

**SARS-CoV-2/COVID-19
NONEXCLUSIVE SOFTWARE END USER LICENSE AGREEMENT**

THIS NONEXCLUSIVE SOFTWARE END USER LICENSE AGREEMENT (this "Agreement") is entered into by and between Lawrence Livermore National Security, LLC, a Delaware limited liability company ("LLNS"), and [End User's full legal name], a [type of entity and jurisdiction] ("End User") as of the date of execution by the last signing party ("Effective Date").

BACKGROUND

- A. LLNS manages, operates and conducts research and development at Lawrence Livermore National Laboratory ("LLNL"), a Federally Funded Research and Development Center, under Contract No. DE-AC52-07NA27344 with the U. S. Department of Energy ("DOE").
- B. LLNS has developed certain software (as further defined below, "Software") that may be relevant to the SARS-CoV-2/COVID-19 pandemic and global health emergency ("COVID-19").
- C. DOE and LLNS desire that such Software be made available for the purpose of researching, developing and utilizing solutions to respond to and mitigate the effects of COVID-19.

AGREEMENT

1. SOFTWARE DESCRIPTION

- 1.1 As used in this Agreement "Software" means the software and related documentation (if any) identified in Exhibit A and provided by LLNS, whether provided online, on disk, in read only memory, on any other media or in any other form.
- 1.2 The Software is licensed, not sold, by LLNS to End User for use by End User only under the terms of this Agreement. LLNS, for itself and on behalf of the U.S. Government, reserves all rights not expressly granted to End User. LLNS and its licensors (if any) retain ownership of all right, title and interest in and to the Software, subject to rights reserved by the U.S. Government.
- 1.3 The Software will be provided at no cost to End User after execution of this Agreement by both parties.
- 1.4 LLNS is providing a license to the Software only. LLNS is under no obligation to provide maintenance or support for the Software, or to notify End User of Software Updates (if any).
- 1.5 The Software may include, contain or link to one or more third party software programs licensed under open source licenses ("Open Source Programs"). The Open Source Programs are licensed pursuant to license agreements permitting End User to copy, modify, and redistribute the applicable Open Source Programs, in both source code and binary code forms, in all cases subject to the terms of the particular license agreement(s) applicable to the Open Source Programs. The Open Source Programs are not subject to this Agreement, and nothing in this Agreement limits End User's rights under, or grants End User rights that supersede, the terms of any applicable Open Source Program license agreement. To the extent required under any license agreement for a particular Open Source Program, upon written request, LLNS will make such Open Source Programs, and LLNS's modifications to such Open Source Programs, available to End User. Other than Open Source Programs, nothing in this Agreement grants End User any rights in any third party proprietary software that may be included in the Software, except the right to use such third party proprietary software only as it is included in the Software and subject to the terms of this Agreement.

2. PERMITTED USES AND RESTRICTIONS

- 2.1 LLNS hereby grants End User the nonexclusive, non-transferrable, royalty-free right and license to install and use the Software in executable form during the term of this Agreement, solely within the field of identifying, diagnosing, controlling, mitigating, modeling, preventing and/or treating of negative health, economic or other outcomes related to COVID-19.
- 2.2 End User may **NOT** rent, lease, lend, loan, redistribute, sublicense or otherwise transfer the Software to any third party (including but not limited to any parent, subsidiary or affiliate of End User), use the Software for service bureau or time-sharing purposes or as a software as a service (SAAS) or application service provider model, or in any other way allow third parties to use, copy or otherwise exploit the Software.
- 2.3 From time to time, LLNS may, but is not obligated to, provide patches, bug fixes or other updates that are required or recommended for the proper functioning of the Software ("Software Updates"). This Agreement allows Software Updates (if any are provided) to be installed on any computer on which the Software is being used as permitted under this Agreement. Once installed on such computer(s), Software Updates shall become subject to this Agreement and all references in this Agreement to Software shall include the Software and all installed Software Updates.
- 2.4 End User may copy the Software solely to the extent necessary to exercise the foregoing license and save one additional copy of the Software on a computer, CD, hard drive or other storage media solely for backup and archival purposes; provided however that (i) End User must reproduce all copyright notices and other proprietary notices on any copies of the Software and must not remove or alter those notices; and (ii) all copies of the Software shall be subject to the terms of this Agreement.
- 2.5 Except to the extent expressly permitted in this Agreement or by applicable law, End User may not copy, reproduce, publish, post, publicly display, transmit, distribute, modify, decompile, reverse engineer, reverse compile, disassemble, attempt to derive the source code of, decrypt, create derivative works, sell or participate in any sale of or exploit the Software or any part thereof. Any attempt to do so is a violation of the rights of LLNS and may subject End User to prosecution and damages.

3. DILIGENCE; REPORTS

- 3.1 End User will proceed diligently with its use of the Software for the purpose stated in Section 2.1.
- 3.2 End User will provide to LLNS a progress report on its use of the Software six (6) months after the Effective Date, and every six (6) months thereafter during the term of this Agreement.
- 3.3 End User will properly cite its use of the Software in any related scientific or research publication.
- 3.4 End User will report to LLNS any feedback, comments, suggestions, improvements or the like concerning the Software (collectively "Feedback"), which shall be received and treated by LLNS on a non-confidential and unrestricted basis. End User hereby grants to LLNS a worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, sublicensable, and irrevocable right and license to use, copy, and modify Feedback for any purpose, including, without limitation, incorporation or implementation of such Feedback into the Software or into other current or future inventions, improvements, products, methods or services developed by LLNS.

4. TERM AND TERMINATION

- 4.1 This Agreement will be in effect for twelve (12) months from the Effective Date, unless (a) sooner terminated by operation of law or by either of the parties in accordance with the terms hereof, or (b) extended by mutual agreement of the parties.
- 4.2 As a condition to agreeing to an extension of the term of this Agreement beyond the initial term specified in Section 4.1, LLNS may require the addition of fees, performance obligations, and other commercial terms to be negotiated by the parties, each acting in their sole discretion.
- 4.3 End User may terminate this Agreement at any time for any reason by uninstalling and ceasing to use the Software and notifying LLNS at softwarelicensing@lists.llnl.gov. LLNS may terminate this Agreement, and all of End User's rights hereunder, upon written notice to End User if End User fails to comply with any term(s) of this Agreement.
- 4.4 Upon the termination of this Agreement for any reason, End User shall cease all use of the Software and destroy all copies of the Software on its computer, networks and storage devices, and any copies thereof, and any media on which the Software was provided. Upon termination all rights granted to End User under this Agreement shall immediately terminate and revert to LLNS except for those provisions expressly stated in Section 4.5 below to survive.
- 4.5 When this Agreement expires or is terminated for any reason, Sections 1, 4, 5, 6, 7, 9, 10, 11 and 12 will survive such expiration or termination.

5. USE OF NAMES, TRADENAMES AND TRADEMARKS

End User will not use in advertising, publicity, press releases, products, services or other promotional activities any name, tradename, trademark, service mark, logo or other designation of DOE, the National Nuclear Security Administration, LLNS, or LLNL (including any contraction, abbreviation, or simulation of any of the foregoing) without LLNS's prior written approval, except for statements and phrases that simply reference the fact that the Software was developed at LLNL or is licensed from LLNS.

6. REPRESENTATIONS; LIMITATION OF WARRANTIES

- 6.1 End User represents that it has the lawful right to enter into and perform this Agreement.
- 6.2 THE SOFTWARE WAS PREPARED AS AN ACCOUNT OF WORK SPONSORED BY AN AGENCY OF THE U.S. GOVERNMENT FOR RESEARCH PURPOSES. THE SOFTWARE IS PROVIDED AND LICENSED TO END USER "AS IS," WITH ALL FAULTS, DEFECTS AND ERRORS. LLNS MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY TYPE WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, OR THAT THE SOFTWARE CAN BE INSTALLED AND DEPLOYED SUCCESSFULLY BY END USER, THAT THE SOFTWARE WILL RUN UNINTERRUPTED OR BE ERROR FREE WHEN INSTALLED ON END USER'S COMPUTER(S) OR NETWORK(S), THAT THE SOFTWARE WILL BE COMPATIBLE WITH THIRD PARTY SOFTWARE, OR THAT THE SOFTWARE WILL OTHERWISE WORK IN END USER'S COMPUTING ENVIRONMENT. LLNS MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SOFTWARE WILL WORK AS DESCRIBED IN ANY DOCUMENTATION, OR THAT THE SOFTWARE WILL GENERATE ACCURATE OR RELIABLE RESULTS. LLNS HAS NO OBLIGATION TO CORRECT ANY PROGRAM ERRORS, INCLUDING THOSE SPECIFICALLY BROUGHT TO ITS ATTENTION.

6.3 THE LICENSE GRANTED HEREBY IS INTENDED SOLELY TO ASSIST WITH THE PUBLIC HEALTH AND RESPONSE TO COVID-19. END USER'S ACCEPTANCE OF THE LICENSE AND ITS USE IS AT END USER'S SOLE RISK AND EXPENSE. NEITHER LLNS NOR THE U.S. GOVERNMENT NOR ANY OF THEIR RESPECTIVE LICENSORS WILL HAVE ANY LIABILITY FOR THE PAYMENT OF ANY DAMAGES OF ANY KIND (INCLUDING CLAIMS ARISING OUT OF OR RELATED TO LOSS OF BUSINESS, PROFITS, GOODWILL OR DATA, COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, PRODUCT LIABILITY, NEGLIGENCE, FAILURE TO WARN, WARRANTY, USE OR INABILITY TO USE, REGARDLESS OF THE LEGAL THEORY ON WHICH ANY SUCH DAMAGES OR LIABILITY MAY BE BASED AND WHETHER OR NOT THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES OR LIABILITY) FOR ANY USE OF THE SOFTWARE.

7. PREP ACT; INDEMNIFICATION; INSURANCE

7.1 Licensee will take all reasonable steps to ensure that , to the extent applicable, any products or services that are designed or developed using the Software and sold or otherwise distributed or provided by Licensee will meet the requirements for liability immunity under the Public Readiness and Emergency Preparedness Act, 42 U.S.C. 247d-6d, et seq, and the declaration thereunder concerning COVID-19 issued by the Secretary of Health and Human Services on February 4, 2020.

7.2 End User will indemnify, hold harmless, and defend LLNS and the U.S. Government, and their respective officers, employees and agents, from and against any and all claims, suits, losses, damages, costs, attorney and other fees, and expenses resulting from, or arising out of, the performance of this Agreement or the exercise of the license granted herein. This indemnification will include, but will not be limited to, any product liability in any way arising from or related to use of the Software.

7.3 End User, at its sole cost and expense, will obtain and maintain adequate insurance coverage appropriate for its activities under this Agreement, which insurance will name LLNS and the U.S. Government, and their respective members, officers, employees and agents as additional insureds. End User will provide evidence of such insurance coverage to LLNS upon request.

8. ASSIGNMENT AND CHANGE OF CONTROL

This Agreement is binding upon and will inure to the benefit of LLNS, its successors and assignees, but is personal to End User. End User may not assign any of its rights under this Agreement to any third party, including affiliates, or through a change of control of Licensee without LLNS's prior written consent, which may be granted or withheld in LLNS's sole discretion. A change of control means any transaction or series of related transactions (including without limitation, mergers, stock acquisitions, reorganizations and consolidations) in which the direct or indirect holders of a controlling interest in Licensee immediately before the transaction(s) cease to hold, directly or indirectly, a controlling interest in Licensee immediately after the transaction(s). Any purported assignment or change of control in violation of this paragraph is void.

9. NOTICES

Any notices required to be given under this Agreement must be in writing and will be deemed to have been properly given and to be effective upon actual receipt by the recipient when personally delivered or sent via first class mail, overnight courier or email. Notices will be sent to the parties at the addresses below, or to other addresses designated in writing by the parties:

If to End User:

Attention: _____

Email: _____

If to LLNS:

Lawrence Livermore National Laboratory
Innovation and Partnerships Office
P.O. Box 808, L-795
7000 East Avenue, L-795
Livermore, CA 94550

Attention: Director, Innovation and Partnerships

Email: softwarelicensing@lists.llnl.gov

10. COMPLIANCE WITH LAWS

End User shall observe all applicable United States and foreign laws and regulations (if any) with respect to the export, re-export, diversion or transfer of the Software, related technical data and direct products thereof, including, without limitation, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations. The export of any technology from the United States, including without limitation the Software and related technical data, may require some form of export control license from the U.S. Government and, pursuant to U.S. laws, and failure to obtain any required export control license may result in criminal liability under U.S. laws.

11. DISPUTE RESOLUTION; GOVERNING LAW AND VENUE

11.1 Except where LLNS is entitled under this Agreement to seek immediate legal or equitable relief, LLNS and End User will utilize good faith efforts to promptly resolve any disputes arising from this Agreement, using the assistance of the LLNS Technology Partnership Ombudsman if they deem appropriate. In the event the parties fail to resolve a dispute within a reasonable period of time, then either party may commence proceedings in the courts specified below.

11.2 This Agreement will be governed by the laws of the State of California, excluding its choice of law rules. Any legal action related to this Agreement will be conducted in the state courts sitting in Alameda County, California, or in the federal courts sitting in the Northern District of California.

12. MISCELLANEOUS

12.1 No amendment or modification of this Agreement will be binding on the parties unless made in a writing executed by duly authorized representatives of the parties. No waiver by either party of any breach or default of any of the covenants or terms of this Agreement will be deemed a waiver as to any prior, subsequent or similar breach or default.

12.2 This Agreement, with the attached exhibit, contains all of the terms and conditions agreed upon by the parties relating to the subject matter of this Agreement and supersedes all prior agreements, negotiations, correspondence, undertakings and communications of the parties, whether oral or written, respecting that subject matter.

12.3 If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provisions hereof, and this Agreement will be construed as if such invalid or illegal or unenforceable provisions had never been part of this Agreement.

12.4 The relationship between the parties is that of independent contractors and nothing in this Agreement is intended to or will establish any partnership, joint venture, employment, franchise, agency or other form of relationship between the parties. Neither party will have, or represent to any third party that it has, any power or authority to bind the other party or incur any obligations on the other party's behalf.

12.5 This Agreement may be executed in counterparts, including by, digital, facsimile or email attachment.

IN WITNESS WHEREOF, LLNS and End User have executed this Agreement by their respective authorized representatives on the dates set forth below.

[END USER'S FULL LEGAL NAME]

LAWRENCE LIVERMORE NATIONAL SECURITY, LLC

By: _____
(Signature)

By: _____
(Signature)

Name: _____

Name: Richard A. Rankin _____

Title: _____

Title: Director, Innovation and Partnerships _____

Date signed: _____

Date signed: _____

EXHIBIT A – SOFTWARE AND ASSOCIATED MATERIALS

SOFTWARE DISCLOSURE INFORMATION

Copyright Disclosure Number	Copyright Registration Number (if any)	Title	Disclosure Date

ASSOCIATED MATERIAL:

Disclosure/Publication Number	Type of Material	Title	Other Reference (if any)