SCHEDULE 1 – STANDARD TERMS - SAAS

1. Term and supply

1.1 Supply

The Proposal constitutes an offer by the Supplier to provide the Services on the terms of this Agreement, and can be accepted by the Customer signing and returning the Proposal, or is otherwise accepted by the Customer using the Platform Services.

1.2 Term of Supply

This Agreement commences on the date it is signed by both parties and continues for the Term.

2. Platform Services

For Services or any part of the Services that contemplate the Supplier providing access to, or a licence to use, Software, then unless otherwise specified in the Proposal:

(a) any Service that involves the Supplier providing any form of software solution will be for the provision of Platform Services;

(b) following the delivery of any Services concerning the configuration, integration, deployment, development, enhancement or development of the Software, the Supplier will grant the Customer, a non-exclusive, non-transferable licence for the Term, to allow the Customer and its Personnel to use the Software via the Platform, solely for the purposes of that part of the Customer's business or operations specified in the Proposal, and not for distribution, transfer, sale or use for the benefit of any third party;

(c) the Customer must ensure that the Supplier is granted sufficient access to enable the Supplier to make Platform Content available via the Platform to the Customer.

3. Other Services

For Services, or any part of the Services, not contemplated by clause 2 above, which may include Services for the provision by the Supplier of advisor, opportunity sizing, scoping, or the deployment, integration, configuration, enhancement or development of Software:

(a) The Supplier will perform the Services in accordance with the Proposal.

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

(c) Unless the Proposal otherwise specifies, following any deployment, development, integration, configuration or enhancement of Software, clause 2 (above) will apply in respect of any use of the Software by the Customer. If no Charges are specified in the proposal for the hosting, support and ongoing licence to use the Software, any licence contemplated clause 2 will be the subject of a separate agreement between the parties.

4. Invoicing

a) The Customer will pay the Supplier the Charges as set out in the Proposal.

b) Unless otherwise specified in the Proposal, the Customer must pay the Supplier the amount invoiced within 45 days from the end of the calendar month in which the Supplier renders the invoice.

c) If the Customer has failed to make a payment which is due and payable to the Supplier in accordance with the Agreement and that amount remains unpaid for five Business Days after the Supplier gives notice to the Customer of the default, the Supplier may do any or all of the following:

(i) suspend performance of its obligations under this Agreement until the amount outstanding is paid in full;

(ii) charge interest on the daily balance of all unpaid Charges at the six percent above the cash rate published by the Reserve Bank of Australia from time to time, capitalised at the end of each month, calculated from and including the date on which the payment became due until but excluding the date on which the payment is made; and

(iii) terminate this Agreement by giving at least thirty (30) days' notice in writing.

5. CPI Review

a) Where this Agreement contemplates the Supplier providing services on an ongoing basis (such as Platform Services, licensing, hosting or support services), or if the Proposal otherwise refers to increases in the Charges according to CPI, then

the Charges for each Invoice Cycle will be the higher of:

(i) an amount calculated at the start of each Invoice Cycle by the CPI Review; or

(ii) the Charges payable for the last concluded Invoice Cycle.

b) In this clause

(i) **CPI** means:

(A) the Consumer Price Index (All Groups) for the City of Brisbane published by the Australian Bureau of Statistics; or

(B) if that index is discontinued, the index specified by the President of the Australian Property Institute at either party's request as reflecting on a consistent basis changes in the cost of living in the City of Brisbane.

(ii) **CPI Review** = (A x B) / C

where:

A = the Charges payable for the Invoice Cycle last concluded;

B = CPI for the last full quarter immediately preceding the first day of the Invoice Cycle under review;

C = CPI for the last full quarter immediately preceding the first day of Invoice Cycle last concluded.

(iii) **Invoice Cycle** means:

(A) each separate period of time contemplated by an invoice for services being provided on a rolling or ongoing basis; or

(B) in the absence of any distinct period contemplated by clause 1.1(A) – on each anniversary of the commencement of the relevant Services.

6. Intellectual Property

(a) The Supplier's Intellectual Property Rights will vest in, or remain with (as the case may be), the Supplier. The Customer acknowledges the Supplier's title to and interest in the Supplier's Intellectual Property Rights.

(b) The Customer and each of its Associated Entities must:

(i) not, subject to the terms of this Agreement, use or allow the use of any of the Supplier's Intellectual Property Rights or any part of them in a manner that is contrary to or conflicts with or in any way or damages the

title, interest or interest of the Supplier in the Supplier's Intellectual Property Rights:

(ii) not challenge or call into question in any way the right, title, interest and goodwill of the Supplier in respect of the Supplier's Intellectual Property Rights;

(iii) subject to this Agreement, not register or attempt to register under the provisions of any statute or otherwise the Supplier's Intellectual Property Rights without the express written consent of the Supplier;

(iv) not modify, reverse engineer or make a copy of the Supplier's Intellectual Property Rights for any purpose, and it must not attempt to discover any source code or underlying ideas or algorithms in the Software or Platform Content;

(c) All tools, software and other materials and equipment used in or created for the provision of Services by the Supplier and all present and future intellectual and industrial property rights in those tools, software and other materials and equipment:

(i) will remain the sole property of the Supplier or its licensors (as the case may be); and

(ii) may be used by the Supplier in providing services to other customers.

7. GST / Indirect Transaction Taxes

(a) All amounts specified in (or in connection with) this Agreement are exclusive of Indirect Transaction Taxes.

(b) If Indirect Transaction Taxes is imposed on any supply, transfer or sale (**supply**) made under or in connection with this Agreement, or if the party making that supply (**supplier**) is liable, under the applicable law, to pay, or collect and remit, the Indirect Transaction Taxes to the appropriate Government Agency, the party receiving that supply (**recipient**) shall pay to the supplier an additional amount equal to the Indirect Transaction Taxes payable by the supplier in respect of the supply at the same time as payment for the supply.

8. Customer's Responsibilities

(a) The Customer will be responsible for:

(i) all equipment, including computer hardware and software, used by the Customer in connecting with the Platform;

(ii) the provision of data, instructions, documentation and information

reasonably required by the Supplier from time to time to perform the Services;

(iii) ensuring the completeness and accuracy of the data, instructions, documentation and information it provides the Supplier;

(iv) any loss or damage suffered that is a direct or indirect result of any incomplete, inaccurate, faulty or aberrant data, instructions, documentation or information provided to the Supplier;

(v) any charges or costs incurred in connection with their telephone or internet connections necessary for the Customer to access the Platform;

(vi) its own data including, but not limited to, uploading it to the Platform.

(b) The Customer acknowledges that:

(i) the Software does not detect faulty of aberrant input data, and under no circumstances will the Supplier validate any the Customer's data for sufficiency, accuracy or usability; and

(ii) there are limitations to the ability for mathematical based optimisation solutions to analyse or take into account each and every relevant consideration relevant to a decision, and the Customer will use its own independent judgment in making decisions based on any output data obtained from the Software or Platform.

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

9. Confidentiality

(a) This clause survives the termination or expiry of this agreement.

(b) Subject to clauses 9(c) and 9(d), each party (**Recipient**) receiving the Confidential Information of the other Party (**Discloser**) must:

(i) not disclose or use (other than to perform its obligations under this agreement) the Discloser's Confidential Information; or

(ii) not make any public announcement or issue any press release regarding this agreement or the transactions contemplated by it,

(iii) use its best endeavours to ensure that its Personnel do not:

(A) disclose or use (other than to perform their obligations under this agreement) the Discloser's Confidential Information;

(B) make any public announcement or issue any press release regarding this agreement or the transactions contemplated by it.

(c) The Recipient may disclose, and may permit its Personnel to disclose, any Confidential Information:

(i) with the prior written consent of the Discloser;

(ii) if it is required to do so by Law or by any recognised stock exchange or Government Agency;

(iii) if the Confidential Information has come within the public domain, other than by a breach of this Agreement by a party, or has come within the possession of the Recipient otherwise than in the course of dealings between the parties as contemplated by this agreement;

(iv) to its professional advisers; or

(v) to an Associated Entity.

(d) Each party will implement commercially reasonable measures to prevent any 'cyberattack', 'hack' or other intentional data security breach performed by a hostile third-party.

(e) Provided the Recipient has complied with clause 9(d), it will not be liable for a breach of this Agreement, or liable in tort or any other legal or equitable basis, for the release of Confidential Information if the release was the result of a 'cyberattack', 'hack' or other intentional data security breach performed by a hostile third-party.

(f) Upon the termination of this agreement, the Recipient must, on demand, return to the other all Confidential Information that it has received to the Discloser and any copies.

(g) Despite clause 9(d), the Recipient may (subject to the continuing obligations under this Agreement), retain a copy of documents and other materials containing, recording or constituting Confidential Information to the extent that:

(i) it is required to retain the Confidential Information under any applicable law, regulation, professional standard, or order from a court or an administrative or

regulatory agency having competent jurisdiction; or

(ii) its computer back-up procedures (or those of its Associated Entities, legal, accounting or financial advisors to whom Confidential Information has been disclosed) create copies of Confidential Information, in which case those entities may retain those copies for the period backed-up computer records are normally archived by the relevant entity;

(iii) it is required to retain the Confidential Information for the purpose of any risk management policy or policy of insurance effected by it, in which case a single copy of the Confidential Information may be retained that party, and access to that copy will be limited to a single appropriate senior officer of that party.

10. Force Majeure

10.1 Giving of notice

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

(a) reasonable particulars of the Force Majeure Event;

(b) details of the obligations affected by it and the extent to which they are affected;

(c) an estimate of its likely duration; and

(d) the steps taken to rectify it.

10.2 Liability for force majeure

Subject to clause 10.3, if a Force Majeure Event occurs:

(a) the Affected Party is not liable for any failure or delay in performing the Affected Obligations; and

(b) the Affected Party's obligations under this Agreement are suspended, to the extent to which they are affected by the Force Majeure Event, for the duration of the Force Majeure Event.

10.3 Exceptions

Clause 10.2 does not apply to the extent that:

(a) the Affected Party could have avoided or circumvented the Force Majeure Event by taking reasonable precautions or other reasonable steps;

(b) the failure or delay in performing the Affected Obligations was caused by a breach of this Agreement by the Affected Party;

(c) the failure or delay in performing the Affected Obligations results from the Affected Party having a lack of funds;

(d) the Affected Obligation is a payment obligation; or

(e) the Affected Party has not otherwise complied with its obligations under this clause 10.

10.4 Efforts to overcome

An Affected Party who has given notice of a Force Majeure Event under clause 10.1 must:

(a) use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as reasonably possible; and

(b) keep the other party regularly informed as to the steps or actions being taken to achieve this.

However, nothing in this clause 10 requires a party to settle any industrial dispute against its will.

10.5 Right of termination

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

11. Liability

11.1 Limitation of Liability

The Supplier is not liable to the Customer or to any other person for:

(a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of the Customer or any of its Personnel; or

(b) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:

(i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or

(ii) the Supplier or its Personnel were previously notified of the possibility of the loss or damage.

(c) any loss arising out of or in connection with loss or damage to real or tangible personal property, personal injury or death caused by or contributed to by the Customer's use of the Software, the Platform or the Platform Services.

11.2 Maximum Liability

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

11.3 Indemnity

The Customer indemnifies the Supplier and its Personnel, and agrees to hold the Supplier and its Personnel harmless, in respect of any loss suffered or incurred in connection with any claims, proceedings, demands and actions of any nature whether actual or threatened made against an Indemnified Person arising out of or in connection with loss or damage to real or tangible personal property, personal injury or death caused by or contributed to by the Customer's use of the Software, the Platform or the Platform Services.

12. Expiry or termination

This clause 12 and clauses 4 (Invoicing), 5 (Intellectual Property), 9 (Confidentiality), 11 (Liability), 13 (General) and 14 (Interpretation) survive the expiry or termination of this Agreement.

13. General

13.1 Entire Agreement

(a) This Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes, terminates and replaces all prior agreements and communications between the parties.

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

13.2 Severability

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:
(a) be read down to the minimum extent necessary to achieve its validity, if applicable; and

(b) be severed from this Agreement in any other case,

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

13.3 Variation

This Agreement cannot be amended or varied except in writing signed by the parties.

13.4 Governing law and jurisdiction

(a) This Agreement is governed by and must be construed in accordance with the laws in force in Queensland, Australia.

(b) The parties submit to the exclusive jurisdiction of the courts of that State or Territory and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

13.5 No set-off

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

14. Interpretation

14.1 Definitions

(a) **Affected Obligations** and **Affected Party** have the meanings given to those terms in the definition of "Force Majeure Event".

(b) **Associated Entity** has the meaning given to that term in the *Corporations Act 2001* (Cth).

(c) **Agreement** means the Proposal and these Standard Terms.

(d) **Business Day** means a weekday (other than a public holiday) on which banks are open for business in Brisbane, Queensland.

(e) **Charges** means the fees or charges payable by the Customer for the provision of the Services as set out in the Proposal.

(f) **Claim** means any action, suit, proceeding or demand of any kind whether in contract, negligence (or any other tort), equity, under statute or otherwise at all.

(g) **Confidential Information** means the terms and existence of this Agreement and all information belonging or relating to a party to this Agreement, whether oral, graphic, electronic, written or in any other form, that is:

   (i) or should reasonably be regarded as, confidential to the party to whom it belongs or relates; or

(ii) not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement,

and includes in the case of the Supplier, confidential information comprised in the Platform Content, the Software and any benchmark tests or reports related thereto.

(h) *Commencement Date* means the date specified in the Proposal or, if no date is specified, the date on which the last party to this Agreement signs it.

(i) *Customer* means the entity identified as the customer or client in the Proposal.

(j) *Force Majeure Event* means any act, event or cause including:

  (i) an act of God, peril of the sea, accident of navigation, war, sabotage, riot, act of terrorism, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, breakdown of plant or equipment, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, pandemic, quarantine, radiation or radioactive contamination;

  (ii) any third-party host of a Platform used by the Supplier to provide Hosting Services changing, in a materially adverse way, the nature or basis on which the Platform can be supplied;

  (iii) an action or inaction of a Government Agency, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order,

to the extent that the act, event or cause directly or indirectly results in a party ("the **Affected Party**") being prevented from or delayed in performing one or more of its material obligations under this Agreement ("the **Affected Obligations**") and that act, event or cause is beyond the reasonable control of the Affected Party

(k) *Indirect Transaction Taxes* means any value added tax, goods and services tax or similar tax including, without limit, sales, use or consumption taxes, imposed, claimed, levied or assessed by, or payable to, any Government Agency, but does not include any related penalty, fine or interest thereon.

(l) *Liabilities* means damages, losses, liabilities, fines, penalties, claims, costs and expenses (including legal fees on a solicitor-client indemnity basis) of any kind.

(m) *Personnel*, in respect of a party, means the officers, employees, Contractors (including subcontractors and their employees) and agents of that party and its Associated Entities.

(n) *Platform* means that part of the Supplier's systems (including hardware, Software and data) and processes used by the Supplier to provide access to the Platform Content under the Agreement and (to the extent and subject to the terms set out in the Proposal) made available for that purpose by the Supplier, regardless of whether the Platform Content is hosted by the Supplier or third party.

Those Systems may include:

  (i) the web development platform called Tropofy (a description of which can be found at http://tropofy.com/docs/index.html) which underpins the deployment of hosted decision support toolkits built by the Supplier;

  (ii) the hardware architecture and automated deployment and release process used by the Supplier to install and upgrade Tropofy based toolkits;

  (iii) the Amazon Web Services configuration often expressed as a Cloud Formation Template (see https://aws.amazon.com/cloudformation/) used by the Supplier to manage hosted environments.

(o) *Platform Content* means the programs and information, in whatever form, to which the Supplier gives access for the purpose of and subject to this Agreement, and as more particularly set out in the Proposal.

(p) *Platform Services* means the access given by the Supplier to the Platform Content via the Platform, subject to this Agreement and as more particularly set out in the Proposal.

(q) *Proposal* means the written proposal given by the Supplier to the Customer to which these Standard Terms are attached.

(r) *Sanctions Undertaking* means the Supplier's "Sanctions Undertaking and End User Assurance" document, available at www.deswik.com/terms-conditions. Supplier reserves the right to amend the Sanctions Undertaking at any time at its discretion.

(s) **Services** means services to be provided by the Supplier to the Customer under this Agreement as set out in the Proposal and may include Platform Services.

(t) **Software** means computer programs or data specified in the Proposal, together with any technical information and documentation necessary for the use of such programs or data, owned by or licenced to the Supplier and used in the provision of the Services.

(u) **Standard Terms** means the terms and conditions in this document.

(v) **Supplier** means Deswik Mining Consultants (Australia) Pty Ltd ACN 130 036 832.

(w) **Supplier's Intellectual Property Rights** means all present and future intellectual and industrial property rights, whether protectable by statute, at common law or in equity:

  (i) in any program, code, algorithm, software, process or other subject matter that is used, written, developed, created or produced by the Supplier or its Associated Entities to carry out the Services; or

  (ii) which are otherwise owned by or licenced to the Supplier or an Associated Entity of the Supplier,

including such rights that are comprised of or contained in:

  (iii) the Software and the Platform Content;

  (iv) patents, designs, copyright, rights in circuit layouts, trademarks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;

  (v) any such rights that are owned by or licenced to the Supplier or its Associated Entities,

  (vi) any application or right to apply for registration of any of these rights;

  (vii) any registration or application for registration of any of those rights; and

  (viii) all renewals and extensions of those rights.

(x) **Term** means the period of time specified in the Proposal by reference to that term and, if no Term is specified in the Proposal:

  (i) for Platform Services or other services involving ongoing hosting, support or a licence to use the Software – the period paid in advance by the Customer;

  (ii) for any other services (including, for example, the deployment, integration, configuration or development of the Software) – the period of time from the Commencement Date until completion of the Services.

14.2 Interpretation

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

(a) a document (including this Agreement) includes any variation, amendment or change to it or replacement of it;

(b) a party means a party to this Agreement and parties means all the parties to this Agreement.

(c) the singular includes the plural and vice versa;

(d) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association;

(e) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

(f) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;

(g) a reference to *use* in the context of a licence to use a computer program means, subject to any limitations and extensions set out in the Proposal, the non-exclusive right to cause the object code version of the program to be executed via remote access over the public internet via the Platform for the purpose for which it was designed (and in any event for the licensee's internal operational purposes not involving commercialisation in favour of any third party);

(h) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;

(i) the reference to "$" is a reference to the lawful currency of Australia;

(j) the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation and when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

(k) an agreement on the part of two or more persons binds them jointly, and each of them severally;

(l) if the doing of any act, matter or thing under or in connection with this Agreement is dependent on the consent or approval of a party, that consent or approval may be withheld, delayed,

given or given on any conditions in the absolute unfettered discretion of that party;

(m) if the date for payment of any monies under the Agreement falls on a day that is not a Business Day, the payment will be due on the following Business Day.

14.3 Inconsistency

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