

SOFTWARE TEST AND EVALUATION LICENSE AGREEMENT

[SOFTWARE NAME & VERSION]

UT-BATTELLE, LLC, hereinafter referred to as, a _____ company having its principal place of business at _____, hereinafter referred to as the "LICENSOR," and [COMPANY], a [STATE] company, having its principle place of business at [ADDRESS], hereinafter referred to as "EVALUATOR" agree as follows, with both hereinafter referred to collectively as the Parties:

The LICENSOR conducts research and development at the Oak Ridge National Laboratory (ORNL) for the U.S. Government under Contract No. DE-AC05-00OR22725 with the U.S. Department of Energy.

Consortium for Advanced Simulation of Light Water Reactors ("CASL") is a program ("CASL Program") funded under an award given by the U.S. Department of Energy ("DOE") to UT-Battelle, LLC, management and operating contractor of Oak Ridge National Laboratory ("ORNL") under Contract No. DE-AC02-00OR22725, in connection with Funding Opportunity Announcement number DE-FOA-0000170 and funding may be disseminated by UT-Battelle in accordance therewith ("CASL Funding").

CASL Program participants ("CASL Members") include universities, DOE National Laboratory management and operating contractors, non-profit institutes, federal corporations, and industrial research organizations. The research of the CASL Program is envisioned to be performed by the CASL Members. CASL IP can be created by any CASL Member ("CASL IP Owner") that receives CASL Funding.

LICENSOR has developed or obtained rights to the software identified in Appendix A, hereinafter referred to as "LICENSED SOFTWARE". The LICENSOR has obtained the right to sublicense Licensed Software from CASL IP Owners.

LICENSOR desires to transmit to EVALUATOR, and EVALUATOR desires to receive, the LICENSED SOFTWARE for the sole purpose of non-commercial testing and evaluating the LICENSED SOFTWARE related to CASL programmatic research at the EVALUATOR's facilities (hereinafter, the "PURPOSE").

1. LICENSOR grants to EVALUATOR, a royalty free, limited term, nonexclusive, nonsublicensable, and nontransferable license to use LICENSED SOFTWARE, for the PURPOSE.
2. LICENSOR further grants to EVALUATOR a limited noncommercial right to prepare derivative works or compilations thereof, or to modify the LICENSED SOFTWARE for internal use only. This right to modify or create derivative works from the LICENSED SOFTWARE shall only be for the purposes of making the LICENSED SOFTWARE work on the EVALUATOR's computing platform and this right shall not extend to the modification of the source code to change the physics in the LICENSED SOFTWARE. Any works derived from the use of the LICENSED SOFTWARE will be owned by EVALUATOR but may be provided to LICENSOR for further research and development purposes. However, any commercial use of such derivative works created from LICENSED SOFTWARE shall be governed by a separate license agreement with appropriate terms and conditions to reflect commercial use of the LICENSED SOFTWARE and corresponding derivative works.
3. In exchange for this grant of rights herein, the EVALUATOR shall provide feedback to the LICENSOR or his designee with regard to the LICENSED SOFTWARE's functionality, any

errors or omissions, or any bug fixes needed in the source code.

4. A final draft of publications by the EVALUATOR including results obtained with the LICENSED SOFTWARE shall be provided to the LICENSOR for review and approval prior to publication, such approval not to be unreasonably withheld by LICENSOR.
5. This AGREEMENT shall be effective as of the date of signature of the last Party to sign this AGREEMENT (hereinafter the "EFFECTIVE DATE"). The term of this AGREEMENT is for eighteen (18) months from the EFFECTIVE DATE (hereinafter, the "TERM") and EVALUATOR shall cease any use of the LICENSED SOFTWARE on that date. The AGREEMENT may be extended by written agreement signed by both Parties.
6. EVALUATOR acknowledges that the LICENSED SOFTWARE is a research, experimental and untested tool of the LICENSOR; that it is being supplied AS IS, without any accompanying maintenance, or support from the LICENSOR.
7. EVALUATOR acknowledges that it shall not acquire any right of ownership or title in the LICENSED SOFTWARE under this AGREEMENT. No rights are granted to EVALUATOR except as expressly recited in this AGREEMENT.
8. A copy of the LICENSED SOFTWARE will be provided to EVALUATOR within a reasonable time after the EFFECTIVE DATE. EVALUATOR agrees not to copy the LICENSED SOFTWARE, in whole or in part, except as required for use by EVALUATOR for the PURPOSE.
9. EVALUATOR acknowledges that a commercial license to the LICENSED SOFTWARE may not be available.
10. EVALUATOR represents and warrants that it shall not export any technical information (or the direct product thereof) furnished to EVALUATOR, either directly or indirectly by LICENSOR, from the United States of America, directly or indirectly without first complying with all relevant export control laws and regulations. EVALUATOR shall indemnify, defend and hold harmless LICENSOR, DOE, CASL IP Owners, their respective members, officers, directors, agents, employees, and persons acting on their behalf, ("Indemnitees") from liability involving the violation of such export regulations, either directly or indirectly, by EVALUATOR. EVALUATOR acknowledges it may be subject to criminal liability under U.S. laws for EVALUATOR's failure to obtain any required export license.
11. THIS LICENSE AND THE LICENSED SOFTWARE ARE PROVIDED AS IS, WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESSED OR IMPLIED. NEITHER THE LICENSOR NOR THE U. S. GOVERNMENT MAKES ANY REPRESENTATION OR WARRANTY THAT THE LICENSED SOFTWARE WILL NOT INFRINGE ANY COPYRIGHT, PATENT OR OTHER PROPRIETARY RIGHT. IN NO EVENT WILL LICENSOR OR THE U.S. GOVERNMENT BE RESPONSIBLE OR LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS OR OTHER ECONOMIC LOSS OR DAMAGE RESULTING FROM EXERCISE OF THIS LICENSE OR THE USE OF LICENSED SOFTWARE.
12. EVALUATOR agrees to defend, indemnify and hold harmless Indemnitees for and against any and all claims, demands, damages, losses, costs, and expenses of any nature, including attorneys'

fees and other litigation expenses, arising from use of the LICENSED SOFTWARE by EVALUATOR including, but not limited to, the making, using, or processing of products, or services derived therefrom. This indemnification includes, but is not limited to, death, personal injury, illness, property damage, economic loss or product liability.

13. All notices, correspondence, and reports shall be addressed to the Parties as follows:

<u>LICENSOR</u>	<u>EVALUATOR</u>
	[COMPANY NAME]
	[ADDRESS]
ATTN: License Administrator	ATTN:

14. EVALUATOR agrees to provide the LICENSOR with any nonproprietary written evaluations and reports of the LICENSED SOFTWARE by EVALUATOR produced after the EFFECTIVE DATE of this AGREEMENT. EVALUATOR agrees to grant the LICENSOR, at no cost, the right to use, prepare derivative works or compilations thereof, and modify the LICENSED SOFTWARE using any written evaluations and reports provided of the LICENSED SOFTWARE by EVALUATOR. In particular, the LICENSOR is interested in knowing all errors or difficulties discovered; characteristic conditions and symptoms of the errors and difficulties, in sufficient detail to allow the LICENSOR to recreate the errors and difficulties itself; and the discovery of a material error in the LICENSED SOFTWARE.
15. EVALUATOR acknowledges that, in the course of using the LICENSED SOFTWARE and performing its duties under this AGREEMENT, it may obtain confidential or proprietary information relating to the LICENSED SOFTWARE (hereinafter referred to as "PROPRIETARY INFORMATION"). Such PROPRIETARY INFORMATION shall belong solely to the CASL MEMBERS contributing to the LICENSED SOFTWARE and includes, but is not limited to, the LICENSED SOFTWARE features and mode of operation, inventions (whether or not patentable), techniques, processes, programs, ideas, algorithms, schematics, testing procedures, software design and architecture, computer code, design and function specifications, analysis and performance information, software documents, and other technical plans and data.
- (a) EVALUATOR shall not during the term of this Agreement and for a period of at least five (5) years after its termination, use (except as expressly authorized by this Agreement) or disclose PROPRIETARY INFORMATION without the prior written consent of the LICENSOR unless such PROPRIETARY INFORMATION becomes part of the public domain without breach of this Agreement by EVALUATOR, its officers, directors, employees, or agents.
 - (b) EVALUATOR agrees to take all reasonable measures to maintain the PROPRIETARY INFORMATION and LICENSED SOFTWARE in confidence, using at least the same degree of care as it uses in protecting its own proprietary information.
 - (c) EVALUATOR will disclose the LICENSED SOFTWARE and PROPRIETARY INFORMATION only to those employees, consultants, and contractors as are necessary for the use expressly and unambiguously licensed hereunder, and only after such

employees and contractors have agreed in writing to be bound by the provisions of this AGREEMENT. EVALUATOR shall not, without the prior written consent of the LICENSOR, disclose or otherwise make available the LICENSED SOFTWARE or copies thereof to any third party.

- (d) EVALUATOR will not remove or export the LICENSED SOFTWARE or any PROPRIETARY INFORMATION or any direct product thereof from the United States.

16. TERMINATION

- (a) This AGREEMENT shall automatically terminate at the end of the TERM unless earlier terminated herein.
- (b) Either Party may terminate this AGREEMENT upon (30) days written notice to the other Party. Upon notification of termination or expiration of this AGREEMENT, EVALUATOR will delete or destroy the LICENSED SOFTWARE received under this AGREEMENT and any copies thereof made.
- (c) The Parties agree that any pledge by EVALUATOR of its rights under this AGREEMENT for any reason, including as security to obtain financing, without prior written approval by LICENSOR shall be an automatic, material and incurable breach of the AGREEMENT resulting in termination of the AGREEMENT effective as of the date of the attempt by EVALUATOR to make such pledge.
- (d) This AGREEMENT shall automatically terminate upon any attempt by EVALUATOR to transfer its interest in this AGREEMENT, in whole or in part, to any other party, unless otherwise agreed to in writing BY LICENSOR.
- (e) Neither Party shall be relieved of any obligation or liability under this Agreement arising from any act or omission committed prior to the termination date

17. GENERAL

- (a) Any notice, report or any other communication required to be given shall be in writing and delivered either: (1) personally, (2) by express, registered or certified first-class mail, (3) by commercial courier, or (4) by facsimile with machine confirmation of transmission.
- (b) This AGREEMENT may be amended or modified only by a written instrument signed by both Parties.
- (c) LICENSOR may assign this AGREEMENT and all rights, duties and obligations hereunder, to DOE or a successor contractor to LICENSOR, as may be required under its Prime Contract with DOE.
- (d) This AGREEMENT shall be construed in accordance with, and the rights of the CASL Members shall be governed by, the laws determined applicable by a Federal court of competent jurisdiction.
- (e) This AGREEMENT is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, and agreements, either written or oral. This AGREEMENT, and each and every provision thereof, is for the exclusive benefit of LICENSOR and EVALUATOR and not for the benefit of any third party, except to the extent expressly provided in the AGREEMENT.

- (f) Should any provision of this AGREEMENT be declared or be determined by a court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed stricken from this AGREEMENT.
- (g) This AGREEMENT may be signed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, both the LICENSOR and the EVALUATOR have executed this AGREEMENT, in duplicate originals, by their respective officers on the day and year hereinafter written.

UT-BATTELLE, LLC:

By: _____

Name: _____

Title: _____

Date: _____

[COMPANY]

By: _____

Name: _____

Title: _____

Date: _____

Appendix A LICENSED SOFTWARE

1. U.S. Copyright

- Reference No. C-[NUMBER], entitled “[SOFTWARE NAME]”, Version [NUMBER]
- Reference No. C-[NUMBER], entitled “[SOFTWARE NAME]”, Version [NUMBER]

2. U.S. Patents and Patent Applications

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