

## Deswik.Apps License Agreement

Revised/Updated: 17 January 2022

**PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY CLICKING "I ACCEPT," YOU AGREE TO THESE TERMS AND CONDITIONS.**

This Deswik.Apps License Agreement (this "Agreement") is a legally binding contract between Deswik Mining Consultants (Australia) Pty Ltd (ACN 130 036 832) ("Deswik") and an individual end user, as defined below ("You," "Your"). You agree that when you access or use the App, You will do so subject to this Agreement. **DO NOT ACCESS OR USE THE APP IF YOU ARE UNWILLING OR UNABLE TO BE BOUND BY THIS AGREEMENT.**

This Agreement is effective as of the date You click "I Accept" (the "Effective Date").

### **1. USE OF THE APP IN GENERAL**

- 1.1. "App" means the "Deswik.Apps" mobile application which accompanies this Agreement. It includes updates to the App that Deswik may make available for download.
- 1.2. Platform access. Apple Inc ("Apple"). may, at any time and without notice, restrict, interrupt or prevent use of the App, or delete the App from your mobile device, or require Deswik to do any of the foregoing, without entitling You to any refund, credit or other compensation from Deswik or any third party (including, but not limited to, Apple, or your network connectivity provider).
- 1.3. Eligibility. You represent and warrant that You are 18 years old or older, and You recognize and agree that You must be 18 years old or older to use the App.
- 1.4. Devices. The App is available only for supported devices and may not be available for all devices. "Supported devices" means a combination of an Apple device model and relevant iOS software versions(s) that is supported by the App.
- 1.5. App Revisions. Deswik may revise the features and functions of the App at any time.
- 1.6. License Revisions. This Agreement was last updated on the date set out above. It is effective between You and Deswik as of the date You first download, install or use the App, whichever is earliest. You are responsible for reading and complying with any amended version of this Agreement that is posted at [www.deswik.com/terms-conditions](http://www.deswik.com/terms-conditions) before such version can be made available by Deswik via the App.
- 1.7. Support. Deswik is not obligated under this agreement to provide any support services for the App. Any support services will be provided by Deswik in accordance with the written terms for those services and may be subject to additional Fees. Any other support or assistance provided is "as is", "with all faults", and without warranty of any kind.
- 1.8. Apple Minimum Terms:
  - (a) Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App.
  - (b) This Agreement is concluded between You and Deswik only, and not with Apple; and Deswik, not Apple, is solely responsible for the App and the content thereof.

- (c) In the event of any failure of the App to conform to any applicable warranty, You may notify Apple, and Apple will refund the purchase price paid specifically for the App itself (and no other fees or monies paid in respect of the App) to You. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Deswik's responsibility subject to the terms of this Agreement.
- (d) You will comply with applicable third-party terms of agreement when using the App.
- (e) Deswik, not Apple, is responsible for addressing any of Your claims or any third-party claims relating to the App or Your possession and/or use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy, or similar legislation.
- (f) You represent and warrant that (i) You are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) You are not listed on any U.S. Government list of prohibited or restricted parties.
- (g) Apple, and Apple's subsidiaries, are third party beneficiaries of this Agreement, and upon Your acceptance of this Agreement Apple will have the right (and will be deemed to have accepted the right) to enforce the Agreement against You as a third-party beneficiary thereof.

## 2. THE APP

- 2.1. License. Deswik hereby grants You a non-exclusive, non-transferable, non-sub-licensable, time limited license to use one copy of the App (as defined below) on Your supported device during the Term (as defined in Clause 9.1 below), provided You comply with the restrictions set out below in Clause 2.2 (*Restrictions on Software Rights*). The license in the preceding sentence does not include use by any third party, and You must not permit any such use.
- 2.2. Restrictions on Software Rights. Copies of the App created or transferred pursuant to this Agreement are licensed, not sold, and You receive no title to or ownership of any copy or of the App itself. You receive no rights to the App other than those specifically granted in Clause 2.1 above. You may not: (a) modify, adapt, translate, create derivative works from, market, sell, distribute, or sublicense the App or any part of it; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the App's source code or any part of it; (c) access the App in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the App, or to copy any ideas, features, functions or graphics of the App, or enable, support or facilitate or help a third party to do this; or (d) make the App available over a network where it could be used by multiple devices at the same time.
- 2.3. Unauthorized Access. You agree to take reasonable steps to prevent unauthorized access to the App, including by protecting Your passwords and other log-in information. You must notify Deswik immediately if You know of or suspect unauthorized use of the App or breach of its security.

#### 2.4. Licensing mechanisms and penalties.

- (a) The App includes license protection mechanisms designed to manage and protect Deswik's rights in it. You must not modify or alter these mechanisms to try to defeat the use rules that the mechanisms are designed to enforce. Deswik may immediately terminate this Agreement, and any license granted under it, if any attempt is made to modify or alter these mechanisms.
- (b) The App 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 App. By using the App, You consent 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 2.4(b).
- (c) If Deswik reasonably suspects You have distributed or used the App outside the terms of this Agreement, Deswik may retrospectively charge You a fee calculated on the number of prohibited distributions or uses using the relevant list prices that Deswik charges for the App. These charges are in addition to any other right or claim that Deswik may have against You.

### 3. YOUR CONTENT

- 3.1. Ownership. As between us, You retain ownership of Your Content.
- 3.2. Rights in Your Content. You represent and warrant that You own Your Content or have received a valid license to Your Content and that submitting or transmitting Your Content through the App will not violate the rights of any third party, including without limitation intellectual property, privacy, or publicity rights. Deswik is under no obligation to review or screen Your Content.
- 3.3. Accuracy. Deswik has no responsibility or liability for the accuracy of any Content You submit to or transmit through the App.
- 3.4. Use of Your Content by Deswik. You grant Deswik a non-exclusive, royalty free licence during the Term to use, reproduce, modify, adapt and further develop Your Content, but only to the extent required to enable Deswik to provide any support as described in clause 1.7. Deswik undertakes to hold all of Your Content which comes into its possession in strict confidence, and as far as commercially feasible, take the same degree of care to protect Your Content as Deswik uses to protect its own confidential information.
- 3.5. "Content" means text, images, photos, audio or video files, and other forms of data or communication.
- 3.6. "Your Content" means any Content transmitted by You or on Your behalf to Deswik or its agents, or which you input into the App.

### 4. PRIVACY

- 4.1. Privacy Policy & Compliance. By using the App, You agree with the terms of Deswik's privacy policy at [www.deswik.com/privacy-policy/](http://www.deswik.com/privacy-policy/) and you recognize and agree that nothing in this Agreement restricts Deswik's right to alter its privacy policy. The App may obtain information from, or access data stored on, a supported device to provide and improve the App and related

products. The App may provide Deswik with information related to your use of the App, information regarding your device, and information regarding your interaction with the App, which Deswik may use to provide and improve the App and related products.

## **5. IP**

- 5.1. IP Rights in the App. Deswik retains all right, title, and interest in and to the App, including without limitation all software used to provide the App and all graphics, user interfaces, logos, and trademarks reproduced through the App, as well as all Content other than Your Content. This Agreement does not grant You any intellectual property license or rights in or to the App or any of its components, except to the limited extent that this Agreement specifically sets out Your license rights to the App. You recognize that the App and its components are protected by copyright and other laws.

## **6. DISCLAIMERS**

- 6.1. Warranty Disclaimers. You agree that you accept the App “as is” and as available, with no representation or warranty of any kind, express or implied, including without limitation implied warranties of merchantability, or fitness for a particular purpose. Deswik does not represent or warrant that the App will perform without interruption, be error or bug free, or provide complete or accurate data, nor does Deswik give any representations or warranties as to the results to be obtained from the use of the App. Use of the App and reliance on the App and results obtained from use of the App is at your sole risk.
- 6.2. Consumer rights. This Agreement describes certain legal rights. You may have other rights, including consumer rights, under the laws of your state, province, or country. This Agreement does not change those other rights if the laws of your state, province, or country do not permit it to do so.

## **7. LIMITATION OF LIABILITY**

- 7.1. Dollar Cap. Deswik’s cumulative liability for all claims arising out of or related to this Agreement will not exceed the amount you paid for the App.
- 7.2. Excluded Damages. 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 App, including but not limited to those resulting from defects in the App, or loss or inaccuracy of data of any kind and whether or not Deswik has any notice of the possibility of such damages.
- 7.3. Other limitation. If applicable law limits the application of the provisions of this Clause 7, Deswik’s liability will be limited to the maximum extent permissible.

## **8. INDEMNITY**

- 8.1. Third party claims. If the App 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 You the right to use the App free of any liability;

- (b) replace or modify the App to make it non-infringing; or
- (c) refund any monies You paid related to the App.

Deswik, not Apple, will be solely responsible for the investigation, defence, settlement and discharge of any such claim.

- 8.2. Sole Liability. The remedies set out in clause 8.1 are Deswik's sole liability and Your exclusive remedy for any infringement by Deswik of intellectual property rights in the App Software or any other items provided by Deswik under this Agreement.
- 8.3. Indemnity to Deswik. You acknowledge and agree that if You breach this Agreement and Deswik or a third party suffers any loss, damage, cost or expense directly or indirectly as a result of the breach, Deswik or the third party may bring an action directly against You. You 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 Your modification of any part of the App or other items provided by Deswik or any breach of this Agreement.
- 8.4. Timing for claims. You must commence any action arising out of or related to this Agreement or the App or Your use of the App within one (1) year of the loss or damage arising. After that time You agree that any cause of action will be permanently barred.

## **9. TERM & TERMINATION**

- 9.1. Term. The term of this Agreement (the "Term") will commence on the Effective Date and, unless terminated earlier in accordance with this Agreement, will expire on the date agreed with Deswik in the order placed for the App.
- 9.2. Termination. Either party may terminate this Agreement for any reason at any time. You may terminate this Agreement by closing Your account or ceasing to use the App. Deswik may terminate this Agreement by notifying You in writing, including without limitation via text to Your mobile device.
- 9.3. Effects of Termination. Upon termination of this Agreement, You must cease all use of the App. The following provisions will survive termination of this Agreement: Clauses 5 (*IP*), 6 (*Disclaimers*), 7 (*Limitation of Liability*), and 10 (*Miscellaneous*); and any other provision of this Agreement that must survive to fulfill its essential purpose.

## **10. MISCELLANEOUS**

- 10.1. Notices. Deswik may send notices to You by email or by text to Your mobile device at the email address or mobile number You provided, and such notices will be deemed received 24 hours after they are sent. You may send notices pursuant to this Agreement to Deswik, or any questions, complaints or claims with respect to the App, by email to appsupport@deswik.com, and such notices will be deemed received 72 hours after they are sent.
- 10.2. Assignment & Successors. You may not assign this Agreement or any of Your rights or obligations under this Agreement without Deswik's express written consent. Except to the extent forbidden in this Clause 10.2, this Agreement will be binding upon the parties' respective successors and assigns.

- 10.3. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 10.4. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 10.5. Choice of Law & Jurisdiction: This Agreement will be governed solely by the laws of the State of Queensland, Australia, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. This Clause 10.5 and Clause 10.7 below (*Dispute Resolution*) govern all claims arising out of or related to this Agreement.
- 10.6. Entire Agreement. This Agreement sets out the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 10.7. Dispute Resolution. Any legal disputes or claims arising out of or related to this Agreement (including without limitation claims related to the use of the App, the interpretation, enforceability, revocability, or validity of the Agreement, or the arbitrability of any dispute), that cannot be resolved informally will be submitted to binding arbitration in Queensland, Australia. The arbitration will be conducted under the Resolution Institute Arbitration Rules, or as otherwise mutually agreed by You and Deswik. Unless the parties agree upon an arbitrator, either party may request a nomination from the Chair of Resolution Institute.

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