

End User Licence and Provision of Internet Services Agreement

Part A- End User Licence

1. PARTIES AND DEFINITIONS

Parties:

“BMT SMART” means BMT SMART Limited, a company limited by shares and organised under the laws of England under company number 8635046 and having its registered office at Goodrich House, 1 Waldegrave Road, Teddington, England, TW11 8LZ.

“Client” means the client identified in the proposal of BMT SMART

The Client has:

- evaluated BMT SMART ^{SERVICES} under the Evaluation Licence; and/or
- received the proposal of BMT SMART referenced and dated as above;
- by virtue of accepting the said Proposal has decided to proceed with the purchase of an End User Licence; and/or
- by virtue of accepting the said Proposal has decided to avail itself of internet services under the Terms and Conditions for the provision of Internet Services as set out in Part B – Provision of Internet Services
- by virtue of accepting the said Proposal has agreed that the terms and conditions herein apply.

Definitions:

The following words and expressions have the meanings given to them below:

“Agreement” means the terms and conditions in this End User Licence and Provision of Internet Services Agreement together with the terms and conditions, details and information in the Proposal

“BMT SMART ^{SERVICES}” means BMT SMART’s proprietary applications software which is to be licenced to the Client hereunder together with access for the Client to web-based services of BMT SMART.

“Confidential Information” for the purposes of Clause 10 hereof means Confidential Information means information which is not in the public domain provided by BMT SMART to the Client relating to BMT SMART ^{SERVICES} including, but not limited to the intellectual property rights of BMT SMART ^{SERVICES}, data accessed or downloaded by the Client through the use of BMT SMART ^{SERVICES}, any know-how, client or supplier lists, or any details of any contractual arrangements and business, or financial matters of BMT SMART which have been disclosed to the Client which are not in the public domain.

“Default Circumstances” shall have the meaning described in Clause 5.4

“Documents” means the Hardware Documentation together with the Software Documentation.

“Hardware” shall mean BMT SMART’s hardware specified in the Proposal;

“Hardware Documentation” shall mean BMT SMART’s documentation specified in the Proposal;

“Installation Services” means those installation services in respect of the installation of Hardware which are described in the Proposal;

“Intellectual Property Rights” means all patent rights, copyright, registered design rights, unregistered design rights, trade marks or other industrial or intellectual property owned or used by a Party together with any current applications for any registerable items of the foregoing and all other intellectual property rights whatsoever;

“Internet” shall mean a world-wide entity of linked computers, computer Networks, databases and infra-structural telecommunications facilities;



“Internet Service or Internet Services” shall mean the electronic service consisting of the provision of data by BMT SMART of data collected and processed by BMT SMART and/or recorded on board of any vessel on which BMT SMART^{SERVICES} is installed by means of the onboard vessel data acquisition software and hardware, and the internet;

“Licence” has the meaning described in Clauses 2 and 4 hereof;

“Licence Fee” or “Subscription fee” shall mean the amount, as set out in the Proposal, which the Client has to pay BMT SMART in respect of the use of the BMT SMART^{SERVICES};

“person” shall include both companies and unincorporated associations;

“Party” individually means BMT SMART Limited or the Client and “Parties” means both of them collectively and shall be construed accordingly;

“Price” and “Payment Terms” whether referred to individually or together shall mean the details of the Price and Payment Terms as specified in the Proposal;

“Proposal” means the existing Proposal signed by the client for the provision of SMART^{SERVICES};

“Provision of Internet Services” shall mean the General Terms and Conditions for the provision of Internal Services as set out herein.

“Software” shall mean BMT SMART's software specified in the Proposal;

“Software Documentation” shall mean the Software Documentation specified in the Proposal;

“Support and Maintenance Agreement” shall mean the Support and Maintenance Agreement referenced in the Proposal;

“System” shall mean the Software specified in the Proposal together with the Hardware specified in the Proposal;

“Use” as used herein means using BMT SMART^{SERVICES} to display ship related performance data and information;

“User Manual” shall mean the technical communication document provided by BMT SMART which is intended to give assistance to the Client and its employees when using the BMT SMART^{SERVICES};

“Vessel” or “Vessels” shall mean that ship or those ships as specified in the Proposal.

2. GRANT OF END USER LICENCE.

BMT SMART grants to the Client on these Terms and Conditions a non-transferable, non-exclusive Licence to use BMT SMART^{SERVICES}.

BMT SMART and/or its suppliers specifically retain all rights, title and interest (including all intellectual property rights) in BMT SMART^{SERVICES} including any additions or modifications or reproductions or duplications of the Software and in any Documents or information relating thereto.

This Agreement supersedes any Evaluation Licence Agreement between the parties which, if the same has not already lapsed, is deemed cancelled.

The Client may use the Software only for processing its own data and for its own business purposes.

The Client acknowledges that the licence in respect of the Software is limited to use in relation to the particular Vessel for which the software is configured. BMT SMART can accept no liability resulting from use of the Software in relation to another vessel.



The Client is permitted to make copies of the Software as reasonably necessary for security back-up purposes only. All copyright and other proprietary notices contained on the original must be reproduced on all copies.

Except as expressly provided herein the Client is not permitted to copy, modify, decompile, or create derivative works from the Software (or the Documents).as supplied for any purpose whatsoever.

The Client undertakes not to translate or modify, decompile or reverse engineer the Software or any part of it. If the Client wishes to facilitate interoperability between the Software and any other computer program, it shall notify BMT SMART. Provided that the Client agrees to such provisions as BMT SMART reasonably requires to protect its legitimate interests BMT SMART shall make available to the Client such information as reasonably required to assist the Client in achieving such interoperability.

3. PERIOD OF LICENCE.

Subject always to clause 5 (Termination clause) hereof, this Agreement shall be for the period specified in the Proposal. Upon expiry of the period specified in the Proposal then any new licence shall be subject to the agreement in writing of a new proposal by both parties.

4. LICENCE.

4.1. The Licence hereby granted under this Agreement permits Client to use BMT SMART^{SERVICES}. Neither this Agreement nor any of the licences, access credentials, documentation or materials, nor any other media or web application upon which BMT SMART^{SERVICES} may be accessed, sub-Licensed or otherwise transferred by Client. No right to print or copy in whole or in part BMT SMART^{SERVICES} or any data or display arising therefrom is granted except as expressly provided under this Agreement. This Licence is personal to Client and Client is expressly prohibited from lending, hiring, renting, selling or otherwise transferring BMT SMART^{SERVICES} or its documentation or an access credentials or any data arising from the use of BMT SMART^{SERVICES} to any third party. Client may not assign, sub-licence, pledge or transfer this Agreement or any of its rights or obligations under this Agreement.

4.2. BMT SMART^{SERVICES} is under constant review and development. BMT SMART reserves the right to make substitutions and modifications in the design and specifications of the Software, provided that such substitutions or modifications do not materially or adversely affect the performance of the Software or the way in which it operates. The Client undertakes to accept and use, when offered at no cost, the latest release of the version of the Software. BMT SMART hereby excludes all liability whatsoever for any loss or damage arising as a result of any failure by the Client to cease to use any previous release promptly following delivery of a new release of the Software.

4.3. If during the course of this Agreement new releases of the Software are provided to the Client the conditions of this Agreement shall continue to be binding on the Client in respect of both the original Software and any subsequent releases provided to the Client.

5. TERMINATION.

5.1. There are a number of circumstances in which termination or suspension by BMT SMART could occur. These circumstances are (i) breach by the Client in performing its contractual obligations (ii) the occurrence of Default Circumstances, and (iii) suspension of a Contract.

The Client shall have no right to terminate the End User Licence and Provision of Internet Services Agreement for its own convenience.

Clause 5.2 below shall apply to all cases of termination or suspension.

Clause 5.3.1 below shall apply if there is breach by the Client in performing its contractual obligations.

Clause 5.3.2 below shall apply if there are default circumstances.

Clause 5.4 defines what are meant by default circumstances.

5.2. Notice of termination or suspension

All notices must be given in writing.

Where the Client is in breach of performing its contractual obligations then a notice of rectification must be given by BMT SMART to the Client. If:

- (i) the breach is capable of remedy and is not rectified within a 30 day notice period or,
- (ii) not capable of remedy within the said 30 days and the Client has not shown within that 30 days that it is diligently proceeding to cure the defect (by taking active effective and continuing steps to do so and the defect is in fact cured within a reasonable period after the 30 days), or
- (iii) adequate compensation is not paid in lieu of the breach,

then termination will become immediately effective at the expiry of the said 30 day period.

In the event of Default Circumstances then a Contract may be terminated by immediate notice.

5.3. Costs and Compensation

The costs and compensation vary according to the circumstances above in the following manner:

5.3.1. Breach by Client

If this Agreement is terminated due to the Client being in breach then BMT SMART shall remain entitled (without any double counting) to payment by the Client for all irrevocably committed costs including the following costs :

- (a) the cost incurred by BMT SMART to the end of the notice period in developing or customising any Software, Materials, Goods, Mathematical Models, Systems and/or Report;
- (b) the full cost if any, incurred by BMT SMART of buying and/or hiring goods, plant, machinery or equipment specifically for the purposes of this Agreement;
- (c) the costs irrevocably committed by subcontractors of BMT SMART specifically for the purposes of this Agreement, including, in particular, any costs relating to the manufacture and supply of the Hardware even if this commitment extends beyond the expiry of the notice period;
- (d) the costs of all work properly completed and delivered to the Client;
- (e) the costs of any work completed by BMT SMART but not yet delivered;
- (f) the costs of Work In Progress including any preparatory work;
- (g) any other costs irrevocably committed by BMT SMART (e.g. travel and accommodation costs) for the purposes of this Agreement even if this commitment extends beyond the expiry of the notice period;
- (h) any fees/amounts due by the Client to BMT SMART not already paid;
- (i) a fair and reasonable profit of 10% of the contract price.

5.3.2. Default Circumstances

If this Agreement is terminated due to the occurrence of Default Circumstances (defined in sub-clause 5.4) then BMT SMART shall be entitled to recover as much of the costs specified in clause 5.3.1 as it is legally able to do.

5.4. Default Circumstances

For the purposes of this clause 5, the following are "Default Circumstances":

- (a) if the Defaulting Party (being a company) shall pass a resolution for winding-up (otherwise than for the purposes of a solvent amalgamation or reconstruction where the resulting entity is at least as credit-worthy as the Defaulting Party and assumes all of the obligations of the Defaulting Party under the Contract) or a court shall make an order to that effect; or

- (b) if the Defaulting Party (being a natural person) shall die, or (being a partnership or other unincorporated association) shall be dissolved; or
- (c) if the Defaulting Party shall cease to carry on its business or substantially the whole of its business; or
- (d) if the Defaulting Party becomes or is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or
- (e) if a liquidator, receiver, administrator, administrative receiver, manager, trustee, or similar officer is appointed over any of the assets of the Defaulting Party.

5.5. Return of the Software and information upon Termination

Upon the termination of this Agreement, the Software and all other material, information and documentation made available to the Client by BMT SMART under or in anticipation of this Agreement or under the Support and Maintenance Agreement and all copies and any other material held by the Client or its staff which relates to the Software shall be delivered to BMT SMART forthwith and the Client undertakes that it shall neither retain any copy of the Software, nor make further use thereof, nor recreate the Software from a backup or in any other way. This undertaking shall continue notwithstanding the termination of this Agreement.

6. DISCLAIMERS.

Except to the extent that any warranties, conditions, guarantees are enshrined in law and may not be excluded or limited by virtue of statute or other law, BMT SMART makes no warranties with respect to BMT SMART^{SERVICES} or the Documents, and BMT SMART^{SERVICES} and the Documents are provided "AS IS". **SUBJECT TO THE AFORESAID EXCEPTION, THIS DISCLAIMER OF WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES OF ANY KIND, EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.**

BMT SMART has no responsibility for decisions made as a result of the use of BMT SMART^{SERVICES} nor for decisions made as a result of the provision of internet services.

7. LIMITATION OF LIABILITY AND EXCLUSION OF CONSEQUENTIAL LOSS

7.1. Limitation of Liability

BMT SMART's total liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, arising by reason of or in connection with this Agreement shall be limited to the sum of £50,000, or the total of the sums paid under the Proposal, whichever is the greater, except insofar as BMT SMART's liability may not be so limited by virtue of statute or other law.

7.2. Exclusion of BMT SMART's Liability in respect of increased cost or expenses, loss of profit, business, contracts, goodwill, revenues, anticipated savings, special damage, indirect damage or consequential damage.

In no circumstances shall BMT SMART be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise, howsoever, and whatever the cause thereof;

7.2.1. for any increased cost or expenses of the Client ;

7.2.2. for any loss of profit, business, contracts, goodwill, revenues, or anticipated savings, or;

7.2.3. to the extent not already covered by this clause, for any losses, costs or liabilities of the Client relating to demurrage, port charges or dues or liquidated damages of the Client;

- 7.2.4. for any special indirect or consequential damage of any nature whatsoever (other than for direct physical damage to tangible property where BMT SMART's liability shall be limited to £50,000).

7.3. Exclusions in respect of replacement Hardware or parts thereof

In the event that BMT SMART, at the Client's request, shall supply replacement Hardware or replacement parts to the Hardware for installation by the Client or by any third party contracted to the Client, then such Hardware or replacement parts shall be subject to (i) any warnings, caveats, restrictions, limitations or conditions imposed or given by the manufacturer or supplier of such Hardware or replacement Hardware parts and (ii) the exclusions and limitations on BMT SMART's liability as stated in this clause 7 or elsewhere in this Agreement. In particular, and notwithstanding the foregoing, BMT SMART shall not be liable for any damage (including damage caused by fire) if any such Hardware or replacement Hardware parts are not sourced by BMT SMART nor for any incorrect installation or incorrect fitting of any replacement Hardware or Hardware parts by the Client or by any third party contracted to the Client nor for any Hardware or replacement Hardware parts which BMT SMART has not had the opportunity to inspect where such an inspection would have revealed or would have been likely to have revealed that the replacement parts were faulty.

7.4. Other exclusions

BMT SMART shall not be liable whether in contract, tort or otherwise to the extent that any defect or failure is due to:-

- 7.4.1. Accident, negligence, or misuse by any party other than BMT SMART;
- 7.4.2. Failure of or defect in BMT SMART^{SERVICES} arising from the interface between BMT SMART^{SERVICES} with hardware or software not provided by BMT SMART;
- 7.4.3. Physical or environmental conditions or electrical stress (including, for example, lightning) which damages the magnetic medium on which the software is stored or which cause BMT SMART^{SERVICES} to fail or run incorrectly;
- 7.4.4. Any party other than BMT SMART modifying or adjusting the Software;
- 7.4.5. The Client failing to abide by the provisions of this Agreement or by any instruction, conditions or guidance contained in the User Manual.

7.5. Proportionate Liability

The extent to which any loss or damage will be recovered from BMT SMART by the Client will also be limited so as to be in proportion to BMT SMART's contribution to the overall fault for such loss or damage, taking into account any contributory negligence by the Client, the Client's other consultants and/or other advisers and/or other suppliers and any other third parties responsible to the Client and/or liable in respect of such loss.

7.6. Sub-Clauses and constituent parts thereof to be separate limitations of liability

Each of the foregoing sub-clauses 7.1 to 7.5 (and their constituent parts thereof) shall be construed as a separate limitation (applying and surviving even if for any reason one or other of the said clauses or a constituent part thereof is held inapplicable or unreasonable in any circumstances) and shall remain in force notwithstanding expiry or termination of this Agreement.

8. BMT SMART INDEMNITY

Subject to Clause 7 (Limitation of Liability and exclusion of consequential loss) BMT SMART shall indemnify and hold harmless the Client against a proven liability, costs and damages arising as a result of the infringement of any Intellectual Property of any third party caused by use of the Software in accordance with this Agreement provided that such infringement is not attributable to material or information supplied by or on behalf of the Client and provided further that, if any claim of such infringement is made against the Client by the holder of such rights, the Client will promptly so inform BMT SMART in writing. The Client authorises BMT SMART solely to defend or settle such a claim (at BMT SMART's discretion) and undertakes to provide all reasonable assistance in connection therewith. BMT SMART shall be obliged to defend or settle such a claim at its own expense and to pay any damages

awarded to the holder of such rights or agreed to be paid to him by BMT SMART. In the event of any such claim, BMT SMART shall have the option to provide the Client with:

1. The right to continue using the Software, Support and Maintenance and Internet Service; or
2. A non-infringing replacement or modification thereof without material diminution in performance or function; or
3. A refund of the price paid to BMT SMART for the Software, Support and Maintenance and Internet Service.

9. CLIENT INDEMNITY

The Client shall indemnify and hold harmless BMT SMART against proven liability, costs and damages arising as a result of infringement of any Intellectual Property of any third party resulting from information or material supplied to BMT SMART by the Client in connection with this Agreement or used by the Client in connection with the Software. The Client shall indemnify and hold harmless BMT SMART against all losses, costs, expenses and liabilities arising from breach by the Client of the terms of this Agreement and in particular the licence provided under this Agreement and from any breach of its undertakings as to confidentiality under this Agreement.

In addition, and without prejudice to the generality of the provisions of this clause any indemnities given by the Client shall apply to any works and/or services described in the Proposal.

10. CONFIDENTIALITY AND RIGHTS OF BMT SMART TO DATA

The Client agrees to keep secret and confidential and not to disclose or divulge to any third party or to enable or cause any person to become aware of any Confidential Information relating to BMT SMART or to BMT SMART^{SERVICES} including but not limited to intellectual property (whether owned or licensed by BMT SMART) nor to use any Confidential Information except for any information which is in the public domain (otherwise than through the wrongful disclosure of the Client).

The Client agrees that any Confidential Information provided or disclosed by BMT SMART is confidential whether oral, written or embodied in other physical or electronic form except that information is not to be considered as confidential if the Client is able to demonstrate that:

- a) the Confidential Information was known to the Client prior to its receipt from BMT SMART;
- b) the Confidential Information is in the public domain prior to its receipt from BMT SMART otherwise than through the wrongful disclosure by the Client; or
- c) the Confidential Information has entered the public domain after the date of its receipt from BMT SMART other than by unauthorised disclosure by the Client or any other person.

The Client shall not disclose or divulge to any third party or enable or cause any person to become aware of any Confidential Information supplied by BMT SMART without the prior written approval of BMT SMART, save as required by law.

For the sake of clarification, the intellectual property rights in any data accessed or downloaded through the use of BMT SMART^{SERVICES} or through the Internet Service (as herein defined) shall be and remain the property of BMT SMART and the Client shall have no right to use such data except as set out herein or any right to disclose it to any other party.

11. COMPUTER MAINTENANCE, SECURITY AND VIRUS PROTECTION

It is the duty of the Client to ensure that all of the computers on which BMT SMART^{SERVICES} is installed are regularly and properly maintained with proper and adequate security and virus protection.

12. NOTICES

All notices, reports, requests, approvals and other communications required or permitted under this Agreement must be in writing. They will be deemed given as required if (i) delivered personally, (ii) sent by electronic mail (in the main body of such email and not as an attachment) with receipt confirmed, or (iii) sent by commercial overnight courier with written verification of receipt, or (iv) sent by confirmed facsimile

telephone transmission. Those communications which are sent by mail must be sent to the relevant party's registered office address set out in the Proposal or to such other address that the receiving party may subsequently have provided in writing.

13. GENERAL PROVISIONS

- 13.1. The waiver or forbearance or failure of BMT SMART in insisting in any one or more instances upon the performance of any provisions of this Agreement shall not be construed as a waiver or relinquishment of its rights to future performance of such provision and the Client's obligation in respect of such future performance shall continue in full force and effect.
- 13.2. If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.
- 13.3. BMT SMART shall not be responsible for any pre-contractual misrepresentations but:
- does not exclude or limit its liability insofar as such misrepresentations relate to fundamental matters
 - does not exclude or limit its liability (or remedy) in respect of any misrepresentation unless such exclusion or limitation satisfies the requirement of reasonableness
 - does not exclude or limit its liability for pre-contractual misrepresentations insofar as it would be unreasonable to exclude or limit its liability by virtue of statute or other law
- 13.4. If the ownership of the Vessel is transferred and the Software forms part of the physical transfer to the new Vessel owner, the Client shall use its best endeavours to bring the existence of this Agreement to the new Vessel owner and if all parties consent, BMT SMART will arrange for this Agreement including all rights and obligations to be novated to the new owner. BMT SMART shall be under no obligation to the new Vessel owner under this Agreement unless and until formal novation has taken place.
- 13.5. All Software, Proposal contents, know-how, technical information, inventions, bases, archives, technical processes, drawings, specifications, documents, user manuals as well as other materials, information and documentation that is not in the public domain and made available by one party to the other party constitute confidential information and trade secrets of BMT SMART or the Client. Each party shall ensure that none of the same is disclosed to any third party and shall take reasonable steps to ensure that none of its employees shall disclose or make the same available to any other person without the permission of the disclosing party. The provisions of this sub-clause shall continue notwithstanding the termination of this Agreement.

14. SOFTWARE SUPPORT AND MAINTENANCE

Software Support and Maintenance will be subject to the terms and conditions of a separate agreement.

15. GOVERNING LAW

This Agreement shall be governed by English law and subject to Clause 13 both parties irrevocably agree to submit to the exclusive jurisdiction of the English Courts. Nothing in this clause or in Clause 16 shall prevent either Party from enforcing in any country any award made by the Arbitrator or by the English courts.

16. ARBITRATION

Any question or disagreement which might arise concerning the construction, meaning or effect of this Agreement or concerning the rights and liabilities of the parties under this Agreement shall be referred to a single arbitrator appointed in London to be agreed between the parties. Failing such agreement within 30 days of a request by one Party to the other that the matter be referred to arbitration in accordance with this clause, such reference shall be to an arbitrator appointed by the President for the time being of the Royal Institution of Naval Architects. Unless it can be shown that the arbitrator has erred in law, the arbitrator's decision shall be final and binding on the parties. Any reference under this Clause shall be deemed to be a reference to arbitration within the meanings of the Arbitration Acts 1950-1996.

17. PRIVACY OF CONTRACT

This Agreement is intended to be a private contract between the Parties hereto and it is not intended to confer any rights of enforcement upon any third party (other than on a permitted assignee to whom the Agreement is actually assigned) even if any of the terms of the Agreement purports to confer any rights of enforcement upon such a third party.

18. CLAUSE HEADINGS

Clause headings have been inserted herein as an aid to interpretation. They cannot be a full explanation of the contents of the relevant clause nor shall any part of the clause be deemed to be inapplicable because of a clause heading nor shall the relevant clause be restricted or bounded by the relevant clause heading.

19. NO OTHER TERMS

The provisions of this Agreement apply to the exclusion of any and all terms of the Client contained in any purchase order or document submitted by the Client and BMT SMART hereby objects to all such terms. No modification, termination, extension, renewal, waiver of, or addition to this Agreement shall be binding upon BMT SMART unless specifically set forth in writing and signed by an authorised representative of BMT SMART.

The Client by his signature to the Proposal agrees that this Agreement, the Proposal and any other agreements contained in or referenced in the Proposal are the complete and exclusive statement of the agreement between the parties relating to the subject matter hereof and supersede all prior oral and written communications between the parties relating to the subject matter hereof. The Client acknowledges that he is not relying on any representation or warranty which is not expressly contained in this Agreement.

20. FORCE MAJEURE

Neither Party shall be liable to the other for any failure to perform or delay in performance of its obligations hereunder or otherwise caused by any circumstances beyond its reasonable control.

Part B-Provision of Internet Services

1. DEFINITIONS

The meaning of the definitions as set out in Part A above shall also apply to this Part B.

2. RIGHT OF USE

- 2.1. BMT SMART grants the Client the right to make use of the Internet service provided by BMT SMART, after payment of the Licence fee set out in the Proposal. BMT SMART shall inform the User of this in due time.
- 2.2. BMT SMART shall provide availability to the Internet Service and shall make every effort to offer optimum availability.
- 2.3. BMT SMART shall make every effort to keep the data, which shall be made available via the Internet Service, up to date in so far as this is reasonably possible.
- 2.4. The Client shall provide reliable hardware and software, peripheral equipment and connections for access to the Internet service.
- 2.5. BMT SMART is entitled to temporarily interrupt and/or restrict the availability of the Internet service in so far as this is reasonably necessary for essential maintenance work on the Internet service.
- 2.6. The Client permits BMT SMART to monitor their use of the system using Google Analytics or similar such tools. This information shall be used to enhance BMT SMART's understanding of how the client uses the system and how much time each user spends on each area of the system.
- 2.7. The right of use of the Internet service granted to the Client is not exclusive and is not transferable.

3. PRICE AND PAYMENT

The Client shall pay the Licence fee within the time indicated in the Proposal. Failure to pay the Licence fee on time will suspend the right of the Client to access the internet service until payment is made in full. If the client fails to pay the Annual Subscription fee within (60) days of the date of invoice BMT SMART may terminate the Internet service.

4. OBLIGATIONS ON THE PART OF THE CLIENT

- 4.1. When requested to do so by BMT SMART, the Client shall immediately supply BMT SMART with all of the information needed for the performance of the Agreement.
- 4.2. The Client shall in all respects act and behave in a manner that can be expected of a responsible and careful user.
- 4.3. The Client is not permitted to use software or otherwise undertake activities that could stop other users from gaining access to the Internet service or that could have a negative effect on the availability of the Internet service for other users.
- 4.4. The Client is not permitted to transfer the rights arising out of this Agreement to third parties, unless BMT SMART has given the Client explicit and written permission to do so.
- 4.5. Without first obtaining BMT SMART's explicit and written permission the Client is not permitted to:
 - publish or in some other way divulge the results obtained by means of the Internet service, which includes making the results available for inspection to third parties other than directly interested parties;
 - to use the results obtained by means of the Internet service to submit a claim or to start legal proceedings;
 - to use the results obtained by means of the Internet service for advertising purposes or similar applications, or
 - to sell the results obtained by means of the Internet service or to convert these into cash in some other way.
- 4.6. BMT SMART is entitled to restrict and/or stop the use of the Internet service if the Client does not fulfil any of his obligations towards BMT SMART or acts contrary to the this Agreement. BMT SMART.

5. SECURITY

The Client is obliged to carefully manage the security devices supplied within the framework of the performance of the Agreement and to, if necessary, take active steps to prevent and terminate unauthorised use of the security devices.

6. LIABILITY

- 6.1. The provisions below in clauses 6.2 to 6.4 apply to limit the liability of BMT SMART in addition to the limitation of liability and exclusion of consequential loss provisions in clause 7, Part A above, in respect of the provision of internet services.
- 6.2. BMT SMART shall not be liable for any damage that the Client suffers or for any anticipated savings that the Client does not realise which are attributable to internet connection problems , problems relating to the

telecommunication provider's telephone network, electrical power failures and/or any other circumstances beyond BMT SMART's control and/or that BMT SMART could not reasonably have been expected to have foreseen.

6.3. The Client shall report the damage as referred to in Clause 6.2 above to BMT SMART in writing as soon as possible and no later than 30 (thirty) days after the damage occurred so that BMT SMART may address any problems which have occurred with the external providers with a view to minimising subsequent problems. The Client is liable for the damage that BMT SMART suffers as a result of the improper and/or unauthorised use of the Internet service.

6.4. BMT SMART accepts no liability whether in contract, tort or otherwise for any losses, damages, claims or liabilities arising from:

- accident, negligence, or misuse by any Party other than BMT SMART; and/or
- the abnormal use, misuse or neglect of any materials or goods used in connection with the provision of the internet services; and/or
- physical or environmental conditions or electrical stress or other problems (such as problems relating to the telecommunication provider's telephone network, electric power failures or lightning or any other circumstances beyond BMT SMART's control and/or that BMT SMART could not reasonably be expected to have foreseen. which causes the provision of internet services to fail, to fail to connect, or to run incorrectly; and/or
- the Client failing to abide by the provisions of the this Agreement