END USER SOURCE CODE LICENSE AGREEMENT

For

SPR OPT VERSION 1.0

Between

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

and

_____
(Company Name)

LLNL Case No. TL-_____
[for LLNL use]

Lawrence Livermore National Laboratory
University of California
P.O. Box 808, L-795, Livermore, CA 94551
Industrial Partnerships and Commercialization

_____
(Date)

END USER SOURCE CODE LICENSE AGREEMENT

This Agreement is by and between The Regents of the University of California ("THE REGENTS"), under its U.S. Department of Energy (DOE) Contract No. W-7405-ENG-48 to manage and operate Lawrence Livermore National Laboratory ("LLNL"), and

_____, a _____ corporation
(Company Name) (State of Incorporation)

_____
(Company Address)

_____ _____ _____
(Contact Name) (Phone) (E-Mail Address)

THE REGENTS is a corporation organized and existing under the laws of the State of California, with its principal office at 1111 Franklin Street, 12th Floor, Oakland, CA 94607-5200.

1. **LICENSE GRANT.** Subject to receipt by THE REGENTS of any required U.S. Department of Energy approvals, THE REGENTS grants _____
(Company Name)

("**LICENSEE**"), and **LICENSEE** hereby accepts, a non-exclusive, non-transferable, royalty-free license to install and use the Version 1.0 of the computer software program of SPR Opt, in source code format, together with any associated media, printed materials, and on-line or electronic documentation (if any) provided by THE REGENTS (collectively, the "Software"), wherein use includes the creation of any enhancements and derivative works from the source code of the Software, subject to the following terms and conditions:

   a. **LICENSEE** may use the Software solely for **LICENSEE**'s own internal use;

   b. **LICENSEE** may use the Software solely at the company address, **LICENSEE** may not transfer the Software without the prior written consent of THE REGENTS; **LICENSEE** may not allow the Software to be accessed over the internet;

   c. **LICENSEE** may copy the Software solely to the extent necessary to exercise the foregoing license, and for backup and archival purposes; provided however that (i) **LICENSEE** must reproduce all copyright notices and other proprietary notices on any copies of the Software and **LICENSEE** must not remove or alter those notices; (ii) all copies of the Software shall be subject to the terms of this Agreement; and (iii) **LICENSEE** may not otherwise copy or allow copies of the Software to be made; and

   d. **LICENSEE** may not rent, lease, loan, sublicense, distribute or transfer the Software to any third party, nor use the Software for commercial time-sharing or service bureau use.

2. **CONSIDERATION. LICENSEE** will pay THE REGENTS a one-time fee according to chart below. The Software and supporting documentation will be provided to **LICENSEE** after execution of this Agreement by LICENSEE and payment of the fee.

SPR Opt, Version 1.0	Fee:
U.S. Academic	free
U.S. Noncommercial	free
Non-U.S. Academic/Noncommercial	$500
U.S. Commercial	$1,100
Non-U.S. Commercial	$1,500

3. **COPYRIGHT; RETENTION OF RIGHTS.** Subject to approval by the U.S. Department of Energy: (i) **LICENSEE** hereby acknowledges that the Software is protected by United States copyright law and international treaty provisions; (ii) THE REGENTS, and its licensors (if any), hereby reserve all rights in the Software which are not explicitly granted to **LICENSEE** herein; and (iii) without limiting the generality of the foregoing, THE REGENTS and its licensors retain all title, copyright, and other proprietary interests in the Software and any copies thereof, and **LICENSEE** does not acquire any rights, express or implied, in the Software, other than those specifically set forth in this Agreement.

4. **NO MAINTENANCE OR SUPPORT**. THE REGENTS shall be under no obligation whatsoever to: (i) provide maintenance or support for the Software; or (ii) to notify **LICENSEE** of modifications including bug fixes, patches, or upgrades to the Software (if any). If, in its sole discretion, THE REGENTS make such Software modifications available to **LICENSEE** and THE REGENTS does not separately enter into a written license agreement with **LICENSEE** relating to such modifications, then it shall be deemed incorporated into the Software and subject to this Agreement bug fixes, patches, or upgrades to the Software (if any).

5. **U.S. GOVERNMENT RIGHTS.** The Software was developed under funding from the U.S. Department of Energy and the U.S. Government consequently retains certain rights as follows: the U.S. Government has been granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable, worldwide license in the Software to reproduce, prepare derivative works, and perform publicly and display publicly. Beginning five (5) years after the date permission to assert copyright is obtained from the U.S. Department of Energy, and subject to any subsequent five (5) year renewals, the U.S. Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable, worldwide license in the Software to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so.

6. **WARRANTY DISCLAIMER.** THE SOFTWARE IS SUPPLIED "AS IS" WITHOUT WARRANTY OF ANY KIND. THIS LICENSE AND THE ASSOCIATED SOFTWARE ARE PROVIDED WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. THE REGENTS AND DOE MAKE NO REPRESENTATION OR WARRANTY THAT USE OF THE SOFTWARE WILL NOT INFRINGE ANY COPYRIGHT OR OTHER PROPRIETARY RIGHT. THE REGENTS AND DOE (1) DO NOT ASSUME ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF THE SOFTWARE; AND (2) DO NOT WARRANT THAT THE SOFTWARE WILL FUNCTION UNINTERRUPTED, THAT IT IS ERROR-FREE OR THAT ANY ERRORS WILL BE CORRECTED.

7. **LIMITATION OF LIABILITY.** IN NO EVENT WILL THE REGENTS, DOE OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL

OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF DATA, FOR ANY REASON WHATSOEVER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE REGENTS HAS BEEN WARNED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT SHALL THE REGENTS' LIABILITY FOR DAMAGES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNT PAID BY **LICENSEE** FOR THE SOFTWARE.

8. **INDEMNITY. LICENSEE** will indemnify, hold harmless, and defend THE REGENTS, DOE, their officers, employees, and agents; the Software developers, the Software sponsors, and their agents, officers, and employees; against any claims, suits, losses, liabilities, damages, costs, fees, and expenses resulting from or arising out of exercise of this license. **LICENSEE** will pay any and all costs, including reasonable attorney fees, incurred by THE REGENTS in enforcing this indemnification.

9. **TERM AND TERMINATION.** The license granted to **LICENSEE** under this Agreement will continue for five (5) years from when THE REGENTS received permission from the Department of Energy (DOE) to assert copyright. The term of the license may be extended in five-year increments subject to DOE's approval. The license may be terminated by THE REGENTS in accordance with this Agreement. If **LICENSEE** breaches any term of this Agreement, and fails to cure such breach within thirty (30) days of the date of written notice, this Agreement shall immediately terminate. Upon such termination, **LICENSEE** shall immediately cease using the Software, return to THE REGENTS, or destroy, all copies of the Software, and provide THE REGENTS with written certification of **LICENSEE**'s compliance with the foregoing. Termination shall not relieve **LICENSEE** from **LICENSEE**'s obligations arising prior to such termination, including but not limited to the responsibility to pay previously accrued fees. Notwithstanding any provision of this Agreement to the contrary, Sections 5 through 12 shall survive termination of this Agreement.

10. **EXPORT CONTROLS. LICENSEE** 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.

11. **NOTICE. LICENSEE** will place the following notice on all copies of Software and supporting documentation:

    This work was produced at the University of California, Lawrence Livermore National Laboratory (UC LLNL) under contract W-7405-ENG-48 between the U.S. Department of Energy and The Regents of the University of California for the operation of UC LLNL. Copyright is reserved to The Regents for the purposes of commercialization or other disposition.

    The Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly.

    NEITHER THE UNITED STATES GOVERNMENT NOR THE UNITED STATES DEPARTMENT OF ENERGY NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF

ANY INFORMATION, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.

12. GENERAL. This Agreement shall be governed by the laws of the State of California, excluding its rules governing conflicts of laws. No provision in either party's purchase orders, or in any other business forms employed by either party will supersede the terms of this Agreement, and no modification or amendment of this Agreement is binding, unless in writing signed by a duly authorized representative of each party. This Agreement is binding upon and shall inure to the benefit of THE REGENTS, its successors and assigns. This Agreement represents the entire understanding of the parties, and supersedes all previous communications, written or oral, relating to the subject of this Agreement. If **LICENSEE** has any questions concerning this license, contact Lawrence Livermore National Laboratory, Industrial Partnerships and Commercialization, 7000 East Avenue, L-795 Livermore, CA 94550. Attn: Software Licensing.

THE REGENTS and **LICENSEE** hereby execute this Agreement, in duplicate originals, by their respective duly authorized officers.

_____ (Company Name)	**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA** **LAWRENCE LIVERMORE NATIONAL LABORATORY**
By:_____ (Signature)	By:_____ (Signature)
Name:_____ (Please print)	Name: Karena D. McKinley
Title:_____	Title: Director, Industrial Partnerships & Commercialization
Date signed:_____, 200__	Date signed:_____, 200__