

## ACQUIRE SOFTWARE END-USER LICENCE AGREEMENT

**IMPORTANT:** YOU MUST READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE USING THIS SOFTWARE. This End User Licence Agreement (or "EULA") is a legal agreement between the person, company or organisation that has licensed this software ("You", "Licensee") and Acquire Technology Solutions Pty Ltd ("ATS"). By using this Software, Licensee accepts the Software and agrees to become bound by the terms of this EULA. If You do not agree to be bound by these terms, or do not have the authority to bind Licensee to these terms, then DO NOT USE THE SOFTWARE and return to ATS for a full refund.

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### 1 DEFINITIONS

"ADM" or "acquire Data Model" means:

- (a) the software and scripts that form part of the Software and which are used to generate an acquire database;
- (b) the design or logical model for the acquire database; and
- (c) the sum or collection of acquire databases that have been generated from the scripts.

"ADM Connection Licence" means a licence that is required for any user of Licensee to access an acquire Data Model.

"ADM Databases" means the databases that are created as a consequence of the Licensee running the ADM database generation scripts and populating the resulting database(s) using an ADM Connection Licence;

"ADM Product" means any of the following products; ADM\_Minerals, ADM\_Coal, ADM\_OilSands, ADM\_Oil&Gas and includes an ADM module as an extension of any of these products.

"Clientside Software Products" means all or any of the following acquire products; acquire Manager, acquire Client, acquire Data Entry, acquire Log Reporter Design, acquire Log Reporter Runtime, acquire Depth Adjustment Tool.

"Commuted Licence" is a Floating Licence that has been checked-out to a specified node, for a specified period, to enable a Floating Licence to be used off-line, or where a connection cannot be made to the Licence Manager.

"Confidential Information" means the confidential information of ATS which relates to the subject matter of this EULA and includes information relating to:

- (a) the design, specification and content of the Software;
- (b) the Documentation;
- (c) the personnel, policies or business strategies of ATS;
- (d) the terms upon which the Software is being supplied and installed pursuant to this EULA;

and excludes any information that:

- (e) is independently developed by Licensee;
- (f) is or becomes publicly available without breach of this EULA;
- (g) is rightfully received from a third party without obligation of confidence; or
- (h) is released for disclosure by the owner of the information with its written consent.

**“Connection Manager”** means the software program which controls connection to the ADM.

**“Documentation”** means all printed and digital materials, including but not limited to, online help, user documentation, training documentation, or technical information and briefings supplied under this EULA.

**“Floating Licence”** means a licence that can be allocated to a user by a Licence Manager. A Floating Licence is “checked-out” when a user begins using the Software on any given machine and is “checked-in” when a user finishes using the Software. When a Floating Licence is checked-out it is unavailable to other users.

**“Hardware Key”** means a USB device, which contains an activation key, without which the Software will not work on the machine or node it is installed on.

**“Intellectual Property Rights”** means statutory and other proprietary rights in respect of trade marks, designs, patents, circuit layouts, copyrights, confidential information, know-how and all other rights with respect to intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organization of July 1967 as amended.

**“Lease Licence”** has the meaning given to that term in clause 2.4.

**“Licence Key”** means a unique key without which the Software will not run. A Licence Key may be implemented in software or via a Hardware Key. If implemented in software the key ties the Software to the specific machine or node.

**“Licence Manager”** means the software program which controls the allocation of Floating Licences to the user(s) of the Licensee.

**“Named User”** means a user of Licensee to whom an ADM Connection Licence has been allocated and whose name is held as the user of the ADM Connection Licence on the ATS support database.

**“Node-Locked Licence”** means a licence to use Software on a specified machine or “node”. A Node-Locked licence is enforced by a Licence Key.

**“Quotation”** means any quotation provided by ATS for the purchase of the Software covered by this EULA.

**“Software”** means any one of the acQuire software products, either individually or collectively, including but not limited to Clientside Software Products, Pocket acQuire, acQuire Direct, ADM, ADM Product, ADM modules or other modules, components, plug-ins, workflows, scripts, objects and programs delivered on any media or downloaded over the Internet, including but not limited to, alpha, beta,

pre-release, restricted versions or final commercial release provided in object or executable code format(s), inclusive of backups, updates, service packs or sample code supplied under this EULA.

"**Trial Licence**" has the meaning given to that term in clause 2.3.

"**Standard Licence**" has the meaning given to that term in clause 2.2.

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## **2 GRANT OF LICENCE**

2.1 The Quotation provided by ATS to You will specify the category of licence being provided to You with the terms as contained in this clause 2.

2.2 **Grant of Standard Licence** - ATS grants to Licensee a perpetual, nonexclusive, non-assignable licence to use the Software and Documentation for Licensee's internal use only in accordance with the terms and conditions set out in the Schedule and otherwise subject to the provisions of this EULA provided that You adopt any new version of the Software in the time allowed under clause 4.1(i).

2.3 **Trial Licence** - Licensee's rights and obligations under a Trial Licence are the same as those for a Standard Licence except that the licence expires after 30 days and is subject to the restrictions imposed under clause 4.2 of this EULA.

2.4 **Lease Licence** - Licensee's rights and obligations under a Lease Licence are the same as those for a Standard Licence except that the licence expires after 1 year and is subject to the restrictions imposed under clause 4.3 of this EULA.

2.5 The amount of the licence fees payable for any Software by Licensee will be communicated by ATS to Licensee prior to this EULA being entered into between ATS and Licensee and as specified in the Quotation. Licensee is not entitled to exercise any of its rights under this EULA until such licence fees are paid to ATS.

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## **3 LICENCE ACTIVATION**

The Software is activated through a Licence Manager, Licence Key or Hardware Key designed to prevent unlicensed or illegal use of the Software. You agree ATS may use these technological measures to prevent such use and You agree to follow any requirements of ATS regarding such technological measures. You may also need to reactivate the Software if You modify your computer hardware, or install the Software on another computer. The absence of technological restrictions does not affect your requirement to comply with this EULA.

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## **4 LICENCE RESTRICTIONS**

### **4.1 General Restrictions**

- (a) Licensee may not sub-license, lease, rent or lend the Software or Documentation.
- (b) Licensee may install and store copies of Software onto electronic storage device(s).

- (c) The number of Software licences in use by Licensee at any given time shall not exceed the total number of Software licences granted by ATS to Licensee in accordance with records maintained by ATS.
- (d) Licensee may make one copy of the Software and Documentation for archival purposes during the term of this EULA. Additionally, Licensee may make routine computer backups. Any redundant installation shall remain dormant while the primary installation is operational.
- (e) Licensee may customise the Software, but only to the extent that such customisation is described in the Documentation, by:
  - (i) adding tables to the ADM;
  - (ii) copying and modifying the copied scripts and objects, but not the original scripts or objects themselves; and
  - (iii) use of the acQuire Direct application programming interface.
- (f) Transfers - subject to the prior written consent of ATS and the agreement of the transferee to be bound by the terms of this EULA, You may transfer any licences of Software (together with any backup copies You have made) and the Documentation on a permanent basis only between users, nodes and sites within the same country. However, You may not retain any copies of either the Documentation or the Software. You are required to complete a licence transfer request form, which is available from [bd@acquire.com.au](mailto:bd@acquire.com.au) and submit such form duly completed to ATS.
- (g) Licensee shall not make any attempt to circumvent the licence requirements of this EULA or technological measure(s) such as the Licence Manager that control access to or use of the Software and Documentation.
- (h) Licensee shall not remove or obscure any ATS patent, copyright, trademark or proprietary rights notices contained in or fixed to the Software or Documentation.
- (i) After a reasonable transition period for updating to the most current version of the Software, Licensee shall cease using all prior version(s) of the Software and the licence granted with respect to the prior version will automatically terminate.
- (j) Data Hosting – the hosting of Software for use by 3<sup>rd</sup> parties is not permitted under the terms of this EULA. Organisations wishing to host Software are required to enter into a separate agreement with ATS
- (k) Embedding of the acQuire Direct application programming interface into a 3<sup>rd</sup> party software product is not permitted under the terms of this EULA. Organisations wishing to embed acQuire Direct into their applications are required to enter into a separate developer’s agreement with ATS.
- (l) Licensee shall not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the Software.

#### 4.2 **Restrictions that apply to a Trial Licence**

Where the Software is licensed under a Trial Licence, Licensee must not:

- (a) install more than one copy;
- (b) download under more than one username;
- (c) alter a drive or system to enable the trial version to run for longer than the trial period;
- (d) disclose the results of software performance benchmarks obtained using the trial version without the permission of ATS;
- (e) use the trial version for training; or
- (f) use the trial version for any purpose except determining whether to purchase a Standard Licence or a Lease Licence.

#### 4.3 **Restrictions that apply to a Lease Licence**

Where the Software is licensed under a Lease Licence, Licensee must not alter a drive or system to enable the Lease version to run for longer than the specified lease term.

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### **5 COMPLIANCE**

Licensee agrees that ATS or its authorised agent(s) may audit Licensee's use of the Software at Licensee's premises to determine compliance with the terms of this EULA upon providing 14 days prior written notice of such audit. In the event that such audit reveals any use of the Software by Licensee other than in full compliance with the terms of this EULA, Licensee shall reimburse ATS for all reasonable expenses related to such audit in addition to any other losses, expenses or liabilities ATS may incur as a result of such non-compliance. Nothing in the clause limits any other rights that ATS may have with respect to such non-compliance.

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### **6 MAINTENANCE**

Maintenance means Software or Documentation updates and access to technical support in accordance with the support policy set out in the website of ATS. Maintenance is purchased annually in advance.

- 6.1 Licensee's rights to maintenance continue for as long as the annual maintenance is paid up in full, however, ATS is only obliged to maintain the latest versions of the Software.
- 6.2 Licensee has the right to updates of the Software and Documentation which are produced by ATS from time to time.
- 6.3 Licensee has the right to access and use any secure ATS web site resources made available to Licensee for Licensee's internal use only provided that Licensee follows ATS' terms of use policy specified therein. All password or controlled access

information provided by ATS shall be treated by Licensee as ATS confidential information.

- 6.4 Licensee can de-commission a licence by returning the Licence Key to ATS. No maintenance is due on de-commissioned licences. A Licence Key can be re-commissioned by contacting ATS. Maintenance will be payable on the re-commissioned licence.

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## **7 OWNERSHIP**

Licensee has a limited licence to use the Software and Documentation pursuant to this EULA. Licensee acknowledges there is no transfer of title or ownership to Licensee of the Software or Documentation.

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## **8 LIMITED WARRANTY AND DISCLAIMER**

- 8.1 ATS warrants to Licensee for the period of 90 days from the date of installation of the Software that the Software will operate in substantial conformity with the Documentation.
- 8.2 ATS is not liable under the warranty set out in clause 8.1 in the following circumstances:
- (a) unless within 90 days of the date of installation of the Software, Licensee returns the defective Software to ATS together with a written report specifying in detail the nature and extent of any defect;
  - (b) if the Software is not installed, used and operated in accordance with the instructions set out in the Documentation;
  - (c) if the Software is not operated by competent personnel;
  - (d) if the defect arises from damage occurring to the Software subsequent to its delivery to Licensee.
- 8.3 If a defect is determined by ATS to have been caused by a failure of the Software to conform to the warranty set out in clause 8.1, then ATS will, at its option in its sole discretion, either replace any defective media, or repair, correct or provide work-around support subject to the support policy of ATS, or return the licence fees paid by Licensee for the Software provided Licensee removes and destroys all copies of the Software and Documentation and provides appropriate evidence of such removal and destruction.
- 8.4 ATS' obligations set out in clause 8.3 are Licensee's sole and exclusive remedies as against ATS if the Software does not comply with the warranty provided in this clause 8.1.
- 8.5 Except as expressly stated otherwise in this EULA, the Software is supplied "as is" without warranty of any kind either express or implied, including but not limited to, warranties of merchantability and fitness for a particular purpose. Subject to the warranty given under clause 8.1, the entire risk as to the quality of the Software is assumed by Licensee. Licensee assumes responsibility for the selection of the

Software to achieve its intended results and for the end results obtained from the Software and/or its operation.

- 8.6 Neither ATS nor any employee or agent of ATS is authorised to provide any warranty or representation beyond that expressly specified in this EULA.
- 8.7 Licensee acknowledges that in entering into this EULA it has relied upon its own experience, skill and judgment to evaluate the Software and that it has satisfied itself as to the suitability of the Software to meet its requirements.
- 8.8 All express or implied warranties, statutory or otherwise relating to the Software or this EULA are excluded from this EULA to the extent permitted by law. Nothing in this EULA will exclude, restrict or modify any conditions, warranty, right, remedy or liability implied or imposed by any statute or regulation if they cannot be excluded, restricted or modified. Where legislation implies in the EULA any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of liability under such condition or warranty, the condition or warranty shall be deemed included in this EULA. However, the liability of ATS for any breach of such condition or warranty shall be limited, at the option of ATS, to one or more of the following:
- (a) in the case of services, the supply of the service again, or the payment of the cost of having the services supplied again;
  - (b) in the case of goods, any one or more of the following:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the goods repaired.
- 8.9 Except as and to the extent otherwise specifically provided in this EULA, under no circumstances shall ATS and its officers, employees, agents or contractors be liable for any loss of profit, indirect, consequential or incidental loss, loss or corruption of data, damage or injury arising from or in connection with this EULA or from any act or omission of ATS or its officers, employees, agents or contractors whether arising out of or in connection with the negligence, tort, breach of contract, in equity, statutory duty or otherwise.

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## **9 LIMITATION OF LIABILITY**

- 9.1 The aggregate liability of ATS to Licensee, whether arising from breach of contract, negligence or any other tort, in equity or otherwise and whether or not Licensee was advised of the possibility of such loss or damage, is limited to an amount equal to the licence fees actually received by ATS under this EULA. However, this limitation of liability shall not apply to the extent, and to the extent only, that any legislation or regulation prohibits or restricts limitation of liability for personal injury (including sickness and death) and/or loss or damage to tangible property.

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**10 INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY**

- 10.1 ATS warrants to the best of its knowledge that the use of the Software in accordance with the provisions of this EULA will not infringe the Intellectual Property Rights of any third party.
- 10.2 ATS shall not be liable under the warranty set out in clause 10.1 unless Licensee:
- (a) notifies ATS in writing as soon as practicable of any infringement, suspected infringement or alleged infringement; and
  - (b) gives ATS the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings; and
  - (c) provides ATS with reasonable assistance in conducting the defence of such a claim; and
  - (d) permits ATS to modify, alter or substitute the infringing part of the Software, at its expense, to avoid continuing infringement, or authorizes ATS to procure for Licensee the authority to continue the use and possession of the infringing Software.
- 10.3 In the event proceedings are brought or threatened by a third party against Licensee alleging that Licensee's use of the Software constitutes an infringement of Intellectual Property Rights, ATS may at its own option and at its own expense conduct the defence of such proceedings. Licensee shall provide all necessary co-operation, information and assistance to ATS in the conduct of the defence of such proceedings.
- 10.4 ATS assumes no liability whatsoever under this warranty attributable to:
- (a) the use of the Software in combination with any other products or technologies if the claim of the third party would not have occurred but for such combination;
  - (b) use of the Software in a manner or for a purpose not reasonably contemplated or not authorised by ATS;
  - (c) modification or alteration of the Software without the prior written consent of ATS;
  - (d) failure by You to comply with any third party terms and conditions referred to in clause 11; or
  - (e) any transaction entered into by You relating to the Software without ATS's prior consent in writing.
- 10.5 The Licensee must indemnify ATS against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party alleging such infringement if:
- (a) the claim arises from an event specified in clause 10.4; or

- (b) the ability of ATS to defend the claim has been prejudiced by the failure of the Licensee to comply with any requirement of clauses 10.2 or 10.3.

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**11 THIRD PARTY SOFTWARE**

The Software may contain third party software which requires notices and/or additional terms and conditions.

By accepting this EULA, You also agree to accept these additional terms and conditions, if any, set out therein.

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**12 CONFIDENTIALITY**

- 12.1 Licensee shall not, without the prior written approval of ATS, disclose ATS' Confidential Information.
- 12.2 Licensee shall not be in breach of subclause 12.1 in circumstances where it is legally compelled to disclose ATS' Confidential Information.
- 12.3 Licensee shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this EULA, do not make public or disclose ATS' Confidential Information.
- 12.4 This clause shall survive the termination of this EULA.

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**13 TERMINATION & BREACH**

- 13.1 ATS may terminate this EULA immediately by notice in writing to Licensee if Licensee is in breach of any term of this EULA and such breach is not remedied within 30 days of its notification by ATS or if Licensee becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration.
- 13.2 In the event of termination You must destroy all copies of the Software and Documentation and any component parts of such Software and Documentation.

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**14 SEVERABILITY**

If any provision of this EULA is held invalid, unenforceable or illegal for any reason, the EULA shall otherwise remain in full force and effect apart from such provisions which shall be deemed delete.

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**15 GOVERNING LAW**

This EULA will be governed by and construed by the laws of Western Australia, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Convention) which shall not apply to this EULA and shall be subject to the exclusive jurisdiction of the courts of the State of Western Australia.

## SCHEDULE

### SOFTWARE-TERMS OF USE

The following table lists the types of licences that govern the terms of use of Software products.

Software	Licence Types				
	Site	Company	Named User	Node Locked	Floating
ADM Product	X	X			
ADM Module	X	X			
ADM Connection			X		
Manager				X	X
Client				X	X
Data Entry				X	X
Log Reporter				X	X
Depth Adjustment Tool				X	X
Pocket acQuire				X	

#### 1 ADM Product

The licence types for an ADM Product are as follows:

- (a) an ADM site licence permits You to create and use one or more ADM databases at a single site, as determined by ATS, which is solely operated by Licensee.
- (b) an ADM company licence permits You to create and use one or more ADM databases at any site, as determined by ATS, which is solely operated by Licensee.

#### 2 ADM Connection

- (a) The licence type for an ADM connection is an ADM Connection Licence. An ADM Connection Licence is required to access an ADM. The number of users able to access an ADM is determined by the number of ADM Connection Licences You have acquired. An ADM Connection Licence permits a Named User to access and use any ADM from any computer of Licensee.

- (b) Other than in circumstances referred to in clause 2(c)(i) below, where a Licensee has created an ADM Database and then proposes to export or aggregate all or part of the ADM Database to another application in circumstances where:
- (i) a user of that application will have direct or indirect access to all or part of the exported or aggregated ADM Database; and
  - (ii) the user does not hold an ADM Connection Licence,
- then either prior to that export or aggregation or the user being given access to the application which will result in that user getting access to all or part of the exported or aggregated ADM Database, the Licensee must cause that user to enter into an ADM Connection Licence.
- (c) Notwithstanding clause 2(b) above, nothing in this EULA is intended to either:
- (i) require a user of an ADM Database to hold an ADM Connection Licence where the user receives unsolicited data from an ADM Database or an exported or aggregated ADM Database, which will not be the subject of further processing. For example, a user that receives an unsolicited pdf format report will not be required to hold an ADM Connection Licence in relation to the receipt of that report because the pdf format report will not undergo any further processing. However, a user that receives an unsolicited CSV format dataset for use in Excel will be required to hold an ADM Connection Licence because the CSV format dataset will undergo further processing; or
  - (ii) give ATS any right, title or interest in the ADM Database.

### **3      Clientside Software Products**

The licence types for Clientside Software Products are as follows:

- (a)      a Node-Locked Licence permits use on a specific computer required to run the Software;
- (b)      a Floating Licence permits the Software to be executed on any computer anywhere on the network. The number of concurrent users is controlled by the Licence Manager; and
- (c)      a Floating Licence may be “commuted” or transferred for a specified number of days to a specified node under a Commuted Licence. When it is commuted the Floating Licence is locked by the Licence Manager and is unavailable until the Commuted Licence is released, either:
  - (i)      by the user reversing the commuting process; or
  - (ii)     automatically, upon Commuted Licence expiry, if the specified number of days is exceeded.