disk space, CPU usage, memory usage, database connectivity, and network utilization.

(F) **On-site Test Environment:** may be needed to properly reproduce and diagnose issues for Deswik's Application and Database Servers. The Test Environment must consist of a virtualized Application Server, virtualized Database Server and a virtualized client with Deswik debugging tools installed on it. Local administrative privileges are required on all the virtualised test machines. Remote Access to the Test Environment, as detailed above, will be required if advised by Deswik to provide the Support Services.

(ii) The minimum access requirements under this clause enable authorised Deswik personnel to review the exact Customer environment (including software, data and configuration) and significantly improve problem analysis and resolution and undertake software upgrades or configuration changes.

(iii) Only those Deswik personnel who are specifically authorized by the Customer will be permitted access to the Customer's network and Deswik Application Servers and Database Servers. Deswik will, where requested by the Customer, comply with all reasonable security requirements, forms, undertakings, policies etc to obtain such access.

(d) Expert Users

(i) The Customer must appoint an internal Expert User (or users as required) at each Site to act as its representative and point of contact in relation to all software defect reporting and user assistance requests. The Expert User/s must have completed appropriate formal training provided by Deswik staff.

(ii) The Expert User/s will be an initial point of contact for all other users in relation to software defect reporting, customer specific issues/procedures and user assistance requests.

(iii) Prior to reporting a software defect or submitting a user assistance request, an Expert User must attempt to diagnose the issue or respond internally to a user assistance request. If the initial attempt to diagnose the issue or answer the User Assistance request is unsuccessful, the Expert User will then raise the issue with Deswik Support.

(iv) When necessary to raise a software defect issue with Deswik Support, the Expert User/s will coordinate and forward reproducible steps, and related data files if required, to Deswik Support for resolution.

(v) The Expert User approach:

(A) has been found to be beneficial for both customers and Deswik;

(B) will enable identification of training requirements, procedural issues and reduction in identical calls made to Deswik; and

(C) allows Customers, if they choose to, to significantly reduce training costs through Train-the-Trainer like approaches.

(e) Other conditions

(i) If a user continually logs "User Assistance" support calls that are covered by standard Deswik training courses, Deswik may recommend a training course as part of a solution.

(ii)   The Service Level Targets apply to "applicable use" of the product/s only. For clarity, the product should only be used as per the documentation supplied.

(iii)   The Service Level Targets do not apply to supported 3rd party applications, modules or components, even if they are integrated in Deswik Software. Notwithstanding this, Deswik will monitor the relationships with those 3rd party application developers and support providers and use best endeavours to adhere to the Service Level Targets.

(iv)   If a user who has raised a ticket/s leaves their employment with the Customer, and the Customer does not within a reasonable time advise an alternative person to whom the ticket should be assigned, Deswik reserves the right to close the ticket at its discretion.

(f)   Dependence on External Suppliers

(i)   To provide the Services, Deswik is dependent in some cases upon certain external suppliers for certain products, information and services ("dependencies").

(ii)   Deswik will endeavor to manage all the relationships with any external suppliers so as to not impact on the Services provided by Deswik under this Agreement.

(iii)   If the Customer requires support on an issue which relates to a dependency, as part of the Services Deswik may have to refer the issue to the external supplier for correction or response. Deswik will keep the Customer informed of progress and timeframes for correction as advised by the external supplier.

(iv)   Should an external supplier cease production, supply or support of any product or service on which Deswik is dependent to provide the Services, Deswik will inform the Customer, and Deswik reserves the right to provide the relevant Services thereafter on a "best endeavors" basis.