

## SOFTWARE LICENCE

### Definitions

“Authorized Users” means named individual users whom are an identifiable individual, not necessarily named at the time of a license grant, designated by Customer to access the Software, regardless of whether or not the individual is actively using the Software at any given time. An individual shall only be designated as a Named User on the earlier of a) he or she is authorized by Customer to access the Software or b) once he or she has accessed the Software.

“Customer” means the business entity as displayed on the Purchase Order and associated entities.

“Documentation” means any documentation, manuals and instruction provided by the Licensor.

“Licence Fee” means the fee for the Software, as defined in the Quotation.

“Licence Period” means the term the Licence is valid for.

“Licensor” means CQMS Razer Pty Ltd or its associated entities.

“Purchase Order” means any written order, whether in physical or electronic format, for Software or services, including a Purchase Order, Work Order, statement of work, on-line orders, or other form of an ordering document delivered to or made available to Licensor through a medium or channel approved by Licensor, which is subject to, and incorporates by reference, the agreement or terms negotiated by the parties.

“Quotation” means the formal offer of Software and shall contain a reference number to be referenced on an Order Form.

“Software” means the particular software named in a Quotation, and including, without limitation, source code, object code and all related applications and data file structures, communication protocols, firmware, hosted infrastructure and documentation and materials relating thereto.

“Subscription” means a service provided on a recurring payment basis.

### 1. License and Delivery

Subject to Customer’s compliance with these terms, and on payment of the Licence Fee, Licensor grants Customer a limited, non-transferable, non-sublicensable, non-exclusive license to install, run, and use the Software in the normal course of your business for the Licence Period.

By using the Software, or installing the Software at your site, Customer acknowledges and agrees that they may only use the Software whilst in possession of a valid Licence in respect of each item of Software.

Customer assume full responsibility for the use by Customer’s employees, independent contractors, subcontractors, agents and consultants of the Software.

Customer understands and agrees that this Licence does not constitute a sale of any rights in the underlying Software, confidential information, trade secrets or improvements or enhancements thereof.

## **2. Permitted Use.**

Customer must only use the Software in the regular course of their business, within their normal capacity, and in accordance with the Documentation, or reasonable directions given by Licensor.

Unless otherwise permitted under this Agreement and the Documentation, Customer shall not:

- a. make more copies of the Software than the specified in an Order Form or use any unlicensed versions of the Software;
- b. use any Software that is not listed in an Order Form even if such unlicensed software is made available to Customer as part of Licensor's general delivery mechanisms;
- c. provide access to the Software to anyone other than Authorized Users;
- d. sublicense, distribute or pledge the Software or any of the rights herein;
- e. lease, rent or commercially share (including time-share) or use the Software for purposes of providing processing services, including, providing third-party hosting, application integration, application service provider-type services, or service bureau;
- f. use or access any embedded or bundled component of Software on a stand-alone basis where such embedded or bundled component is provided to Customer for the sole purpose of enabling the functionality of such Software;
- g. use Third Party Software except in conjunction with the Licensor Software and subject to the same use rights that it has to the Licensor Software.
- h. use any third party software, including any open source software, in conjunction with any Software, unless Customer ensures that such use does not cause the Software to become subject to any third party license applicable to such third party software or require the public disclosure or distribution of any Software or the licensing of any Software for Materials or the purpose of making derivative works; and
- i. modify, translate, reverse engineer, decrypt, decompile, disassemble, create derivative works based on, or otherwise attempt to discover the Software source code or underlying ideas, techniques or algorithms, provided, however, that Customer may engage in such conduct as is necessary to ensure the interoperability of the Software as required by law. Prior to commencing any de-compilation or reverse engineering, Customer will observe strict obligations of confidentiality and provide Licensor with reasonable advance written notice and the opportunity to assist with or conduct such activity on Customer's behalf and at Customer's expense.

Licensor shall deliver the Software electronically or pre-installed in Goods and delivery is deemed complete when such Software is made available to Customer.

## **3. Ownership.**

Licensor and its licensors own all Software, Materials, and Documentation and all derivatives thereof (collectively "Protected Materials"), which are protected by applicable U.S. and international patent, copyright, trademark and trade secret laws. Customer must duplicate unaltered copies of all proprietary notices incorporated in or affixed to any Protected Materials. Customer receives no other rights to use any of Licensor's Marks.

#### **4. Confidentiality.**

Neither party shall disclose Confidential Information to any third party without the disclosing party's prior consent. Confidential Information may only be disclosed to individuals that need to know such information, and on the condition that the individual is subject to a written agreement to protect information with terms as protective as this Agreement. For the purposes of this section, the definition of Licensor and Customer includes Affiliates of either party. Licensor may use data collected during the Term in an aggregated, anonymized form, provided that such data is aggregated from more than one customer and does not identify Customer, Customer employees, or Customers' customers.

The duty to protect Confidential Information does not apply to information that is shown to be:

- a. available to the public other than by a breach of a confidentiality obligation;
- b. rightfully received from a third party not in breach of a confidentiality obligation;
- c. independently developed by one party without use of the Confidential Information of the other;
- d. known to the recipient at the time of disclosure (other than under a separate confidentiality obligation);
- e. produced in compliance with applicable law or court order, provided the other party is given reasonable advance notice of the obligation to produce Confidential Information (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure.

Each party shall indemnify the other for any damages (including reasonable expenses) the other may sustain resulting from a breach of this Section. Money damages may not be a sufficient remedy for a breach of confidentiality. If either party breaches the confidentiality obligations, the non-breaching party may seek injunctive or other equitable relief without the necessity of posting a bond even if otherwise normally required. Such injunctive or equitable relief is in addition to all other rights and remedies available at law or in equity.

Confidential Information remains the sole property of the disclosing party; except for rights explicitly granted in the Agreement, the receiving party does not acquire any rights to such Confidential Information.

#### **5. Term and Termination.**

The Licence Period for:

- a. any perpetual Software Licence is in perpetuity, and;
- b. for any Subscription Software Licence starts on the Effective Date stated in a Purchase Order, for the specified duration. Following the end of the initial Licence Period for any Subscription, the Licence Period will automatically renew continuously for the same length as the initial Licence Period unless either party gives written notice at least 60 days prior to the end of the initial or any renewal Licence Period of its intention to terminate.

Except as otherwise stated below, this Software Licence will remain in effect until the Licence Period is complete, or until the Software Licence is terminated.

- c. Either party may terminate:
- d. this Software Licence upon 30 days prior written notice if the other party breaches a material provision of this Agreement and fails to cure such breach within the 30 day notice period;
- e. Subscription, upon written notice delivered at least 60 days prior to the end of any applicable annual Maintenance period or Term.
- f. The Software Licence automatically terminates if either party files for bankruptcy, goes into receivership, becomes insolvent, or makes an assignment for the benefit of creditors.

Upon termination of this Software Licence, Customer must cease using, de-install and permanently delete all of the applicable Software, whether modified or merged into other materials.

Termination of this Agreement or any Order Form does not (i) relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement or (ii) limit either party from pursuing other remedies available to it, including injunctive relief.

At the Licensors discretion, Software upgrades or updates may be made available in the future to the Software. Upgrades and updates, if any, may not necessarily include all existing software features or new features that Licensor releases for newer or other models of Licensor products. An active support subscription is required to gain access to Software upgrades or updates, and a Perpetual Licence does not provide access to future upgrades or updates.

## **6. Alpha, Beta, Developer Evaluation, Free Trial and Evaluation License.**

In addition to all other applicable terms and conditions, Software provided or accessed for demonstration or evaluation purposes or for alpha or beta testing is subject to the following conditions:

1. Software may only be used for demonstration, evaluation or alpha or beta testing purposes,
2. Customer must stop using the Software upon the earlier of (1) 30 days from the date Customer receives the right to install or access the Software, (2) Customer's receipt of notice of termination from Licensor, or (3) Customer no longer has access to the Software; and
3. the Software is provided "AS IS" without Maintenance or any warranties or indemnities.

## **7. Special Conditions.**

The following Special Conditions also form part of this Technology Licence.

8. In addition to other Terms and Conditions, Licensor will not be liable to the extent permitted by law to Customer for any costs, including consequential loss, suffered or incurred directly or indirectly by Customer in connection with this Licence and the use of the Software, in connection with:
  - a. Customer participation in any experiments, beta software or pilots in connection with the Software;

- b. reliance on technical advice, modelling or calculations provided by Licensor;
  - c. any unauthorised activity in relation to the Software by Customer or Customer representatives;
  - d. Customer use of or reliance on Software for a purpose other than Customer's ordinary business purposes or the reasonably expected purpose of the Software.
  - e. The foregoing limitation applies to any loss or damage or liability however caused whether they arise in contract, tort (including by the Licensor's negligence), or under statute.
9. Software provide decision support tools, providing additional information to assist in making better mining management decisions. Software does not affect Customer's responsibility to monitor Customer's own mining performance, and to act in a proper and safe manner.