ITP Engines UK Ltd

**SOFTWARE LICENCE
AGREEMENT**

For the use of

ESATAN-TMS

The Whittle Estate,

Cambridge Road, Whetstone,
Leicester, LE8 6LH, ENGLAND

1 DEFINITIONS

I)   **"Licensor"** shall mean ITP Engines UK Ltd, having its registered office at The Whittle Estate, Cambridge Road, Whetstone, Leicester, LE8 6LH, ENGLAND.

II)   **"Licensee"** shall mean the licensed user of the Program(s).

III)   **"Purchaser"** shall mean the company or organisation (not being the Licensee) that has agreed to pay the fees and charges in respect of the Program(s) on behalf of the Licensee.

IV)   "**ESATAN-TMS**" shall mean the software package made up of ESATAN, FHTS, ThermNV, Workbench, ThemXL and CADbench.

V)   **"ESATAN"** shall mean the executable program and all utilities, libraries, and Documentation necessary to run the ESATAN™ thermal analysis software.

VI)   **"FHTS"** shall mean the extension to ESATAN™ providing facilities for the analysis of fluid heat transport problems.

VII)   **"ThermNV"** shall mean the executable program and all utilities, libraries, and Documentation necessary to run the ThermNV network visualisation software.

VIII) **"Workbench"** shall mean the executable program and all utilities, libraries, and Documentation necessary to run thermal radiative analysis and pre- and post-processing software.

IX)   **"ThermXL"** shall mean the executable program and all utilities, libraries, and Documentation necessary to run the ThermXL thermal analysis software within the Microsoft® Excel environment, but excluding the Microsoft® Excel software.

X)   "**CADbench**" shall mean the executable program developed and made available by SpaceClaim, providing geometrical capabilities to clean and prepare a CAD model to be used in ESATAN-TMS.

XI)   **"Program(s)"** shall mean all or any of the product(s) listed in paragraphs V to X of this Clause 1, along with any modifications and enhancements thereto, as adapted to operate on the Equipment.

XII)   **"Documentation"** shall mean the manual or manuals and other documents (paper or electronic) associated with the Program(s) supplied by the Licensor to the Licensee.

XIII) **"Equipment"** shall mean the computer and operating system on which the Program(s) are to be used.

XIV) "**SpaceClaim**" shall mean SpaceClaim Corporation, having its principal place of business at 150 Baker Ave. Ext., Concord, Massachusetts 01742, United States of America.

XV)   **"Licence"** shall mean this document with its related Appendices.

XVI) **"FLEXlm key"** shall mean the licence file in order for the Program(s) to operate.

2 LICENCE

The Licensor hereby grants to the Licensee a non-exclusive, non-transferable licence, without the right to grant sub-licences, to use the Program(s) on the Equipment on the terms and conditions contained herein from the date and for the period specified in Appendix 1. Licences for educational use shall be subject to the additional restrictions set out in Appendix 3.

3 ROLE OF THE PURCHASER

The Purchaser, with the prior written consent of the Licensor, is authorised to distribute the Program(s) to Licensees subject to the terms and conditions of the Licence. The Purchaser shall procure that the Licensee accepts the terms and conditions of the Licence, except for the obligation on the Licensee to make payments under Clause 13. Payments in accordance with Clause 13 shall be made by the Purchaser on behalf of the Licensee to the Licensor.

4 ACCEPTANCE

Acceptance of the Program(s) shall be deemed to take place when the Program(s) have successfully been installed on the Equipment and the FLEXlm key has been provided by the Licensor to the Licensee.

5 USE

5.1   The Program(s) shall be used only for the Licensee's own data processing for its own internal business purposes and shall not be used to provide a data processing service to any third party whether by way of trade or otherwise.

5.2   The Licensee may use the Program(s) only on the Equipment. If the Program(s) cannot be used because the Equipment or any part thereof is temporarily inoperable, then the Licence shall be deemed to apply, without any additional payment to the Licensor but at the Licensee's risk and expense, to the use of the Program(s) on any other compatible equipment until the Equipment becomes operable.

5.3   The Licensee may not transfer the Program(s) permanently to another location or to other equipment without the consent in writing of the Licensor which shall not be unreasonably withheld. An additional payment may be applied as specified in Appendix 1.

6 PERFORMANCE AND WARRANTY

The Licensor warrants for a period of 12 months from the granting of the Licence that (i) the Program(s) shall perform substantially in accordance with the Documentation existing at the date of delivery, provided the Program(s) are operated in accordance with the Licensor's instructions and (ii) any maintenance service shall be performed in a manner commensurate with usual and customary professional standards. The Licensor does not warrant that the Program(s) shall meet the Licensee's requirements or operate without interruption or be error free. Upon breach of this warranty, the Licensor shall at its option: (1) use commercially reasonable efforts to provide corrected Program(s) and/or Documentation (as the case may be) to the Licensee, or (2) refund an amount not exceeding the total charges paid by the Licensee or the Purchaser, as applicable, under the Licence in respect of the affected Program(s). These are the exclusive remedies agreed between the parties in case of breach of this warranty. The Licensor shall not be liable for technical, editorial or other errors or omissions which may be contained in, or the negligent preparation of, the Program(s) or the Documentation. Except as specifically provided herein, the Licensor disclaims any condition, warranty or representation, promise or guarantee, either express or implied by law or otherwise, with respect to the Program(s) and/or Documentation including, but not limited to, their quality, performance, merchantability, suitability, or fitness for a particular purpose. The Licensor does not warrant the accuracy and/or usefulness of the results or solutions, even if performed in accordance with the procedures, commands and theories contained in the Documentation.

7   MAINTENANCE & SUPPORT

7.1   A maintenance service shall be provided as specified in Appendix 2 from the date of acceptance.

7.2   The provision of error correction included in the maintenance service specified in Appendix 2, is conditional upon the Licensee having:

    a) provided adequate information in respect of any malfunction in the Program(s) and

    b) incorporated all amendments issued by the Licensor.

7.3   Where a new issue or update of the Program(s) and/or Documentation or part thereof is released by the Licensor it shall be provided by the Licensor under the maintenance service and accepted and used by the Licensee.

8   MODIFYING

The Licensee may not, without the prior written consent of the Licensor, modify or alter the Program(s) or incorporate the Program(s) into programs not provided by the Licensor.

9   OWNERSHIP

9.1   Title, copyright and all other proprietary rights in the Program(s) and the Documentation and all parts and copies thereof shall remain vested in the Licensor and/or SpaceClaim and/or its respective third party licensors.

9.2   The Licensee shall not sell, transfer, lend or otherwise make available, or disclose to any other person or entity the Program(s) and the Documentation, except in accordance with Clause 15, or remove or alter any copyright or other proprietary notices contained therein.

9.3   The Licensee and/or Purchaser shall follow all reasonable instructions given by the Licensor from time to time with regard to the use of trade-marks owned by the Licensor and/or SpaceClaim and/or its respective third party licensors and other indications of the property and rights of the Licensor and/or SpaceClaim and/or its respective third party licensors.

10   INTELLECTUAL PROPERTY INFRINGEMENT

10.1   Except as set out in Clause 10.2 below, the Licensor shall defend at its expense any action brought against the Licensee to the extent that it is based on a claim that the Program(s), when properly used within the scope of the Licence, infringe a United Kingdom or European patent, copyright, trade secret or other intellectual property right of any third party and the Licensor shall pay any costs, damages and reasonable attorneys' fees finally awarded against the Licensee in such action which are attributable to such claim; provided that (i) the Licensor is notified in writing promptly of the claim and makes no statements prejudicial thereto, (ii) the Licensee permits the Licensor to assume sole control of the defence, compromise or settlement of said claim, and (iii) the Licensee provides to the Licensor reasonable cooperation, information and assistance in connection therewith.

10.2   The Licensor shall have no liability to the Licensee with respect to claims of infringement based on the following: (i) the use or combination of the Program(s) with any other software or hardware not supported by the Licensor, if such infringement would not have occurred but for such use or combination, (ii) any modification of the Program(s) by anyone other than the Licensor, (iii) the use of other than the current version of the Program(s), if such version was made available by the Licensor for no additional fees with notice that such version was being provided in order to avoid an alleged or potential infringement, (iv) claims of infringement of patents, copyrights, trade secrets or other intellectual property rights of the Licensee or the Licensee's affiliates. The

Licensee shall, on terms comparable to those set forth in Clause 10.1, defend and indemnify the Licensor against, claims described in items (i), (ii), (iii) and (iv) of this Clause 10.2 to the extent resulting from the Licensee's act or omission.

10.3   This Clause 10 states the entire liability of the Licensor with respect to infringement or alleged infringement or any patent, copyright, trade secret or other intellectual property right.

11   ASSIGNMENT

11.1   The Licensee or the Purchaser shall not assign any of its rights or obligations under the Licence without the prior written consent of the Licensor.

11.2   Subject always to the provisions of Clause 12, the Licence shall inure to the benefit of any person or entity having any right, title or interest in the Program(s) or Documentation and such person or entity may directly enforce they terms of the Licence.

12   LIABILITY

12.1   The Licensee shall be solely responsible for any use it makes of the Program(s), Documentation and other information supplied hereunder and the Licensee undertakes to save and keep the Licensor and/or SpaceClaim and/or its respective third party licensors harmless in respect of any claim for loss, damage, costs or expenses howsoever arising (including, but not limited to, the negligence of the Licensor and/or SpaceClaim and/or its respective third party licensors), made by any person as a result of such use by the Licensee. In no case shall the Licensor's liability to the Licensee exceed an amount equal to the total charges paid by the Licensee or the Purchaser, as applicable, under the Licence in respect of the Program(s) for the immediately preceding twelve month period.

12.2   Notwithstanding anything to the contrary in the Licence, at law or otherwise, the Licensor and/or SpaceClaim and/or its respective third party licensors shall not be liable to the Licensee or the Purchaser for any indirect, special, incidental, compensatory, punitive or consequential loss or damages or for any loss of revenue, loss of profits, loss of contracts, loss of business, loss of use, interruption of business, loss of operation time, loss of data, costs of capital and costs in connection with interruption of operation, howsoever arising (including, but not limited to, the negligence of the Licensor and/or SpaceClaim and/or its respective third party licensors) and even if advised of the possibility of such loss, damages or costs.

13   TERMS OF PAYMENT

13.1   Following acceptance under Clause 4, the Licensor shall be entitled to claim payment of the fees and charges quoted as due on acceptance. Subsequent fees and charges shall become due at the beginning of each year after the initial period, unless the Licence is earlier terminated in accordance with Clause 14 .

13.2   All fees and charges are exclusive of all value added taxes, sales taxes, use taxes and the like. Licensee shall pay all taxes associated with the Licence, exclusive of any tax based on the income of the Licensor. If claiming a tax exemption, Licensee must provide a valid tax exemption certificate.

13.3   All fees and charges due under the Licence shall be paid by the Licensee or the Purchaser, as applicable, either within the period specified in Appendix 1 or by the due date whichever is the later.

13.4 The Licensee or the Purchaser, as applicable, reserves the right to withhold payment against any invoice which is not submitted in accordance with the Licence and shall forthwith notify to the Licensor in writing the reasons for withholding the payment.

13.5 If the payment of any sum due under the Licence shall be delayed by the Licensee or the Purchaser, as applicable, other than in accordance with Clause 13.3, the Licensor shall be entitled to charge interest at the rate specified in Appendix 1 on the amount of the delayed payment for the period of the delay.

14   TERMINATION

14.1 The Licensee or Purchaser, as applicable, may terminate the Licence by giving three months' prior written notice to the Licensor to take effect at the end of the initial period specified in Appendix 1 or any subsequent extension of this period.

14.2 The Licence may be terminated forthwith by the Licensor on written notice if the Licensee is in breach of the terms of the Licence or the Purchaser fails to comply with its obligations under Clause 3 and, in the event of a breach capable of being remedied, fails to remedy the breach within 14 days of receipt of notice thereof in writing.

14.3 The Licensor may terminate the Licence forthwith on written notice if the Licensee or the Purchaser, as applicable, shall become bankrupt, insolvent, or make an arrangement with its creditors or go into administration or liquidation.

14.4 Termination of the Licence shall not prejudice any rights of any party which have arisen on or before the date of termination.

14.5 Within seven days following the date of termination the Licensee shall at the option of the Licensor return or destroy all copies, forms, and parts of the Program(s) and Documentation, which are covered by the Licence and shall provide to the Licensor, if requested, a written certificate of destruction signed by a senior employee of the Licensee authorised to sign on their behalf.

14.6 The Licence may be terminated forthwith by the Licensee on written notice if the Licensor is in breach of the terms of the Licence and, in the event of a breach capable of being remedied, fails to remedy the breach within 14 days of receipt of notice thereof in writing.

15   CONFIDENTIALITY AND PROGRAM COPYING

15.1 The Licensee shall keep confidential the Program(s), the Documentation or any parts thereof and shall not disclose the same to any third party without the prior written consent of the Licensor.

15.2 The Licensee shall not reverse engineer, decompile or disassemble the Program(s) or translate the Program(s) or reduce the Program(s) by any other means to a human-perceivable form.

15.3 The Licensee shall not copy or reproduce the Program(s) or the Documentation, in whole or in part, except where it is agreed necessary for the Licensee's standard computer security practices and the Licensee shall ensure that all copyright or other proprietary notices of the Licensor and/or SpaceClaim and/or its respective third party licensors are maintained.

15.4 The Licensor and the Licensee shall keep confidential the Licence and all other information of the other party designated as "confidential" obtained under or in connection with the Licence and shall not divulge the same to any third party without prior written consent of the other party.

15.5 The provisions of this Clause shall not apply to:-

a) any information in the public domain otherwise than by breach of the Licence,

b) information in the possession of the receiving party thereof before divulgence as aforesaid, or

c) information obtained from a third party who is free to divulge the same.

15.6 The Licensor and the Licensee shall divulge confidential information only to those employees and contractors who are directly involved in the Licence or use of the Program(s) and shall ensure that such employees and contractors are aware of and comply with these obligations as to confidentiality.

15.7 The obligation of both parties as to disclosure and confidentiality shall come into effect when installing the Program(s) and shall continue in force notwithstanding the termination of the Licence.

16 FORCE MAJEURE

No party shall be liable for failure or delay in its obligations in respect of the Licence if such failure or delay results from industrial dispute or any circumstances beyond the party's reasonable control.

17 WAIVER, SEVERABILITY AND AMENDMENT

17.1 No delay, neglect or forbearance on the part of any party in enforcing any term or condition of the Licence shall either be or be deemed to be a waiver or in any way prejudice any right under the Licence.

17.2 In the event that any provision of the Licence shall for any reason by held invalid, illegal or unenforceable by a court of competent jurisdiction, to such extent such provision shall be deemed null and void and severed from the Licence and the remaining provisions shall remain in full force and effect.

17.3 No amendment made to the Licence shall be binding or effective unless made in writing and signed by both the Licensor and Licensee.

18 PUBLICITY

The Licensor shall not, without the prior written consent of the Licensee, advertise or publicly announce he is providing services to the Licensee.

19 ARBITRATION

Any dispute or difference arising out of or in connection with the Licence which cannot be resolved by the parties within thirty days of the dispute or dispute first being notified shall, at first instance, be referred to a mediator for resolution. The parties shall attempt to agree upon the appointment of a mediator, upon receipt, by either of them, of a written notice to concur in such appointment. Should the parties fail to agree within fourteen days, either party, upon giving written notice, may apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a mediator.

Should the mediation fail, in whole or in part, either party may, upon giving written notice, and within twenty eight days thereof, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Chartered Institute of Arbitrators (2000 Edition), or any amendments

thereof, which Rules are deemed to be incorporated by reference into this Clause. The seat of the arbitration shall be London, England and proceedings shall be conducted in the English language.

Nothing in this Clause shall be construed as prohibiting a party from applying to a court for interim injunctive relief.

20   EXPORT AND US GOVERNMENT USE

THE LICENSEE AND PURCHASER ACKNOWLEDGES THAT THE PROGRAM(S) ARE SUBJECT TO THE EXPORT CONTROL LAWS OF THE UNITED KINGDOM AND/OR THE UNITED STATES OF AMERICA AND AGREES TO COMPLY FULLY WITH ALL RELEVANT EXPORT AND IMPORT LAWS TO ASSURE THAT NEITHER THE PROGRAM(S) NOR THE DOCUMENTATION, NOR ANY DIRECT PRODUCT THEREOF, IS EXPORTED, DIRECTLY OR INDIRECTLY, IN VIOLATION OF APPLICABLE LAW. WITHOUT PREJUDICE TO THE FOREGOING, THE LICENSEE REPRESENTS AND WARRANTS THAT THE PROGRAM(S) SHALL NOT BE USED IN CONNECTION WITH ANY CHEMICAL, BIOLOGICAL OR NUCLEAR WEAPONS OR OTHER NUCLEAR EXPLOSIVE DEVICES, OR MISSILES CAPABLE OF DELIVERING SUCH WEAPONS.

THE PURCHASER AGREES THAT HE SHALL NOT EXPORT, RE-EXPORT, LICENSE OR TRANSFER THE PROGRAM(S) TO A FINAL DESTINATION WHERE THE PURCHASER HAS GROUNDS FOR SUSPECTING THE PROGRAM(S) ARE OR MAY BE INTENDED TO BE USED IN CONNECTION WITH CHEMICAL, BIOLOGICAL OR NUCLEAR WEAPONS OR OTHER NUCLEAR EXPLOSIVE DEVICES, OR MISSILES CAPABLE OF DELIVERING SUCH WEAPONS, UNLESS HE HAS MADE ALL REASONABLE ENQUIRIES AS TO THEIR PROPOSED USE AND IS SATISFIED THAT THE PROGRAM(S) SHALL NOT BE SO USED.

THE PURCHASER FURTHER AGREES THAT HE SHALL NOT EXPORT, RE-EXPORT, LICENSE OR TRANSFER THE PROGRAM(S) TO ANY FINAL DESTINATION FOR WHICH UK, US, UN OR EU TRADE SANCTIONS OR EMBARGOES MAY APPLY OR BE IN FORCE. FURTHER DETAILS CAN BE OBTAINED AT:

http://www.dti.gov.uk/europeandtrade/strategic-export-control/

Where the Licensee is the US Government, the following shall additionally apply:

"This product and documentation are provided on a RESTRICTED basis. Use, duplication or disclosure by the US Government is subject to restrictions set forth in Subparagraphs (c)(1) and (2) of the Commercial Software Restricted Rights at 48 CFR 52.227-19, as applicable."

21   LAW APPLICABLE

The Licence shall be subject to, construed and interpreted in accordance with the laws of England.

22   ENTIRE AGREEMENT

The Licence (including its Appendices) sets forth the complete understanding of the parties with respect to the subject matter hereof and supersedes all prior understandings and communications relating thereto. The provisions of the Licence shall take precedence over any conflicting terms in purchase orders issued by the Licensee and/or the Purchaser, if any.

23   APPLICABILITY OF LICENCE AGREEMENT

The installation of the Program(s) and/or a valid licence code provided by the Licensor indicates that the Licensee has read the Licence and agrees to its terms.

APPENDIX 1

LICENCE INFORMATION

1. Period of Licence

From date of delivery for an initial period of one year and thereafter automatically for successive periods of one year at a time unless earlier terminated by either party in accordance with Clause 14.

2. Terms of Payment

Payment is to be made within 30 days from receiving an invoice.

The rate of interest to be charged by the Licensor to the Licensee or the Purchaser, as applicable, in the event of delays in payment shall be at 2% above the percentage base lending rate of National Westminster Bank plc in force from time to time during the period of the delay.

3. Type of Licence

Node-locked Licence

The Program(s) shall run only on the Equipment referred to by the node-locked licence. Transfer to other equipment is not permitted without prior written consent by the Licensor. In these circumstances, additional charges may be applied.

Network

The Program(s) shall run on an undefined number of machines of the same type. The FLEXlm key shall not discriminate between machine ID's.

APPENDIX 2

MAINTENANCE SERVICE

1. Description of Licence Support to be provided for all:

a)   Error Correction

b)   Updates and New Releases

c)   Documentation Amendments

d)   Telephone User Support

e)   E-mail and Web Site User Support

2. Maintenance Period

From date of installation for an initial period of one year and thereafter for successive periods of one year unless earlier terminated in accordance with Clause 14.

APPENDIX 3

TEACHING TOOL LICENCE

Where the Licence is discounted for educational use (Teaching Tool Licence), the following additional restrictions shall be met:

a)   The Program(s) shall be used for teaching purposes only

b)   The Program(s) shall not be used for projects funded/contracted by any company/organisation external to the Licensee

c)   The Program(s) shall be used for non-commercial purposes only

d)   The Licensee shall benefit from Maintenance Service (Appendix 2, except for 1.c and 1.e).

The Licensor reserves the right to review the status of any customer or proposed customer as a qualified educational user.