

## TUFLOW PRODUCTS SOFTWARE LICENCE AGREEMENT (September 1<sup>st</sup>, 2011)

This Agreement sets out the terms of the licence agreement for the supply by BMT WBM of TUFLOW Products Software to the Licensee.

THE PARTIES	
<b>BMT WBM</b>	<b>BMT WBM Pty Ltd</b> ABN 54 010 830 421 Level 8, 200 Creek Street, Brisbane, QLD, 4000, AUSTRALIA (PO Box 203, Spring Hill, Q, 4004, AUSTRALIA) email: <a href="mailto:sales@tuflow.com">sales@tuflow.com</a> Ph: +61 (0) 7 3831 6744 Fax: +61 (0) 7 3832 3627
<b>THE LICENSEE</b>	The Licensee's details are set out in <b>Schedule A</b> .
1. PRODUCTS AND LICENSING	
<b>TUFLOW PRODUCTS SOFTWARE</b>	<p><b>TUFLOW Products</b> are BMT WBM's range of specialist water engineering software. A <b>TUFLOW Product</b> is:</p> <ul style="list-style-type: none"> <li>• <b>TUFLOW</b>: a grid based hydrodynamic computational engine; or</li> <li>• <b>TUFLOW FV</b>: a flexible mesh based hydrodynamic computational engine; or</li> <li>• a <b>Module</b>: a licensed optional addition to TUFLOW or TUFLOW FV; or</li> <li>• <b>miTools</b>: customised software written for the MapInfo GIS software. (MapInfo is not a TUFLOW Product and is not supplied by BMT WBM.)</li> </ul> <p>TUFLOW and TUFLOW FV operate on computers running Windows 95/98/NT/2000/XP/Vista/7. Recent versions of TUFLOW and TUFLOW FV are not tested, and therefore may not run, on older versions of Windows. Each instance (simulation) requires access to a licence on a USB <b>Software Lock</b>. A Software Lock is either a <b>Local Lock</b> (formerly Standalone Locks) or a <b>Network Lock</b>. Local Locks allow TUFLOW Product licences to be activated on a single computer. Local Locks can be relocated from one computer to another whilst no licences are activated. Network Locks are for the sole purpose of allowing users to access TUFLOW Product licences across the Licensee's intranet. Access in any form to a Licensee's Network Lock from outside the Licensee's intranet, is not permitted under this agreement.</p> <p>All TUFLOW Product software and documentation is downloaded from <a href="http://www.tuflow.com">www.tuflow.com</a>.</p> <p>BMT WBM provides several utility software programs for pre and post-processing of data, and Tutorial Models, at no extra cost. These items are downloadable from <a href="http://www.tuflow.com">www.tuflow.com</a>.</p> <p>A Software Lock is not required to prepare any of the input data, view results or simulate Tutorial Models.</p> <p>miTools requires access to a valid miTools Licence and a compatible version of the MapInfo software.</p>

<b>LICENCE</b>	<p><b>Licence:</b> Each Licence granted by BMT WBM entitles the Licensee to use the TUFLOW Product for appropriate purposes.</p> <p><b>Schedule B</b>, the <b>Price List</b>, is available from <a href="http://www.tuflow.com/Prices.htm">www.tuflow.com/Prices.htm</a>, and sets out the <b>Price</b> (as at the date of this Agreement) per Licence, that is payable by the Licensee to BMT WBM, and is made up of the <b>Purchase Price</b> plus, when the Licensee chooses to rent additional Licences, the <b>Rental Price</b>.</p>
<b>Software Upgrades and Support</b>	<p>BMT WBM will invoice the Licensee annually around June/July for the Software Upgrades and Support Fee for all maintained Licences. Should the Licensee wish to cancel the annual Software Upgrades and Support Fee, BMT WBM must be advised in writing via email to <a href="mailto:sales@tuflow.com">sales@tuflow.com</a>, and a credit note will be issued to cancel the invoice. Cancelled Licences that are reinstated at a later date are subject to an additional surcharge upon reinstatement. If a Licence is cancelled for more than five (5) consecutive years it cannot be reinstated.</p> <p>Provided that the Licensee pays the Software Upgrade and Support Fee, BMT WBM will provide:</p> <ul style="list-style-type: none"> <li>• access to new releases of the TUFLOW Product once tested within BMT WBM;</li> <li>• support that is limited to installing and setting up the TUFLOW Product;</li> <li>• responses to minor queries in regard to using the TUFLOW Product provided the Licensee has previously undergone training in the use of the TUFLOW Product (see Training below).</li> </ul> <p>The support includes the provision of advice in relation to minor questions on functionality, models, modelling techniques and associated data. The support is not a substitute for training (this advice is covered under ongoing training – see Training below). All support queries should be directed to <a href="mailto:support@tuflow.com">support@tuflow.com</a>.</p> <p>For the Software Upgrade and Support Fee rates see <b>Schedule B</b>, the <b>Price List</b>, available from <a href="http://www.tuflow.com/Prices.htm">www.tuflow.com/Prices.htm</a>.</p> <p>BMT WBM will fix any software bugs free-of-charge, but reserves the right to decide whether a particular issue is in fact a "bug".</p> <p>BMT WBM is very open to constructive suggestions for new features.</p>
<b>2. RECOMMENDED SUPPLEMENTS</b>	
<b>Software</b> (not supplied by BMT WBM):	As TUFLOW and TUFLOW FV are computational engines, the Licensee requires additional software to develop and view TUFLOW and TUFLOW FV models and output. For further information visit <a href="http://www.tuflow.com">www.tuflow.com</a> or contact <a href="mailto:info@tuflow.com">info@tuflow.com</a> .
<b>Hardware</b> (not supplied by BMT WBM):	For real-world applications of TUFLOW and TUFLOW FV, BMT WBM recommends later PC chips with a minimum of 2Gb (recommend 4Gb) RAM and large HDD.

<p><b>Training</b> (may be supplied by BMT WBM):</p>	<p>BMT WBM highly recommends initial and ongoing training in the TUFLOW Product and suggests that this is indispensable for effective use of the TUFLOW Product. Frequent use of support (see Software Upgrades and Support above) is not a substitute for training.</p> <p>Initial training for TUFLOW or TUFLOW FV takes typically two days to a week, depending on the level of expertise in: hydrodynamic modelling; third-party software being used to interface with the TUFLOW Product; and the size of the group. Ongoing training is recommended to keep up to date on the latest developments and for refining modelling skills. BMT WBM will provide specialists to deliver the training on a time and expenses basis. Where BMT WBM trainers are not available, other experienced modellers or organisations offering training services may be recommended (contact <a href="mailto:training@tuflow.com">training@tuflow.com</a> and/or see <a href="http://www.tuflow.com/Training.htm">www.tuflow.com/Training.htm</a>).</p> <p>Hourly rates for BMT WBM specialists are available upon request. Expenses incur a surcharge of 10%.</p> <p>While BMT WBM will accept bookings for training within six months of supplying a Licence, BMT WBM cannot guarantee that training will be available thereafter.</p>
<p><b>3. GENERAL TERMS</b></p>	
<p><b>The Licensee:</b></p> <p>3.1 must not assign or sub-license the Licence or any of the Licensee's rights under this Agreement, or permit any person other than the Licensee's officers, employees or sub-contractors to use the TUFLOW Product, without the prior written permission of BMT WBM;</p> <p>3.2 must not alter, decompile, disassemble, reverse-engineer or otherwise attempt to discover the source code of the TUFLOW Product;</p> <p>3.3 must make all payments to BMT WBM in AU\$ (unless otherwise indicated on the invoice): by direct deposit to a bank account nominated by BMT WBM; by credit card transaction; or as otherwise directed by BMT WBM from time to time, within 30 days unless stated otherwise of receiving an invoice from BMT WBM;</p> <p>3.4 must, subject to 3.11 and 3.12 below, release and indemnify BMT WBM 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 WBM 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; and</p> <p>3.5 may (by written notice) order or request to rent additional Licences/Software Locks as set out in <b>Schedule B</b>, the <b>Price List</b>, available from <a href="http://www.tuflow.com/Prices.htm">www.tuflow.com/Prices.htm</a>, provided that BMT WBM will not be obliged to supply such items if BMT WBM has ceased to supply such items in the ordinary course of its business.</p>	

**BMT WBM:**

- 3.6 upon receipt of payment or purchase order from the Licensee, BMT WBM will issue by courier a Software Lock (USB Key), or make available a digital upgrade for an existing Software Lock;
- 3.7 reserves the right to vary the prices for the Licences and Software Locks set out in Schedule B, the Price List, available from [www.tufLOW.com/Prices.htm](http://www.tufLOW.com/Prices.htm) from time to time without notice to the Licensee;
- 3.8 may assign the rights, benefits and obligations under this Agreement to another person, provided that BMT WBM notifies the Licensee of the assignment;
- 3.9 may terminate the Licence by notice to the Licensee if the Licensee breaches any provision of this Agreement or any of BMT WBM's intellectual property rights and does not remedy the breach within 30 days of a notice from BMT WBM requiring the Licensee to do so. If BMT WBM terminates the Licence under this provision, the Licensee must immediately cease using and return to BMT WBM all copies of the TUFLOW Product and all Software Locks; and
- 3.10 expressly excludes:
- (a) any representation that the TUFLOW Product will work with any particular software or hardware, including the software or hardware recommended by this Agreement;
  - (b) any representation that the Licences or Software Locks, upgrades or technical support, or training (except as expressly stated in this Agreement) will continue to be available for any period of time; and
  - (c) 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**

- 3.11 Nothing in this Agreement excludes or limits the application of any provision of any statute (including the Australian *Trade Practices Act 1974* (Cth)) where to do so would contravene that statute or cause any part of this clause to be void.
- 3.12 BMT WBM's liability to the Licensee for breach of any Non-excludable Condition (other than an implied warranty of title) is limited, at BMT WBM'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.
- 3.13 The provisions of this Agreement will not be varied, except by agreement in writing signed by the duly authorised persons of the parties.
- 3.14 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 WBM.

**GST**

- 3.15 In these clauses 3.15 to 3.18, a word or expression defined in the Australian *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- 3.16 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 3.16 (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.
- 3.17 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 3.16.
- 3.18 A party need not make a payment for a taxable supply made under or in connection with this agreement until it receives a tax invoice for the supply to which the payment relates.

## SCHEDULE A

THE LICENSEE	
<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 Product (whether or not Schedule A has been completed).

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

\_\_\_\_\_  
Signature of officer



\_\_\_\_\_  
Signature of witness

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



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

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