

END USER SOURCE CODE LICENSE AGREEMENT

For

LLNL SCDC VERSION 1

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)

SOFTWARE END USER LICENSE AGREEMENT

This Software End User 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.

1. Software Description:

As used in this Agreement, “Software” means, collectively, the software known as LLNL SCDC v. 1 including 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.

2. Permitted Uses and Restrictions:

(a) LLNS hereby grants End User the non-exclusive, nontransferable right and license to compile, install and use the Software in source code form during the term of this Agreement only at the 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 may require 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, 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. If End User creates derivative works of the Software, it will provide copies to LLNS together with a perpetual worldwide nonexclusive royalty-free license for LLNS to use them for its own non-commercial purposes.

(f) End User will implement sufficient restrictions to control access to the Software, will maintain a list of personnel that have access to the Software, along with their countries of citizenship, and will make such list available to LLNS upon request. The parties agree that LLNS would have access to such list for the sole purpose of monitoring End User’s use of the Software and compliance with the terms of this Agreement, and not for other data collection or processing purposes. End User certifies to LLNS that it has obtained, or will obtain, all necessary consents from its personnel to provide such a list to LLNS in compliance with applicable data privacy laws.

3. Consideration:

(a) End User will provide the information requested in Exhibit A. The Software is being provided at no cost to End User.

(b) End User will properly cite its use of the Software in any related scientific or research publication as Zavarin, M.; Chang, E.; Wainwright, H.; Parham, N.; Kaukuntla, R.; Zouabe, J.; Deinhart, A.; Genetti, V.; Shipman, S.; Bok, F.; Brendler, V. Community Data Mining Approach for Surface Complexation Database Development. *Environ. Sci. Tech.* DOI: 10.1021/acs.est.1c07109

(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, or of any Reports generated by the Software.

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 five (5) 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) to, and the use of the Software in, foreign countries or by individuals who are not United States citizens, 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 such country or on any such list. 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, United States, 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 Representation: 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 that the information provided in Exhibit A is accurate and complete.

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, 15 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 duly authorized representatives on the dates set forth below.

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

By:		By:	
	(Signature)		(Signature)
Name:		Name:	Matthew Garrett
	(Print Name)		
Title:		Title:	Director, Innovation and Partnerships Office
Date signed:		Date signed:	

EXHIBIT A

To be completed by End User

Please complete this form and return it to LLNL as your request for LLNL software. Not all requests for software are granted. Reviews can take time. If your request is granted, then LLNL will sign the license and you will receive an additional e-mail with instructions on how to obtain the software.

LICENSEE INFORMATION:

 Legal Name of Organization/Individual

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

 Physical Address 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 or controlled by a designated party under U.S. sanctions, or otherwise barred from doing business with the U.S. Government?

Yes: No:

A U.S. Government Use Agreement can be requested by Federal Agencies and their authorized contractors by emailing softwarelicensing@lists.llnl.gov.