

LAWRENCE BERKELEY NATIONAL LAB

SOURCE CODE LICENSE AGREEMENT

FOR NON-COMMERCIAL USE

Software and Version: as specified in the price lists (the "Price Lists") at <http://esd.lbl.gov/research/projects/tough/> for the code(s) you have selected

IMPORTANT – READ CAREFULLY: THIS SOURCE CODE 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 IN THE PRICE LISTS) 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 non-commercial, a non-exclusive, non-transferable, perpetual license to install, use, copy, modify and prepare derivative works of the version of the computer software programs listed in the Price Lists, in both executable and source code formats, together with any associated media, printed materials, and on-line or electronic documentation (if any) provided by Berkeley Lab (collectively, the "Software"), on computer systems now or in the future owned or leased by you, subject to the following terms and conditions:

- (a) You may use the Software solely for your own internal, non-commercial, research use. You agree that you will not use the Software for any commercial purpose. If you desire to use the Software in any other capacity, you must acquire a different license from Berkeley Lab;
- (b) The software may be used only on your premises and, if you are acting on behalf of a University, solely by members of the department specified 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 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; (iii) you may not otherwise copy or allow copies of the Software to be made; and
- (d) You may not rent, lease, loan, sublicense, or distribute the Software or any derivative work thereof to any third party.

2. COPYRIGHT; RETENTION OF RIGHTS.

2.1 Ownership of Software. Subject to receipt by Berkeley Lab or its licensors of any required approvals 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 in the Software which are not explicitly granted to you herein; and (iii) without limiting the generality of the foregoing, Berkeley Lab and its licensors 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.

2.2 Ownership of Derivative Works. Subject to the underlying copyright in the Software by Berkeley Lab and its licensors, Licensee retains all title, copyright, and other proprietary interests in derivative works of the Software that are developed by or on behalf of Licensee. Berkeley Lab does not acquire any rights, express or implied, in such derivative works.

2.3 Enhancements. You are under no obligation whatsoever to provide any bug fixes, patches, or upgrades to the features, functionality or performance of the source code ("Enhancements") to anyone; however, if you choose to make your Enhancements available either publicly, or directly to Berkeley Lab, without imposing a separate written license agreement for such Enhancements, then you hereby grant the following license to Berkeley Lab: a non-exclusive, royalty-free perpetual license to install, use, modify, prepare derivative works, incorporate into other computer software, distribute, and sublicense such enhancements or derivative works thereof, in binary and source code form.

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 updates (collectively, "Update") to the Software (if any). If, in its sole discretion, Berkeley Lab makes an Update available to you and Berkeley Lab does not separately enter into a written license agreement with you relating to such Update, then it shall be deemed incorporated into the Software and subject to this Agreement.

4. LICENSE FEE. In consideration of the rights granted hereunder, you agree to pay Berkeley Lab the appropriate license fee (see the Price Lists) due when you agree to this Agreement by clicking the “I Agree” button below.

5. CONFIDENTIALITY. Licensee will take appropriate steps to ensure that the source code of the Software remains confidential and is protected against unauthorized disclosure, use, or release, and will treat it with at least the same level of care as Licensee would use to protect and secure Licensee’s own confidential information, but in any event using no less than a reasonable standard of care.

6. U.S. GOVERNMENT RIGHTS. The Software was developed under funding from the U.S. Government 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.

7. 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.

8. LIMITATION OF LIABILITY. IN NO EVENT SHALL 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.

9. INDEMNITY. You shall indemnify, defend, and hold harmless Berkeley Lab, its licensors, 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 your use of the Software pursuant to this Agreement. You shall pay all costs incurred by Berkeley Lab in enforcing this provision, including reasonable attorney fees.

10. TERM AND TERMINATION. The license granted to you under this Agreement shall 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 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 to the contrary, Sections 5 through 12 shall survive termination of this Agreement.

11. 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.

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 shall 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.

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