

END USER SOURCE CODE LICENSE AGREEMENT

For

NEC VERSION 5

Between

LAWRENCE LIVERMORE NATIONAL SECURITY, LLC

and

(Company Name)

LLNL Case No. TE0_____

[for LLNL use]

**Lawrence Livermore National Laboratory
P.O. Box 808, L-795, Livermore, CA 94551
Innovation & Partnerships Office**

(Date)

**NUMERICAL ELECTROMAGNETIC CODE (NEC) v5.0 SOFTWARE END USER SITE LICENSE
UPGRADE AGREEMENT**

This Software End User Site License Agreement (“Agreement”) is entered into between Lawrence Livermore National Security, LLC, a Delaware limited liability company (“LLNS”), and the person or entity identified in Exhibit A (“End User”), and relates to software, as further described below, that was developed by LLNS at the Lawrence Livermore National Laboratory (“LLNL”) under Contract No. DE-AC52-07NA27344 between LLNS and the U.S. Department of Energy/National Nuclear Security Administration. End User is a current licensee who is an individual, a U.S. small businesses or an academic institution as defined below who purchased NEC v4.2 between January 1, 2019 and July 1, 2020.

1. Software Description:

As used in this Agreement, “Software” means, collectively, the software known as Numerical Electromagnetic Code (“NEC”) version 5 and related documentation (if any) provided by LLNS, whether provided online, on disk, in read only memory, on any other media or in any other form. 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. The Software will be provided to End User after execution of this Agreement by both parties and payment of the required fee.

2. Permitted Uses and Restrictions:

(a) LLNS hereby grants End User the non-exclusive, nontransferable right and license to install and use the Software in executable form during the term of this Agreement only for its own internal purposes and at the single location listed by End User in Exhibit A.

(b) 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 or application service provider model, or in any other way allow third parties to exploit the Software, or take any action to permit others to copy or use the Software outside the license granted in the preceding paragraph.

(c) 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 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. From time to time, LLNS may, but is not obligated to, make new versions of the Software available for license by End User. Such new versions will be subject to a new license agreement and payment of additional consideration.

(d) 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.

(e) 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. Consideration:

(a) Within ten (10) business days of execution of this Agreement, End User will pay LLNS a one-time fee of _____. Such fee is nonrefundable and will not be reduced by any taxes, fees or other charges.

(b) End User will properly cite its use of the Software in any related scientific or research publication as “Burke, G. & Poggio, A. (2018). Numerical Electromagnetics Code version 5.0. LLNL-CODE-746721.”

(c) 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. Accuracy of Information: Any reports, summaries, analyses or other information generated by the Software (collectively, "Reports") are based exclusively on data and other information provided by End User or third parties ("Data"). LLNS makes no representations or warranties regarding the accuracy, completeness, reliability or timeliness of any Data provided by End User or third parties, or of any Reports generated by the Software based on such Data.

5. No Maintenance or Support: 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) (including without limitation bug fixes, patches and upgrades). LLNS will have no access to, and no responsibility for storing or backing up, any Data or Reports. End User is solely responsible for maintaining, storing and backing up as it sees fit any Data or Reports that it wishes to preserve. LLNS is not responsible for unauthorized access to, use of or alteration of any Data or Reports.

6. Termination: This Agreement is effective upon the date of execution by LLNS and, unless sooner terminated as provided herein, it shall continue in effect until three (3) years from the effective date. 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. 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.

7. Third Party Systems and Programs: 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.

8. Disclaimer of Warranties: 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. ALL USE BY END USER OF THE SOFTWARE SHALL BE AT THE END USER'S SOLE AND EXCLUSIVE OWN RISK.

9. Limitation of Liability: TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER LLNS, NOR THE U.S. GOVERNMENT, NOR ANY OF THEIR RESPECTIVE LICENSORS, WILL BE LIABLE FOR ANY LOSS OF BUSINESS, PROFITS, GOODWILL OR DATA, COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES SUFFERED BY END USER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR END USER'S USE OR INABILITY TO USE THE SOFTWARE FOR ANY CAUSES OF ACTION OF ANY KIND (INCLUDING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE) EVEN IF LLNS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH

DAMAGES. DIRECT DAMAGES RECOVERABLE BY END USER FROM LLNS UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY END USER TO LLNS UNDER SECTION 3(a) OF THIS AGREEMENT.

10. Indemnity: End User will indemnify, defend and hold harmless LLNS and its affiliates, the U.S. Government and their respective licensors, officers, directors, employees and agents from and against any and all claims, liabilities, losses, costs and expenses (including attorneys' fees) incurred by any of them in connection with End User's performance or breach of this Agreement or its use of the Software.

11. Use of Names: End User may not display or use for any commercial purposes the names "Lawrence Livermore National Laboratory," "LLNL," "Lawrence Livermore National Security, LLC" or "LLNS" without LLNS's prior written permission.

12. Export Control: End User will comply with all applicable United States and foreign laws with respect to the transfer of the Software and documentation (if any) and the use of the Software in foreign countries, including, without limitation, the International Traffic in Arms Regulations ("ITAR"), the Export Administration Regulations ("EAR"), and any sanctions and/or anti-boycott rules or regulations in effect during the term of this Agreement. End User represents and warrants that it is not located in any country or identified on any list that is subject to restrictions by such laws. End User also agrees that it will not use the Software for any purposes prohibited by United States law.

13. Software Audit: Upon written request from LLNS and subject to reasonable advance notification, End User shall provide LLNS with access to any books, computers, records, or other information that relate or may relate to its use of the Software as LLNS may request to show compliance with the terms of this Agreement. Such audit will not unreasonably interfere with End User's business activities. In the event that an audit reveals use of the Software in violation of the terms of this Agreement, End User will reimburse LLNS for the reasonable cost of the audit, in addition to such other rights and remedies that LLNS may have.

14. Governing Law: This Agreement will be interpreted and construed in accordance with the laws of the State of California, excluding any choice of law rules that would direct the application of the laws of another jurisdiction. 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. End User hereby irrevocably waives all right it may have to a trial by jury in any legal action or proceeding arising out of or in connection with this Agreement.

15. End User Certification: End User represents that it has the lawful right to enter into and perform this Agreement, that it has read and understood this agreement and agrees to be bound by its terms and conditions, and that the information provided in Exhibit A is accurate. End User further represents that its license for NEC 4.2 is in good standing with no cause to terminate, and that End User still qualifies as an individual, an organization which qualifies as a small business concern for U.S. government contracting purposes pursuant to 15 U.S.C. 632 and Small Business Administration regulations ("U.S. small business") or an educational institution that has been accredited by an authorized governmental agency within its applicable local, state, provincial, federal or national government and has the primary purpose of teaching its enrolled students ("academic institution").

16. Amendment: No modification or amendment of this Agreement is binding, unless in writing signed by a duly authorized representative of each Party.

17. General: This Agreement constitutes the entire agreement between LLNS and End User with respect to the Software and supersedes any and all prior proposals, negotiations, conversations, discussions and agreements between LLNS and End User regarding the Software. LLNS and End User are independent contractors, and nothing in this Agreement creates a partnership, joint venture, agency or other similar relationship between LLNS and End User. Upon termination of this Agreement for any reason, Sections 4, 6, 8, 9, 10, 11, 12, 13, 14 and 17 shall survive in full force and effect. Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provisions, and no waiver of one breach will constitute a waiver of subsequent breaches of the same or different nature. If any provision of this Agreement shall be finally determined to be unlawful, void or unenforceable in any respect, that provision shall not affect the validity or enforceability of any other provisions and this Agreement will be construed as if such unenforceable provisions had never been part of this Agreement. This Agreement is executed in the English language. If this Agreement is translated into other languages, the English version of this Agreement shall govern in the event of any dispute. If End User has any questions concerning this Agreement, contact Lawrence Livermore National Laboratory, Innovation and Partnerships Office, L-795, 7000 East Avenue, Livermore, CA 94550. Attn: Software Licensing or via email at softwarelicensing@lists.llnl.gov.

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

END USER**LAWRENCE LIVERMORE
NATIONAL SECURITY, LLC**

By:		By:	
	(Signature)		(Signature)
Name:		Name:	Nina A. Potter
	(Print Name)		
Title:		Title:	Manager, IP & Agreements Management
Date signed:		Date signed:	

EXHIBIT A

To be completed by End User

LICENSEE INFORMATION:

Legal Name of Organization/Individual

Type of legal entity and jurisdiction if other than individual (e.g., Delaware corporation)

Physical Address(es) where Software will be installed and used

Mailing/Street Address for Notifications

Contact Name

Telephone Number

Email Address

Country of Citizenship (for individual license requests only, for compliance with export control regulations)
Note: if dual citizenship, list all countries

Foreign organizations must also complete the online [Customer Screening Form](#) and return it with this form.

Please check all that apply:

- | | | | |
|--------------------|--------------------------|---------------------------|--------------------------|
| Foreign (non-U.S.) | <input type="checkbox"/> | State or Local Government | <input type="checkbox"/> |
| University | <input type="checkbox"/> | Not-for-Profit Entity | <input type="checkbox"/> |
| Small Business | <input type="checkbox"/> | Individual | <input type="checkbox"/> |
| Minority Owned | <input type="checkbox"/> | Publicly Traded Company | <input type="checkbox"/> |
| Woman Owned | <input type="checkbox"/> | Privately Held Company | <input type="checkbox"/> |
| Large Business | <input type="checkbox"/> | | |

Are you a party designated under U.S sanctions, owned nor controlled by a designated party under U.S sanctions, or otherwise barred from doing business with the U.S. Government? : Yes: No:

Interested in another type of license?

LLNL may offer other licenses or partnership agreements on a case-by-case basis. Contact softwarelicensing@lists.llnl.gov to describe your business needs and determine what rights and agreements may be available for you. For example, LLNL is interested in partnering with distributors interested in to commercially distributing, supporting and maintaining Numerical Electromagnetic Code (NEC) version 5. To support the established NEC 4.2 user community, LLNL continues to provide NEC 4.2 by request.