



## 1. INTRODUCTION

- 1.1 This page sets out the general software licensing terms and conditions (**Software Terms**) which apply to any Software and Support which BMT licences or provides to the Customer (as capitalised term as defined below). Any other products or services provided by BMT shall be covered by BMT's general terms and conditions, available here: [www.bmt-ni.com/terms-and-conditions](http://www.bmt-ni.com/terms-and-conditions) (**General Terms**), relevant clauses of which may apply to licensing of the Software where referenced within these Software Terms.
- 1.2 The parties' agreement for the licensing and use of the Software is made up of (i) these Software Terms; (ii) the Quotation; and (iii) any other written document either issued by BMT (and expressly referring to and incorporating itself into the agreement) or any amendments or supplements to the agreement signed and agreed in writing between the parties. Together the above documents shall constitute and be known as the **Software Agreement** and apply to the contract between the parties to the exclusion of any other terms that the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Software Agreement shall sit alongside any separate or connected **Agreement** (as defined in the General Terms) between the parties for other products and services.
- 1.3 When construing the meaning of the Software Agreement, the documents listed in clause 1.2 shall be interpreted in a reverse order of priority in the event of any inconsistency or conflict, with documents appearing later in the list taking priority over documents appearing earlier in the list.
- 1.4 These Software Terms are published on BMT's website. The Customer should print or save a copy of these Software Terms for its records.
- 1.5 Any order placed by the Customer shall only be deemed to be accepted upon BMT's signature of the Quotation at which point and on which date the Software Agreement shall come into existence.
- 1.6 BMT may amend these Software Terms from time to time as set out in clause 14.13. Every time the Customer agrees a new Quotation with BMT it should check these Software Terms to ensure that it understands the terms which will apply to the Software Agreement at that time. These Software Terms were most recently updated on November 2019.
- 1.7 Any Quotation issued by BMT shall be valid for a period of 30 days from the date of issue, if not counter-signed and returned by the Customer, at which point the offer outlined in the Quotation shall lapse.

## 2. INTERPRETATION

- 2.1 In the Software Agreement the following definitions and rules of interpretation shall apply:

**Agreement** has the meaning given to it in clause 1.2.

**Authorised Users** means those employees and agents of, and independent contractors providing services to, the Customer only, who are authorised by the Customer to use the Software and its ancillary documentation, who have agreed to the terms of the EULA.

**Business Day** means any day which is not a Saturday, Sunday, bank or public holiday in Northern Ireland.

**Commencement Date** means the date specified for commencement of the Software licence in the Quotation, or if none is specified, the later of the following (i) the date on which the Software is shipped or made available electronically to Customer or, if applicable, (ii) the date on which Customer is informed by BMT that the associated license key can be requested or is available.

**Confidential Information** shall have the meaning given to it in the General Terms but shall expressly include the Software and its ancillary documentation.

**Customer** means the person licensing the Software from BMT, as noted in the Quotation.

**Customer Data** means the data, content and images inputted by the Customer, Authorised Users, or (if applicable) BMT (or its sub-contractors) on the Customer's behalf for the purpose of facilitating the Customer's use of the Software.

**Customer Equipment** means functioning hardware and software as BMT specifies from time to time, expressly the modelling/simulation or host software platform as BMT may indicate from time to time (which shall be subject to the software developer's standard term or such other terms as the Customer may separately have negotiated), as well as (unless agreed otherwise by BMT) internet access to facilitate licence key validation.

**Devices** means the hardware devices on which the Software is to be installed, the maximum number of which shall be specified in the Quotation.

**EULA** means the end-user licence agreement (incorporating BMT's separate Privacy Policy and cookies policy) which all Authorised Users are required to sign up to before beginning to use the Software.

**General Terms** has the meaning given to it in clause 1.1.

**Initial Licence Term** means the initial licence term set out in the Quotation provided by BMT, which shall be 12 months where no term is specified.

**BMT** means Blow Moulding Technologies Ltd (registered company number NI609138, registered office 1 Chlorine Gardens, Belfast, Northern Ireland, BT9 5DJ).

**Licence Charges** means the total amount set out or provided for in the Quotation or otherwise payable in accordance with the terms of the Software Agreement, to be paid in accordance with the timeframes and

other stipulations set out in the Software Agreement. Expanded or additional licences may be purchased by the Customer from time to time in return for payment of BMT's then prevailing fees.

**Licence Restrictions** means the licence restrictions specified in the Quotation or elsewhere in the Software Agreement.

**Licence Term** means the term beginning on the Commencement Date, and continuing for the Initial Licence Term, and any Renewal Periods (subject to clause 13.3), unless and until the Software Agreement is terminated in accordance with its terms.

**Payment Terms** means the payment terms for payment of the Licence Charges and any other Software related charges as between the parties, which shall be the invoicing and payment in full on demand in advance of the Licence Charges prior to the Initial Licence Term or any Renewal Period, and payment of the Support Fee monthly in arrears following provision of chargeable Support.

**Purpose** means accessing and using the Software to, as indicated in the Quotation, as it is functionally contemplated to operate in accordance with the Software's published documentation, in accordance with the Software Agreement, for its internal business use only.

**Quotation** means the written quotation for, among other things, use of the Software, provided by BMT to the Customer.

**Renewal Period** means rolling terms of 12 months (or such other period as may be specified in the Quotation).

**Site** means the site and premises specified in the Quotation.

**Software** means the relevant version and instance of BMT's software, as specified in the Quotation, including any upgrades to such Software either: (a) purchased by the Customer from time to time in return for payment of BMT's then prevailing charges; or (b) to which the Customer is otherwise entitled under the terms of the Software Agreement.

**Software Agreement** has the meaning given to it in clause 1.2.

**Support** means the reasonable level of support services (subject to fair usage restrictions) to be provided by BMT in relation to each Authorised User, for the relevant Licence Term, and made available, unless otherwise specified, during BMT's standard business hours (9am to 5pm UK time on Business Days) via email to [info@bmt-ni.com](mailto:info@bmt-ni.com). Remote access must be provided by the Customer to allow BMT access to the Customer Equipment for emergency fixes, if required and requested. BMT may also provide online support resources for Authorised Users.

**Support Fee** means any fees chargeable in respect of Support provided to the Customer by BMT, which shall be payable on a time and materials basis in respect of any Support in excess of 2 hours' Support across the Term (the cost of which is built into the Licence Charges), calculated at BMT's standard hourly rates as dictated by BMT from time to time.

**Term** means the term of the Software Agreement as defined in clause 13.1.

- 2.2 Headings shall not affect the interpretation of these Software Terms.

- 2.3 References to clauses are to the clauses of these Software Terms.

- 2.3 The rules of interpretation otherwise outlined in section 2 of the General Terms shall additionally apply to these Software Terms.

## 3. LICENCE FOR THE SOFTWARE

- 3.1 Subject to payment and the Licence Restrictions, BMT hereby grants to the Customer a non-exclusive, non-transferable, non sub-licensable licence to install and use the Software on the number of permitted Devices in respect of which the Software licence has been validated at the Site, during the Licence Term, solely for the Purpose, and to make one back up copy. Customer will receive a licence key for the Software which will permit installation on the relevant Devices, but licence keys, licence tokens or delivery of media do not by themselves grant the legal right to use any Software.

- 3.2 The Customer undertakes that: (a) it shall be responsible for compliance by Authorised Users with the terms of the Software Agreement and the EULA, and that the restrictions on the Customer set out within the Software Agreement shall, unless the context requires otherwise, equally apply to any such persons; (b) the number of Devices on which the Software is installed shall not exceed the number of Device licences the Customer has purchased from time to time; (c) it will not allow or suffer any single licence to the Software for a single Device to be installed on more than one Device, or used by more than one individual Authorised User on such Device, unless it has been reassigned in its entirety to another individual Authorised User and/or Device, in which case the prior Authorised User shall no longer have any right to access or use the Software and/or its documentation and the Software shall have been uninstalled from the previous Device (as applicable); (d) each Authorised User shall keep a secure password for his use of the Software and its documentation, and that each Authorised User shall keep his password confidential, where this is relevant; (e) it shall maintain a written, up to date list of current Authorised Users and Devices on which the Software is installed and provide such list to BMT within 5 Business Days of BMT's written request at any time or times; (f) it shall permit BMT to audit the Customer Equipment and Software installed by the Customer, and the full and comprehensive records it shall maintain in connection with compliance with its obligations hereunder (including a record of the measures put in place by Customer to protect the access to



and the use of each Software, and uninstall it following termination of the Software Agreement) including to attend at the Site, in order to establish that the Customer is using same in accordance with the terms of the Software Agreement (or following termination of the Software Agreement that it has ceased all use). Such audit may be conducted no more than once per quarter, and with reasonable prior notice, and shall be subject to BMT's compliance with any reasonable and generally applicable requirements imposed by the Customer regarding such audit (these audit rights shall survive termination of the Software Agreement). For such purposes, BMT may require Customer to provide it, or any third party BMT engages to conduct such verification, with machine access, copies of system tools outputs, or other electronic or hard copy system information as appropriate; (g) if any of the audits referred to in clause 3.2(f) reveal that the Customer has underpaid Licence Charges to BMT, then without prejudice to any other right to which it may be entitled, the Customer shall pay to BMT an amount equal to such underpayment (as calculated by reference to the Licence Charges for any out of scope use, which shall be dictated by BMT, in its reasonable discretion) within five (5) Business Days of the date of the relevant audit, as well as any costs incurred by BMT in undertaking such audit and enforcing its rights hereunder; and (h) if any of the audits referred to in clause 3.2(f) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to BMT's other rights, the Customer shall promptly disable such passwords and BMT shall not issue any new passwords to any such individual.

- 3.3 The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Software that: (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes unlawful violence; (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or (f) causes damage or injury to any person or property.
- 3.4 The Customer shall not: (a) other than to the extent its rights to do so cannot be excluded under UK law, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or its documentation (as applicable) in any form or media or by any means; nor attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or (b) access all or any part of the Software in order to build a product or service which competes with the Software; or (c) use the Software to provide services to third parties; or (d) subject to clause 14.7, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any person except the Authorised Users; or (e) attempt to obtain, or assist any person in obtaining, access to the Software, other than as provided under the Software Agreement; or (f) interfere with or disrupt the integrity or performance of the Software or third party data contained therein; or (g) attempt to gain unauthorised access to the Software or their related systems or networks, including with a view to making alterations to, or modifications of, the whole or any part of the Software, or permitting the Software or any part of it to be combined with, or become incorporated in, any other programs; or (h) attempt to correct errors, defects and other operating anomalies of the Software.
- 3.5 The Customer shall use best endeavours to prevent any unauthorised access to, or use of, the Software and/or its documentation and, in the event of any such unauthorised access or use, promptly notify BMT.
- 3.6 The rights provided under this clause 3 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.
- 3.7 The Customer acknowledges that it has no right to have access to the Software in source code form or in unlocked coding or with comments.
- 3.8 BMT may, from time to time at its discretion, generally upgrade and improve the Software as it sees fit and the Customer acknowledges that such upgrades and improvements may affect its use of the Software if BMT releases such upgrades or improvements to the Customer for installation. Otherwise, BMT shall have no obligation to provide any upgrades or enhancements to the Customer, save as expressly outlined in this Software Agreement. Any specific upgrades requested by the Customer, which are technically feasible and agreed by BMT, may be separately chargeable.

#### 4. SERVICES AND SUPPORT

- 4.1 BMT shall, during the Licence Term provide the Support to the Customer on and subject to the terms of the Software Agreement.
- 4.2 BMT may appoint a suitably qualified sub-contractor to provide Support on its behalf. The Customer will continue to be liable to pay BMT any charges, and shall not be liable directly for any of the fees of the sub-contractor, with the exception of any expenses reasonably incurred by the sub-contractor for any on-site Support the Customer may request and the parties may agree. Where on-Site Support is required generally then any expenses incurred by BMT or its employees directly shall be additionally chargeable.
- 4.3 BMT may need access to the Customer's property, information, tools and resources for, and during the course of, provision of Support. If requested

by BMT, the Customer will provide free and unfettered access to these. The Customer hereby warrants and acknowledges that it is entitled to grant all such access, and provide any such information, tools or resources as may be sought pursuant to this clause.

- 4.4 The Customer acknowledges that, in giving any opinion or advice in the course of provision of the Support, BMT may rely on the information about the Customer and the Site the subject of the Software solution provided by BMT to the Customer, and will not seek to establish the reliability of such information. Accordingly, the Customer: (i) undertakes to provide complete and accurate information about itself and about anything which is or may be relevant to the Support and to provide such other information as BMT may reasonably request; and, (ii) warrants and represents that any such information provided is accurate, complete and not misleading.
- 4.5 The Customer acknowledges that it will retain responsibility at all times for compliance with all relevant laws, protocols and regulations with respect to the Site and responsibility for all costs of such compliance.
- 4.6 BMT will provide the Customer with the Support during the Licence Term in accordance with BMT's support policy in effect at the time that the Support is provided, subject to payment of the Support Fee.
5. **BMT'S OBLIGATIONS**
- 5.1 BMT undertakes that the Support will be provided with reasonable skill and care, and that the Software shall materially conform to any written specification issued by BMT regarding the Software, when used in its operating environment, for a period of 90 (ninety) days from the Commencement Date.
- 5.2 The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by (a) use of the Software or Services contrary to BMT's instructions or otherwise than as permitted by the Software Agreement, (b) modification or alteration of the Software by any party other than BMT or BMT's duly authorised contractors or agents, without BMT's written consent; (c) use of the Software in an application, or with any software, hardware or materials for which it was not intended; (d) the Software or Support are used otherwise than as permitted by the Software Agreement; (e) issues with the Customer Equipment; (f) interaction of the Software with other software programmes or plugins maintained by the Customer; or (g) acts or omissions otherwise attributable to the Customer and/or outside BMT's reasonable control. If the Support or Software do not conform to the undertaking in clause 5.1, BMT will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of such undertaking. Notwithstanding the foregoing, BMT does not warrant that the Customer's use of the Support and Software will be uninterrupted or error-free.
- 5.3 The Software Agreement shall not prevent BMT from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Software Agreement.
- 5.4 BMT warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Software Agreement.
- 5.5 Timing for performance of BMT's obligations under the Software Agreement shall not be of the essence.
- 5.6 Any warranties and Support commitments provided by BMT under the Software Agreement are not applicable to third party software components.

#### 6. CUSTOMER'S OBLIGATIONS

The Customer shall: (a) at its cost, provide BMT with all necessary co-operation in relation to the Software Agreement, and all necessary data and access to information as may be required by BMT, its agents or contractors, in order to provide the Support and Support, including but not limited to applicable specifications, data management decisions, approvals, security access information and configuration services; (b) comply with all applicable laws and regulations with respect to its activities under the Software Agreement; (c) carry out all other Customer responsibilities set out in the Software Agreement in a timely and efficient manner (in the event of any delays, BMT may adjust any agreed timetable or delivery schedule as reasonably necessary); (d) ensure that the Authorised Users use the Software in accordance with the terms and conditions of the Software Agreement and shall be responsible for any breach of the Software Agreement by either; (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for BMT, its contractors and agents to perform their obligations under the Software Agreement vis-à-vis the Customer; (f) ensure that its network and systems comply with the relevant specifications provided by BMT from time to time; (g) be solely responsible for procuring and maintaining its network connections and telecommunications links, and maintaining appropriate Customer Equipment; (h) provide a single main point of contact who can address questions or issues relating to the Software, provide timely feedback and review any changes to the Software; and (i) be solely



responsible at its own cost for generating Customer Data, content and data required to utilise the Software. In the event that the Customer requires any assistance from BMT in this regard, BMT may provide such assistance as it deems appropriate at its then prevailing charges.

**7. THIRD PARTY AND OPEN SOURCE SOFTWARE**

**7.1** BMT's Software utilises third party and open source software components which are subject to third party and open source licence terms. Accordingly the following terms and conditions shall apply to the Customer's use of BMT's Software and Support in addition to the provisions set out elsewhere in the Software Agreement, as well as any other relevant third party licence terms which may apply from time to time: [www.bmt-ni.com/terms-and-conditions](http://www.bmt-ni.com/terms-and-conditions) - General T&Cs Cleverbridge.

**8. CHARGES AND PAYMENT**

- 8.1** The Customer shall pay the Licence Charges and any Support Fee (and any other charges specified under the Software Agreement or agreed in respect of the Software or Support) to BMT in accordance with the Payment Terms.
- 8.2** If BMT has not received payment of any amount due and owing under the Software Agreement within ten (10) days after the due date, and without prejudice to any other rights and remedies of BMT: (a) BMT may, without liability to the Customer, disable the Customer's and any Authorised Users' passwords, accounts or access to all or part of the Software and BMT shall be under no obligation to provide any or all of the Support while the invoice(s) concerned remain unpaid; and (b) interest shall accrue on such due amounts at an annual rate equal to 4% (four per cent) over the then current base lending rate of HSBC plc at the date the relevant invoice was issued, compounded monthly, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.3** All amounts and fees stated or referred to in the Software Agreement: (a) shall be payable in pounds sterling (unless another currency is denominated in the Quotation); (b) are non-cancellable and non-refundable; (c) are exclusive of value added tax, which shall be added to BMT's invoice(s) at the appropriate rate.
- 8.4** If, at any time whilst using the Software, the Customer exceeds the Licence Restrictions, BMT shall charge the Customer, and the Customer shall pay, BMT's then prevailing charges for such excessive use.
- 8.5** The Licence Charges shall be automatically increased by no more than 3% (three per cent) from the previous price at the start of each Renewal Period and shall be deemed to have been amended accordingly.

**9. PROPRIETARY RIGHTS**

- 9.1** The Customer acknowledges and agrees that BMT and/or its licensors own all intellectual property rights in, or arising from, the Support, Software and their documentation. Except as expressly stated herein, the Software Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Support, Software and their documentation. This shall be without prejudice to the Customer's ownership of any background intellectual property rights owned by it separately from the Software Agreement and/or pre-dating the Software Agreement.
- 9.2** BMT uses a deployed solution to licence its Software, and shall not gain any access to Customer Data or intellectual property rights pursuant to the Software Agreement. Any connection established between the Customer's systems and BMT's or its contractor's systems shall be established solely for the purposes of validating Software licence keys.
- 9.3** Both parties will comply with all applicable requirements of the Data Protection Legislation, but acknowledge that it is neither party's intention that it shall process Personal Data on behalf of the other pursuant to any Software Agreement. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

**10. CONFIDENTIALITY**

Each party shall maintain the confidentiality of the other party's Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information (or permit any third party to do so) other than as strictly necessary for the performance of its rights and obligations under the Software Agreement. Further, Customer agrees specifically not to use or access BMT's Confidential Information to develop any software platform which competes with or performs substantially similar functions to the Software. The provisions of this clause shall not apply to any information which: (a) is or comes into the public domain without breach of the Software Agreement; or (b) was in the possession of the receiving party prior to receipt from the disclosing party without an obligation of confidence; or (c) was obtained from a third party free to divulge such information; or (d) is required to be disclosed by law or by any legal, regulatory or administrative body.

**11. INDEMNITY**

**11.1** The Customer shall defend, indemnify and hold harmless BMT against claims, actions, proceedings, losses, damages, expenses and costs

(including without limitation court costs and reasonable legal fees) arising out of or in connection with its and/or the Authorised Users' use of the Support and Software including, without limitation, for any liability, damages, costs or claims incurred by BMT due to the Customer's use of the Support or Software for any purpose outside of the Purpose or any claim relating to Customer Data, including, without limitation, any claim brought by a third party alleging that Customer Data, or the Customer's use of the Support or Software in breach of the Software Agreement infringes or misappropriates the intellectual property rights of a third party or violates applicable law, save to the extent directly attributable to BMT's breach of the Software Agreement.

- 11.2** BMT shall, subject to clause 11.5 and the limitations in clause 12, defend the Customer against any claim that the Software infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that: (a) BMT is given prompt notice of any such claim; (b) the Customer provides reasonable co-operation to BMT in the defence and settlement of such claim, at BMT's expense; and (c) BMT is given sole authority to defend or settle the claim.
  - 11.3** In the defence or settlement of any claim, BMT may procure the right for the Customer to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Software Agreement without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
  - 11.4** In no event shall BMT, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (a) a modification of the Software by anyone other than BMT; or (b) the Customer's use of the Software in a manner contrary to the instructions given to the Customer by BMT; or (c) the Customer's use of the Software after notice of the alleged or actual infringement from BMT or any appropriate authority.
  - 11.5** The foregoing states the Customer's sole and exclusive rights and remedies, and BMT's (including BMT's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 12. LIMITATION OF LIABILITY**
- 12.1** This clause 12 sets out the entire financial liability of BMT (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of: (a) any breach of the Software Agreement (including without limitation, any claim under clause 11.2); (b) any use made by the Customer of the Software or Support or any part of them; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Software Agreement.
  - 12.2** Except as expressly and specifically provided in the Software Agreement: (a) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Software Agreement; (b) the Support and the Software are provided to the Customer on an "as is" basis; and (c) the Customer assumes sole responsibility for the use of the Support, Software and their associated documentation by it and its Authorised Users, and for conclusions drawn from such use. BMT shall have no liability for any damage caused by errors or omissions in any information, instructions or data provided to BMT by the Customer in connection with the Software or Support, or any actions taken by BMT at the Customer's direction.
  - 12.3** Nothing in the Software Agreement excludes BMT's liability: (a) for death or personal injury caused by BMT's negligence; or (b) for fraud or fraudulent misrepresentation; or (c) any other liability which cannot strictly be excluded or limited by relevant law.
  - 12.4** Subject to clauses 12.2 and 12.3: (a) BMT shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Software Agreement; and (b) BMT's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Software Agreement shall be limited to the total Licence Charges paid during the 12 months immediately preceding the date on which the claim arose.
  - 12.5** The Customer acknowledges and accepts that the Software and Support have not been developed or programmed specifically to meet its requirements, and that it is therefore its sole responsibility to ensure that the facilities and functions of the Software and Support meet such requirements. In particular, it acknowledges that the Software simply uses the strain offered by Abaqus and provides the stress response within the approximations of the mathematical representation of the material in its computer readable algorithm form and the approximations associated with



the material characteristics curve fitting and that results cannot be guaranteed. BMT does not guarantee that the Software will enable Customer to attain the objectives Customer has set for itself. In all instances, Customer shall be solely responsible for ensuring that the results produced by Software comply with quality and safety requirements of Customer's products or services.

### 13. TERM AND TERMINATION

- 13.1** The Software Agreement shall commence on the Commencement Date, or the date the Quotation is signed by both parties, whichever is earlier, and shall (unless terminated earlier in accordance with these terms) continue in full force and effect until the end of the Licence Term.
- 13.2** Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Software Agreement without liability to the other if: (a) the other party commits a material breach of any of the terms of the Software Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach; (b) an order is made or a resolution is passed for the winding up of the other party or if an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or if such an administrator is appointed or if documents are filed with the court for the appointment of an administrator or if notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying charge holder, or if a receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitle the court or a creditor to appoint a receiver or manager or which entitle the court to make a winding-up order or if the other party takes or suffers any similar or analogous action in consequence of debt; (c) the other party ceases, or threatens to cease, to trade; or (d) any separate Agreement between the parties is validly terminated due to the other party's breach of that Agreement.
- 13.3** The Licence Term shall automatically renew over each Renewal Period unless and until either party gives notice to the other in writing (including by email) that it does not wish the Software Agreement to continue beyond the then current Renewal Period, such notice to expire no later than 4 weeks prior to the end of the then current Renewal Period.
- 13.4** On expiry or termination of the Software Agreement for any reason: (a) all licences granted under the Software Agreement shall immediately terminate, even if the Initial License Term or License Term is defined as "perpetual" in, or if no expiration date is specified in, the Quotation; (b) each party shall return and make no further use of any Confidential Information belonging to the other party; and (c) the accrued rights of the parties as at expiry or termination, or the continuation after expiry or termination of any provision expressly stated to survive (including, without limitation, clauses 1, 3.2(f) and (g), 9, 10, 11.1, 12, 13.4 and 14) or implicitly surviving termination, shall not be affected or prejudiced; and (d) BMT may destroy or otherwise dispose of any of the Customer Data in its possession.

### 14. GENERAL

- 14.1** BMT shall have no liability to the Customer under the Software Agreement if it is prevented from or delayed in performing its obligations under the Software Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of BMT or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.
- 14.2** BMT may deploy measures to restrict unauthorised use of its Software. In this context, the Software may include a security mechanism that can detect the installation or use of illegal copies of it, and that is able to collect and transmit data about illegal copies only. Data collected will not include any data created by Customer with the Software. By using the Software, Customer consents to such detection and collection of data, as well as its transmission and use if an illegal copy is detected. BMT also reserves the right to use a hardware lock device, licence administration software, and/or a license authorization key to control access to, and use of, any BMT Software. Customer may not take any steps to tamper with, circumvent or disable any such measures. Use of the Software without any hardware lock device, license administration software and/or license authorization key provided by BMT is prohibited.
- 14.3** A waiver of any right under the Software Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 14.4** Unless specifically provided otherwise, rights arising under the Software Agreement are cumulative and do not exclude rights provided by law.
- 14.5** If any provision (or part of a provision) of the Software Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever

modification is necessary to give effect to the commercial intention of the parties.

- 14.6** The Software Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. For the avoidance of doubt, the Software Agreement shall apply to the exclusion of any terms introduced by the Customer, through custom, dealing or otherwise. This is without prejudice to any other Agreement between the parties, for the supply or purchase of other goods and services other than the Software and the Support.
- 14.7** The Customer shall not, without the prior written consent of BMT (such consent not to be unreasonably withheld), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Software Agreement. BMT shall be free to assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Software Agreement without the consent of the Customer, but providing notice of any assignment or transfer.
- 14.8** Nothing in the Software Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 14.9** Notwithstanding any other provisions of the Software Agreement, nothing in the Software Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.
- 14.10** Any notice required or permitted to be given under the Software Agreement shall be in writing and shall be delivered or transmitted to the intended recipient's address as specified in the Software Agreement or such other address as either party may notify in writing to the other from time to time for this purpose. It may also, in the case of notice by BMT only, be generally posted on BMT's website portal, or notified by way of email to the email address BMT has on account for a given Customer. Any notice shall be treated as having been served on delivery if delivered by hand or 4 Business Days after posting if sent by pre-paid first-class post. In the case of notice served by posting on the website or by email, the notice shall be deemed given at the time such upload goes live onto the website and at the time of transmission of the email (respectively).
- 14.11** The construction, validity and performance of the Software Agreement shall be governed by the laws of Northern Ireland, and the parties submit any dispute regarding the construction, validity and performance of the Software Agreement, or its subject matter, to the exclusive jurisdiction of the courts of Northern Ireland.
- 14.12** The Quotation may be executed in any number of counterparts, each of which will be considered an original, but all of which together will constitute the same agreement. The exchange of a fully executed Quotation (in counterparts or otherwise) by electronic transmission shall be sufficient to bind the parties to the terms and conditions of the Software Agreement.
- 14.13** Unless otherwise stated in these Software Terms, no amendment or variation of the Software Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives). The above notwithstanding, BMT may, acting in its sole discretion, amend these Software Terms from time to time. Every time BMT enters into a new Quotation with any Customer, the terms applying to the Software Agreement between the Parties shall be as outlined in the relevant version of these Software Terms in force at the time of the signing of the relevant Quotation.