

LAWRENCE BERKELEY NATIONAL LAB
END USER LICENSE AGREEMENT
FOR U. S. FEDERAL GOVERNMENT USE

Software and Version: as specified in the price lists (the "Price Lists") at <https://eesa.lbl.gov/technology/geot/> for the code you have selected

IMPORTANT – READ CAREFULLY: THIS END USER LICENSE AGREEMENT ("AGREEMENT") IS A LEGAL AGREEMENT BETWEEN YOU (IN YOUR CAPACITY AS AN INDIVIDUAL AND AS AN AGENT FOR YOUR COMPANY, INSTITUTION OR OTHER ENTITY) (COLLECTIVELY, "YOU" OR "LICENSEE") AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, DEPARTMENT OF ENERGY CONTRACT-OPERATORS OF THE ERNEST ORLANDO LAWRENCE BERKELEY NATIONAL LABORATORY ("BERKELEY LAB"). DOWNLOADING, INSTALLING, USING, OR COPYING OF THE SOFTWARE (AS DEFINED BELOW) BY YOU OR BY A THIRD PARTY ON YOUR BEHALF INDICATES YOUR AGREEMENT TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE.

1. LICENSE GRANT. Subject to receipt by Berkeley Lab of any required U.S. Department of Energy approvals, Berkeley Lab grants you, and you hereby accept, a government use, non-exclusive, non-transferable, royalty-free perpetual license to install and use the version of the computer software programs in the Price Lists, in executable code format only, together with any associated media, printed materials, and on-line or electronic documentation (if any) provided by Berkeley Lab (collectively, the "Software"), subject to the following terms and conditions:

- (a) You may use the Software solely for your own internal use either (i) as an agency of the U. S. Federal government, or (ii) solely to perform the project for which you are funded by the U. S. Federal government. You agree that you will not use the Software for any commercial purpose. If you desire to use the Software in any purpose other than government use as described in this paragraph, you must acquire a different license from Berkeley Lab;
- (b) The software may be used solely by members of the government entity or federally funded entity listed during the registration process; you may not transfer a copy of the Software to any third party, nor may you allow the Software to be accessed over a network or the internet in a manner that would allow users to access the Software who are not employed by you, without the prior written consent of Berkeley Lab;
- (c) You may copy the Software solely to the extent reasonably necessary to exercise the foregoing license, and for backup and archival purposes; *provided however* that (i) you must reproduce all copyright notices and other proprietary notices on any copies of the Software and you must not remove or alter those notices; (ii) all copies of the Software shall be subject to the terms of this Agreement; and (iii) you may not otherwise copy or allow copies of the Software to be made; and
- (d) You may not reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code of the Software. You may not modify, alter, or create derivative works of the Software in any manner. You 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. COPYRIGHT; RETENTION OF RIGHTS. Subject to approval by the U.S. Department of Energy: (i) you hereby acknowledge that the Software is protected by United States copyright law and international treaty provisions; (ii) Berkeley Lab, and its licensors (if any), hereby reserve all rights, title and interest in and to the Software which are not explicitly granted to you herein; and (iii) without limiting the generality of the foregoing, Berkeley Lab and its licensors (if any) retain all title, copyright, and other proprietary interests in the Software and any copies thereof, and you do not acquire any rights, express or implied, in the Software, other than those specifically set forth in this Agreement.

3. NO MAINTENANCE OR SUPPORT. Berkeley Lab shall be under no obligation whatsoever to: (i) provide maintenance or support for the Software; or (ii) to notify you of bug fixes, patches, or upgrades to the Software (if any). If, in its sole discretion, Berkeley Lab makes a Software bug fix, patch or upgrade available to you and Berkeley Lab does not separately enter into a written license agreement with you relating to such bug fix, patch or upgrade, then it shall be deemed incorporated into the Software and subject to this Agreement.

4. LICENSE FEE. Government Use Licenses are provided at no cost to U. S. federal government entities or to entities acting on behalf of the U. S. federal government.

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. BERKELEY LAB, ITS LICENSORS, THE UNITED STATES, THE UNITED STATES DEPARTMENT OF ENERGY, AND THEIR EMPLOYEES: (1) DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, (2) DO NOT ASSUME ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF THE SOFTWARE, (3) DO NOT REPRESENT THAT USE OF THE SOFTWARE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS, (4) 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 BERKELEY LAB 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 BERKELEY LAB HAS BEEN WARNED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT SHALL BERKELEY LAB’S LIABILITY FOR DAMAGES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNT PAID BY YOU FOR THE SOFTWARE.

8. INDEMNITY. You shall indemnify, defend, and hold harmless Berkeley Lab, the U.S. Government, the Software developers, the Software sponsors, and their agents, officers, and employees, against any and all claims, suits, losses, damage, costs, fees, and expenses arising out of or in connection with this Agreement. You shall pay all costs incurred by Berkeley Lab in enforcing this provision, including reasonable attorney fees.

9. TERM AND TERMINATION. The license granted to you under this Agreement will continue perpetually unless terminated by Berkeley Lab in accordance with this Agreement. If you breach any term of this Agreement, and fail to cure such breach within thirty (30) days of the date of written notice, this Agreement shall immediately terminate. Upon any such termination, you shall immediately cease using the Software, return to Berkeley Lab, or destroy, all copies of the Software, and provide Berkeley Lab with written certification of your compliance with the foregoing. Termination shall not relieve you from your 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 11 shall survive termination of this Agreement.

10. EXPORT CONTROLS. You 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. 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 Berkeley Lab, 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 you have any questions concerning this license, contact Lawrence Berkeley National Laboratory, Intellectual Property Office, One Cyclotron Road, MS 56A-120, Berkeley, CA 94720, Attn: Software Licensing or via e-mail at IPO@lbl.gov.

BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, AND/OR CLICKING THE “I ACCEPT” BUTTON, YOU ARE INDICATING YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS HEREIN.