

TUFLOW SOFTWARE LICENCE AGREEMENT (February, 2010)

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

THE PARTIES	
BMT WBM	<p>BMT WBM Pty Ltd ABN 54 010 830 421 Level 11, BMT WBM Building, 490 Upper Edward Street (PO Box 203), Brisbane QLD 4004 email: sales@tuflow.com or support@tuflow.com Ph: +61 (0) 7 3831 6744 Fax: +61 (0) 7 3832 3627</p>
THE LICENSEE	<p>The Licensee's details are set out in the Schedule in the TUFLOW Price List available from http://www.tuflow.com/Prices.htm.</p>
1. PRODUCT AND LICENCE	
THE SOFTWARE	<p>TUFLOW is BMT WBM's specialist water engineering software. miTools is BMT WBM's specialised module for the MapInfo GIS software.</p> <p>TUFLOW operates on Software Locked computers running Windows 95/98/NT/2000/XP/Vista/7 via a Parallel Port or USB lock that can be relocated from one computer to another. Network Locks allow users to access TUFLOW licenses across an organisation's intranet.</p> <p>All TUFLOW software and documentation is downloaded from www.tuflow.com.</p> <p>BMT WBM provides several utility programs for post-processing of data and a TUFLOW Tutorial Model at no extra cost, available from www.tuflow.com.</p> <p>A Software Lock is not required to prepare any of the input data, view results or simulate the TUFLOW Tutorial Model.</p> <p>The MapInfo and TUFLOW Productivity Utilities (miTools) is BMT WBM's specialised module for the MapInfo GIS software. The tools require access to a valid TUFLOW Licence. All tools and documentation are downloaded from http://www.tuflow.com/miTools/miTools.htm.</p>
LICENCE	<p>Licence: Each Licence granted by BMT WBM entitles the Licensee to use TUFLOW for water engineering purposes.</p> <p>The Schedule in the TUFLOW Price List available from http://www.tuflow.com/Prices.htm, sets out the Price (as at the date of this Agreement) per Licence/Software Lock, that is payable by the Licensee to BMT WBM and is made up of the Purchase Price plus, when the Licensee chooses to rent additional Software Locks, the Rental Price.</p>

<p>Software Upgrades and Support</p>	<p>BMT WBM will invoice the Licensee annually around June for the Software Upgrades and Support Fee for TUFLOW and for the miTools. Should the Licensee wish to cancel the annual Software Upgrades and Support Fee, BMT WBM must be advised in writing via email to sales@tuflow.com, 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 TUFLOW Software Upgrade and Support Fee, BMT WBM will provide access to new releases of TUFLOW once tested within BMT WBM, will provide support that is limited to installing and setting up the TUFLOW software, and will provide responses to minor TUFLOW modelling queries provided the Licensee has previously undergone training in the use of TUFLOW (for training in the use of TUFLOW, see Training below). The support includes the provision of advice in relation to minor questions on TUFLOW 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).</p> <p>Provided that the Licensee pays the miTools Software Upgrade and Support Fee, BMT WBM will provide access to new releases of miTools once tested within BMT WBM, will provide support that is limited to installing and setting up the software, and will provide responses to minor miTools queries provided the Licensee has previously undergone training in the use of TUFLOW (for training in the use of TUFLOW, see Training below). The support includes the provision of advice in relation to minor questions on miTools functionality, techniques and associated data manipulation. The support is not a substitute for training (this advice is covered under ongoing training – see Training below).</p> <p>For the Software Upgrade and Support Fee rates see the TUFLOW Price List available from http://www.tuflow.com/Prices.htm.</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>
<p>2. RECOMMENDED SUPPLEMENTS</p>	
<p>Software (not supplied by BMT WBM):</p>	<p>As TUFLOW is purely a computational engine, the Licensee requires additional software to develop and view TUFLOW models and output. For further information visit the links below or contact sales@tuflow.com.</p> <p>http://www.tuflow.com/Description_InterfaceOptions.htm</p> <p>http://www.tuflow.com/Joint_Ventures.htm</p>
<p>Hardware (not supplied by BMT WBM):</p>	<p>For larger 2D/1D models, BMT WBM recommends later PC chips with a minimum of 512Mb (recommend 2Gb) RAM and large HDD.</p>

<p>Training (may be supplied by BMT WBM):</p>	<p>BMT WBM highly recommends initial and ongoing training in TUFLOW (which includes the use of miTools), and suggests that this is indispensable for effective use of TUFLOW. Frequent use of support (see Software Upgrades and Support above) is not a substitute for training.</p> <p>Initial training takes two days to a week, depending on the level of expertise in 2D modelling and GIS, and the size of the group. Ongoing training is recommended to keep up to date on the latest developments and for refining TUFLOW modelling skills. BMT WBM will provide TUFLOW specialists to deliver the training in the use of TUFLOW on a time and expenses basis. Where BMT WBM trainers are not available, other experienced TUFLOW modellers or organisations offering training services may be recommended (contact training@tuflow.com and/or see http://www.tuflow.com/Training.htm).</p> <p>Hourly rates for TUFLOW 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>3. GENERAL TERMS</p>	
<p>The Licensee:</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 TUFLOW and/or miTools, 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 TUFLOW;</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 of receiving an invoice from BMT WBM;</p> <p>3.4 upon receipt of payment or purchase order from the Licensee, BMT WBM will issue by courier a TUFLOW Software Lock (USB Key), or make available from an ftp site, software to upgrade an existing TUFLOW Software Lock;</p> <p>3.5 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 TUFLOW and/or miTools licensed under this Agreement; and</p> <p>3.6 may (by written notice) order or request to rent additional Licences/Software Locks as set out in the Schedule in the TUFLOW Price List available from http://www.tuflow.com/Prices.htm, 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:

- 3.7 reserves the right to vary the prices for the Licences and Software Locks set out in the TUFLOW Price List available from <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 TUFLOW, miTools and all Software Locks; and
- 3.10 expressly excludes:
- (a) any representation that TUFLOW and/or miTools 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 Licensor 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.