

**Two Month Software Evaluation License Agreement**  
**VABS Software System**

This Software License Agreement (the "Agreement") by and between you ("LICENSEE") and Utah State University, a not for profit organization organized under the laws of the State of Utah, having a principal place of business at the Technology Commercialization Office, 1695 Research Park Way, North Logan, Utah 84341 ("LICENSOR"). You and Licensor may be referred to from time to time in this Agreement, individually, as a "Party" and, collectively, as the "Parties."

**WHEREAS**, Licensor is the developer and owner of **Variational Asymptotical Beam Sectional Analysis (VABS) Software System**, a computer software application that is a cross-sectional analysis tool to calculate cross-sectional properties for a slender structure with arbitrary geometry made with arbitrary material, and related documentation, information and associated intellectual property rights;

**WHEREAS**, Licensor desires that **VABS Software System** be used widely in related research;

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement and intending to be legally bound, the Parties agree as follows:

**1. Definitions**

a. **Software Materials**. Current versions of software developed by, or with the assistance of, Licensor, including software and systems identified as **VABS Software System** and all related materials whether in written, oral, magnetic, photographic, optical or other form along with copyrights, (whether or not registered or to be registered in the United States or elsewhere) (collectively, the "Software Materials");

b. **Systems Information**. Any and all data, documents, specifications, materials, processes, drawings and other information related to the Software Materials (collectively, the "Systems Information");

c. **Definition of "You" in This License**. "You" throughout this License, whether in upper or lower case, means an individual or a legal entity exercising rights under, and complying with all of the terms of, this License. For legal entities, "You" includes any entity that controls, is controlled by, or is under common control with you. For purposes of this definition, "control" means (i) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (ii) ownership of fifty percent (50%) or more of the outstanding shares, or (iii) beneficial ownership of such entity.

**2. License to the Software Materials**

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- b. reproduce, have reproduced, display and perform the Software Materials solely for the purpose of evaluating the usefulness of the software.

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b. License rights under this license are not granted for any commercial utilization of Software Materials.

#### **4. LICENSOR Representations and Warranties**

LICENSOR represents and warrants as follows:

a. **Rights, Power and Authority.** LICENSOR has full rights, power and authority to enter into this Agreement, to perform all of its obligations under this Agreement and grant the rights to LICENSEE as set forth herein.

b. **Agreement Not in Breach of Other Agreements.** This Agreement and the obligations of LICENSOR under this Agreement will not conflict with, or constitute a breach or default of any other agreement, instrument or arrangement to which LICENSOR is a party or by which it is bound.

c. **Software Materials.** Each item of the Software Materials is not and will not be libelous or violate the rights of any person or entity, including, but not limited to, copyright, trademark, patent or proprietary rights of such person or entity, and LICENSEE's use of the Software Materials and the exercise of LICENSEE's rights under this Agreement shall not infringe upon or violate any such right.

c. **Litigation.** There are no actions, suits or proceedings pending, or, to the best knowledge of LICENSOR, after reasonable inquiry, threatened before any court, governmental, administrative agency, or arbitrator which will likely adversely affect LICENSEE's exercise of its rights under this Agreement, including, without limitation, LICENSEE's right to copy, use, and enjoy the Software Materials, including any threat or claim for copyright, trademark, or patent infringement by any third party, and there is no basis for any such proceeding.

d. **Consents and Approvals.** No authorization, consent or approval of any public body, authority or any third party is necessary for LICENSOR to license the Software Materials and to consummate the transactions contemplated by this Agreement.

#### **5. LICENSEE's Representations and Warranties.**

LICENSEE represents and warrants to, and agrees with, LICENSOR as follows:

a. **Rights, Power and Authority.** LICENSEE has full rights, power and authority to enter into this Agreement and to perform all of its obligations under this Agreement.

b. **Agreement Not in Breach of Other Agreements.** This Agreement and the obligations of LICENSEE under this Agreement will not conflict with, or constitute a breach or default of any other agreement, instrument or arrangement to which LICENSEE is a Party or by which it is bound.

c. **No Transfer of Ownership.** The Parties acknowledge and agree that nothing in this Agreement, including, but not limited to, the definition of Software Materials, shall transfer or be deemed to transfer any right, title or interest in or to any confidential or proprietary information or other property of either Party or the other Party (including, without limitation, any right, title or interest in any such confidential or proprietary information or property contained in the Software Materials), other than the license rights granted by LICENSOR to LICENSEE under Section 2.

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**6. Indemnification.** LICENSEE does hereby indemnify and agrees to save and hold LICENSOR, its affiliates, successors, LICENSEEs and assigns, and the officers, directors, agents and employees of each of them, harmless of and from any and all liability, claims, causes of action, suits, losses, settlements, damages, fines, penalties and expenses (including, but not limited to, reasonable attorneys' fees and expenses) for which they or any of them may become liable or may incur or be compelled to pay in any action or claim against them or any of them, by reason of or in connection with any breach or alleged breach by LICENSEE of this Agreement or any of LICENSEE's representations, warranties or agreements hereunder. LICENSOR shall give LICENSEE prompt written notice of any such action or claim, and LICENSEE shall take such action as is reasonably advisable to defend such action or claim on behalf of LICENSOR. LICENSEE shall have the right to defend any such action or claim with counsel of its own choice. LICENSOR and LICENSEE shall keep each other fully advised of all developments and shall cooperate fully with each other in all respects in connection with any such defense as is made.

**7. Entire Agreement.** The terms and provisions contained herein constitute the entire agreement between the Parties with respect to the subject matter hereof, and shall supersede any and all previous oral or written understandings, arrangements or agreements between the Parties with respect to the subject matter hereof. No agreements or undertakings varying, modifying, amending, extending, discharging or terminating the same shall be binding upon any Party unless in writing signed by a duly authorized officer or representative thereof.

**8. Waiver.** No waiver of any breach of any term or provision of this Agreement shall be construed to be, or shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the Party waiving the breach.

**9. Remedies.** No remedy conferred on either party by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given or now or later existing at law or in equity or by statute or otherwise. The election of one or more remedies by LICENSEE or LICENSOR shall not constitute a waiver of the right to pursue other available remedies. The failure of either party to promptly institute legal action upon any breach of this Agreement shall not constitute a waiver of that or any other breach hereof.

**10. Assignment.** Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned by either of the Parties to this Agreement without the prior written consent of the other Party; provided, however, that LICENSEE shall have the right to assign its rights, interests and obligations under this Agreement to any direct or indirect parent, subsidiary or affiliated company, or consultant or other service provider for the purpose of providing service to or on behalf of LICENSEE, and shall have the further right to assign its rights, interests and obligations under this Agreement in connection with any corporate merger, acquisition, reorganization or similar transaction. This Agreement shall be binding on, and shall inure to the benefit of, the Parties hereto, and their respective successors and permitted assigns.

**11. Partial Invalidity.** If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and the Parties hereby acknowledge and agree that they would have executed the remaining portion hereof without including the portion so declared invalid, void or unenforceable. In the event of any such determination, the Parties agree to negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intent and purpose hereof. To the extent permitted by law, the Parties hereby, to the same extent, waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

**12. TERMINATION BY LICENSOR.** This software evaluation license shall automatically expire two months from the date the software is issued to LICENSEE by LICENSOR. Notwithstanding any provision of this Agreement, LICENSEE's rights under Sections 6, 9, 16 and 20 of this Agreement shall survive termination of this Agreement.

**13. TERMINATION BY LICENSEE.**

a) LICENSEE shall have the right to terminate this Agreement or the license granted herein, at any time and from time to time, by giving notice in writing to LICENSOR. Such termination shall be effective immediately from such notice and all LICENSEE's rights associated therewith shall cease as of that date.

b) Any termination pursuant to the above paragraph shall not relieve LICENSEE of any obligation or liability accrued hereunder prior to such termination, or rescind or give rise to any right to rescind anything done by LICENSEE or any payments made or other consideration given to LICENSOR hereunder prior to the time such termination becomes effective, and such termination shall not affect in any manner any rights of LICENSOR arising under this Agreement prior to such termination. LICENSEE shall pay all reasonable attorney's fees and costs incurred by LICENSOR in enforcing any obligations of LICENSEE or accrued rights of LICENSOR after termination.

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North Logan, UT 84341

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