

HPCMP CREATE™ Software Products License Agreement

Authorized to U.S. Citizens or Permanent U.S. Residents subject to established HPCMP CREATE™ Policy

License Control Number: _____
(Completed by HPCMP CREATE™ Management)

Warning – This document refers to technical data, the export of which is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751, et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C., App 2401 et seq. Violations of these export laws are subject to severe civil and criminal penalties. Disseminate in accordance with provisions of DoD Directive 5230.25.

1. Introduction

- a) This Software Products License Agreement (hereinafter, “Agreement”) is made by and between the Department of Defense as represented by the High Performance Computing Modernization Program (hereinafter, "HPCMP") and the undersigned “Recipient” in Section 15a. This material is distributed in accordance with DoD Instruction 5230.24. Recipient agrees to abide by all notices, and distribution and license markings. The controlling DOD office is the U.S. Army Engineer Research and Development Center (hereinafter, "ERDC"). This material shall be handled and maintained in accordance with For Official Use Only, Export Control, and AR 380-19 requirements.
- b) HPCMP has developed and distributes to the Recipient, its HPCMP CREATE™ software program(s) (hereinafter, the "Products" or "HPCMP CREATE™ Product(s)"). For the purposes of this Agreement, the Product(s) include any executable codes and associated interfaces, user/developer guides, and access to the HPCMP CREATE™ Community Support Site product support pages.
- c) For purposes of this Agreement, the rights and obligations of “Recipient” in this Agreement shall mean to include Recipient and Recipient’s qualified employees set forth in Section 15b. Notifications provided to Recipient shall suffice as notification to Recipient’s qualified employees.

2. License Grant

- a) Subject to the Recipient’s compliance with the terms and conditions set forth in this Agreement, Recipient is granted a non-exclusive, non-transferable, revocable, limited license to use the Product(s) for the intended use as determined by the HPCMP, and as authorized in the Purpose of Request (“Purpose”) section (Section 14) of this Agreement. Requests for other uses must be submitted in writing to the HPCMP. The HPCMP has the sole right to approve such requests, and will do so in writing.
- b) The Product(s) are licensed to Recipient, not sold. HPCMP retains all right, title and interest in the Product(s) and any portion thereof and in all copies, modifications and derivative works of the Product(s) and any portions thereof including, without limitation, all rights to patent, copyright, trade secret, trademark and other proprietary or intellectual property rights. Recipient has no rights, by license or otherwise, to use, disclose or disseminate the Product(s), in whole or in part, except as otherwise expressly provided herein. Recipient may not use any name, mark or designation of the Product(s) except for the express purposes in this Agreement. Recipient has no right to receive, use,

distribute or examine any source code or design documentation relating to the Product(s), except as specifically authorized in approved collaborative development and source code agreements.

- c) Unless otherwise permitted by the HPCMP, Recipient shall utilize the Product(s) exclusively to support United States Government programs. Recipient shall not provide or allow access to the Product(s) to any other group, entity or individual without the express permission of the HPCMP.

3. Restrictions

- a) The Recipient shall not re-distribute, sell, or use the Product(s) for any purposes not approved by the HPCMP, in whole or in part. Only with written authorization from HPCMP may the Recipient produce copies of the Product(s) or portions of the Product(s), this includes for use solely by the Recipient or for use by employees and agents of the Recipient. A copy of the approved Agreement shall be provided and maintained with each authorized copy of the Product(s) or portion of the Product(s) and appropriate personnel shall be briefed regarding the Agreement requirements. In addition, the HPCMP is to be formally notified of the name, address, and designated point of contact (POC) of all authorized U.S. contractors/subcontractors to which a copy is provided for purposes of this Agreement. The original recipient of the Product(s) shall be responsible for compliance with the terms of this Agreement related to all copies.
- b) The HPCMP may change the terms and conditions of this Agreement as required by Government interests with written notification to Recipient.
- c) The Recipient bears full responsibility for abiding by Export Control laws, and agrees not to disseminate any export-controlled material in or related to the Product(s) in a manner that would violate applicable export control laws and regulations. The Product(s) are subject to the Arms Export Control Act (Title 22, U.S.C., Section 2751, et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C., App. 2401, et seq. Violations of these export laws are subject to severe civil and criminal penalties.

Notwithstanding any provisions contained herein, Recipient is hereby put on notice that export of any goods or technical data from the United States may require some form of export license from the U.S. Government. Failure to obtain necessary export licenses may result in criminal liability of Recipient under U.S. laws. The HPCMP neither represents that a license shall not be required nor that, if required, it shall be issued. Nothing granted herein to Recipient provides any such export license.

- d) The software and associated materials of the Product(s) constitute “software” and “technical data” within the meaning of the Export Administration Regulations (EAR) at 15 CFR Parts 730-774 and depending on its application, the International Traffic in Arms Regulations (ITAR) 22 CFR 120-130. As such, Recipient acknowledges that the Product(s) may be controlled by the International Traffic In Arms Regulation (ITAR), 22 CFR Sections 121 through 128, and may require an export license before assigning any FOREIGN NATIONAL or FOREIGN REPRESENTATIVE to perform work using the Product(s) or before granting any FOREIGN NATIONAL or FOREIGN REPRESENTATIVE access to the Product(s). Furthermore, such persons must be approved by the HQUSACE designated Foreign Disclosure Officer before beginning such work or receiving such information. Therefore, in addition to abiding with U.S. Export Control laws, Recipient agrees to obtain the written approval of ERDC prior to assigning or granting access to the Product(s) to FOREIGN NATIONALS or FOREIGN REPRESENTATIVES. This approval must include the name and country of origin of the FOREIGN NATIONAL or FOREIGN REPRESENTATIVE, the specific work, equipment, material, software, or technical data to which the person will have access,

and whether the FOREIGN NATIONAL or FOREIGN REPRESENTATIVE is cleared to have such access (DOD 5220.22-M, National Industrial Security Program Operating Manual). For purposes of this Agreement:

- i) “Foreign national” is any person who is not a citizen of, a national of, or a legal resident/immigrant alien of the United States.
 - ii) “Foreign representative” is any person, regardless of nationality or citizenship, who act as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person.
 - iii) “Foreign source” is any source (such as a vendor, subcontractor, or supplier) not owned and controlled by citizens or legal resident/immigrant aliens of the United States.
- e) Neither Recipient nor its employees and agents shall modify, alter, decompile, disassemble, reverse engineer or reverse compile or otherwise reduce to human readable form the HPCMP CREATE™ software component of the Product(s) without prior written consent of the HPCMP. Changes to the HPCMP CREATE™ Product(s) software may not be further distributed by the Recipient, its employees or agents without the written approval of the HPCMP. These changes may be considered by the HPCMP for incorporation into future releases of the HPCMP CREATE™ software baseline. Unless otherwise specified by the HPCMP, the Government shall retain title to and have unlimited rights to any Recipient changes to the HPCMP CREATE™ Product(s). The HPCMP reserves the right to prohibit changes to HPCMP CREATE™ Product(s) software that insert General Public License agreements.
- f) This Agreement does not entitle the Recipient to receive any component of the Product(s) that is subject to national defense security classification or the proprietary rights of others, including commercial trade secrets (hereinafter, Restricted Material). The Recipient shall immediately secure access to such Restricted Material, report promptly the discovery of the Restricted Material to the HPCMP, and shall follow all instructions concerning the use, safeguarding, or return of the Restricted Material. The Recipient shall not copy, or make further study or use of any Restricted Material.

4. Markings

- a) The Recipient agrees to strictly abide by and adhere to any and all restrictive markings, identification markings, and notices placed on the Product(s). Recipient shall not remove said markings without authorization from the HPCMP.
- b) The Recipient agrees to include any restrictive marking and notices, specifically including DoD distribution and license statements, on all derivative works created from documentation, technical data, sample product input or any other written material provided by the HPCMP. In such cases, Recipient shall clearly denote where such Product-derived data initiates and concludes by the use of annotation or other standard markings.

5. Third Party Libraries and Utilities

Certain Third Party Libraries (TPL) and other Third Party Utilities (TPU) are either embedded within, or used as part of the build materials of certain software of the HPCMP CREATE™ Product(s). A list of all such embedded TPL and TPU build materials and associated license agreements are maintained at

<https://portal.create.hpc.mil> and are available upon request, if any. The licenses associated with TPLs may not be suitable for all uses to which some Recipients may wish to apply HPCMP CREATE™ Product(s). The Recipient is responsible for making sure that their use of HPCMP CREATE™ Product(s) and any software therefrom is consistent with the terms of these TPLs. In instances where the terms of the TPLs do not allow the Recipient's intended use, it is the Recipient's responsibility to acquire the required permissions from the respective license holder.

6. WARRANTY

THE HPCMP CREATE™ PRODUCT(S) AND TPL AND TPU SOFTWARE USED IN CONNECTION WITH THE HPCMP CREATE™ PRODUCT(S) ARE PROVIDED “AS IS” BY THE HPCMP AND THE RESPECTIVE COPYRIGHT HOLDERS. THE HPCMP MAKES NO OTHER WARRANTIES WHATSOEVER EITHER EXPRESS OR IMPLIED WITH RESPECT TO THE PRODUCT(S) OR ANYTHING PROVIDED BY THE HPCMP, AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM BUGS, CORRECTNESS, ACCURACY, RELIABILITY, AND RESULTS, AND REGARDING THE USE AND RESULTS OF THE USE, AND THAT THE ASSOCIATED SOFTWARE’S USE WILL BE UNINTERRUPTED. HPCMP DISCLAIMS ALL WARRANTIES AND LIABILITIES REGARDING THIRD PARTY SOFTWARE, IF PRESENT IN THE HPCMP CREATE™ PRODUCT(S), AND DISTRIBUTES IT “AS IS.”

THE HPCMP MAY, AT ITS DISCRETION, EITHER (i) REPAIR THE PRODUCTS, OR (ii) REPLACE THE PRODUCT(S). THIS IS THE RECIPIENT’S EXCLUSIVE REMEDY, AND THE HPCMP’S SOLE LIABILITY ARISING IN CONNECTION WITH THE USE OF THE PRODUCT(S) OR ANYTHING PROVIDED BY THE HPCMP FOR THE PURPOSES SPECIFIED IN THIS AGREEMENT.

7. LIMITATION OF LIABILITY AND INDEMNIFICATION

- a) TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, THE HPCMP 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 RECIPIENT 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.
- b) RECIPIENT AGREES TO WAIVE ANY AND ALL CLAIMS AGAINST HPCMP, THE UNITED STATES GOVERNMENT AND ITS CONTRACTORS AND SUBCONTRACTORS, AND SHALL INDEMNIFY AND HOLD HARMLESS HPCMP, THE UNITED STATES GOVERNMENT AND ITS CONTRACTORS AND SUBCONTRACTORS FOR ANY LIABILITIES, DEMANDS, DAMAGES, EXPENSES OR LOSSES THAT MAY ARISE FROM RECIPIENT’S USE OF THE PRODUCT(S) AND SOFTWARE THEREFROM, INCLUDING

ANY DAMAGES FROM MATERIALS AND COMPONENTS BASED ON, OR RESULTING FROM, THE USE OF THE PRODUCT(S).

- c) IF FURTHER RELEASE OR DISTRIBUTION OF THE PRODUCT(S) IS PERMITTED, RECIPIENT AGREES TO OBTAIN THIS IDENTICAL LIMITATION OF LIABILITY AND INDEMNIFICATION AGREEMENT WITH ANY ENTITIES THAT ARE PROVIDED WITH THE PRODUCT(S).

8. Interagency Recipient

If Recipient belongs to or is an employee of a federal agency, Sections 6 and 7 above do not apply to Recipient, except for Section 7(c).

9. Debarment of U.S. Contractors

- a) To the extent of its knowledge and belief, the Recipient knows of no person employed by it, or acting on its behalf, who will have access to this data, who is debarred, suspended, or otherwise ineligible from performing on U.S. Government contracts; or has violated U.S. export control laws.
- b) The Recipient itself is not debarred, suspended, or otherwise determined ineligible by any agency of the U.S. Government to perform on U.S. Government contracts, has not been convicted of export control law violations, and has not been disqualified under the provisions of DoD Directive 5230.25.

10. Maintenance and Upgrade of the Products

- a) Each version of the Product(s) has an expected two-year support life, but the HPCMP may modify support life as determined in the best interest of the Government.
- b) The HPCMP intends to correct errors and deficiencies in the Product(s). However, the HPCMP reserves the right to defer such corrections to coincide with previously established Product release schedules (subject to change without notice to the Recipient) or to decline to include the corrections (with notification to the Recipient).

11. Technical Support to Be Provided For the Products

- a) The HPCMP will provide the Recipient with instructions and supporting documentation for the installation and operation of the Product(s) software. For supported operating system(s) and computer platform(s), contact the HPCMP.
- b) The Product(s) are provided without any technical support or maintenance for any operating systems, platforms or versions not specified by the HPCMP. The HPCMP reserves the right to defer technical support or to decline to provide technical support in the event of unforeseen resource shortfalls, upon notification to the Recipient.

12. Severability

If any term of this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

13. Termination

- a) The Recipient is bound to the obligations under this Agreement in perpetuity. The term of this Agreement shall automatically terminate upon ONE YEAR from the effective date (which is the date of execution below); however, the HPCMP may unilaterally terminate this Agreement at any time with notice to the Recipient. Upon termination of this Agreement, the Recipient may either sign a new Agreement or discontinue use of the Product(s). Use of archived copies of the Product(s) is restricted to support activities outlined in the Purpose section of this Agreement and must be either approved in writing by the HPCMP, returned to the HPCMP, or destroyed upon completion of the approved Agreement.
- b) If the Recipient's organization or programs change, the Recipient must notify the HPCMP and modify the existing Agreement or obtain a new Agreement.

The following pages need to be completed.

14. PURPOSE OF REQUEST

a) **Intended Purpose.**

Check all that apply (required):

- ☐ U.S. GOV Programs
- ☐ U.S. GOV Research
- ☐ U.S. Industry/Academia Contract with U.S. GOV
- ☐ U.S. Industry/Academia Internal Research and Development targeting future U.S. GOV Interests
- ☐ Not for U.S. GOV purpose
- ☐ Other

Describe intended purpose/use of product(s) being requested (required):

If more space is needed, include as an addendum to this Agreement, which shall be incorporated herein by reference.

If your request is in support of a DoD Contract, please specify the DoD Contract Number or Technology Transfer Agreement Number, the Contract POC, and the Contract's associated Completion Date.

Contract No.:	Completion Date:
Contract POC Name:	

b) **Select Groups/Products.**

Check all that apply (required):

<input type="checkbox"/> Air Vehicles <input type="checkbox"/> Kestrel <input type="checkbox"/> Helios	<input type="checkbox"/> Ground Vehicles <input type="checkbox"/> Mercury	<input type="checkbox"/> RF Antennas <input type="checkbox"/> SENTRI	<input type="checkbox"/> Ships <input type="checkbox"/> IHDE <input type="checkbox"/> Navy FOAM <input type="checkbox"/> NESM <input type="checkbox"/> RSDE
<input type="checkbox"/> HPC Portal Applications (<i>only developers are allowed access</i>)			
<input type="checkbox"/> Meshing and Geometry (<i>only developers are allowed access; to request access for Capstone visit the HPCMP CREATE™ Genesis website, https://www.hpcmpcreategenesis.org</i>)			
<input type="checkbox"/> CREATE Community (<i>automatically included if approved for any of the products/groups above</i>)			
Please contact create-accounts@create.hpc.mil if you have any questions about access to our groups/products.			

15. RECIPIENT INFORMATION

a) **Recipient** (Organization): _____

Please check the box which best describes the recipient organization (*you may only choose one*):

- ☐ DoD
- ☐ Federal Agency
- ☐ U.S. Industry
- ☐ U.S. Academia
- ☐ Foreign
- ☐ Other

The undersigned is a duly authorized person to sign for military and civilian requests; is a COR for government contractors duly authorized to sign this Agreement; or is an officer or representative duly authorized to represent and sign on behalf of Recipient or corporate interests for industry requests. The effective date of this Agreement shall be the date of execution by the undersigned as set forth below. The undersigned hereby accepts all of the terms and conditions of this Agreement on behalf of Recipient and agrees that Recipient shall utilize the HPCMP CREATE™ Product(s) only for the purpose/use described above. Recipient further understands that processing or transmitting export controlled material via any public electronic medium is strictly prohibited.

Authorized POC Name (print):		
Position/Title:		
Organization:		
Phone:	Email:	
Signature:		Date:

Continue to the following page(s) to complete the Qualified Employee Acknowledgement Signature section.

b) **Qualified Employee Acknowledgement Signature(s)**

All employees of Recipient who will have access to the HPCMP CREATE™ Product(s) acknowledges the terms and restrictions of this Agreement as they pertain to the Product(s), including but not limited to, the requirement to use the HPCMP CREATE™ Product(s) only for the purpose/use described above. The number of qualified employees included on this signature page and all addendums: _____.

1	Recipient Name (print):		
	Organization:		
	Address:		
	Phone:	Email:	
	Signature:		Date:
2	Recipient Name (print):		
	Organization:		
	Address:		
	Phone:	Email:	
	Signature:		Date:
3	Recipient Name (print):		
	Organization:		
	Address:		
	Phone:	Email:	
	Signature:		Date:
4	Recipient Name (print):		
	Organization:		
	Address:		
	Phone:	Email:	
	Signature:		Date:

(Qualified Employee Acknowledgement Signatures Continued)

5	Recipient Name (print):		
	Organization:		
	Address:		
	Phone:	Email:	
	Signature:		Date:
6	Recipient Name (print):		
	Organization:		
	Address:		
	Phone:	Email:	
	Signature:		Date:
7	Recipient Name (print):		
	Organization:		
	Address:		
	Phone:	Email:	
	Signature:		Date:
8	Recipient Name (print):		
	Organization:		
	Address:		
	Phone:	Email:	
	Signature:		Date:
9	Recipient Name (print):		
	Organization:		
	Address:		
	Phone:	Email:	
	Signature:		Date:

If more signature fields are needed, additional sheets can be provided as an addendum to this Agreement.