

TUFLOW Products Software Licence Agreement



BY INSTALLING A TUFLOW PRODUCT (OR A TUFLOW PRODUCTS RELEASE), YOU AGREE TO THE FOLLOWING TERMS OF THIS AGREEMENT BETWEEN YOU (LICENSEE) AND BMT COMMERCIAL AUSTRALIA PTY LTD ABN 54 010 830 421 (BMT)

Parties

BMT Commercial Australia Pty Ltd ABN 54 010 830 421 (**BMT**)

You (the individual and (if applicable) the entity entering into the agreement) (**Licensee**)

Background

- A. BMT has the rights required to grant a licence to the TUFLOW Products.
- B. BMT wishes to grant a licence to the TUFLOW Products to the Licensee under terms of this Agreement.

Reference Schedule

Item 1	BMT details for Notices	Name:	BMT Commercial Australia Pty Ltd
		ABN:	ABN 54 010 830 421
		Address:	Level 5, 348 Edward Street, (or PO Box 203), Brisbane, Queensland, 4000, Australia
		Contact:	Chelsea Lindsay
		Telephone:	+61 7 3831 6744
		Facsimile:	+61 7 3832 3627
		Email:	sales@tuflow.com
Item 2	Licensee and details for Notices	As notified by the Licensee in writing to BMT.	
Item 3	Commencement Date	The date the Licensee provides notice to BMT of its agreement to the terms of this agreement by clicking 'I agree' upon downloading and installing the TUFLOW Products, or the date of first use of the TUFLOW Products.	
Item 4	TUFLOW Software	The TUFLOW software licensed to the Licensee is comprised of all products mutually agreed in writing between BMT and Licensee.	
Item 5	Trial Period	Length of trial period:	As mutually agreed in writing between BMT and Licensee.
Item 6	Free Component	Included:	The Free Component is included with specific versions of particular TUFLOW software as documented in the TUFLOW Product manuals published by BMT from time to time.
Item 7	Licence Fee and Software Upgrade and Support Fee	As per the latest TUFLOW Products Price Lists available at http://www.tuflow.com/Prices.aspx .	



1. Definitions and interpretation

1.1 Definitions

In this agreement:

Agreement means this licence agreement and any schedules or annexures to this agreement.

Authorised Officer of a party which is a corporation means:

- (a) an employee of the party whose title contains either of the words Director or Manager;
- (b) a person performing the function of any of them;
- (c) a solicitor acting on behalf of the party; or
- (d) a person appointed by the party to act as an Authorised Officer for the purposes of this agreement and notified to the others.

Authorised User is the Licensee, or an employee or sub-contractor or sub-licensee or affiliate of the Licensee, using the TUFLOW Software for the sole purpose of undertaking the Licensee's internal business activities.

Business Day means:

- (a) if determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane.

BMT Technology means all Intellectual Property Rights created, owned or licensed by BMT, including the TUFLOW Products and algorithms and software used by (or comprised in) the TUFLOW Products excluding the Licensee Technology.

Consequential Loss means any of the following:

- (a) loss of revenue;
- (b) loss of profits;
- (c) loss of opportunity to make profits;
- (d) loss of business;
- (e) loss of business opportunity;
- (f) loss of use or amenity, or loss of anticipated savings;
- (g) special, exemplary or punitive damages; and
- (h) any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement,

including any of the above types of loss arising from an interruption to a business or activity.

Corporations Act means the *Corporations Act 2001* (Cth).

Free Component means the additional, complimentary mode which allows the Licensee to access a limited functionality of the TUFLOW Software, and is also bound by upper limits and model size and run time (as determined by BMT in its absolute discretion). Not all TUFLOW Software offers a Free Component.

Government Body means:

- (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted by or under a law of any country or political subdivision of any country; and
- (c) any person deriving a power directly or indirectly from any other Government Body.

Hardware Lock means a USB dongle containing one or more Licence Locks. Hardware Locks cannot be used on virtual machines.

Improvements means any and all Intellectual Property Rights related to the TUFLOW Products created in the course of, or in connection with, the use of TUFLOW Products.

Insolvency Event means an event of bankruptcy or insolvency, an assignment for the benefit of creditors, the appointment of a receiver, receiver and manager, provisional liquidator, liquidator and official manager or any similar person to any assets of a person, a failure to comply with a statutory demand, or anything else which occurs which is analogous or has a substantially similar effect, under the laws of any jurisdiction, or the person is otherwise insolvent or unable to pay its debts as and when they fall due.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trademarks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Law means any statute, rule, regulation, proclamation, order in council, ordinance, local law or by-law, whether:

- (a) present or future; or
- (b) State, federal or otherwise.

Liability means any liability, debt or obligation, whether actual, contingent or prospective, present or future, qualified or unqualified or incurred jointly or severally with any other person.

Licence means the licence granted to the Licensee under clause 2.1.

Licence Fee means the fee described at **Item 7** of the Reference Schedule.

Licence Lock means a licence provided by BMT for access to the TUFLOW Software. A Licence Lock may reside on a Hardware Lock or a Software Lock, and is configured as either a Local Lock or a Network Lock.



Licensee Data means all data owned or supplied by the Licensee which is stored on or used in connection with the TUFLOW Products by the Licensee and includes reports, maps, models, pdf, templates, graphics and documentation generated by or derived from the TUFLOW Products as a result of the Licensee Data or as a result of the Licensee's use of the TUFLOW Products.

Licensee Network means the Licensee's private internal physical or virtual network (as agreed to, or determined, by BMT), created to share services within the Licensee's organisation without public access.

Licensee Technology means the Intellectual Property Rights of the Licensee which are demonstrated to be created independently of the Agreement.

Local Lock means a Licence Lock which allows the Licensee to run one simulation per licence on any computer which has access to the Licensee Network and has the Hardware Lock attached or Software Lock installed. Local Locks cannot be used on virtual machines or across multiple computers concurrently within the Licensee Network.

Loss means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

Material means property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

Network Lock means a Licence Lock which allows the Licensee to provide access to multiple Authorised Users to simulations within the Licensee Network. Network Locks can be used on virtual machines in a cloud environment.

Personnel means in relation to a party, any Related Body Corporate, Related Entity, employee, officer, agent, contractor, professional adviser of that party.

Reference Schedule means the schedule at the beginning of this agreement.

Related Body Corporate includes any corporation that is deemed to be related to a person by virtue of the provisions of the *Corporations Act*.

Related Entity means a person which is a related entity within the meaning of that term in section 9 of the *Corporations Act*.

Software Bug means an error, flaw, failure or fault in the TUFLOW Software as determined by BMT.

Software Lock means a machine specific lock containing one or more Licence Locks. The lock is software installed, and cannot be transferred to another machine or computer. The machine can be a virtual machine, provided the virtual machine is only accessible by Authorised Users.

Software Upgrade and Support Services means those services described in clause 5.1(b)(1) - (3).

Tax means any present or future tax, levy, deduction, impost, withholding, charge or duty which is levied or imposed by any Government Body together with any interest, penalty or fine on those amounts.

Term means the duration of the agreement, until it is terminated or expires in accordance with the terms of the agreement.

TUFLOW Products means the TUFLOW Software and if available (refer **Item 6**), the Free Component.

TUFLOW Software means the components listed in Item 4 of the Reference Schedule in binary form only.

Where a term used in this agreement appears in bold type in the Reference Schedule, that term has the meaning shown opposite it in the Reference Schedule.

1.2 Interpretation

- (a) Unless the contrary intention appears, a reference in this agreement to:
- (1) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;
 - (2) one gender includes the others;
 - (3) the singular includes the plural and the plural includes the singular;
 - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;
 - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;
 - (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
 - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
 - (8) money is to Australian dollars, unless otherwise stated; and
 - (9) a time is a reference to Brisbane time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.



- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.
- (e) A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

1.3 Business Days

- (a) If anything under this agreement must be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (b) If an act is required to be done on a particular day, it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

1.4 Parties

- (a) If a party consists of more than one person, this agreement binds each of them separately and any two or more of them jointly.
- (b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.

2. Licence

2.1 Grant

- (a) On and from the Commencement Date, subject to clauses 2.1(c), 2.2 and 2.3, BMT grants the Licensee a worldwide, perpetual (subject to clauses 2.1(d) and 10), non-exclusive, revocable, non-transferable licence to do the following in respect of the TUFLOW Products:
 - (1) install the TUFLOW Products; and
 - (2) use the TUFLOW Products in conjunction with software necessary to develop, modify and view the Licensee Data for its internal business activities in accordance with the terms of this Agreement.
- (b) The licence granted to the Licensee is subject to clause 2.4 and is restricted to the use of the TUFLOW Products by Authorised Users in accordance with these terms and conditions for the sole purpose of developing, modifying and viewing the Licensee Data for the Licensee's internal business activities within the Licensee Network, and not for any other purpose.
- (c) Where a Trial Period has been included in **Item 5** of the Reference Schedule, the TUFLOW Software is not to be used for commercial purposes during the Trial Period (including, but not limited to, use of reports, maps, models, pdf, templates, graphics, documentation generated by or derived from the

TUFLOW Products as a result of the Licensee Data or as a result of the Licensee's use of the TUFLOW Products. in any reports or other documentation), unless:

- (1) a TUFLOW Software Licence is purchased prior to the expiration of the Trial Period as per clause 4.1 and paid for prior to the Licensee's commercial use of the TUFLOW Software; or
 - (2) it is agreed to in writing by BMT.
- (d) If a Trial Period has been included in **Item 5** of the Reference Schedule, within seven (7) days of the conclusion of the Trial Period, the Licensee must either:
 - (1) elect to purchase a TUFLOW Software Licence by providing notice to BMT. BMT will then provide an invoice to the Licensee for payment of the relevant Licence Fee; or
 - (2) notify BMT that it elects not to purchase a TUFLOW Software Licence, in which event the Licence provided under clause 2.1(a) in relation to the TUFLOW Software is terminated and the Licensee must return all **Hardware** Locks, storage devices, documentation and other Materials provided by BMT, and have all Software Locks uninstalled, within 14 days of the conclusion of the Trial Period.
 - (e) If the Licensee fails to notify BMT in accordance with clause 2.1(d), then the Licensee will be taken to have elected not to purchase a TUFLOW Software Licence and the Licence provided under clause 2.1(a) in relation to the TUFLOW Software is terminated and the Licensee must return all Hardware Locks, storage devices, documentation and other Materials provided by BMT, and have all Software Locks uninstalled, within 14 days of the conclusion of the Trial Period.

2.2 Installation and Authorised Use

The Licensee must ensure that:

- (a) any Authorised Users of the TUFLOW Products licensed under this Agreement only access, install, and use the TUFLOW Products strictly in accordance with this Agreement;
- (b) the TUFLOW Products are only downloaded from www.tuflow.com/Downloads.aspx, and are only installed on the Licensee Network, by Authorised Users, and by doing so are bound by these terms and conditions;
- (c) the computer files provided in a TUFLOW Products download are not edited, modified, replaced, overwritten, or separated from each other, and at all times remain together wherever installed within the Licensee Network;
- (d) where the Licensee has purchased a Local Lock, the TUFLOW Software is only used by Authorised Users on a single computer which has access to a Local Lock; and



- (e) where the Licensee has purchased a Network Lock:
 - (1) the TUFLOW Software is only accessed by Authorised Users within the Licensee Network; and
 - (2) usage of the TUFLOW software on a virtual machine is permitted provided access is entirely confined to Authorised Users within the Licensee Network.

2.3 Restrictions

As a fundamental condition of this Agreement, the Licensee agrees that:

- (a) Improvements do not form part of the Licence;
- (b) the prior written consent of BMT is required for the Licensee to sub-licence any right under this Agreement; and
- (c) BMT will not be liable in any way for any Loss, including any Loss incurred by a user, or any Loss arising from any error, inaccuracy, incompleteness or other similar defect in the TUFLOW Products and Licensee Data.

2.4 Sub-licensing

- (a) The Licensee shall not grant sub-licences except as permitted under clause 2.3(b);
- (b) The Licensee is responsible for ensuring that each sub-licensee is bound, in writing, by terms no less onerous than those set out in this Agreement;
- (c) Any sub-licence shall automatically terminate on the termination or expiry of this Agreement;
- (d) The Licensee shall be liable for all acts and omissions of any sub-licensee and shall indemnify BMT against all costs, expenses, claims, loss or damage incurred or suffered by BMT, or for which BMT may become liable (whether direct, indirect or consequential and including any economic loss or other loss of profits, business or goodwill) arising out of any act or omission of any sub-licensee; and
- (e) If the Licensee has received the required prior written consent of BMT under clause 7.4(e) to merge or interface any third-party software (including source code or open source software) with the TUFLOW Products, the Licensee shall not pass on or provide any sub-licensee or other third party with or access to any TUFLOW Products which have been merged or interfaced with any such third party software.

3. Acknowledgement

The Licensee acknowledges that TUFLOW Products are computational engines which require additional software, not included in this Agreement, to develop, modify and view the Outputs.

4. Licence Fee

4.1 Fee

- (a) The Licensee will pay the Licence Fee to BMT described at **Item 7** of the Reference Schedule.
- (b) BMT reserves the right to vary the prices for the Licence Fee set out in **Item 7** from time to time without notice to the Licensee.

4.2 Credit terms

- (a) BMT will issue the Licensee with a Tax Invoice for the Licence Fee owing under clause 4.1 and specified in **Item 7** of the Reference Schedule.
- (b) The Licensee must pay BMT the Licence Fee owing under clause 4.1 within 30 days of the date of the invoice, unless stated otherwise on the invoice. Where an invoice is not paid within this timeframe, BMT can charge interest on the amount owing on the invoice at a compounding monthly rate of 2%.

4.3 Delivery and utilisation

- (a) Upon receipt of payment of the Licence Fee by BMT, a Licence Lock shall be delivered either as a Hardware Lock dispatched by registered post to the Licensee's delivery address as shown in **Item 2** of the Reference Schedule, or the Software Lock delivered by email to the Licensee. Licensee acknowledges that it is solely responsible for:
 - (1) downloading and installing the drivers for the Licence Lock as advised by BMT in writing;
 - (2) downloading the TUFLOW Software executable files from the web address as advised by BMT in writing;
 - (3) otherwise installing and configuring the TUFLOW Software (except where provided by BMT as part of the Software Upgrade and Support Services); and
 - (4) where permitted by the Licence, integrating the TUFLOW Software with any other software.
- (b) Where the TUFLOW Software includes a Free Component as included in **Item 6**, use of the Free Component is bound by the conditions of this agreement.
- (c) Where a Trial Period has been included at **Item 5** of the Reference Schedule, clause 4.3(a) shall apply, however the Licence Lock shall be dispatched at a time as advised by BMT in writing.
- (d) The Licensee acknowledges that replacement of:
 - (1) damaged Licence Locks will be granted only at BMT's sole discretion;
 - (2) lost or inaccessible Licence Locks will incur a fee limited to the Licence Fee of the TUFLOW Software payable at the time of the replacement of the lost Licence Lock.



5. Software Upgrades and Support

5.1 Upgrades and support

- (a) Where the Licensee has paid the requisite Licence Fee, and not paid the Software Upgrade and Support Fee described at **Item 7** on the terms given in clause 5.2, BMT is not obligated to provide the Licensee with any Software Bug fixes to the TUFLOW Software.
- (b) Where the Licensee has paid the Software Upgrade and Support Fee described at **Item 7** on the terms given in clause 5.2, BMT will provide the Software Upgrade and Support Services, being:
 - (1) access to new versions, features of or upgrades to the TUFLOW Software as and when they are made available by BMT;
 - (2) installation and set-up support of TUFLOW Software;
 - (3) where necessary, BMT will provide Software Bug fixes to the TUFLOW Products; and
 - (4) where the Licensee has undertaken training in the use of TUFLOW Software under clause 5.2(d), responses to minor queries in relation to the functionality, models, modelling techniques and associated data of the TUFLOW Software.

5.2 Credit terms

- (a) BMT will automatically generate an invoice annually for the Software Upgrade and Support Fee as per **Item 7** of the Reference Schedule.
- (b) Where the Licensee elects to cancel the Software Upgrade and Support services, the Licensee must provide notice to BMT. Within a reasonable time of receipt of the notice of cancellation described in clause 5.2(a), BMT will issue a credit note to cancel the invoice for the Software Upgrade and Support Fee.
- (c) The Licensee acknowledges and agrees that Software Upgrade and Support services reinstated after cancellation as per clause 5.2(b) will be subject to a 25% surcharge in addition to the Software Upgrade and Support Fees for the period from cancellation to reinstatement.
- (d) The Licensee acknowledges and agrees that if the Licensee elects to cancel the Software Upgrade and Support services for a period of five (5) consecutive years, the Software Upgrade and Support Services cannot be reinstated and a new Licence will need to be purchased.

6. Training

The Licensee acknowledges and agrees that:

- (a) training on the use of TUFLOW Software is not included in the Licence Fee payable under this Agreement and is charged separately at an hourly

rate determined by BMT or as otherwise agreed in writing with BMT;

- (b) bookings for training must be received by BMT in advance of the date proposed for training and will be accepted at BMT's discretion; and
- (c) where BMT staff are unable to provide training, BMT may recommend other external trainers experienced in the use of the TUFLOW Software.

7. Intellectual Property

7.1 Ownership - BMT Technology

- (a) Ownership of the BMT Technology is not modified by this Agreement.
- (b) The Intellectual Property Rights in the BMT Technology remain vested in BMT.

7.2 Ownership – Licensee Technology

- (a) Ownership of the Licensee Technology is not modified by this Agreement.
- (b) The Intellectual Property Rights in the Licensee Technology remain vested in the Licensee.
- (c) The Licensee grants BMT a non-exclusive, non-transferable, worldwide, royalty free licence to use the Licensee Technology, Licensee Data and Materials provided to BMT solely for the purposes of the Licence and performing its obligations under this Agreement, including obligations in relation to upgrades and support as stated in clause 5.
- (d) The Licensee acknowledges that if the licence described in clause (c) is not granted, BMT will be unable to perform all of its obligations under this Agreement, particularly in relation to support under clause 5. If the licence described in clause (c) is not granted or it is revoked, BMT will not be in breach of the terms of this Agreement if it does not perform its support obligations under clause 5.

7.3 Provision and ownership of Improvements

- (a) The Licensee will promptly disclose Improvements to BMT.
- (b) Upon its creation, all Improvements will be owned by and assigned to BMT.

7.4 Prohibited activities

The Licensee will not (and must not permit or procure its Personnel to):

- (a) reverse engineer or decompile or otherwise attempt to discover the source code of the TUFLOW Products;
- (b) reproduce, alter or otherwise modify or adapt the TUFLOW Products to create any derivative works based on the TUFLOW Products;
- (c) use, or permit, the TUFLOW Products to be accessed or used in any way other than in a manner expressly permitted by this Agreement;



- (d) challenge the validity of any Intellectual Property Rights of BMT;
- (e) merge or interface any third-party software (including source code or open source software) with the TUFLOW Products without the prior written consent of BMT;
- (f) permit the TUFLOW Products to be accessed in any unauthorised way, including via interfaces (including exposing or “passing through” a software API or otherwise making the TUFLOW Products accessible as an Application Program Interface (API));
- (g) do or permit any other act which infringes BMT’s Intellectual Property Rights;
- (h) do or permit an act that uses the TUFLOW Products in a way that could infringe a third party’s Intellectual Property Rights; or
- (i) use the TUFLOW Products in any way that could damage the reputation of BMT.

7.5 Notification of infringement claim

The Licensee must notify BMT promptly from the date it becomes aware of:

- (a) any actual or suspected infringement by a third party of the other party’s Intellectual Property Rights; or
- (b) any actual or threatened claim by a third party that its Intellectual Property Rights have or will be infringed by any act, omission or permission by a party in connection with this Agreement.

7.6 Survival

This clause 7 survives the termination or expiration of this Agreement.

8. Liability

8.1 Exclusion of liability

- (a) To the extent permitted by Law, in no event will BMT be liable to the Licensee for Consequential Loss even if BMT has been made aware of the possibility of such Consequential Loss prior to entering into this Agreement.
- (b) The Licensee agrees BMT is not liable to third parties for any acts or omissions regarding, arising out of, or in connection with, this Agreement.
- (c) The Licensee agrees BMT is not liable to the Licensee or third parties for simulations executed using BMT’s Cloud Simulation Service for TUFLOW, or the cloud services offered by TUFLOW’s approved Vendors.

8.2 Implied terms

- (a) To the full extent permitted by Law, any term which would otherwise be implied into this Agreement is excluded.
- (b) To the full extent permitted by Law, the Licensee acknowledges that the TUFLOW Software (and

anything else provided under the Licence) is licensed by BMT on an ‘as is, where is’ basis and BMT makes no warranties or representations as to the Licensee Data and the TUFLOW Software (and anything else provided under the Licence).

- (c) In the event any Law implies or imposes terms into this deed which cannot be lawfully excluded, such terms will apply, save that the liability of BMT for breach of any such term will be limited in accordance with clause 8.3(a) or as otherwise required by Law.

8.3 Limitation of liability

(a) Re-performance

To the extent BMT is found Liable in connection with this Agreement, its Liability shall be limited (at the option of BMT) to any one or more of the following:

- (1) refunding the price of the goods to which the Liability relates or the supply of equivalent services; or
- (2) reimbursing the Licensee (subject to clause 8.3(b)) for paying someone else to supply the goods which the Liability relates.

(b) Liability cap

To the extent that BMT is Liable in connection with this Agreement, then BMT’s cumulative Liability (however incurred, whether under contract, tort, statute or a right of indemnity) in the aggregate (to the fullest extent permitted by law) shall in no event exceed the sum of the Licence Fee received by BMT under this Agreement.

8.4 Survival

This clause 8 survives the termination or expiration of this Agreement.

9. Warranty and indemnity

9.1 Warranty

Each party warrants to the other party that it has the full right and title to enter into this Agreement and to grant the rights it sets out to the other party.

9.2 Indemnity

The Licensee must, subject to clauses 8.1 and 8.3 above, release and indemnify BMT from and against all liabilities, claims, damages, suits, expenses, causes of action, injuries or losses (howsoever caused, including as a result, directly or indirectly, of any negligent act or omission or breach of duty by BMT or any other person) brought by any person (including the Licensee and any third parties) arising in any way from the exercise by the Licensee of its rights under this Agreement or use by any person of copies of the TUFLOW Product licensed under this Agreement.



10. Termination

10.1 Suspension of Licence

- (a) If the Licensee has failed to pay the Licence Fee within five business days of BMT's notice of such non-payment as per **Item 7** of the Reference Schedule, then BMT may either (at BMT's absolute discretion) terminate or suspend the Licence by giving notice to the Licensee, and the termination or suspension (as the case may be) will be immediately effective on the date of that notice.
- (b) If BMT suspends the Licence pursuant to clause 10.1(a), then BMT can revoke the suspension by notice to the Licensee, and the revocation of the suspension will be immediately effective on the date of that notice.

10.2 Suspension of Software Upgrade and Support Services

- (a) If the Licensee has failed to pay the Software Upgrade and Support Services Fee as per the terms of the relevant invoice and the Licensee has also failed to notify BMT of cancellation of the Software Upgrade and Support Services as per clause 5.2(b), within five business days of BMT's notice of such non-payment as per **Item 7** of the Reference Schedule BMT may either (at BMT's absolute discretion) terminate or suspend the Software Upgrade and Support Services by giving notice to the Licensee, and the termination or suspension (as the case may be) will be immediately effective on the date of that notice.
- (b) If BMT suspends the Software Upgrade and Support Services pursuant to clause 10.2(a), then BMT can revoke the suspension by notice to the Licensee, and the revocation of the suspension will be immediately effective on the date of that notice.

10.3 Termination for cause

Either party (**First Party**) may terminate this Agreement immediately by written notice upon the occurrence of one of the following events:

- (a) if the other party is in breach of this Agreement and that other party has failed to remedy the breach within thirty (30) days of a written notice to it from the First Party, specifying the breach and requiring it to be remedied;
- (b) if the other party is in breach of this Agreement and that breach is not capable of remedy, as reasonably determined by the First Party; or
- (c) an Insolvency Event occurs in respect of the other party.

10.4 No prejudice of rights

Termination shall not prejudice or affect any right or action which shall have accrued or shall thereafter accrue to either party.

11. Consequences or termination or expiration

Upon termination or expiration of this Agreement:

- (a) the Licence terminates;
- (b) all monies owing under the Agreement become immediately payable and due;
- (c) the Licensee must immediately cease using the TUFLOW Products and permanently uninstall and delete the TUFLOW Products and return any Hardware Locks to BMT and have all Software Locks uninstalled; and
- (d) after complying with 11(c), the Licensee must provide written confirmation to BMT of its compliance with 11(c).

12. Notices

12.1 Form

Any notice or other communication to or by any party must be:

- (a) in writing and in the English language;
- (b) addressed to the address of the recipient in clause 12.4 or to any other address as the recipient may have notified the sender; and
- (c) be signed by the party or by an Authorised Officer of the sender.

12.2 Manner

In addition to any other method of service authorised by law, the notice may be:

- (a) personally served on a party;
- (b) left at the party's current address for service;
- (c) sent to the party's current address for service by prepaid ordinary mail or if the address is outside Australia by prepaid airmail;
- (d) sent by facsimile to the party's current numbers for service; or
- (e) sent by electronic mail to the party's electronic mail address.

12.3 Time

If a notice is sent or delivered in the manner provided in clause 12.2 it must be treated as given to or received by the addressee in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
 - (1) in Australia to an Australian address, the second Business Day after posting; or
 - (2) in any other case, on the tenth Business Day after posting;
- (c) facsimile, when a transmission report being printed by the sender's facsimile machine stating that the document has been sent to the recipient's facsimile number; or
- (d) electronic mail, when the sender's computer reports that the message has been delivered to the electronic mail address of the addressee,

but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

12.4 Initial details

The addresses and numbers for service are initially:

- (a) for BMT, the address details described at **Item 1**; and
- (b) for the Licensee, the Licensee's Invoicing Address Details described at **Item 2**.

12.5 Changes

A party may from time to time change its address or numbers for service by notice to each other party.

13. Governing law and jurisdiction

13.1 Governing law

This agreement is governed by and construed in accordance with the laws of Queensland.

13.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph 13.2(a).

14. Miscellaneous

14.1 Exercise rights

A single or partial exercise or waiver by a party of any right under or relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.

14.2 Merger

If the liability of a party to pay money under this agreement becomes merged in any deed, judgment, order or other thing, the party liable must pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under this agreement and that fixed by or payable under that deed, judgment, order or other thing.

14.3 Moratorium legislation

Any law which varies prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under this agreement is excluded to the extent permitted by law.

14.4 No assignment

A party must not assign, transfer or novate all or any part of its rights or obligations under or relating to this agreement or

grant, declare, create or dispose of any right or interest in it, without the prior written consent of each other party.

14.5 Remedies cumulative

The rights and remedies under this agreement are cumulative and not exclusive of any rights or remedies provided by law.

14.6 Severability

If a provision of this agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

14.7 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this agreement and the transactions contemplated by it.

14.8 Costs

Each party is responsible for all its own costs incurred in the negotiation and performance of this agreement including legal costs.

14.9 Taxes

The Licensee must:

- (a) pay all Taxes which may be payable or determinable in connection with the execution, delivery, performance or enforcement of this agreement or any payment or receipt or of any transaction contemplated by this agreement; and
- (b) indemnify BMT against any liabilities resulting from any delay or omission by the Licensee to pay any Taxes.

14.10 Time

- (a) Time is of the essence of this agreement in respect of an obligation to pay money.
- (b) If the parties agree to vary a time requirement, the time requirement so varied is of the essence of this agreement.
- (c) An agreement to vary a time requirement must be in writing.

14.11 Variation

An amendment or variation to this agreement is not effective unless it is in writing and signed by the parties.

14.12 Waiver

- (a) A party's waiver of a right under or relating to this agreement, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.
- (b) No other act, omission or delay by a party will constitute a waiver of a right.



14.13 Counterparts

This agreement may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument. A party who has executed a counterpart of this agreement may deliver it to, or exchange it with, another party by:

- (a) faxing; or
- (b) emailing a pdf (portable document format) copy of,

the executed counterpart to that other party.

14.14 Whole agreement

This agreement is the entire agreement and understanding between the parties relating to the subject matter of this agreement; and supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.