

## TUFLOW FLIKE SOFTWARE LICENCE AGREEMENT

(31<sup>st</sup> July 2018)

This Agreement sets out the terms of the licence agreement for the supply by BMT Commercial Australia Pty Ltd of TUFLOW Flike to the Licensee.

### THE LICENCOR

BMT Commercial Australia Pty Ltd

ABN 54 010 830 421

Level 8, 200 Creek Street, Brisbane, QLD, 4000, AUSTRALIA

(PO Box 203, Spring Hill, Q, 4004, AUSTRALIA)

email: [flike.sales@tuflow.com](mailto:flike.sales@tuflow.com)

Ph: +61 (0) 7 3831 6744

Fax: +61 (0) 7 3832 3627

### THE LICENSEE

The Licensee's details are set out in Schedule A.

#### 1. PRODUCTS AND LICENCING

- 1.1. TUFLOW Flike is specialist water engineering software to undertake flood frequency analysis.
- 1.2. TUFLOW Flike operates on computers running Windows XP/Vista/7/8/8.1/10. Recent versions of TUFLOW Flike are not tested, and therefore may not run, on older versions of Windows. A licence key is required to use for TUFLOW Flike. This key is locked to the computer on which it was installed. Access in any form to Licensee's Licence Key from outside the Licensee's intranet, is not permitted under this agreement.
- 1.3. All TUFLOW Product software and documentation can be downloaded from <http://flike.tuflow.com/>.

#### 1.4. LICENCE

- 1.4.1. **Licence:** Each Licence granted by BMT Commercial Australia Pty Ltd entitles the Licensee to use TUFLOW Flike for appropriate purposes for one (1) year. The Price, is available from <http://flike.tuflow.com/licence/>, and sets out the Price (as at the date of this Agreement) per Licence, that is payable by the Licensee to BMT Commercial Australia Pty Ltd, and is made up of the Purchase Price for one (1) years access to TUFLOW Flike (the paid-up period).
- 1.4.2. A new Licence fee is required each year to keep the Licence active for a period of one (1) year.
- 1.4.3. Upon receipt of payment of the Licence Fee from the Licensee, BMT Commercial Australia Pty Ltd will issue a digital Licence for TUFLOW Flike which will provide, for one (1) year:

- 1.4.3.1. Access to the current version of TUFLOW Flike according to BMT Commercial Australia Pty Ltd's sole discretion.
- 1.4.3.2. Support as set out under the heading Support.
- 1.4.3.3. BMT Commercial Australia Pty Ltd will invoice the Licensee annually for the Licence Fee for all maintained Licences. Should the Licensee wish to cancel the Licence at any time during the one (1) year paid-up period, 30 days' notice must be provided to BMT Commercial Australia Pty Ltd in writing via email to [flike.sales@tuflow.com](mailto:flike.sales@tuflow.com), and a credit note will be issued for the remainder of the paid-up period. This will result in TUFLOW Flike becoming inoperable. Cancelled Licences can be reinstated at a later date subject to a new Licence Fee.

## 2. SUPPORT

- 2.1. Provided that the Licensee has a valid Licence Key, BMT Commercial Australia Pty Ltd will provide:
  - 2.1.1. Access to the current version of TUFLOW Flike and any new versions that may be developed and released during the paid-up period at our sole discretion once tested within BMT Commercial Australia Pty Ltd;
  - 2.1.2. Support that is limited to installing and setting up TUFLOW Flike;
  - 2.1.3. Responses to minor queries in regard to using TUFLOW Flike provided the Licensee has previously undergone training in the use of the TUFLOW Flike (see Training below). The support includes the provision of advice in relation to minor questions on functionality, models, modelling techniques and associated data. This support is limited to ten (10) individual enquiries during the one (1) year licence period. Individual enquiries will be determined at BMT Commercial Australia Pty Ltd's sole discretion and include correspondence beyond the initial contact. The support is not a substitute for training (this advice is covered under Training). All support queries should be directed to [flike.support@tuflow.com](mailto:flike.support@tuflow.com).
- 2.2. **Bug fixes:** BMT Commercial Australia Pty Ltd will fix any software bugs free-of-charge, but reserves the right to decide whether a particular issue is in fact a "bug".
- 2.3. **Feature Request:** BMT Commercial Australia Pty Ltd is open to constructive suggestions for new features. The new feature may be developed at our sole discretion. Licensee may request additional features in TUFLOW Flike, provided that:
  - 2.3.1. Licensee shall waive any claim or right in such feature should the feature be developed by BMT Commercial Australia Pty Ltd;
  - 2.3.2. Licensee shall be prohibited from developing the feature, or disclose such feature request, or feature, to any 3rd party directly competing with BMT Commercial Australia Pty Ltd or any 3rd party which may be, following the development of such feature, in direct competition with BMT Commercial Australia Pty Ltd;
  - 2.3.3. Licensee warrants that feature does not infringe any 3rd party patent, trademark, trade-secret or any other intellectual property right; and
  - 2.3.4. Licensee warrants that it developed, envisioned or created the feature solely by itself.

### 3. TRAINING

3.1. Training (may be supplied by BMT Commercial Australia Pty Ltd): BMT Commercial Australia Pty Ltd recommends initial and periodic training in TUFLOW Flike for effective use of TUFLOW Flike. Frequent use of support (see Software Upgrades and Support above) is not a substitute for training. Initial training for TUFLOW Flike takes typically about a day, depending on the level of expertise of the trainee in hydrology and the size of the group. BMT Commercial Australia Pty Ltd may provide periodic specialist open training courses in TUFLOW Flike. A current schedule of upcoming training is available from <http://flike.tuflow.com/>. In addition to open courses, specialists from BMT Commercial Australia Pty Ltd may be available to deliver customised training on a time and expenses basis. Hourly rates for the BMT Commercial Australia Pty Ltd specialists are available upon request. Expenses incur a surcharge of 10%. While best endeavours will be made by BMT Commercial Australia Pty Ltd to provide regular training courses at most metropolitan areas across Australia, BMT Commercial Australia Pty Ltd cannot guarantee that training courses will be available and accessible following purchase of a TUFLOW Flike licence.

### 4. GENERAL TERMS

#### **The LICENSEE:**

- 4.1. must not assign or sub-licence the Licence or any of the Licensee's rights under this Agreement, or permit any person other than the Licensee's officers, employees or subcontractors to use the TUFLOW Flike, without the prior written permission of BMT Commercial Australia Pty Ltd;
- 4.2. must not alter, decompile, disassemble, reverse-engineer or otherwise attempt to discover the source code of TUFLOW Flike;
- 4.3. must make all payments to BMT Commercial Australia Pty Ltd in AU\$ (unless otherwise indicated on the invoice): by direct deposit to a bank account nominated by BMT Commercial Australia Pty Ltd; by credit card transaction; or as otherwise directed by BMT Commercial Australia Pty Ltd from time to time, within 30 days unless stated otherwise of receiving an invoice from the BMT Commercial Australia Pty Ltd;
- 4.4. must, subject to 4.9 and 4.10 below, release and indemnify BMT Commercial Australia Pty Ltd 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 Commercial Australia Pty Ltd 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 TUFLOW Flike licenced under this Agreement.

#### **BMT Commercial Australia Pty Ltd:**

- 4.5. reserves the right to vary the prices for the Licence set out in <http://flike.tuflow.com/licence/> from time to time without notice to the Licensee;
- 4.6. may assign the rights, benefits and obligations under this Agreement to another person, provided that BMT Commercial Australia Pty Ltd notifies the Licensee of the assignment;

- 4.7. may terminate the Licence by notice to the Licensee if the Licensee breaches any provision of this Agreement or any of BMT Commercial Australia Pty Ltd's intellectual property rights and does not remedy the breach within 30 days of a notice from BMT Commercial Australia Pty Ltd requiring the Licensee to do so. If BMT Commercial Australia Pty Ltd terminates the Licence under this provision, the Licensee must immediately cease using and delete all copies of the TUFLOW Flike and all Licences; and
- 4.8. expressly excludes:
- 4.8.1.any representation that TUFLOW Flike will work with any particular software or hardware, including the software or hardware recommended by this Agreement;
- 4.8.2.any representation that the Licence, upgrades, technical support, or training (except as expressly stated in this Agreement) will continue to be available for any period of time; and
- 4.8.3.all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void (Non-excludable Condition).

**GENERAL:**

- 4.9. Nothing in this Agreement excludes or limits the application of any provision of any statute (including the Competition and Consumer Act 2010 (Cth)) where to do so would contravene that statute or cause any part of this clause to be void.
- 4.10. To the extent that any Non-excludable Condition applies to this Agreement, BMT Commercial Australia Pty Ltd's liability to the Licensee for breach of any Non-excludable Condition (other than an implied warranty of title) is limited, at BMT Commercial Australia Pty Ltd's option, to refunding the price of the goods or services in respect of which the breach occurred, or to providing, replacing or repairing those goods or providing those services again.
- 4.11. To the extent that BMT Commercial Australia Pty Ltd is liable under this agreement, then BMT Commercial Australia Pty Ltd's cumulative Liability in the aggregate (to the fullest extent permitted by law) shall in no event exceed the sum of the Licence Fee received by BMT Commercial Australia Pty Ltd under this agreement.
- 4.12. The parties agree that BMT Commercial Australia Pty Ltd is not liable to third parties in connection with this agreement.
- 4.13. These clauses 4.9 – 4.13 survive the termination or expiration of this agreement.
- 4.14. The provisions of this Agreement will not be varied, except by agreement in writing signed by the duly authorised persons of the parties.
- 4.15. This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation given or made by BMT Commercial Australia Pty Ltd.

- 4.16. Words or expressions used in clauses 4.16 – 4.22 which are defined by the Australian A New Tax System (Goods and Services Tax) Act 199 (Cth) will have the meaning given to them in that Act.
- 4.17. Unless expressly stated to the contrary all amounts expressed in this agreement are exclusive of GST.
- 4.18. If a party (Supplier) is obliged under the GST Law to pay an amount of GST for a taxable supply made by the Supplier to another party (Recipient) under this agreement, the Recipient must pay the Supplier an amount equal to the GST payable on the supply by the Supplier.
- 4.19. The Recipient must pay the amount referred to in clause 4.18 and any interest, penalty, fine or expense relating to the GST, in addition to and at the same time as the consideration otherwise payable by the Recipient for the supply.
- 4.20. If requested by the Recipient, the Supplier must provide the Recipient with a Tax Invoice on or before payment of the amounts required by these clauses 4.18 – 4.22.
- 4.21. If an adjustment event arises for a taxable supply under clause 4.18, the amounts required to be paid must be recalculated (Recalculated Amount) and the Recipient must pay the Supplier the Recalculated Amount.
- 4.22. Where a party is required to pay for or reimburse an expense or outgoing of another party, the amount required to be paid or reimbursed is the amount of the expense or outgoing less any input tax credits to which the other party, or the representative member of a GST group to which they belong, is entitled.

**SCHEDULE A**

<b>The LICENSEE</b>	
<b>Organisation</b>	
<b>Delivery Address</b>	
<b>Delivery Contact Name</b> <b>Email</b> <b>Telephone</b> <b>Facsimile</b>	
<b>Invoicing Address</b> <i>(if different to the above)</i>	
<b>Invoicing Contact Name</b> <i>(if different to the above)</i> <b>Email</b> <b>Telephone / Facsimile</b>	
<b>ABN</b> <i>(or, if outside Australia, the equivalent corporate identity number if any)</i>	

Acceptance of this Agreement is made by signing below, or by commencing using the TUFLOW Flike (whether or not Schedule A has been completed).

Signed for the Licensee by an authorised officer in the presence of

\_\_\_\_\_  
Signature of officer (print)

\_\_\_\_\_  
Signature of witness (print)

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held