GENESIS SOFTWARE USER LICENSE

This Agreement is entered into between _____ ("LICENSEE"; an individual or entity) and the High Performance Computing Modernization Program ("LICENSOR"), a United States Federal Government Laboratory of the Department of Defense, having a place of business located at 3909 Halls Ferry Road, Vicksburg, MS 39180-6199.   LICENSOR and LICENSEE may be referred to herein individually as a "Party" or collectively as the "Parties."

LICENSOR has developed and distributes to LICENSEE, its HPCMP CREATE^{TM} – Genesis software program(s). In consideration of the LICENSOR releasing the Genesis software products to LICENSEE and granting LICENSEE the rights set forth below, LICENSEE acknowledges and agrees to the following:

1. LICENSE RIGHTS.

1.1   Permission is hereby granted to LICENSEE a non-exclusive, world-wide, non-transferrable, limited term license in and to the following software and software documentation (**collectively referred to as, "Licensed Software"**):
   (1) Executable versions of Capstone SDK, Genesis-CFD, and Genesis-DESIGN,
   (2) Associated support documentation such as users guides and tutorials, and
   (3) For Genesis-DESIGN only, source code will also be provided.

LICENSEE agrees to use the Licensed Software solely for the limited purpose (**collectively referred to as, "Purpose"**) of:
   (i)   Using and reproducing the Licensed Software for internal use;
   (ii) Building plug-ins for Genesis-CFD, building pre-engineered parts and/or associated models for Genesis-DESIGN and building applications on top of Capstone SDK, provided that LICENSEE acknowledges use of "HPCMP CREATE^{TM} Genesis" in any plug-ins, pre-engineered parts, or other derivative works; and
   (iii) Using the Licensed Software for educational, research, government, or evaluation purposes only, wherein the specific "Use Case(s)" shall be stated in Article 6 below.

LICENSEE shall identify all user groups and number of users from LICENSEE's organization who are granted access to the Licensed Software. LICENSEE shall provide and periodically update the number of LICENSEE students/employees required in Article 6.2. LICENSEE is prohibited from sharing or distributing the Licensed Software to anyone NOT identified in the user(s) section of Article 6.

LICENSEE is prohibited from selling or redistributing the Licensed Software to anyone outside of LICENSEE's organization. LICENSOR may change the terms and conditions of this Agreement as required by Government interests. LICENSEE may only use and disclose the Licensed Software as provided in this Agreement and no other rights to the Licensed Software are provided herein.

1.2   RELATED WORKS. LICENSEE hereby grants LICENSOR a non-exclusive, world-wide, royalty free, irrevocable license in and to any changes, transformations, modifications, adaptations, or derivations made using the Licensed Software, as permitted by this Agreement, to use, modify, reproduce, release, perform, display or disclose such works for Unlimited Rights as defined in DFARS Section 252.227-7013(a)(16) and 252.227-7014(a)(16).

1.2.1   LICENSEE shall, in good faith and in a reasonable manner, notify LICENSOR of all changes, transformations, modifications, adaptations, or derivations made using the Licensed Software.

1.2.2   As part of Related Works, LICENSEE is invited to submit Genesis-DESIGN pre-engineered parts, or code modifications back to LICENSOR. Prior to submission, the LICENSEE shall test modified code and/or pre-engineered parts against automated tests that accompany Genesis-DESIGN source code.

1.2.3   As part of Related Works, LICENSEE is invited to submit any Genesis-CFD or Capstone SDK plug-ins or associated applications back to LICENSOR, with a description and unit, integration, systems test data/results.

1.2.4   Modifications, parts, and associated tests can be submitted to the LICENSOR for potential

integration into the LICENSOR maintained Licensed Software.

1.3 **TRANSFERS**. Other than as permitted by this Agreement, LICENSEE shall not transfer, distribute or share the Licensed Software, or any portion or derivative thereof, or recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation) related thereto, to any third party without the prior written consent of LICENSOR. LICENSEE shall use the Licensed Software in compliance with all applicable laws, rules and regulations relating to the handling and use of such Licensed Software.

1.4 **OTHER USES.** LICENSEE shall only use the Licensed Software as permitted by this Agreement and for the limited Purpose stated in Article 1. If LICENSEE desires to use the Licensed Software for purposes other than the Purpose stated in Article 1, LICENSEE agrees, before beginning any such use, to negotiate a separate agreement, specific for that purpose or use, in good faith with LICENSOR. It is understood by LICENSEE that LICENSOR shall have no obligation to enter into any separate agreement with LICENSEE, and may grant exclusive or non-exclusive licenses to others as provided by law.

1.5 **DISCLAIMER.** ALL MATERIAL IS PRO-VIDED **"AS IS"** AND WITHOUT ANY REPRE-SENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MER-CHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSE, ANY WARRANTIES OF ACCURACY OR COMPLETENESS, OR ANY WARRANTIES THAT THE USE OF THE MATE-RIAL WILL NOT INFRINGE OR VIOLATE ANY PATENT OR OTHER PROPRIETARY RIGHTS OF ANY THIRD PARTY (WHETHER DIRECTLY OR INDIRECTLY). LICENSOR WILL NOT PROVIDE ANY SUPPORT OR MAINTENANCE FOR ANY OF THE SOFTWARE OR MATERIALS PROVIDED.

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making sure that their use of Licensed Software and any software therefrom is consistent with the terms of these TPLs. In instances where the terms of the TPLs do not allow the LICENSEE'S intended use, it is the LICENSEE's responsibility to acquire the required permissions from the respective license holder.

2. OWNERSHIP, RECORDS, INTELLECTUAL PROPERTY.
2.1 LICENSEE acknowledges that the Licensed Software transferred to it under this Agreement by LICENSOR is the sole property of LICENSOR.

2.2 LICENSEE shall provide prominent notice on or accompanying any publications (permitted as provided herein) involving the Licensed Software that the Licensed Software was developed in part or in whole by LICENSOR.

For all software products made or distributed by LICENSEE that include, are derived from, or are based on any portion of the Licensed Software, LICENSEE shall prominently display the following legend on all packaging and download screens:

THIS PRODUCT WAS DEVELOPED FROM SOFTWARE PROVIDED TO **[LICENSEE]** BY **[LICENSOR]**. **[LICENSOR]** RETAINS OWNERSHIP OF ALL SOFTWARE IT HAS DEVELOPED. LICENSOR DOES NOT ENDORSE THIS OR ANY OTHER COMMERCIAL PRODUCTS, AND ASSUMES NO LIABILITY FOR THIS OR ANY OTHER COMMERCIAL PRODUCTS.

2.3 LICENSEE acknowledges that the provisions of 35 U.S.C. §§ 200-212 (which establish rights of the United States in inventions made in the performance of work funded, in whole or in part, by the United States Government) and 37 C.F.R. §501.6(a)(1) (which establishes rights of the United States in inventions made by Government Employees) apply to the use of the Licensed Software by LICENSEE for the Purpose described herein. To the extent the LICENSEE asserts it is entitled to rights in inventions made using the Licensed Software, it shall notify LICENSOR in writing. LICENSEE hereby grants LICENSOR a non-exclusive, non-transferrable, fully paid up perpetual license in and to any inventions made using the Licensed Software.

2.4 This material is distributed in accordance with DoD Instruction 5230.24. LICENSEE agrees to abide by all notices, and distribution and license markings.

2.5 Except as expressly provided herein, nothing in this Agreement shall by implication, estoppel or otherwise, create in the LICENSEE any right, title, interest, or license in or to the inventions, patents, copyrights, technical data, or other intellectual property of LICENSOR.

3. TERM & TERMINATION.

3.1 The term of this Agreement shall commence on the date of last signature below ("Effective Date"), and shall automatically terminate upon ONE YEAR from the Effective Date. However, LICENSOR may unilaterally terminate this Agreement at any time. Upon termination of this Agreement, LICENSEE may either sign a new Agreement or discontinue use of the Licensed Software.

3.2 This Agreement shall be subject to termination at the election of LICENSOR, by written notice to LICENSEE, where there has been a default in the due observance or performance of any material covenant, condition or agreement herein by LICENSEE, and such default has continued for a period of thirty (30) days after written notice specifying the same shall have been given to LICENSEE. Notwithstanding the termination or expiration of this Agreement, all obligations incurred by LICENSEE with respect to protection, use, disclosure and return or destruction of the Licensed Software shall survive and remain in effect in perpetuity from the date the Licensed Software was received.

3.3 Use of archived copies of the Licensed Software is restricted to the support of activities outlined in the Purpose section of this Agreement and must be either approved in writing by LICENSOR, returned to LICENSOR, or destroyed upon completion of the approved Agreement.

3.4 Expiration or termination of the Agreement shall not relieve the parties of any obligation accruing prior to such expiration or termination. The provisions of Articles 1, 2, 3, 4, 5, and 6 shall survive any expiration or termination of this Agreement.

3.5 If the LICENSEE's organization or programs change, the LICENSEE must notify LICENSOR and modify the existing Agreement or obtain a new Agreement.

4. LIABILITY & INDEMNIFICATION.

4.1 TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, LICENSOR WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR ANY EXHIBIT OR ATTACHMENT, OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY(I) FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, (II) FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, (III) FOR LOSS, INACCURACY, OR CORRUPTION OF DATA OR INTERRUPTION OF USE, OR (IV) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL, EVEN IF LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

4.2 LICENSEE AGREES TO WAIVE ANY AND ALL CLAIMS AGAINST LICENSOR, THE UNITED STATES GOVERNMENT AND ITS CONTRACTORS AND SUBCONTRACTORS, AND SHALL INDEMNIFY AND HOLD HARMLESS LICENSOR, THE UNITED STATES GOVERNMENT AND ITS CONTRACTORS AND SUBCONTRACTORS FOR ANY LIABILITIES, DEMANDS, DAMAGES, EXPENSES OR LOSSES THAT MAY ARISE FROM LICENSEE'S USE OF THE LICENSED SOFTWARE, INCLUDING ANY DAMAGES FROM MATERIALS AND COMPONENTS BASED ON, OR RESULTING FROM, THE USE OF THE LICENSED SOFTWARE.

4.3 IF FURTHER RELEASE OR DISTRIBUTION OF THE LICENSED SOFTWARE IS PERMITTED, LICENSEE AGREES TO OBTAIN THIS IDENTICAL LIMITATION OF LIABILITY AND INDEMNIFICATION AGREEMENT WITH ANY ENTITIES THAT ARE PROVIDED WITH THE LICENSED SOFTWARE.

5. GENERAL.

6.1 SUBMISSIONS AND NOTICES. Delivery of all matters required or permitted to be submitted in

writing under this Agreement shall be considered timely made if, by the due date, they: (1) have been personally delivered or delivered through U.S. Mail; or, (2) properly addressed and sent prepaid via (a) commercial overnight delivery service or (b) facsimile (followed by telephonic confirmation). Each Party from time-to-time may change the point-of-contact/address information listed below by notice to the other Party. The individuals identified below are designated as the primary point of contact for receiving notices under this Agreement:

For LICENSOR:
U.S. Army HPCMP
ATTN: CREATE
Associate Director
3909 Halls Ferry Road
Vicksburg, MS 39180
Tel. 571-926-1224
Robert.L.Meakin.civ@mail.mil

For LICENSEE:
[Note: If the primary point of contact is the same as in section 6.3, this portion can be left blank.]

ATTN (Name): _____

Street Address: _____

City, State, Zip: _____

Phone: _____

Email: _____

Please check the box which best describes the LICENSEE's organization (you may only choose one):

☐ DoD (or DoD contractor)

☐ Federal Agency (or Agency contractor)

☐ Industry

☐ Academia

5.2 GOVERNING LAW & JURISDICTION. If a dispute, controversy, or claim between the Parties relating to this Agreement shall arise, the Parties shall first attempt to settle such matter through informal dispute resolution. If any such matter cannot be resolved informally, applicable U.S. Federal laws shall govern this Agreement for all purposes.

5.3 EQUITABLE RELIEF. LICENSEE acknowledges that any disclosure or unauthorized use of the Licensed Software or any Protected Information could constitute a material breach of this Agreement and possibly cause substantial harm to LICENSOR for which damages might not be a fully adequate remedy. In the event of any such breach, in addition to other available remedies, LICENSOR shall have the right to seek injunctive relief without being required to post any bond or other security.

5.4 ASSIGNMENT. Neither Party shall transfer, delegate, or assign this Agreement or any portion thereof without the other Party's prior written consent. Any attempted assignment by a Party in violation of this Section shall be null-and-void. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.

5.5 INDEPENDENT CONTRACTORS. It is expressly agreed that LICENSEE and LICENSOR shall be independent contractors and that the relationship between the two Parties shall not constitute a partnership, joint venture or agency. Neither LICENSEE nor LICENSOR shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other, without the prior consent of the Party to do so.

5.6 SEVERABILITY. If any provision or term of this Agreement is held to be invalid by a court of competent jurisdiction, then such provision or term will be enforced to the maximum extent possible so as to affect the intent of the Parties and the remaining terms of this Agreement will continue in full force and effect.

6. USE CASE(S) AND NUMBER OF USERS.

6.1 By responding to the following queries, characterize the purposes for which the Licensed Software is intended to be used.

a) Which components of the CREATE Genesis Software Suite are required (check all that apply).

☐ Capstone

☐ Genesis-CFD

☐ Genesis-DESIGN

b) Which of the following use cases best characterize your intended purposes (check all that apply).

☐ Educational

☐ Research

☐ Evaluation

☐ Other*

c) Briefly summarize the purposes for which the Licensed Software is being requested. Some examples are noted below. (Note: If more space is needed – beyond that provided in the following block, please attach an addendum to the Agreement labeled "Addendum – Continuation of Summary of Use Purposes".)

Educational: *Capstone and Genesis-CFD will be used as part of an applied aerodynamics course taught in both the fall and winter semesters. Genesis-DESIGN will be used as part of the Senior Design project.*

Research: *Genesis-CFD will be used by graduate student researchers to evaluate algorithms they develop for generating System Identification Models by encapsulating them as "plug-ins". Genesis-DESIGN will be used in a subordinate mode to build necessary aircraft OML from 3-view drawings of targeted aircraft and Capstone will be used to generate the corresponding CFD grids.*

Evaluation: *Access to the Genesis Software suite is needed to assess the potential for our organization to use full-feature HPCMP CREATE software products as part of our corporate IRAD programs that target future Defense Programs.*

Other:* *Components of the Genesis Software suite are intended for design and analysis of our next generation UAS that targets videography of professional sporting events.*

Summary of Use Cases for which the Licensed Software is being requested:

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* IMPORANT NOTE: *Only use cases that are for educational, research, government, or evaluation purposes are within the scope of the present license. Use cases that do not fall in one of these categories require prior written approval of the LICENSOR.*

6.2 The number of individuals affiliated with this LICENSE that will have access to the LICENSED Software: _____.

6.3 IN WITNESS WHEREOF, the Undersigned is a person, officer or representative duly authorized to represent and sign on behalf of LICENSEE and have executed and delivered the Agreement as of the Effective Date below. The undersigned hereby agrees to all of the terms and conditions of this Agreement on behalf of LICENSEE and agrees that LICENSEE shall utilize the Licensed Software only for the Purpose described above.

Signature: _____   Date: _____
                                                                                                              (MM/DD/YYYY)

Name: _____

Title: _____

Organization: _____

Address: _____

_____

Phone: _____

Email: _____