



## **Micromine Spry Software Licence Agreement**

Revision 6 (last updated 29 April 2024)

### **AGREEMENT BETWEEN:**

**Micromine Australia Pty Ltd ABN 72 630 329 118** of Level 6, 251 St Georges Terrace, Perth WA 6000 Australia (**Licensor**)

AND

**You and the company, organisation or party on whose behalf the Software is used, (Licensee)**

### **Recitals**

- A. The Licensor has the capacity to license the Software.
- B. The Licensee wishes to license the Software from the Licensor for its own internal business purposes.
- C. The Licensor agree to license the Software to the Licensee on the terms of this agreement.
- D. The words and phrases used in this agreement have the meanings as set out in the section entitled "Definitions".
- E. In the interpretation of this agreement, the rules set out at in the section entitled "Interpretation" apply.

## **1 When agreement becomes binding**

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- (a) This document will be executed and form a binding agreement between the Licensee and the Licensor when you press the Accept button on this window.
- (b) By pressing the Accept button, You warrant in your personal capacity that You currently have the authority to create a contractually binding relationship between the Licensee and the Licensor for the duration of the Agreement.
- (c) By clicking "accept" and proceeding to use the Software you are representing you are a duly authorised member of the Licensee organisation or company's personnel and have the authority to bind that organisation or company to this agreement.

## **2 Overview of Software**

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### **2.1 Purpose**

The Software:



- (a) was developed for the Purpose; and
- (b) is subject at all times to proper operation and reasonable effort by the Licensee to mitigate all risks arising out of the Licensee's use of the Software including, without limitation:
  - (i) verifying input data prior to entry;
  - (ii) verifying output data prior to reliance or action on that data; and
  - (iii) deploying, implementing, executing, operating or otherwise dealing with the Software in compliance with the Minimum Software Requirements.

## 2.2 Electronic Signature

The parties agree that they may enter into this agreement by electronically signing this agreement.

## 2.3 Software Trial

- (a) The Software may be downloaded and used on a trial basis, at the Licensor's sole and absolute discretion, free of charge after the Commencement Date.
- (b) In exchange for using the Software on a trial basis, the Licensee agrees to be bound by the terms and conditions of this agreement.

## 2.4 Security and authentication

- (a) The Software may be accessed by one of two ways:
  - (i) Cloud authentication; or
  - (ii) Dongle authentication.
- (b) For Cloud authentication, the Licensee agrees and acknowledges that the Software will be inoperable unless the computer on which the Software is installed can access the Cloud service to authenticate the Software.
- (c) For Dongle authentication, the Licensee agrees and acknowledges that the Software will be inoperable unless a Dongle provided by the Licensor is attached to the computer on which the Software is to be installed.
- (d) The Dongle remains the property of the Licensor at all times.
- (e) The Licensee agrees:



- (i) to comply with the Software Security Policy found at <https://www.micromine.com/licensing/>; and
- (ii) that use of the Software is subject to that Software Security Policy.

## 2.5 Changes

- (a) The Licensor may make changes to the Software from time to time at its sole and absolute discretion to continue commercial development, maintenance and operation of the software.
- (b) The Licensor will make any updates, upgrades, fixes and other improvements to the Software that it develops from time to time available to the Licensee at no charge to the Licensee.
- (c) The Licensor is under no obligation to develop any update, upgrade, fix or other improvement to the Software other than fixes for errors, bugs or other faults within the Software that are determined by the Licensor (acting reasonably) are errors, bugs or other faults common to all licensees of the Software or otherwise reasonably within the Licensor's control.
- (d) The Licensee must ensure that all updates, upgrades, fixes and other improvements to the Software made available under clause 2.5(b) are installed in the Licensee's operating environment.

## 3 Licence

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### 3.1 Licence

Subject to this agreement, the Licensor grants the Licensee a non-exclusive, non-transferrable, revocable license to use the Software in the Territory for its own internal business purposes or the business purposes of any Related Body Corporate (**Licence**).

### 3.2 Licence term

The Licence commences on the Commencement Date and continues until termination of this agreement under clause 8.

## 4 Permitted use

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### 4.1 Access to Software

- (a) The Licensee must ensure that only Personnel of the Licensee and its Related Bodies Corporate have access to the Software, unless agreed by the Licensor in writing.
- (b) The Licensee must:



- (i) notify all persons who may access the Software under clause 4.1(a) of the terms relating to permitted use under this clause 4;
  - (ii) confirm their understanding and acceptance of those terms; and
  - (iii) take reasonable steps to regularly monitor use of the Software by users to ensure compliance with those terms.
- (c) Without limiting clause 12, the Licensee is solely responsible and liable for all acts and omissions of persons accessing the Software under clause 4.1(a) or who otherwise obtain access to the software due to the Licensee, in relation to the Software.

#### 4.2 Unauthorised Activities

The Licensee must:

- (a) provide the Licensor with all information, data, documentation and cooperation reasonably required by the Licensor to allow the Licensor to comply with its obligations or exercise its rights under this agreement;
- (b) use the Software only in the manner and for the purpose intended by the Licensor, including compliance with any technical limitations or prohibitions or security features implemented in the Software;
- (c) not engage in any Unauthorised Activities;
- (d) take reasonable efforts to keep the Software, Cloud authentication passcodes and Dongles securely under its control;
- (e) as soon as reasonably possible:
  - (i) notify the Licensor if it becomes aware of any suspected or actual loss or theft of a Cloud authentication passcode or Dongle;
  - (ii) notify the Licensor if it becomes aware of any suspected or actual Unauthorised Activities; and
  - (iii) take all steps to prevent or stop any Unauthorised Activity of which it becomes aware or suspects to have occurred or may occur; and
- (f) provide assistance reasonably requested by the Licensor in relation to any action the Licensor may take against any person for any suspected Unauthorised Activities.



#### 4.3 Audit

- (a) The Licensor may, on reasonable notice to the Licensee, audit the Licensee's, and each user of the Software's, compliance with this clause 4.
- (b) The Licensee must provide all reasonable support and make available all documents, letters, time sheets, output, reports, emails, and any other relevant material, to the Licensor for the purpose of auditing use of the Software under clause 4.3(a).

#### 4.4 Suspension

- (a) Where the Licensor (acting reasonably) knows or reasonably suspects that the Licensee has breached this clause 4, the Licensor may at its discretion suspend:
  - (i) the Licensee's use of the Software;
  - (ii) the purchase of additional time or Dongles by the Licensee; or
  - (iii) provision of support to the Licensee,without informing the Licensee of the suspension prior to the suspension taking effect.
- (b) The Licensor will inform the Licensee in writing of the suspension as soon as reasonably possible from the time of the suspension taking effect.

### 5 Licensee Obligations

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In addition to, and without limiting, its other obligations under this agreement, the Licensee must:

- (a) ensure that all updates, upgrades, fixes and other improvements to the Software made available by the Licensor are installed;
- (b) comply with all applicable laws in its use of the Software; and
- (c) seek to identify, manage and mitigate risks relating to use of the Software within its control.

### 6 Supply of Software

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#### 6.1 Implementation and use

Without limiting clause 12, it is the Licensee's obligation and sole responsibility to:

- (a) download the Software and confirm the integrity of the download;



- (b) install the Software in an environment complying with the Minimum Software Requirements and confirm the success of the installation;
- (c) ensure the physical integrity and security of the Dongles;
- (d) ensure it has sufficient time to use the Software and monitor remaining time available to the Licensee; and
- (e) ensure each Dongle in the control of the Licensee is properly synchronised, and the Licensee is solely liable for any lost data or work as a result of a failure to do so.

## **7 Purchases and payments**

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### **7.1 Purchases**

The Licensee may purchase:

- (a) time to use the Software in advance of using the Software; or
- (b) Dongles,

at any time by written request to the Licensor or by any other purchasing means offered by the Licensor.

### **7.2 Pricing Changes**

- (a) The Licensor may change the pricing of time and Dongles under 7.1 at its sole and absolute discretion.
- (b) New pricing will be applicable to the next purchase of time or a Dongle made by the Licensor.

### **7.3 Invoice**

The Licensor will provide the Licensee with an invoice for Payment pursuant to a purchase made under 7.1, which will be payable by the due date stated on the Licensor's invoice.

### **7.4 Right to recover**

- (a) The Licensor may demand immediate payment of any Payment from the Licensee if the Licensee has failed to pay any Payment within the time specified in clause 7.3.
- (b) If the Licensee fails to satisfy a demand under clause 7.4(a), the Licensor may, without limiting the Licensor's rights under this agreement or at law:
  - (i) suspend the Licensee's use of the Software;



- (ii) terminate this agreement;
- (iii) demand payment; or
- (iv) commence proceedings in relation to the demand.

#### **7.5 Default**

If the Licensee fails to pay any Payment in accordance with this clause 7, the Licensor may, solely or in combination (without limitation to any other remedy available):

- (a) demand immediate payment of any outstanding Payment;
- (b) suspend the Licensee's ability to use the Software;
- (c) suspend the Licensee's ability to:
  - (i) purchase time; or
  - (ii) purchase Dongles; or
- (d) terminate this agreement.

#### **7.6 Exclusions**

Unless stated otherwise, a Payment does not include sales, use, excise, or any other taxes or assessments levied by any government agency and each Party may recover such amounts from the other Party.

#### **7.7 GST**

- (a) In this clause 7.7, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- (b) If a Party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 7.7(b) (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (c) If a Party must reimburse or indemnify another Party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other Party is entitled to for the loss, cost or expense, and then increased in accordance with clause 7.7(b).
- (d) A Party need not make a payment for a taxable supply made under or in connection with this document until it receives a tax invoice for the supply to which the payment relates.



## 8 Term and Termination

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### 8.1 Term

This agreement commences on the Commencement Date and continues until terminated according to this agreement.

### 8.2 Right to terminate

- (a) The Licensor may withdraw the software on twelve (12) months' notice in writing, and immediately upon the Licensee engaging in Unauthorised Activities.
- (b) Either Party may terminate this agreement:
  - (i) for convenience by providing six (6) months' notice to the other Party in writing; or
  - (ii) if the other Party:
    - (A) commits a material breach of this agreement which is not capable of being remedied;
    - (B) fails to remedy a material breach of this agreement which is capable of remedy within thirty (30) days of receipt of a written notice from the other Party specifying such breach;
    - (C) is prevented by an act of Force Majeure from performing that Party's obligations under this agreement for thirty (30) days; or
    - (D) suffers an Insolvency Event.

### 8.3 After termination

On termination or expiry of this agreement:

- (a) each Party's rights and obligations under this agreement cease and terminate immediately, however accrued rights or remedies of a Party are not affected;
- (b) the Licensee must destroy all Confidential Information of the Licensor according to clause 9.4; and
- (c) the Licensee must immediately:
  - (i) return or destroy all copies of the Software in its control;
  - (ii) satisfy all outstanding Payments under clause 7.3; and





- (iii) return each Dongle in the control of the Licensee to the Licensor.

## **9 Confidential Information and Privacy**

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### **9.1 Obligation of confidentiality**

The Licensee agrees to keep confidential, and not use or disclose, other than as permitted by this agreement, all Confidential Information of the Licensor.

### **9.2 Exceptions**

The obligation not to disclose in clause 9.1 does not apply to Confidential Information that is required to be disclosed under applicable law, or under compulsion of law by a court or government agency, as long as the Licensee:

- (a) discloses the minimum amount of Confidential Information required to satisfy the law or rules;
- (b) before disclosing any information, gives reasonable amount of notice to the Licensor and takes all reasonable steps (whether required by the Licensor or not) to maintain such Confidential Information in confidence; and
- (c) notifies the court or government agency that it is the Confidential Information of the Licensor.

### **9.3 Consent to disclosure**

- (a) Subject to clause 9.2, the Licensee may use and disclose the Confidential Information of the Licensor only for the purpose of using the Software in accordance with this agreement or otherwise with the prior written consent of the Licensor.
- (b) If the Licensee discloses Confidential Information under clause 9.3(a), the Licensee must ensure that such Confidential Information is kept confidential by the person receiving the Confidential Information and is used only for the exercise of rights or the performance of obligations under this agreement.

### **9.4 Return or destruction of Confidential Information**

Immediately on termination of this agreement, the Licensee must:

- (a) return or destroy (at the Licensor's option) all copies of the Confidential Information or other property of the Licensor in the Licensee's custody or control;
- (b) if the Confidential Information is in digital, electronic or magnetic form or on any computer or other data processing machine or data carrier, permanently erase the Confidential Information beyond recovery; and



- (c) confirm in writing (or other reasonable method requested by the Licensor) compliance with clause 9.4(a) and clause 9.4(b).

#### **9.5 Licensor Privacy Policy**

The Licensee agrees and consents to the Licensor's use of Personal Information in accordance with the Licensor's Privacy Policy, available at [www.micromine.com/privacy-policy/](http://www.micromine.com/privacy-policy/).

### **10 Intellectual property**

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- (a) Subject to clause 10(b), the Licensee acknowledges that all right, title and interest in the Software is owned by the Licensor or its Related Bodies Corporate and all right, title and interest in improvements, adaptations, modifications or alterations to the Software, or any work inseparably mixing or incorporating the Software, vests upon creation in the Licensor or relevant Related Body Corporate.
- (b) The Licensor will not own Intellectual Property Rights in any material independently created by the Licensee or third person that is:
  - (i) Background IP;
  - (ii) merely an input of the Software or subsequently generated data; or
  - (iii) used or integrated with the Software within the usual usage and performance of the Software as provided and permitted by the Licensor, including any scripts, widgets or macros enabled by the Software,

unless otherwise agreed with the Licensee.

### **11 Warranties**

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#### **11.1 Warranties**

Each Party represents and warrants that:

- (a) it has full power and authority to enter into and perform its obligations under this agreement;
- (b) it has taken all necessary action to authorise the execution, delivery, and performance of this agreement in accordance with its terms.



## 11.2 Licensee Warranties

The Licensee represents and warrants that:

- (a) it will not do or permit, cause or suffer to be done, or omit to do anything that may reasonably infringe the Licensor's Intellectual Property Rights;
- (b) it will fully assist and co-operate with the Licensor in stopping any damage to, or any infringement against, the Licensor's Intellectual Property Rights licensed under this agreement, or any rights connected or associated with them; and
- (c) it will not do or permit, cause or suffer to be done, or omit to do anything with regard to the Software that causes, or may reasonably be expected to cause, a breach of this agreement.

## 12 Liability

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### 12.1 Exclusion of liability

The Licensor is not liable and must not be held liable for any claim, loss, compensation, fees, charges, damages (including for negligence), or Consequential Loss suffered or incurred by the Licensee, its Personnel, Related Bodies Corporate or any third party as a result of or relating to:

- (a) any act or omission of the Licensor, the Licensor's Personnel or any Related Body Corporate's Personnel, under or in relation to this agreement;
- (b) any act or omission of the Licensee, the Licensee's Personnel or any Related Body Corporate's Personnel, or any other party;
- (c) use of or reliance on the Software:
  - (i) for a purpose other than the business purposes of the Licensee or the reasonably expected purpose of the Software;
  - (ii) in an environment that does not satisfy the Minimum Software Requirements;
  - (iii) by persons other than the Licensee or authorised users of the Software; or
  - (iv) where the Software has not been updated to the most recent version of the Software with all updates, upgrades, fixes and other improvements as released by the Licensor as of that date;
- (d) any Unauthorised Activity in relation to the Software;
- (e) failure of:



- (i) any third party component including, without limitation, hardware failure, network failure, or power failure;
  - (ii) internet access to enable Cloud authentication;
  - (iii) any third party software including, without limitation, the operating system and any other software; or
  - (iv) the Licensee to purchase time or synchronise Dongles as required to operate the Software;
- (f) the Licensee's or any authorised user's infringement of any third party Intellectual Property Rights while using the Software, other than to the extent the infringement is caused by the Software;
- (g) incorrect or corrupt data, lost data, or any inputs or outputs of the Software; or
- (h) a computer virus, trojan and other malware,

whether in contract, tort (including negligence), under a warranty, under statute or otherwise.

## 12.2 Warranty

Licensor warrants and represents that the Software does not infringe the intellectual property rights of any third party.

## 12.3 Exclusion of warranties

Except as expressly set out in this agreement and to the extent permitted by law, the Licensor:

- (a) provides the Software "as-is"; and
- (b) excludes all warranties and conditions, express, implied or statutory, including all implied warranties of:
  - (i) merchantability;
  - (ii) fitness for a particular purpose;
  - (iii) lack of viruses;
  - (iv) uninterrupted or error free operation;
  - (v) accuracy or completeness of responses or results; or
  - (vi) lack of workmanlike effort,



regarding the Software.

#### **12.4 Limitation of liability**

Subject to this clause 12, the liability of the Licensor under this agreement is limited to the Payment paid in the period which is 12 months prior to the date on which the event giving rise to the liability first arose.

#### **12.5 Guarantees at law**

Where liability is implied by law into this agreement despite this clause 12, the liability of the Licensor is limited to:

- (a) in the case of goods:
  - (i) repair of the goods;
  - (ii) the cost of repair of the goods; or
  - (iii) the cost of the goods; and
- (b) in the case of services:
  - (i) reprovision of the service; or
  - (ii) the cost of providing the services again.

### **13 Indemnities**

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The Licensee indemnifies and keeps indemnified, the Licensor, its Personnel, and Related Bodies Corporate, from and against, all loss (including Consequential Loss), damage, award, settlement, cost or expense (including legal costs on a solicitor and own client basis) suffered or incurred as a result of:

- (a) the Licensee's default under this agreement;
- (b) an unlawful or negligent act or omission on the part of the Licensee, its Personnel, or any Related Body Corporate;
- (c) any infringement of the Licensor's Intellectual Property Rights by or enabled by the Licensee, its Personnel, or any Related Body Corporate, in any form; or
- (d) any claims by a third party in relation to the third party's reliance on the Software as provided by the Licensor to the Licensee,

except to the extent that such loss, damage, award, settlement, cost or expense is caused or contributed to by a breach of this agreement or negligent act or omission of the Licensor.



## 14 No Compensation

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In no event is the Licensee entitled to any compensation, repayment or reimbursement as a result of the Licensee's:

- (a) election to terminate this agreement under clause 8; or
- (b) suspension of the Software or support, or of the ability for the Licensee to purchase time or Dongles, under clauses 4.4, 7.5(b) or 7.5(c).

## 15 Force Majeure

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If an act of Force Majeure arises, the affected Party (Affected Party) must give written notice to the other Party as soon as reasonably practical of:

- (a) the nature of the act of Force Majeure;
- (b) each obligation under this agreement that the Affected Party may be delayed in performing and the anticipated duration of the delay;
- (c) each obligation under this agreement that the Affected Party is or is likely to be prevented from performing; and
- (d) the Affected Party's plans to work around or minimise the impact of the Force Majeure,

and each Party must make all reasonable efforts to minimise the effects of the Force Majeure.

## 16 Disputes

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### 16.1 No arbitration or court proceedings

If a dispute arises out of or in relation to this agreement (**Dispute**) no Party to the Dispute (**Disputant**) will start arbitration or court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 16.

### 16.2 Notice

A Party claiming that a Dispute has arisen must notify each other Disputant in writing giving details of the Dispute and its proposal for a resolution.

### 16.3 Initial Period

For a fourteen (14) day period after a notice is given (**Resolution Period**) each Disputant must use all reasonable endeavours to resolve the Dispute.



#### **16.4 Appointment of mediator**

If the Dispute remains unresolved at the end of the Resolution Period, it must be referred for mediation at the request of any Disputant to:

- (a) a person agreed on by the Disputants; or
- (b) if agreement is not reached within seven days of the end of the Initial Period, a mediator nominated by the then Chairman of LEADR or the Chairman's nominee.

#### **16.5 Costs**

Each Disputant must bear its own costs of complying with this clause 16 and the Disputants must bear equally the mediator's costs.

#### **16.6 Termination**

If the Dispute is still not resolved within thirty (30) days of appointment of the mediator, a Disputant that has complied with clauses 16.1 to 16.5 may terminate the dispute resolution process by giving notice to each other Disputant.

#### **16.7 Breach of this clause**

If, in relation to a Dispute, a Disputant breaches any provision of clauses 16.1 to 16.5, each other Disputant need not comply with those clauses in relation to that Dispute.

### **17 Notices**

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#### **17.1 Communication in connection with the Agreement must be in writing**

Communications must be in writing.

#### **17.2 Parties may serve communications by Email**

The Licensor or the Licensee may serve any Communication on the other party by sending it to that party's email address.

#### **17.3 How an email is taken to have been received by the addressee**

A Communication by email will be taken to have been received by the addressee 24 hours after the email was sent, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address.



## **18 Miscellaneous**

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### **18.1 Alterations**

The Licensor may modify the terms of this Agreement from time to time and will notify the Licensee by email or by posting a notice on [www.micromine.com](http://www.micromine.com). Continued use of the Software following any such modification constitutes acceptance of the modified terms.

### **18.2 Approvals and consents**

Except where this agreement expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally, or withhold, any approval or consent under this agreement.

### **18.3 Assignment**

The Licensee must not assign or transfer this agreement or any right under this agreement without the prior written consent of the Licensor.

### **18.4 Costs**

Each Party must pay its own costs of negotiating, preparing and executing this agreement and any other instrument executed to give effect to this agreement.

### **18.5 Survival**

The following clauses survive termination of this agreement:

- (a) clauses 4.2, 5, 7.3, 7.4, 7.5, 7.6, 7.7, 8.3, 9, 10, 11, 12, 13, 14, 16, 17 and 18;
- (b) any warranty, indemnity, disclaimer or obligation of confidentiality under this agreement not in a clause listed in clause 18.5(a); and
- (c) any other term that is by its nature intended to survive termination of this agreement.

### **18.6 Not Used**

### **18.7 Entire arrangement**

This agreement constitutes the entire arrangement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

The terms of this agreement apply to the exclusion of any other terms that the Licensee seeks to impose or incorporate (including any terms or conditions contained in any correspondence, purchase order, vendor terms or other documentation from the Licensee), or which are implied by trade, custom, practice or course of dealing. Any terms or conditions attached to any purchase order issued by the Licensee in respect of the Software (other than this





agreement) will not form part of the agreement unless such conditions are expressly accepted by the Licensor in writing.

These terms may be superseded by the terms in an executed corporate agreement or sales contract between the Licensor and Licensee if explicitly stated as superseding this agreement. These terms, unless expressly stated otherwise, are incorporated as complimentary to, but secondary to the extent of any inconsistency, a written software licence agreement.

#### 18.8 Further action

Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and the transactions contemplated by it.

#### 18.9 Waiver

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a Party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

#### 18.10 Relationship

Except where this agreement expressly states otherwise, this agreement does not create a relationship of employment, trust, agency or partnership between the Parties.

#### 18.11 Governing law and jurisdiction

- (a) This agreement is governed by the laws of Western Australia and the laws of the Commonwealth of Australia in force in Western Australia
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Western Australia and relevant Federal Courts and Courts competent to hear appeals from those Courts.

### 19 Definitions

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- (a) **Background IP** means any Intellectual Property Rights owned by the Licensee before this agreement is effective.
- (b) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane.
- (c) **Cloud** means internet based servers hosted by the Licensor to provide on demand services to the Licensee.
- (d) **Commencement Date** means the date this agreement is executed by the Parties.



- (e) **Communication** means any written communication including each notice, consent, approval, request and demand) under or in connection with this Agreement.
- (f) **Confidential Information** in relation to a Party (the **Disclosing Party**) means any information that concerns the business, operations or affairs of the Disclosing Party, or a Related Body Corporate of the Disclosing Party (including, without limitation, proprietary information, commercial information, personal information, works in which Intellectual Property Rights exist (including the Software in binary and source form) and any other tangible or intangible material) that is disclosed to, or otherwise acquired by, the other Party (the **Receiving Party**) at any time in connection with this agreement or the performance or receipt of services under this agreement, and which:
  - (i) is by its nature confidential;
  - (ii) is designated by the Disclosing Party as confidential; or
  - (iii) the Receiving Party knows or ought to reasonably know is confidential,but does not include information which:
  - (iv) is or becomes public knowledge other than by a breach of the agreement or any other obligation of confidentiality by the Receiving Party;
  - (v) is in the possession of the Receiving Party without restriction in relation to disclosure on or before the date on which it is disclosed to, or acquired by, the Receiving Party; or
  - (vi) has been developed or acquired by the Receiving Party completely independently of and without reference to any information provided by the Disclosing Party or the performance of the Receiving Party's obligations under the agreement.
- (g) **Consequential Loss** means any:
  - (i) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business, loss of contract, loss of use, loss of goodwill, loss of production and any other economic loss (whether the loss is direct or indirect);
  - (ii) direct or indirect financing costs or increase in operating costs; or
  - (iii) loss or other amounts that are special, indirect or consequential.
- (h) **Dongle** means the USB security device required to use the Software purchased from the Licensor by the Licensee from time to time.



- (i) **Force Majeure** means an extraordinary and unforeseeable event beyond the reasonable expectation of this agreement or control of any Party to this agreement including, but not limited to:
  - (i) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
  - (ii) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
  - (iii) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
  - (iv) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; and
  - (v) strikes, blockades, lock out or other industrial disputes.
- (j) **GST** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (k) **Intellectual Property Rights** means all rights conferred by statute, common law or in equity and subsisting anywhere in the world in relation to:
  - (i) registered and unregistered copyright;
  - (ii) inventions (including patents, innovation patents and utility models);
  - (iii) confidential information, trade secrets, technical data and know-how;
  - (iv) registered and unregistered designs;
  - (v) registered and unregistered trade marks; and
  - (vi) circuit layout designs, topography rights and rights in databases, whether or not any of these is registered, registrable or patentable;
  - (vii) any other rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist or may hereafter subsist; and
  - (viii) any licence or other similar right from a third party to use any of the above,
  - (ix) but excluding any moral rights, and similar personal rights, which by law are non-assignable.



- (l) **Insolvency Event** means the happening of any of these events in relation to a Party:
- (i) a court order that the Party be wound up or an application for same is made;
  - (ii) a liquidator or provisional liquidator is appointed in respect of the Party, or an order seeking appointment of such is sought;
  - (iii) a meeting is convened or a resolution is passed to appoint an administrator in respect of the Party;
  - (iv) except to reconstruct or amalgamate while solvent on terms approved by the other Party, the Party enters into, or resolves to enter into, a deed of company arrangement, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
  - (v) the Party resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other party or is otherwise wound up or dissolved;
  - (vi) the Party is or states that it is unable to pay its debts when they fall due;
  - (vii) any of the events described in sections 459C(2)(a) to (f) or 585 of the Corporations Act occurs in relation to the Party;
  - (viii) the Party takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation;
  - (ix) the Party becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event; or
  - (x) a receiver, controller, managing controller or administrator is appointed to the Party; or
  - (xi) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
- (m) **Minimum Software Requirements** means the requirements specified in the technical specifications at [<https://www.micromine.com/spry-system-requirements/>].
- (n) **Party** means a party to this agreement.



- (o) **Payment** means any amount payable to the Licensor by the Licensee under this agreement.
- (p) **Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).
- (q) **Personnel** means directors, officers, employees, agents, consultants, professional advisors, contractors and subcontractors.
- (r) **Privacy Policy** means the Licensor's Privacy Policy, which may be viewed at [www.micromine.com/privacy-policy/](http://www.micromine.com/privacy-policy/) or any substitute URL.
- (s) **Prohibited Jurisdiction** means Russia, the Democratic People's Republic of Korea, Iran, Syria, Libya, or other sanctioned jurisdiction(s) as nominated by the Licensor from time to time.
- (t) **Purpose** means:
  - (i) in relation to the software known as "Spry", facilitating simulating the scheduling of equipment and haulage operations of mining projects;
  - (ii) in relation to the software known as "Gantt Scheduler", facilitating simulating the scheduling of equipment of mining projects; and
  - (iii) in relation to the software known as "Licence Administrator", facilitating the synchronisation and administration of Dongles.
- (u) **Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).
- (v) **Software** means the software known as
  - (i) Micromine Spry;
  - (ii) Micromine Gantt Scheduler; and
  - (iii) License Administrator,whichever is installed by You, and includes all corresponding plugins, widgets, applications, documentation and other materials in tangible or intangible form.
- (w) **Software Security Policy** means the "Software Security Policy", which may be viewed at <https://www.micromine.com/licensing/>.
- (x) Not used.
- (y) **Territory** means the entire world but always excludes a Prohibited Jurisdiction.



- (z) **Unauthorised Activities** includes, without limitation:
- (i) providing access to, copying, distributing, sharing, reproducing, or otherwise making available in whole or part in any form or through any system or technology for any purpose;
  - (ii) modifying, adapting or otherwise altering;
  - (iii) removing, disabling, defeating, or otherwise circumventing any functionality (including, without limitation, any hardware or software security protection or preventative measures against unauthorised use) of;
  - (iv) merging, mixing, combining, or other use as a separable or inseparable component of another work;
  - (v) reverse engineering, decompiling, disassembling or otherwise seeking to establish the technical processes, operations, or workings of;
  - (vi) the sub-license, sale, rent, lease, loan or other commercialisation of; or
  - (vii) access, use, or (directly or indirectly) allowing use, of the Software in, from, or for the benefit of any party in a Prohibited Jurisdiction,

the Software or a Dongle (other than as allowed under this agreement) without prior written consent of the Licensor, and includes inducing, facilitating or allowing another person to do any such act.

## 20 Interpretation

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In this agreement, unless the context requires otherwise:

- (a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (b) a reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (c) a reference to a clause, schedule, attachment or other annexure is a reference to a clause of, or schedule, attachment or other annexure to, this agreement unless provided otherwise;
- (d) a reference to an agreement or document (including a reference to this agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this agreement or that other agreement or document, and includes the recitals, schedules, attachments and other annexures to that agreement or document;



- (e) a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail;
- (f) a reference to a Party includes that Party's successors, permitted substitutes and permitted assigns (and, where applicable, the Party's legal personal representatives);
- (g) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (h) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (i) a reference to dollars or \$ is to Australian currency;
- (j) mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included;
- (k) nothing in this agreement is to be interpreted against a Party solely on the ground that the Party put forward this agreement or a part of this agreement;
- (l) a *month* means a calendar month;
- (m) a reference to *year* is a reference to each successive period of 12 months commencing on the relevant date;
- (n) if a day on or which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (o) words in this agreement beginning with a capital letter may be a term defined in this agreement or a clause of this agreement; and
- (p) headings are for convenience only and do not affect interpretation